

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1217

Sale of Electricity

SPONSOR(S): Troutman

TIED BILLS:

IDEN./SIM. BILLS: SB 2168

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Energy & Utilities Policy Committee		Sims-Davis	Collins
2)	Government Operations Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Florida Public Service Commission (PSC) regulates the rates and service of entities defined as "public utilities" under s. 366.02(1), F.S. This definition currently includes five investor-owned electric utilities in Florida and seven investor-owned natural gas distribution companies in Florida. The term does not include rural electric cooperatives or municipal electric utilities. Pursuant to s. 366.11, F.S., rural electric cooperatives and municipal electric utilities are specifically exempt from certain provisions applicable to investor-owned utilities, except as specified in statute.

The bill expands the definition of public utility in s. 366.02, F.S., to include separate legal entities created pursuant to an interlocal agreement under s. 163.01(15), F.S. The bill also amends s. 366.11, F.S., to specify that the provisions of Chapter 366, F.S., that grant the PSC authority to regulate the rates and service of investor-owned utilities will also apply to the sale of electricity by separate legal entities created pursuant to an interlocal agreement under s. 163.01(15), F.S. It appears that these two provisions grant the PSC full authority over the rates and service of such separate legal entities engaged in the sale of electricity or natural gas to or for the public. The bill may subject the Florida Municipal Power Agency to the PSC's jurisdiction over rates and service of public utilities.

The PSC estimates that the bill would result in recurring revenues to the commission of \$557,300, in FY10-11, FY11-12, and FY12-13. The PSC estimates that additional regulatory responsibilities under the bill would require a minimum of 2.5 FTEs and recurring expenditures of \$162,618 in FY10-11, FY11-12, and FY12-13, and non-recurring expenditures of \$9,693 for each of these fiscal years. It is unclear what impact the bill would have on local government expenditures as the impact will likely depend on the rates set by the PSC and the regulatory costs imposed.

The effective date of the bill is July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Florida Public Service Commission (PSC) regulates the rates and service of entities defined as public utilities under s. 366.02(1), F.S., which states:

“Public utility” means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term “public utility” does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas. (Emphasis added.)

This definition currently includes five investor-owned electric utilities in Florida and seven investor-owned natural gas distribution companies in Florida. The term does not include rural electric cooperatives or municipal electric utilities. Pursuant to s. 366.11, F.S., rural electric cooperatives and municipal electric utilities are specifically exempt from certain provisions applicable to investor-owned utilities, except as specified in statute.

Section 163.01, F.S., authorizes local government units to enter into interlocal agreements with each other for certain purposes. Section 163.01(15), F.S., specifies the powers granted to any public agency of the state which is an electric utility, or any separate legal entity created pursuant to s. 163.01, F.S., which consists only of electric utilities, and which exercises or proposes to exercise the powers granted by Part II of chapter 361, the Joint Power Act. The Florida Municipal Power Agency, created by interlocal agreement under s. 163.01, is an entity that would exercise powers under s. 163.01(15), F.S.

## **Effect of Proposed Changes**

The bill expands the definition of public utility in s. 366.02, F.S., to include separate legal entities created pursuant to an interlocal agreement under s. 163.01(15), F.S. The bill also amends s. 366.11, F.S., to specify that the provisions of Chapter 366, F.S., that grant the PSC authority to regulate the rates and service of investor-owned utilities will also apply to the sale of electricity by separate legal entities created pursuant to an interlocal agreement under s. 163.01(15), F.S. It appears that these two provisions grant the PSC full authority over the rates and service of such separate legal entities engaged in the sale of electricity or natural gas to or for the public.

The Florida Municipal Power Agency (FMPA) was created pursuant to interlocal agreement in 1978, and its membership has expanded since then from five to fifteen municipal electric utilities. These members are required to purchase all of their energy and capacity requirements at wholesale from FMPA, as well as sell all of their electrical generation to FMPA. It appears that the bill would require that the PSC set the rates at which FMPA sells power to its members and set a rate of return for FMPA. In addition, it appears that the bill would subject FMPA's power purchases from its member utilities to the same oversight the PSC applies to purchases by investor-owned utilities. It appears that the bill would subject FMPA to the same requirements as the public utilities currently regulated by the PSC, including regular reporting of earnings and service reliability and participation in annual cost-recovery proceedings.

The PSC reports that the bill may also apply to the Orlando Utilities Commission and the City of St. Cloud, which operate under an interlocal agreement.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 366.02, F.S., providing definitions for purposes of Chapter 366, F.S.

**Section 2.** Amends s. 366.11, F.S., relating to certain exemptions from PSC jurisdiction.

**Section 3.** Provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The PSC estimates that, based on its standard rate for regulatory assessment fees and FMPA's 2009 revenues, it would receive recurring revenues of \$557,300, in FY10-11, FY11-12, and FY12-13.

#### **2. Expenditures:**

The PSC estimates that full rate regulation of a large wholesale supplier like FMPA would require a minimum of 2.5 FTEs, comprised of 1.5 additional regulatory analysts and 1 additional senior attorney. Based on these estimates, the PSC estimates recurring expenditures of \$162,618 in FY10-11, FY11-12, and FY12-13, and non-recurring expenditures of \$9,693 for each of these fiscal years.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

It is unclear what impact the bill would have on local government expenditures. The impact will likely depend on the rates set by the PSC and the regulatory costs imposed. To the extent that FMPA or similarly situated legal entities created by interlocal agreement incur additional regulatory expenses, these expenses could be passed through to their constituent members.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

It is unclear what impact the bill would have on the private sector, including ratepayers of municipal electric cooperatives that are members of FMPA or of other separate legal entities established by interlocal agreement.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires a separate legal entity created by interlocal agreement to expend funds associated with the costs of regulation by the PSC, which expenditures would likely be passed on through wholesale rates to its constituent municipalities; however, it appears that an exemption applies because the bill appears to have an insignificant fiscal impact.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Public utilities are defined in s. 366.02, F.S., as entities supplying electricity or gas to or for the public. The supply of electricity or natural gas "to or for the public" has not been interpreted to apply beyond retail transactions.<sup>1</sup> Because FMPA supplies electricity at wholesale, it is not clear if the bill will effectively place FMPA under the PSC's full ratesetting jurisdiction.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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<sup>1</sup> See *Lee County Electric Cooperative, Inc. v. Jacobs*, 820 So.2d 297 (Fla. 2002) (affirming the PSC's finding that it did not have jurisdiction over a rural electric cooperative's wholesale rate schedule established pursuant to contract).