

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/HB 1081 Essential Electric Utility Service  
**SPONSOR(S):** Commerce Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Keating	Hamon

### SUMMARY ANALYSIS

Florida law, through s. 366.15, F.S., establishes procedures that each investor-owned electric utility (IOU) must follow when providing service to residential customers who depend on electric powered equipment for physician-certified medical reasons ("medically essential" electric service).

The bill expands s. 366.15, F.S., to require that municipal electric utilities and rural electric cooperatives offer medically essential electric service programs on terms similar to IOUs. The bill also requires that all electric utilities provide additional consumer education about medically essential electric service programs, and it modifies the certification and notice requirements associated with these programs. In particular, the bill:

- Requires each electric utility to post on its website a written explanation of the certification process, including a standard certification form.
- Requires each electric utility to provide a written explanation of the certification process to each residential customer at the time the customer opens an account and semiannually thereafter.
- Requires licensed physicians, physician assistants, and advanced registered nurse practitioners to inform eligible patients of the right to participate in medically essential electric service programs and to provide such patients a copy of s. 366.15, F.S., and, if requested, a completed medical certification.
- Allows for medical certification by licensed physician assistants and advanced registered nurse practitioners in addition to licensed physicians.
- Requires the medical certification to specify the time period for which service is expected to remain medically essential, up to 60 months.
- Requires the electric utility to provide recertification materials to certified customers at least 60 days prior to expiration of the customer's certification, and allows the utility to send recertification materials to the customer by e-mail if the customer has provided an email address.
- Requires an electric utility to provide additional notice to a certified customer before any disconnection of service for nonpayment, including notice by electronic means.

Florida law does not explicitly address the process by which electric utility service is restored to all customers following outages caused by emergency or disaster. The bill adopts a recommendation of the House Select Committee on Hurricane Response and Preparedness by requiring counties, as part of their local emergency management plans: (1) to identify facilities to which the restoration of electric service is deemed by the counties to be critical to the public health, safety, welfare, or security; and (2) to regularly update and share this information with local electric utilities. The bill requires electric utilities, as part of their efforts to restore service in the most efficient manner, to emphasize the expeditious restoration of these facilities.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Medically Essential Electric Service

Florida law, through s. 366.15, F.S., establishes procedures that each investor-owned electric utility<sup>1</sup> (IOU) must follow when providing service to residential customers who depend on electric powered equipment for physician-certified medical reasons. This service is referred to as “medically essential”<sup>2</sup> electric service.

Under the law, each IOU must:

- Designate employees who are authorized to direct the continuation or restoration of medically essential electric service.
- Provide annually to all customers a written explanation of the certification process for medically essential electric service, which includes:
  - Submittal of completed forms supplied by the utility, including a certification form completed by a physician licensed under ch. 458 or ch. 459, F.S., which states in medical and nonmedical terms why the electric service is medically essential; and
  - Recertification by a physician every 12 months.
- Provide recertification materials to a certified customer by mail at least 30 days prior to expiration of the customer’s certification, and allow the customer to submit completed recertification forms within 30 days after the expiration of certification.
- Provide notice to a certified customer before any disconnection of service for nonpayment:
  - By telephone at least 24 hours before the scheduled disconnection;
  - In person at the customer’s residence no later than 4 p.m. of the day before the scheduled disconnection, if the customer cannot be reached in a timely manner by telephone; and
  - By leaving written notification at the residence, if the customer cannot be reached by telephone or in person.
- Provide notice of any scheduled service interruptions to certified customers.

If a certified customer notifies its IOU of a need for financial assistance, the law requires the IOU to provide the customer with information on sources of state or local agency funding that may provide financial assistance to such customers. In addition, if an IOU operates a program to receive voluntary contributions from its customers to provide financial assistance to persons unable to pay for service, the IOU must train its customer service representatives to assist certified customers in identifying the program and any agencies to which the IOU has distributed the contributed funds.

The law provides that each certified customer maintains the responsibility to make satisfactory arrangements with the IOU to ensure payment for service consistent with the requirements of the IOU’s tariff. Further, the law provides that each certified customer is solely responsible for any backup equipment or power supply and a planned course of action in the event of a power outage or interruption of service. The law specifies that an IOU may disconnect service to a residence whenever

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<sup>1</sup> Florida’s investor-owned electric utilities are Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company. These utilities are referred to in statute as “public utilities” for purposes of regulation by the Public Service Commission. s. 366.02, F.S.

<sup>2</sup> The term “medically essential” is defined as “the medical dependence on electric-powered equipment that must be operated continuously or as circumstances require as specified by a physician to avoid the loss of life or immediate hospitalization of the customer or another permanent resident at the residential service address.” s. 366.15(1), F.S.

an emergency may threaten the health or safety of a person, the surrounding area, or the public utility's distribution system, provided that the IOU must promptly restore service as soon as feasible. The law states that it does not form the basis for any cause of action against an IOU.

The law does not apply to municipal electric utilities or rural electric cooperatives, but the majority of those utilities maintain programs for medically essential electric service, many under terms similar to the terms specified in law for IOUs.<sup>3</sup> The rates and service of municipal electric utilities and rural electric cooperatives are not regulated by the Public Service Commission (PSC).

Chapter 456, F.S., addresses the regulation of specified health care professions by the Department of Health. It does not address certification of patients for medically essential electric service.

### Restoration of Electric Service

In the aftermath of Hurricane Irma, the Speaker of the Florida House of Representatives created the Select Committee on Hurricane Response and Preparedness (Select Committee) on September 19, 2017. The Select Committee was directed to gather information, solicit ideas for improvement, and make recommendations to the executive branch and suggest legislative options to address hurricane response and preparedness. Based on conversations with constituents and local emergency management officials, personal experiences, and hours of presentations and discussion with experts from numerous fields, the Select Committee agreed to a list of proposed recommendations for consideration and further development by the standing committees of the House. On January 16, 2018, the Select Committee issued its Final Report which listed those recommendations and identified primary recommendations.<sup>4</sup>

One of the topics identified in the Final Report is hardening and restoring the electric grid. In addressing this topic, the Select Committee noted, among other things, that it had received testimony indicating that there is not consistent communication and cooperation among local emergency management officials and electric utilities statewide in relation to identifying and restoring critical facilities. To address this concern, the Select Committee adopted a recommendation to improve these communications and emphasize the restoration of electric service to facilities deemed critical by local emergency management officials.<sup>5</sup>

The State Emergency Management Act (Act) is codified at ss. 252.31-252.60, F.S., and establishes the framework for state and local agencies in Florida to prepare for and respond to emergencies<sup>6</sup>, including natural, technological, and manmade disasters.<sup>7</sup> The Act charges the Division of Emergency Management (DEM) with the responsibility of maintaining a comprehensive statewide program of emergency management and coordinating with the federal government, other departments or agencies of the state, and local governments.<sup>8</sup> The Act requires DEM to prepare a statewide comprehensive

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<sup>3</sup>As of December 31, 2016, IOUs served 75% of residential customers in the state (6,937,595), while municipal electric utilities served 14% (1,247,474) and rural electric cooperatives served 11% (1,012,056). See FLORIDA PUBLIC SERVICE COMMISSION, Statistics of the Florida Electric Utility Industry, October 2017, at 44, available at <http://www.floridapsc.com/Files/PDF/Publications/Reports/Electricgas/Statistics/2016.pdf>.

<sup>4</sup> FLORIDA HOUSE OF REPRESENTATIVES, *Final Report of the Select Committee on Hurricane Response and Preparedness*, January 16, 2018, available at <https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General Publications&FileName=SCHRP - Final Report online.pdf> (last visited Feb. 6, 2018).

<sup>5</sup> *Id.* at p. 21.

<sup>6</sup> "Emergency" is defined as "any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property." s. 252.34(5), F.S.

<sup>7</sup> "Disaster" is defined as "any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States." Disasters are categorized as "catastrophic," "major," or "minor" depending on the degree to which state and/or federal assistance is required in response. s. 252.34(2), F.S.

<sup>8</sup> s. 252.35(1), F.S.

emergency management plan and requires that specific components be included in the plan.<sup>9</sup> DEM is authorized to adopt standards and requirements for local emergency management plans to ensure consistency and coordination with the state plan.<sup>10</sup>

The Act also requires each county, either individually or through agreement with one or more other counties, to establish and maintain an emergency management agency and an emergency management plan and program that is coordinated with the state plan.<sup>11</sup> Each county emergency management agency must perform emergency management functions within its territorial limits and conduct any activities outside its territorial limits as required by the Act and in accordance with state and county emergency management plans and mutual aid agreements.<sup>12</sup> Municipalities may develop emergency management programs in coordination with the county emergency management agency.<sup>13</sup>

Florida law does not explicitly address the process by which electric utility service is restored to customers following outages caused by emergency or disaster.

## **Effect of Proposed Changes**

### Medically Essential Electric Service

The bill requires additional consumer education about medically essential electric service programs and establishes additional protections for utility customers that are certified under such programs. In addition, the bill expands the law to include municipal electric utilities and rural electric cooperatives.

The bill amends s. 366.15, F.S., to replace most references to “public utility” – the term used in ch. 366, F.S., to describe investor-owned electric utilities – with the term “electric utility.” The term “electric utility” is used in ch. 366, F.S., to refer to all types of electric utilities, including investor-owned electric utilities, municipal electric utilities, and rural electric cooperatives. Thus, the bill expands the statutory requirements for medically essential electric service to all retail electric utilities in the state.<sup>14</sup>

The bill requires additional consumer education about medically essential electric service. In particular, the bill:

- Requires that each electric utility post on its website a written explanation of the certification process, including a standard certification form adopted by the utility.
- Requires that each electric utility provide a written explanation of the certification process to each residential customer at the time the customer opens an account with the utility and semiannually thereafter, either through a bill insert or by electronic means.
- Creates s. 456.45, F.S., to require certain health care practitioners – licensed physicians, physician assistants, and advanced registered nurse practitioners – to inform a patient of the right to participate in medically essential electric service programs and to provide the patient with a written copy of s. 366.15, F.S., if the patient may be at risk of loss of life or immediate hospitalization due to the loss of electric service at the patient’s residence. At the request of such a patient, the practitioner must provide the patient a completed medical certification using the form adopted by the utility and document the certification in the patient’s record.

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<sup>9</sup> s. 252.35(2)(a), F.S.

<sup>10</sup> s. 252.35(2)(b), F.S.

<sup>11</sup> s. 252.38(1), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> s. 252.38(2), F.S.

<sup>14</sup> The bill does not extend certain accounting and training requirements in s. 366.15(10)(b)2., F.S., to municipal electric utilities and rural electric cooperatives.

The bill also modifies the statutory requirements for medically essential electric service. With respect to the certification process, the bill:

- Allows for medical certification by licensed physician assistants and advanced registered nurse practitioners in addition to licensed physicians.
- Requires that each utility adopt a standard certification form and specifies the information to be included in the form, including: the customer's name, account number, service address, and contact information; the name of the permanent resident at the service address who is medically dependent on electric-powered equipment; and the name of that person's certifying health practitioner. The bill requires that the standard certification form include a separate section to be completed by the certifying health care practitioner, which must include: the name, business address, and medical license number of the certifying health care practitioner; a statement in medical and nonmedical terms that specifies why electric service is medically essential; and the time period for which the service is expected to remain medically essential.
- Provides that the medical certification may extend up to 60 months.
- Requires recertification upon expiration of the current certification period but no sooner than 12 months after issuance of the current certification.
- Provides that the electric utility may send recertification materials to the customer by e-mail if the customer has provided an email address to the utility.
- Requires the electric utility to provide recertification materials to certified customers at least 60 days prior to expiration of the customer's certification.
- Allows the electric utility, no more often than once every 12 months, to request verification from the customer that the person for whom service is certified continues to reside at the service address.

With respect to disconnection of service for nonpayment, the bill:

- Ensures that certified customers are provided no less time than other residential customers to make payment or payment arrangements (in any event, no less than 20 days from the date a bill is mailed or delivered by the electric utility) prior to the utility scheduling disconnection of service.
- Requires the electric utility to provide, in addition to any notice provided in its normal course of business, notice to certified customers:
  - By telephone and in writing – including by electronic means if the customer has provided contact information to receive electronic communications – no later than 15 days before, and again no later than 7 days before, the scheduled disconnection;
  - In person at the customer's residence no later than 2 business days before the scheduled disconnection, if the customer cannot be reached in a timely manner by telephone; and
  - In writing by electronic means, in addition to leaving written notification at the residence, if in-person contact is not made.

### Restoration of Electric Service

The bill adopts a recommendation of the Select Committee by requiring that each emergency management plan developed by a county, either individually or through agreement with one or more other counties, must identify those facilities to which the restoration of electric service is deemed by the county or counties to be critical to the public health, safety, welfare, or security. The bill provides that these facilities may include, but are not limited to, emergency management and law enforcement facilities; health care facilities; public shelters; and critical utility, transportation, communications, government, and military infrastructure. The bill requires that each plan must provide for this information to be updated on a regular basis and shared with each utility that provides retail electricity service within the county.

The bill requires each electric utility, as part of its efforts to restore electric service in the most efficient manner, to emphasize the expeditious restoration of service to those facilities identified in the plan as critical. The bill does not appear to require the creation of a strict priority list for restoration of electric service.

The bill makes conforming changes, including cross-references.

The bill provides an effective date of July 1, 2018.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 252.38, F.S., related to emergency management powers of political subdivisions.

**Section 2.** Amends s. 252.373, F.S., to conform a cross-reference.

**Section 3.** Amends s. 366.11, F.S., related to certain exemptions from regulation under ch. 366, F.S.

**Section 4.** Amends s. 366.15, F.S., related to medically essential electric public utility service.

**Section 5.** Creates s. 456.45, F.S., related to certification of medically essential electric utility service.

**Section 6.** Provides an effective date of July 1, 2018.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

Electric utilities that currently provide medically essential electric service programs may incur costs to modify those programs to comply with the bill. The small minority of electric utilities that do not currently provide such programs will incur costs to establish those programs in compliance with the bill.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2018, the Commerce Committee published a proposed committee substitute (PCS) to CS/HB 1081. The PCS makes the following changes to CS/HB 1081:

- Requires each county, as part of its emergency management plan or in supporting documents to its plan, to identify critical facilities for purposes of restoration of electric service and to regularly update and communicate this information to utilities that provide retail electricity service within the county.
- Requires each electric utility, as part of its efforts to restore service in the most efficient manner, to emphasize the expeditious restoration of service to critical facilities identified by the county.
- Clarifies that municipal electric utilities and rural electric cooperatives are not exempt from the provisions of the bill related to medically essential electric service.
- Requires each utility, rather than the Public Service Commission, to adopt a standard certification form for medically essential electric service, and specifies the information to be included in each form.
- Provides that a utility, no more often than once every 12 months, may verify that a person whose service is certified as medically essential continues to reside at the service address.
- Conforms cross-references.

This analysis addresses the PCS.