



Energy & Utilities Subcommittee

Monday, January 11, 2016

4:00 PM

Webster Hall (212 Knott)

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Energy & Utilities Subcommittee

Start Date and Time: Monday, January 11, 2016 04:00 pm
End Date and Time: Monday, January 11, 2016 06:00 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 579 Municipal Power Regulation by Mayfield

HB 639 Carbon Dioxide Emissions from Existing Stationary Sources by Diaz, M., Rodrigues, R.

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Friday, January 8, 2016.

By request of the Chair, all Energy & Utilities Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 8, 2016.

NOTICE FINALIZED on 01/04/2016 4:13PM by McCloskey.Michele



The Florida House of Representatives

Regulatory Affairs Committee Energy & Utilities Subcommittee

**Steve Crisafulli
Speaker**

**Dane Eagle
Chair**

AGENDA

**Monday, January 11, 2016
212 Knott
4:00 pm – 6:00 pm**

- I. Call to Order
- II. Roll Call
- III. Consideration of the following bill(s):
 - a. HB 579 Municipal Power Regulation by Mayfield
 - b. HB 639 Carbon Dioxide Emissions from Existing Stationary Sources by Diaz, M., Rodrigues, R.
- IV. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 579 Municipal Power Regulation

SPONSOR(S): Mayfield and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 840

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating <i>CK</i>	Keating <i>CK</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Florida Municipal Power Agency (FMPA) was created in 1978 through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale electrical power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities. Through various joint electrical power supply projects, it supplies all of the electrical power needs of 13 member utilities (through its All-Requirements Project) and some of the power needs for seven other member utilities. FMPA member utilities that do not participate in power supply projects may use other FMPA services, including training.

FMPA is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each of FMPA's power supply projects. The All-Requirements Project is governed by an Executive Committee that reports to the Board. Each municipality that participates in the All-Requirements Project appoints a member to the Executive Committee. Through public meetings of these governing bodies, FMPA establishes a budget and the rate structures applicable to its electrical power supply projects.

Pursuant to proviso language accompanying a specific appropriation in the 2014-2015 budget, FMPA was subject to a full operational audit by the State of Florida Auditor General. The audit report was completed in March 2015 and produced fifteen findings and recommendations related to FMPA's operations.

The bill establishes reporting and regulatory requirements for FMPA. In particular, the bill:

- Establishes annual financial reporting requirements for FMPA.
- Requires that members of FMPA's Board of Directors and Executive Committee be elected officials of the municipalities represented.
- Requires the Public Counsel to participate in FMPA proceedings to set rates.
- Defines FMPA as a public utility for purposes of regulation by the Public Service Commission (PSC), but exempts FMPA from the PSC's jurisdiction to regulate rates and service.

The bill does not impact state or local government revenues. The bill may result in additional state expenditures associated with the Public Counsel's participation in FMPA proceedings and the PSC's regulatory oversight of FMPA. The bill does not appear to impact local government expenditures.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Municipal Power Agency

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.¹ Through various joint power supply projects², it supplies all of the electrical power needs of 13 member utilities (referred to as "All-Requirements Project" or "ARP" members) and some of the power needs for seven other member utilities.³ Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida.⁴ FMPA manages the transmission of electrical power over facilities owned by FMPA or its ARP members.⁵ FMPA also manages a "power pool" that includes the generating resources of its All-Requirements Project, Lakeland Electric, and Orlando Utilities Commission.⁶ According to its website, FMPA provides economies of scale in electrical power generation, allowing its members, through coordination of their individual power needs, to utilize larger, more efficient power plants and to diversify their power sources.⁷ FMPA members that do not participate in power supply projects may use other FMPA services, including training.⁸

FMPA is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each of FMPA's power supply projects except the All-Requirements Project. The ARP is governed by an Executive Committee. Each member municipality of the ARP appoints one Executive Committee member. The Board is responsible for approving the rate structures for all non-ARP projects, and the Executive Committee is responsible for approving the rate structure for the ARP project.⁹ As required by law, the Board and Executive Committee must conduct their public business, including rate-setting and budgeting, in open, public meetings after providing reasonable notice.^{10,11} A financial audit of FMPA is conducted annually by an independent auditor and is filed with the state.¹²

¹ Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. FLORIDA MUNICIPAL POWER AGENCY, *Members*, <http://fmpa.com/about/members/> (last visited January 5, 2016).

² Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, section 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

³ FLORIDA MUNICIPAL POWER AGENCY, *Energy Overview*, <http://fmpa.com/energy/overview-2/> (last visited January 5, 2016). For a list of the projects and the cities participating in each project, see FLORIDA MUNICIPAL POWER AGENCY, *Projects*, <http://fmpa.com/energy/projects/> (last visited January 5, 2016).

⁴ FLORIDA MUNICIPAL POWER AGENCY, *Plants*, <http://fmpa.com/energy/plants/> (last visited January 5, 2016).

⁵ FLORIDA MUNICIPAL POWER AGENCY, *Transmission*, <http://fmpa.com/energy/transmission/> (last visited January 5, 2016).

⁶ FLORIDA MUNICIPAL POWER AGENCY, *Power Pool*, <http://fmpa.com/energy/power-pool/> (last visited January 5, 2016).

⁷ FLORIDA MUNICIPAL POWER AGENCY, *About Overview*, <http://fmpa.com/about/overview/> (last visited January 5, 2016).

⁸ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015, at p.3.

⁹ *Id.*

¹⁰ Article I, section 24 of the Florida Constitution requires, among other things, that all meetings of any collegial body of a county or municipality at which public business is to be transacted must be open and noticed to the public. Section 286.011(1), F.S., implements this provision and applies it to any board or commissions of any political subdivision of the state, which includes boards formed by interlocal agreement. See 84-16, Fla. Op. Att'y Gen. (1984).

Pursuant to proviso language accompanying a specific appropriation in the 2014-2015 budget¹³, the State of Florida Auditor General was directed to retain subject matter experts to conduct a full audit of any entity created under s. 361.10, F.S.¹⁴ The audit was required to analyze all revenues, expenditures, administrative costs, bond agreements, contracts, and employment records and to provide a complete review of the rates of such entities. Under this direction, the Auditor General retained consultants and conducted an operational audit of FMPA and submitted its final audit report to the Speaker of the House of Representatives and the President of the Senate in March 2015.¹⁵ The audit report produced fifteen findings and recommendations related to FMPA's hedging activities, investments, personnel and payroll administration, procurement practices, ARP contract provisions, and information technology practices. The audit report was presented to the Joint Legislative Auditing Committee on March 30, 2015, with a follow-up discussion on October 5, 2015.¹⁶

Office of Public Counsel

The office of the Public Counsel was created by the Legislature in 1974 to provide legal representation for the people of the state in utility related matters in proceedings before the Public Service Commission (PSC) and in proceedings before counties pursuant to s. 367.171(8), F.S.¹⁷ The Public Counsel is appointed by and serves at the pleasure of the Committee on Public Counsel Oversight, a joint committee of the Legislature.¹⁸ The office of the Public Counsel is currently composed of fifteen positions, including six attorneys, analysts with experience in utility matters, and administrative support staff.¹⁹

The Public Counsel is authorized to intervene in proceedings before the PSC and counties²⁰ and typically participates in cases that impact the retail rates of investor-owned electric, gas, water, and wastewater utilities.²¹ Because the PSC is not authorized to set rates for governmental utilities or utilities organized as cooperatives, the Public Counsel cannot intervene in cases regarding the rates of such utilities. The Public Counsel performs independent analyses, presents testimony of expert witnesses, cross-examines utility witnesses, and files recommendations and briefs in these cases.

¹¹ In addition to public notice, FMPA states that it provides call-in numbers to allow public participation by phone and includes an opportunity for public comment at each meeting. FMPA also states that it uses a "two-read" practice under which significant business or policy decisions are brought to the Board or Executive Committee as an information item at one meeting then brought forward for action at a second meeting, allowing additional time for public notice and discussion.

¹² State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015 at 36 (Exhibit C, FMPA Management Response).

¹³ Specific Appropriation 2685, 2014-2015 General Appropriations Act, Ch. 2014-51, Laws of Fla.

¹⁴ The reference in the appropriation to section 361.10, F.S., was likely misplaced. That section does not authorize the creation of any type of entity. Rather, it authorizes various types of existing utility entities to participate in joint electrical power supply projects.

¹⁵ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015. The Auditor General did not audit any other entities that participate in joint electrical power supply projects authorized by s. 361.10, F.S.

¹⁶ At the October 5, 2015, meeting of the Joint Legislative Auditing Committee, FMPA indicated that it had addressed 10 of the 15 audit report findings and anticipated addressing the remaining findings by the end of 2015. FMPA committed to provide the committee with progress reports every 60 days until each of the audit report's findings have been addressed. The committee indicated that it may conduct additional meetings to discuss FMPA's progress.

¹⁷ See ss. 350.061-350.0614, F.S.

¹⁸ s. 361.061(1), F.S.

¹⁹ OFFICE OF PUBLIC COUNSEL, *Frequently Asked Questions*, <http://www.floridaopc.gov/Pages/FAQs.aspx> (last visited January 6, 2015).

²⁰ s. 361.0611, F.S.

²¹ Currently, the PSC has rate-setting authority over five investor-owned electric utilities, eight investor-owned natural gas utilities, and 149 investor-owned water and/or wastewater utilities. FLORIDA PUBLIC SERVICE COMMISSION, *Facts and Figures of the Florida Utility Industry*, March 2015, available at <http://www.psc.state.fl.us/publications/reports.aspx>.

Public Service Commission Regulation of Retail Electric Service

Regulation of retail electric service in Florida varies based on the organization of the utility providing the service. There are three distinct types of electric utility organizations providing retail service in Florida: investor-owned electric utilities (defined as “public utilities” for purposes of PSC regulation), municipal electric utilities, and rural electric cooperatives. All three types of electric utilities are subject to the PSC’s authority over electric system planning, reliability, and safety. In addition, the PSC has authority over the retail rate structure of all electric utilities²², though it may set retail rates only for investor-owned (“public”) utilities. The PSC has broad authority to regulate the retail rates and service of Florida’s five investor-owned electric utilities, which serve the majority of electric customers in the state.²³

As part of its authority to regulate the retail rates and service of investor-owned electric utilities, the PSC may authorize each such utility, upon application, to issue and sell securities or assume liabilities or obligations (debt). The PSC may deny such authorization if the security, liability, or obligation is for nonutility purposes and shall deny such authorization if the financial viability of the utility is adversely affected such that the utility’s ability to provide reasonable service at reasonable rates is jeopardized. The PSC’s approval constitutes approval only as to the legality of the issue or assumption, and in no way may be considered approval of the “rates, service, accounts, valuation, estimates, or determinations of cost or any other such matter.”²⁴

Certain aspects of the electric utility business are regulated by the Federal Energy Regulatory Commission (FERC). For example, FERC has authority to regulate rates for certain wholesale transmission and power sales.²⁵ However, FERC is not authorized to regulate rates for such wholesale sales by any political subdivision of a state or any rural electric cooperative.²⁶ Accordingly, FMPA’s rates and rate structure are not regulated by FERC.

Effect of Proposed Changes

The bill establishes reporting and regulatory requirements for FMPA. In particular, the bill:

- Establishes annual financial reporting requirements for FMPA.
- Requires that members of FMPA’s Board of Directors and Executive Committee be elected officials of the municipalities represented.
- Requires the Public Counsel to participate in FMPA proceedings to set rates.
- Defines FMPA as a public utility for purposes of regulation by the PSC, but exempts FMPA from the PSC’s jurisdiction to regulate rates and service.

Annual Financial Reporting by FMPA

The bill requires that any entity created under s.163.01, F.S., that supplies electricity to member municipalities must annually submit to the PSC, the Public Counsel, and its member municipalities independently prepared financial statements for each individual generating asset. This provision appears to apply only to FMPA, as it is the only entity created under s. 163.01, F.S., which supplies electricity to member municipalities.

The bill requires that the financial statement include the following:

²² In *Lee County Electric Cooperative, Inc. v. Jacobs*, 820 So. 2d 297 (Fla. 2001), the Florida Supreme Court upheld an order of the Public Service Commission determining that it lacked jurisdiction over the *wholesale* rate structure of a rural electric cooperative.

²³ See s. 366.01, et seq., F.S.

²⁴ s. 366.04(1), F.S.

²⁵ 16 U.S.C. §824.

²⁶ 16 U.S.C. §824(f).

- A balance sheet that reflects assets and liabilities associated with each generation asset, including the plant in service, accumulated additions and removals, net plant, depreciation, operations and maintenance expenses, allocations, and any other material asset and liability categories.
- An income statement that reflects each generation asset's operational and financial activities for the reporting period, including revenues, expenses, gains, and losses, with gains or losses from hedging activities associated with the generation asset to be separately itemized.
- A statement of cash flows that identifies changes in the generation asset's cash flows during the reporting period.
- A statement of the current fair market value for each generation asset,²⁷ which must include the overall fair market value of the generation asset as a whole and each member municipality's equity position net of the entity's debt, based on the current fair market generation asset value. This statement must also include, after considering the market value of the generation assets, the "net return of equity or the cost to exit the entity" for each member municipality.

The bill does not require the PSC, the Public Counsel, or any member municipality to take any specific action after receiving a financial statement pursuant to this provision.

Members of Governing Body of FMPA

The bill provides that only an elected official of a municipality may be appointed to serve on the governing body of an entity created under s. 163.01, F.S., to supply electricity to member municipalities. The bill provides that a current member of such a governing body who is not an elected official may continue to serve until expiration of his or her term but no later than July 1, 2018. This provision appears to apply only to FMPA, as it is the only entity created under s. 163.01, F.S., to supply electricity to member municipalities.

Public Counsel Participation in FMPA Proceedings

The bill expands the role of the Public Counsel to include representation for the people of the state in proceedings before FMPA. In particular the bill authorizes the Public Counsel to do the following:

- Recommend the commencement of proceedings at FMPA.
- Appear on behalf of the state or its citizens in any action or proceeding before FMPA and to urge any position it deems to be in the public interest.
- Obtain access to all files, records, and data of FMPA to the same degree that such access is available to any other attorney representing a party in a proceeding before FMPA.
- Seek review of any determination, finding, or order of FMPA.
- Prepare and issue reports, recommendations, and proposed orders to the PSC, the Governor, and the Legislature on any matter within FMPA's jurisdiction, and make recommendations it deems appropriate for legislation relative to FMPA procedures, rules, jurisdiction, personnel, and functions.
- Appear before other state and federal agencies and courts related to matters under FMPA's jurisdiction.

For purposes of this provision, the bill defines FMPA as "the legal entity, or a successor entity, formed under s. 163.01 by interlocal agreement among municipalities."

The bill does not specify precisely who the Public Counsel would represent before FMPA or how it would participate in FMPA's decision-making process.

²⁷ The bill provides that current fair market value shall be determined assuming the price that a willing buyer would pay a willing seller for the generation asset, with neither party being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, and assuming all risk of ownership, loss, and decommissioning, as applicable.

PSC Jurisdiction over FMPA

The bill expands the definition of “public utility” in Ch. 366, F.S., to include FMPA. For this purpose, the bill defines “Florida Municipal Power Agency” as “the legal entity, or a successor entity, formed under s. 163.01 by interlocal agreement among municipalities.”

As noted above, the current definition of “public utility” for purposes of Ch. 366, F.S., includes only investor-owned electric utilities. The PSC has broad authority under Ch. 366, F.S., to regulate the retail rates and service of such utilities. This grant of authority is included, in part, in s. 366.04(1), F.S., though most if not all of the provisions of Ch. 366, F.S., that address regulation of public utilities are generally related to the rates and service of those utilities.

The bill amends s. 366.04(1), F.S., to exclude FMPA from the PSC’s authority to regulate each public utility’s rates and service. The bill does not clearly specify the PSC’s authority over FMPA.²⁸

B. SECTION DIRECTORY:

Section 1. Creates s. 163.01(19), F.S., establishing financial reporting requirements for entities created under s. 163.01, F.S., that supply electricity by interlocal agreement to member municipalities.

Section 2. Amends s. 350.0611, F.S., relating to duties and powers of the Public Counsel.

Section 3. Amends s. 366.02, F.S., relating to definitions used in Ch. 366, F.S.

Section 4. Amends s. 366.04, F.S., relating to jurisdiction of the Public Service Commission.

Section 5. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The PSC will not collect regulatory assessment fees associated with the classification of FMPA as a public utility. FMPA revenues come from wholesale sales to its member municipalities for resale to retail customers. Under current law, regulatory assessment fees are not levied upon revenues derived from sales for resale between public utilities and municipalities.

2. Expenditures:

Indeterminate. The office of the Public Counsel may incur additional expense to participate in actions before FMPA. The PSC may incur additional expense in overseeing aspects of FMPA’s business.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²⁸ See Florida Public Service Commission, Agency Analysis of 2016 House Bill 579, p.2 (November 18, 2015).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

FMPA may incur costs to comply with the financial reporting requirements imposed by the bill. It also may incur regulatory costs associated with PSC oversight, though the bill does not clearly specify the PSC's authority over FMPA.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Counsel Participation in FMPA Proceedings

It is not clear how the provisions related to the Public Counsel's role with respect to FMPA may be implemented. First, FMPA's customers are its member municipalities, who are already represented on its Board and Executive Committee. In addition, unlike the PSC (or the counties that regulate water and wastewater utilities), FMPA does not conduct formal, evidentiary proceedings among adversary parties when establishing the rate structures applicable to its various power supply projects. Instead, it acts through its Board and Executive Committee in open, public meetings where its staff and the public provide information and it deliberates and votes upon rate structures. Finally, the bill does not provide a standard by which the Public Counsel may determine whether a particular position is in the public interest. Thus, it is not clear who the Public Counsel would represent before FMPA or how it would effectively participate in FMPA's decision-making process.

PSC Jurisdiction over FMPA

The bill amends the definition of "public utility" in Ch. 366, F.S., to include FMPA, but exempts FMPA from PSC regulation of its rates and service under that chapter. In general, the provisions of Ch. 366, F.S., that address regulation of public utilities are related to the rates and service of those utilities. Thus, it is difficult to determine the specific aspects of PSC authority under which FMPA may be regulated by the bill. The bill could be amended to clarify the specific intent of this provision.

For purposes of PSC regulation, the bill defines "Florida Municipal Power Agency" as "the legal entity, or a successor entity, formed under s. 163.01, F.S., by interlocal agreement among municipalities." In

addition to FMPA, this definition may include existing legal entities other than FMPA that were formed under the authority of Ch. 366, F.S. for different purposes. This definition may also include legal entities that may be formed under the same authority for similar purposes. The bill could be amended to clarify the entity or entities that it intends to capture in this definition.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to municipal power regulation;
 3 amending s. 163.01, F.S.; requiring certain entities
 4 created under the Interlocal Cooperation Act of 1969
 5 to submit independently prepared financial statements
 6 for certain electric power projects to specified
 7 public entities; providing statement requirements;
 8 providing eligibility requirements for membership on
 9 the governing body of certain entities created under
 10 the Interlocal Cooperation Act of 1969; amending s.
 11 350.0611, F.S.; expanding the duties of the Public
 12 Counsel to include proceedings involving the Florida
 13 Municipal Power Agency; amending s. 366.02, F.S.;
 14 revising the definition of the term "public utility"
 15 to include the Florida Municipal Power Agency;
 16 defining the term "Florida Municipal Power Agency";
 17 amending s. 366.04, F.S.; exempting the agency from
 18 regulation by the Public Service Commission for
 19 purposes of rates and service; providing an effective
 20 date.

21
 22 WHEREAS, The Florida Municipal Power Agency is a joint-use
 23 action agency created pursuant to a series of interlocal
 24 agreements with the state's municipalities to finance, acquire,
 25 contract, manage, and operate its own electric power projects or
 26 jointly accomplish the same purposes with other public or

27 private utilities, and

28 WHEREAS, the Florida Municipal Power Agency is governed by
 29 a board of directors, consisting of one board member from each
 30 member municipality, which decides all issues concerning each
 31 project except for the "All-Requirements" power supply project,
 32 and

33 WHEREAS, the All-Requirements power supply project is
 34 governed by an executive committee, with each All-Requirements
 35 project member municipality that purchases power from the
 36 project appointing one executive committee member, and

37 WHEREAS, the Auditor General conducted an operational audit
 38 of the of Florida Municipal Power Agency and released Report No.
 39 2015-165 to the Joint Legislative Auditing Committee on March
 40 30, 2015, which included findings and recommendations, and

41 WHEREAS, the Auditor General found many of the Florida
 42 Municipal Power Agency's hedging activities to be inconsistent
 43 with other joint-use action agencies, leading to net losses of
 44 \$247.6 million over the past 12 fiscal years, and

45 WHEREAS, the Auditor General concluded that several of the
 46 Florida Municipal Power Agency's personnel and payroll
 47 administration activities may negatively affect future rates,
 48 including the Chief Executive Officer's employment contract that
 49 provides severance pay and lifetime benefits even if employment
 50 is terminated for cause, and

51 WHEREAS, the Florida Municipal Power Agency did not
 52 consistently follow its own procurement and competitive

53 selection policies, one of which may increase the cost of future
 54 bond issues, and

55 WHEREAS, the Florida Municipal Power Agency's All-
 56 Requirements project agreement to curtail peak-shaving
 57 activities is primarily voluntary, relies on self-reporting, and
 58 contains no penalties for noncompliance, and

59 WHEREAS, certain All-Requirements project contract
 60 provisions relating to the withdrawal of members are ambiguous,
 61 use a fixed discount rate rather than one based on current
 62 capital costs, and do not provide for independent verification
 63 by a withdrawing member, and

64 WHEREAS, even though the Florida Municipal Power Agency is
 65 a governmental entity, many of the laws that apply to local
 66 governments do not apply to the agency, and

67 WHEREAS, the Florida Municipal Power Agency is not subject
 68 to any rate-setting authority, including by the Public Service
 69 Commission, and

70 WHEREAS, there exists a need to promote transparency and
 71 consistency and to increase public understanding and confidence
 72 in the operation of the Florida Municipal Power Agency by the
 73 member municipalities and the public, including those electric
 74 ratepayers who are not residents of the municipality supplying
 75 electric power but who are subject to a municipality that is
 76 receiving power from the agency, NOW, THEREFORE,

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78 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsection (19) is added to section 163.01, Florida Statutes, to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(19) (a) Any entity created pursuant to this section that supplies electricity through an interlocal agreement to its member municipalities shall annually submit to the Public Service Commission, the Public Counsel, and each member municipality that participates in the electric power project an independently prepared financial statement for each individual generation asset. The financial statement must include:

1. A balance sheet that reflects assets and liabilities associated with each generation asset, including the plant in service, accumulated additions and removals, net plant, depreciation, operations and maintenance expenses, allocations, and any other material asset and liability categories.

2. An income statement that reflects each generation asset's operational and financial activities for the reporting period, including revenues, expenses, gains, and losses. Any gains or losses from hedging activities associated with the generation asset shall be separately itemized.

3. A statement of cash flows that identifies changes in the generation asset's cash flows during the reporting period.

4. The current fair market value for each generation asset. The current fair market value shall be determined assuming the price that a willing buyer would pay a willing

105 seller for the generation asset, with neither party being under
 106 any compulsion to buy or sell and both having reasonable
 107 knowledge of relevant facts, and assuming all risk of ownership,
 108 loss, and decommissioning, as applicable. The current fair
 109 market value statement shall include the overall fair market
 110 value of the generation asset as a whole and each member
 111 municipality's equity position net of the entity's debt, based
 112 on the current fair market generation asset value. The current
 113 fair market value statement shall include, after considering the
 114 market value of the generation assets, the net return of equity
 115 or the cost to exit the entity for each member municipality.

116 (b) To serve as a member of the governing body of an
 117 entity created pursuant to this section for the purpose of
 118 supplying electricity to its member municipalities, each member
 119 of the governing body must be an elected official from one of
 120 the entity's member municipalities. Current members of a
 121 governing body of such an entity who are not elected officials
 122 may continue to serve until expiration of their terms but no
 123 later than July 1, 2018.

124 Section 2. Section 350.0611, Florida Statutes, is amended
 125 to read:

126 350.0611 Public Counsel; duties and powers.—It shall be
 127 the duty of the Public Counsel to provide legal representation
 128 for the people of the state in proceedings before the
 129 commission, ~~and~~ in proceedings before counties pursuant to s.
 130 367.171(8), and in proceedings before the Florida Municipal

131 | Power Agency. The Public Counsel shall have such powers as are
 132 | necessary to carry out the duties of his or her office,
 133 | including, but not limited to, the following specific powers:
 134 | (1) To recommend to the commission, ~~or~~ the counties, or
 135 | the Florida Municipal Power Agency, by petition, the
 136 | commencement of any proceeding or action or to appear, in the
 137 | name of the state or its citizens, in any proceeding or action
 138 | before the commission, ~~or~~ the counties, or the agency, and urge
 139 | therein any position which he or she deems to be in the public
 140 | interest, whether consistent or inconsistent with positions
 141 | previously adopted by the commission, ~~or~~ the
 142 | agency, and utilize therein all forms of discovery available to
 143 | attorneys in civil actions generally, subject to protective
 144 | orders of the commission or the counties which shall be
 145 | reviewable by summary procedure in the circuit courts of this
 146 | state;
 147 | (2) To have access to and use of all files, records, and
 148 | data of the commission, ~~or~~ the counties, or the Florida
 149 | Municipal Power Agency available to any other attorney
 150 | representing parties in a proceeding before the commission, ~~or~~
 151 | the counties, or the agency;
 152 | (3) In any proceeding in which he or she has participated
 153 | as a party, to seek review of any determination, finding, or
 154 | order of the commission, ~~or~~ the counties, the Florida Municipal
 155 | Power Agency, or ~~of~~ any hearing examiner designated by the
 156 | commission, ~~or~~ the counties, or the agency, in the name of the

157 state or its citizens;

158 (4) To prepare and issue reports, recommendations, and
 159 proposed orders to the commission, the Governor, and the
 160 Legislature on any matter or subject within the jurisdiction of
 161 the commission or the Florida Municipal Power Agency, and to
 162 make such recommendations as he or she deems appropriate for
 163 legislation relative to commission or agency procedures, rules,
 164 jurisdiction, personnel, and functions; and

165 (5) To appear before other state agencies, federal
 166 agencies, and state and federal courts in connection with
 167 matters under the jurisdiction of the commission or the Florida
 168 Municipal Power Agency, in the name of the state or its
 169 citizens.

170

171 As used in this section, the term "Florida Municipal Power
 172 Agency" or "agency" has the same meaning as provided in s.
 173 366.02.

174 Section 3. Subsection (1) of section 366.02, Florida
 175 Statutes, is amended, and subsection (4) is added to that
 176 section, to read:

177 366.02 Definitions.—As used in this chapter:

178 (1) "Public utility" means every person, corporation,
 179 partnership, association, or other legal entity and their
 180 lessees, trustees, or receivers supplying electricity or gas
 181 (natural, manufactured, or similar gaseous substance) to or for
 182 the public within this state, including the Florida Municipal

183 | Power Agency. However, ~~but~~ the term "public utility" does not
 184 | include either a cooperative now or hereafter organized and
 185 | existing under the Rural Electric Cooperative Law of the state;
 186 | a municipality or any agency thereof; any dependent or
 187 | independent special natural gas district; any natural gas
 188 | transmission pipeline company making only sales or
 189 | transportation delivery of natural gas at wholesale and to
 190 | direct industrial consumers; any entity selling or arranging for
 191 | sales of natural gas which neither owns nor operates natural gas
 192 | transmission or distribution facilities within the state; or a
 193 | person supplying liquefied petroleum gas, in either liquid or
 194 | gaseous form, irrespective of the method of distribution or
 195 | delivery, or owning or operating facilities beyond the outlet of
 196 | a meter through which natural gas is supplied for compression
 197 | and delivery into motor vehicle fuel tanks or other
 198 | transportation containers, unless such person also supplies
 199 | electricity or manufactured or natural gas.

200 | (4) "Florida Municipal Power Agency" means the legal
 201 | entity, or a successor entity, formed under s. 163.01 by
 202 | interlocal agreement among municipalities.

203 | Section 4. Subsection (1) of section 366.04, Florida
 204 | Statutes, is amended to read:

205 | 366.04 Jurisdiction of commission.—

206 | (1) In addition to its existing functions, the commission
 207 | shall have jurisdiction to regulate and supervise each public
 208 | utility with respect to its rates and service, except for the

209 Florida Municipal Power Agency; assumption by it of liabilities
 210 or obligations as guarantor, endorser, or surety; and the
 211 issuance and sale of its securities, except a security which is
 212 a note or draft maturing not more than 1 year after the date of
 213 such issuance and sale and aggregating (together with all other
 214 then-outstanding notes and drafts of a maturity of 1 year or
 215 less on which such public utility is liable) not more than 5
 216 percent of the par value of the other securities of the public
 217 utility then outstanding. In the case of securities having no
 218 par value, the par value for the purpose of this section shall
 219 be the fair market value as of the date of issue. The
 220 commission, upon application by a public utility, may authorize
 221 the utility to issue and sell securities of one or more
 222 offerings, or of one or more types, over a period of up to 12
 223 months; or, if the securities are notes or drafts maturing not
 224 more than 1 year after the date of issuance and sale, the
 225 commission, upon such application, may authorize the utility to
 226 issue and sell such securities over a period of up to 24 months.
 227 The commission may take final action to grant an application by
 228 a public utility to issue and sell securities or to assume
 229 liabilities or obligations after having given notice in the
 230 Florida Administrative Register published at least 7 days in
 231 advance of final agency action. In taking final action on such
 232 application, the commission may deny authorization for the
 233 issuance or sale of a security or assumption of a liability or
 234 obligation if the security, liability, or obligation is for

235 nonutility purposes; and shall deny authorization for the
 236 issuance or sale of a security or assumption of a liability or
 237 obligation if the financial viability of the public utility is
 238 adversely affected such that the public utility's ability to
 239 provide reasonable service at reasonable rates is jeopardized.
 240 Securities issued by a public utility or liabilities or
 241 obligations assumed by a public utility as guarantor, endorser,
 242 or surety pursuant to an order of the commission, which order is
 243 certified by the clerk of the commission and which order
 244 approves or authorizes the issuance and sale of such securities
 245 or the assumption of such liabilities or obligations, shall not
 246 be invalidated by a modification, repeal, or amendment to that
 247 order or by a supplemental order; however, the commission's
 248 approval of the issuance of securities or the assumption of
 249 liabilities or obligations shall constitute approval only as to
 250 the legality of the issue or assumption, and in no way shall it
 251 be considered commission approval of the rates, service,
 252 accounts, valuation, estimates, or determinations of cost or any
 253 other such matter. The jurisdiction conferred upon the
 254 commission shall be exclusive and superior to that of all other
 255 boards, agencies, political subdivisions, municipalities, towns,
 256 villages, or counties, and, in case of conflict therewith, all
 257 lawful acts, orders, rules, and regulations of the commission
 258 shall in each instance prevail.

259 Section 5. This act shall take effect July 1, 2016.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Energy & Utilities
 2 Subcommittee

3 Representative Mayfield offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (1) of section
 8 120.52, Florida Statutes, is amended to read:

9 120.52 Definitions.—As used in this act:

10 (1) "Agency" means the following officers or governmental
 11 entities if acting pursuant to powers other than those derived
 12 from the constitution:

13 (a) The Governor; each state officer and state department,
 14 and each departmental unit described in s. 20.04; the Board of
 15 Governors of the State University System; the Commission on
 16 Ethics; the Fish and Wildlife Conservation Commission; a
 17 regional water supply authority; a regional planning agency; a



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18 multicounty special district, but only if a majority of its
19 governing board is comprised of nonelected persons; educational
20 units; and each entity described in chapters 163, 373, 380, and
21 582 and ss. ~~s.~~ 186.504 and 366.02(5).

22
23 This definition does not include a municipality or legal entity
24 created solely by a municipality; a legal entity or agency
25 created in whole or in part pursuant to part II of chapter 361;
26 a metropolitan planning organization created pursuant to s.
27 339.175; a separate legal or administrative entity created
28 pursuant to s. 339.175 of which a metropolitan planning
29 organization is a member; an expressway authority pursuant to
30 chapter 348 or any transportation authority or commission under
31 chapter 343 or chapter 349; or a legal or administrative entity
32 created by an interlocal agreement pursuant to s. 163.01(7),
33 unless any party to such agreement is otherwise an agency as
34 defined in this subsection.

35 Section 2. Subsection (19) is added to section 163.01,
36 Florida Statutes, to read:

37 163.01 Florida Interlocal Cooperation Act of 1969.—

38 (19) (a) Any entity created pursuant to this section that
39 supplies electricity through an interlocal agreement to its
40 member municipalities shall annually submit to the Public
41 Service Commission, the Public Counsel, and each member
42 municipality that participates in the electric power project an
43 independently prepared financial statement for each individual



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44 generation asset. The financial statement must include:

45 1. A balance sheet that reflects assets and liabilities
46 associated with each generation asset, including the plant in
47 service, accumulated additions and removals, net plant,
48 depreciation, asset and liability allocations, and any other
49 material asset and liability categories.

50 2. An income statement that reflects the operational and
51 financial activities of each generation asset for the reporting
52 period, including revenues, expenses, gains, and losses. Any
53 gains or losses from hedging activities associated with the
54 generation asset shall be separately itemized.

55 3. A statement of cash flows that identifies changes in
56 the generation asset's cash flows during the reporting period.

57 4. The current fair market value of each generation
58 asset. The current fair market value shall be determined
59 assuming the price that a willing buyer would pay a willing
60 seller for the generation asset, with neither party being under
61 any compulsion to buy or sell and both having reasonable
62 knowledge of relevant facts, and assuming all risk of ownership,
63 loss, and decommissioning, as applicable. The current fair
64 market value statement shall include the overall fair market
65 value of the generation asset as a whole and each member
66 municipality's equity position net of the entity's debt, based
67 on the current fair market generation asset value. The current
68 fair market value statement shall include, after considering the
69 market value of the generation assets, the net return on equity



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70 or the cost for any member municipality to withdraw from
71 membership in the entity.

72 (b) To serve as a member of the governing body of an
73 entity created pursuant to this section to supply electricity to
74 its member municipalities, each member of the governing body
75 must be an elected official from one of the entity's member
76 municipalities. Current members of a governing body of such an
77 entity who are not elected officials may continue to serve until
78 expiration of their terms but no later than July 1, 2016.

79 Section 3. Section 350.0611, Florida Statutes, is amended
80 to read:

81 350.0611 Public Counsel; duties and powers. ~~It shall be~~
82 ~~the duty of~~ The Public Counsel shall ~~to~~ provide legal
83 representation for the people of the state in proceedings before
84 the commission, ~~and~~ in proceedings before counties pursuant to
85 s. 367.171(8), and in proceedings pursuant to s. 366.20
86 concerning rates and charges imposed by member electric
87 utilities as defined in s. 366.02. The Public Counsel shall have
88 such powers as are necessary to carry out the duties of his or
89 her office, including, but not limited to, the following
90 specific powers:

91 (1) To recommend to the commission or the counties, by
92 petition, the commencement of any proceeding or action or to
93 appear, in the name of the state or its citizens, in any
94 proceeding or action before the commission, the Division of
95 Administrative Hearings, or the counties and urge therein any



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96 position which he or she deems to be in the public interest,
97 whether consistent or inconsistent with positions previously
98 adopted by the commission, the division, or the counties, and
99 utilize therein all forms of discovery available to attorneys in
100 civil actions generally, subject to protective orders of the
101 commission, the division, or the counties which shall be
102 reviewable by summary procedure in the circuit courts of this
103 state;

104 (2) To have access to and use of all files, records, and
105 data of the commission, the member electric utilities as defined
106 in s. 366.02, or the counties available to any other attorney
107 representing parties in a proceeding before the commission, the
108 Division of Administrative Hearings, or the counties;

109 (3) In any proceeding in which he or she has participated
110 as a party, to seek review of any determination, finding, or
111 order of the commission, the Division of Administrative
112 Hearings, or the counties, or of any hearing examiner designated
113 by the commission or the counties, in the name of the state or
114 its citizens;

115 (4) To prepare and issue reports, recommendations, and
116 proposed orders to the commission, the Governor, and the
117 Legislature on any matter or subject within the jurisdiction of
118 the commission, and to make such recommendations as he or she
119 deems appropriate for legislation relative to commission
120 procedures, rules, jurisdiction, personnel, and functions; and

121 (5) To appear before other state agencies, federal



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122 agencies, and state and federal courts in connection with
123 matters under the jurisdiction of the commission, in the name of
124 the state or its citizens.

125 Section 4. Subsection (1) of section 366.02, Florida
126 Statutes, is amended, and subsections (4) and (5) are added to
127 that section, to read:

128 366.02 Definitions.—As used in this chapter:

129 (1) "Public utility" means every person, corporation,
130 partnership, association, or other legal entity and their
131 lessees, trustees, or receivers supplying electricity or gas
132 (natural, manufactured, or similar gaseous substance) to or for
133 the public within this state, including the Florida Municipal
134 Power Agency. However, ~~but~~ the term "public utility" does not
135 include either a cooperative now or hereafter organized and
136 existing under the Rural Electric Cooperative Law of the state;
137 a municipality or any agency thereof; any dependent or
138 independent special natural gas district; any natural gas
139 transmission pipeline company making only sales or
140 transportation delivery of natural gas at wholesale and to
141 direct industrial consumers; any entity selling or arranging for
142 sales of natural gas which neither owns nor operates natural gas
143 transmission or distribution facilities within the state; or a
144 person supplying liquefied petroleum gas, in either liquid or
145 gaseous form, irrespective of the method of distribution or
146 delivery, or owning or operating facilities beyond the outlet of
147 a meter through which natural gas is supplied for compression



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148 and delivery into motor vehicle fuel tanks or other
149 transportation containers, unless such person also supplies
150 electricity or manufactured or natural gas.

151 (4) "Florida Municipal Power Agency" means the legal
152 entity, or a successor entity, formed under s. 163.01 by
153 interlocal agreement among member municipalities to supply
154 electricity.

155 (5) "Member electric utility" means a municipal electric
156 utility that is also a member of the Florida Municipal Power
157 Agency.

158 Section 5. Subsection (1) of section 366.04, Florida
159 Statutes, is amended to read:

160 366.04 Jurisdiction of commission.—

161 (1) In addition to its existing functions, the commission
162 shall have jurisdiction to regulate and supervise each public
163 utility with respect to its rates and service, except for the
164 Florida Municipal Power Agency; assumption by it of liabilities
165 or obligations as guarantor, endorser, or surety; and the
166 issuance and sale of its securities, except a security which is
167 a note or draft maturing not more than 1 year after the date of
168 such issuance and sale and aggregating (together with all other
169 then-outstanding notes and drafts of a maturity of 1 year or
170 less on which such public utility is liable) not more than 5
171 percent of the par value of the other securities of the public
172 utility then outstanding. In the case of securities having no
173 par value, the par value for the purpose of this section shall



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174 be the fair market value as of the date of issue. The
175 commission, upon application by a public utility, may authorize
176 the utility to issue and sell securities of one or more
177 offerings, or of one or more types, over a period of up to 12
178 months; or, if the securities are notes or drafts maturing not
179 more than 1 year after the date of issuance and sale, the
180 commission, upon such application, may authorize the utility to
181 issue and sell such securities over a period of up to 24 months.
182 The commission may take final action to grant an application by
183 a public utility to issue and sell securities or to assume
184 liabilities or obligations after having given notice in the
185 Florida Administrative Register published at least 7 days in
186 advance of final agency action. In taking final action on such
187 application, the commission may deny authorization for the
188 issuance or sale of a security or assumption of a liability or
189 obligation if the security, liability, or obligation is for
190 nonutility purposes; and shall deny authorization for the
191 issuance or sale of a security or assumption of a liability or
192 obligation if the financial viability of the public utility is
193 adversely affected such that the public utility's ability to
194 provide reasonable service at reasonable rates is jeopardized.
195 Securities issued by a public utility or liabilities or
196 obligations assumed by a public utility as guarantor, endorser,
197 or surety pursuant to an order of the commission, which order is
198 certified by the clerk of the commission and which order
199 approves or authorizes the issuance and sale of such securities

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200 or the assumption of such liabilities or obligations, shall not
201 be invalidated by a modification, repeal, or amendment to that
202 order or by a supplemental order; however, the commission's
203 approval of the issuance of securities or the assumption of
204 liabilities or obligations shall constitute approval only as to
205 the legality of the issue or assumption, and in no way shall it
206 be considered commission approval of the rates, service,
207 accounts, valuation, estimates, or determinations of cost or any
208 other such matter. The jurisdiction conferred upon the
209 commission shall be exclusive and superior to that of all other
210 boards, agencies, political subdivisions, municipalities, towns,
211 villages, or counties, and, in case of conflict therewith, all
212 lawful acts, orders, rules, and regulations of the commission
213 shall in each instance prevail.

214 Section 6. Section 366.20, Florida Statutes, is created to
215 read:

216 366.20 Administrative review of member electric
217 utilities.-

218 (1) It is the intent of the Legislature that municipal
219 electric utility customers who receive service from a member
220 electric utility at a location outside the municipality's
221 boundaries may maintain administrative actions to determine
222 whether the member electric utility's rates and charges meet the
223 same standards for rates and charges that apply to public
224 utilities regulated under this chapter. If the rates and charges
225 are determined not to meet such legislative standards, the



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226 member electric utility shall adopt rates and charges that meet
227 the same standards for rates and charges that apply to public
228 utilities regulated under this chapter.

229 (2) As used in this section, the term "substantially
230 affected person" means an electric utility customer receiving
231 service from a member electric utility at a location outside the
232 municipality's boundaries.

233 (3) Each member electric utility shall give 60 days'
234 notice by publication in the Florida Administrative Register and
235 separately to the commission and to the Public Counsel of any
236 meeting that is subject to s. 286.011, any public meeting, any
237 hearing, or any workshop in which any change in its electric
238 rate is to be initially considered. The member electric utility
239 shall give at least 14 days' notice by publication in the
240 Florida Administrative Register and separately to the commission
241 and to the Public Counsel of each subsequent meeting that is
242 subject to s. 286.011, public meeting, hearing, or workshop in
243 which a rate change will be considered.

244 (4) Within 21 days after adoption or change of a rate or
245 charge by a member electric utility, a substantially affected
246 person or the Public Counsel may request a hearing before the
247 Division of Administrative Hearings to determine whether the
248 member electric utility's adoption or change of the rate or
249 charge complies with the standards for rates and charges that
250 apply to public utilities regulated under this chapter. The
251 parties to a hearing held pursuant to this section shall be the



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252 petitioning substantially affected person; the member electric
 253 utility; any other person who, as a matter of constitutional
 254 right, provision of statute, or provision of agency regulation
 255 is entitled to participate in whole or in part in the
 256 proceeding, or whose substantial interests will be affected by
 257 proposed agency action and who makes an appearance as a party;
 258 and the Public Counsel, who shall represent the interests of all
 259 substantially affected persons. The hearing shall be conducted
 260 pursuant to ss. 120.569 and 120.57(1), except that the order of
 261 the administrative law judge constitutes a final order that is
 262 subject to judicial review pursuant to s. 120.68.

263 Section 7. This act shall take effect July 1, 2016.

264
 265 -----
 266 **T I T L E A M E N D M E N T**

267 Remove everything before the enacting clause and insert:

268 A bill to be entitled

269 An act relating to municipal power regulation;
 270 amending s. 120.52, F.S.; revising the definition of
 271 the term "agency" for purposes of the Administrative
 272 Procedure Act to include certain municipal electric
 273 utilities; amending s. 163.01, F.S.; requiring certain
 274 entities created under the Interlocal Cooperation Act
 275 of 1969 to submit independently prepared financial
 276 statements for certain electric power projects to
 277 specified public entities; providing statement



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278 requirements; providing eligibility requirements for
279 membership on the governing body of certain entities
280 created under the Interlocal Cooperation Act of 1969;
281 amending s. 350.0611, F.S.; expanding the duties of
282 the Public Counsel to include proceedings involving
283 the Florida Municipal Power Agency; amending s.
284 366.02, F.S.; revising the definition of the term
285 "public utility" to include the Florida Municipal
286 Power Agency; defining the terms "Florida Municipal
287 Power Agency" and "member electric utility"; amending
288 s. 366.04, F.S.; exempting the Florida Municipal Power
289 Agency from regulation by the Public Service
290 Commission for purposes of rates and service; creating
291 s. 366.20, F.S.; creating a right for certain
292 municipal electric customers to maintain
293 administrative actions regarding electric rates and
294 service; requiring adoption of certain rates and
295 charges under certain circumstances; defining the term
296 "substantially affected person"; providing notice
297 requirements for a member electric utility when it
298 proposes changes to rates or charges; authorizing
299 substantially affected persons or the Public Counsel
300 to request an administrative hearing within a
301 specified time; specifying the parties to the hearing;
302 specifying hearing requirements; specifying that
303 orders of an administrative law judge are final;



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304 providing for judicial review of final orders;
305 providing an effective date.

306
307 WHEREAS, The Florida Municipal Power Agency is a joint-use
308 action agency created pursuant to a series of interlocal
309 agreements with the state's municipalities to finance, acquire,
310 contract, manage, and operate its own electric power projects or
311 jointly accomplish the same purposes with other public or
312 private utilities, and

313 WHEREAS, the Florida Municipal Power Agency is governed by
314 a board of directors, consisting of one board member from each
315 member municipality, which decides all issues concerning each
316 project except for the "All-Requirements" power supply project,
317 and

318 WHEREAS, the All-Requirements power supply project is
319 governed by an executive committee, with each All-Requirements
320 project member municipality that purchases power from the
321 project appointing one executive committee member, and

322 WHEREAS, the Auditor General conducted an operational audit
323 of the of Florida Municipal Power Agency and released Report No.
324 2015-165 to the Joint Legislative Auditing Committee on March
325 30, 2015, which included findings and recommendations, and

326 WHEREAS, the Auditor General found many of the Florida
327 Municipal Power Agency's hedging activities to be inconsistent
328 with other joint-use action agencies, leading to net losses of
329 \$247.6 million over the past 12 fiscal years, and



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330 WHEREAS, the Auditor General concluded that several of the
331 Florida Municipal Power Agency's personnel and payroll
332 administration activities may negatively affect future rates,
333 including the Chief Executive Officer's employment contract that
334 provides severance pay and lifetime benefits even if employment
335 is terminated for cause, and

336 WHEREAS, the Florida Municipal Power Agency did not
337 consistently follow its own procurement and competitive
338 selection policies, one of which may increase the cost of future
339 bond issues, and

340 WHEREAS, the Florida Municipal Power Agency's All-
341 Requirements project agreement to curtail peak-shaving
342 activities is primarily voluntary, relies on self-reporting, and
343 contains no penalties for noncompliance, and

344 WHEREAS, certain All-Requirements project contract
345 provisions relating to the withdrawal of members are ambiguous,
346 use a fixed discount rate rather than one based on current
347 capital costs, and do not provide for independent verification
348 by a withdrawing member, and

349 WHEREAS, even though the Florida Municipal Power Agency is
350 a governmental entity, many of the laws that apply to local
351 governments do not apply to the agency, and

352 WHEREAS, the Florida Municipal Power Agency is not subject
353 to any rate-setting authority, including by the Public Service
354 Commission, and



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355 WHEREAS, there exists a need to promote transparency and
356 consistency and to increase public understanding and confidence
357 in the operation of the Florida Municipal Power Agency by the
358 member municipalities and the public, including those electric
359 ratepayers who are not residents of the municipality supplying
360 electric power but who are subject to a municipality that is
361 receiving power from the agency, NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 639 Carbon Dioxide Emissions from Existing Stationary Sources
SPONSOR(S): Diaz, M, and others
TIED BILLS: IDEN./SIM. BILLS: SB 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Whittier <i>SHW</i>	Keating <i>CK</i>
2) Agriculture & Natural Resources Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

On August 3, 2015, the U.S. Environmental Protection Agency (EPA) issued its final Clean Power Plan which establishes interim and final carbon dioxide emission performance rates for each state for two subcategories of fossil fuel-fired power plants that states can apply directly to their power plants (referred to in the bill as "stationary sources"):

- Fossil fuel-fired electric steam generating units (generally, coal- and oil-fired power plants) and
- Natural gas-fired combined cycle generating units.

The Clean Power Plan establishes interim and final statewide goals in three forms:

- A rate-based state goal measured in pounds of carbon dioxide per megawatt hour (lb/MWh);
- A mass-based state goal measured in total short tons of carbon dioxide; and
- A mass-based state goal with a new source complement measured in total short tons of carbon dioxide.

The final Clean Power Plan provides for states to develop and implement plans to ensure that the power plants in their state – individually, together, or in combination with other measures – achieve the interim carbon dioxide emissions performance rates over the period of 2022 to 2029 and the final carbon dioxide emission performance rates by 2030. States have until September 6, 2016, to submit to the EPA a final state plan or an initial state plan, which is a non-binding status report with an extension request. If a state elects to submit an initial state plan with an extension request, the final state plan will be due September 6, 2018. If an initial or final state plan is not timely submitted, the EPA will impose a federal implementation plan for the state.

The 2030 carbon dioxide emission goals for Florida are as follows:

- 919 pounds per megawatt hour for the rate-based state goal;
- 105,094,704 total short tons for the mass-based state goal; and
- 106,641,595 total short tons for the mass-based state goal with new source complement.

The bill prohibits any state agency or instrumentality of the state from implementing rules or regulations or submitting a state or multistate implementation plan to the EPA that limits or attempts to limit carbon dioxide emissions from existing stationary sources to comply with the Clean Power Plan until:

- The United States Congress enacts legislation regulating carbon dioxide emissions from existing stationary sources; or
- A federal court issues a final judgment upholding the legality of regulations addressing carbon dioxide from existing stationary sources issued pursuant to the federal Clean Air Act.

The bill appears to have no fiscal impact on state or local governments. The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The U.S. Environmental Protection Agency (EPA) regulates air emissions from stationary and mobile sources under the authority of the Clean Air Act (CAA).¹ Under section 109 of the CAA, the EPA must set National Ambient Air Quality Standards (NAAQS) for air pollutants deemed hazardous to the public health or welfare.² The EPA has set NAAQS for six common pollutants referred to as “criteria pollutants”: ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead.³ Section 110 of the CAA requires each state to adopt a plan (state implementation plan or SIP) that provides for enforcement of the NAAQS.⁴ In addition, Section 112 of the CAA authorizes the EPA to set emission standards for sources of specified pollutants referred to as “hazardous air pollutants.”⁵

Section 111(b) of the CAA authorizes the EPA to establish standards of performance for a *new or modified* stationary source of air pollution that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”⁶ Standards of performance are set by category of stationary sources, and each category is set by the EPA.⁷ The standard for each category must be based on “the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the [EPA] determines has been adequately demonstrated.”⁸

When the EPA establishes standards of performance for a new or modified source under section 111(b) of the CAA, each state must develop a plan for enforcing the standards for such new sources located in the state.⁹ Further, section 111(d) of the CAA mandates that the EPA prescribe regulations that require each state to establish standards of performance for any *existing* source to which the EPA standards would apply if it were a new source, provided that the pollutant at issue is not already regulated as a criteria pollutant or a hazardous air pollutant.¹⁰ Standards for existing sources are set through a process that includes the establishment of federal guidelines followed by the development of state plans to meet the federal guidelines. To reflect technology differences between new and existing sources, the standards established by states for existing sources may be less stringent than those established by the EPA for new sources.¹¹ Further, the state may take into account, among other factors, the remaining useful life of the existing source to which the standard applies.¹² State standards and implementation plans are subject to EPA review and approval.¹³

¹ U.S. Environmental Protection Agency, Summary of the Clean Air Act, *available at* <http://www2.epa.gov/laws-regulations/summary-clean-air-act> (last accessed Jan. 8, 2016).

² 42 U.S.C. § 7409.

³ U.S. Environmental Protection Agency, Clean Air Act Requirements and History, *available at* <http://www.epa.gov/clean-air-act-overview/clean-air-act-requirements-and-history#common> (last accessed Jan. 8, 2016).

⁴ 42 U.S.C. § 7410. SIPs are subject to review and approval by the EPA. The Florida Department of Environmental Protection is responsible for implementing air pollution programs in Florida that are in compliance with federal requirements.

⁵ 42 U.S.C. § 7412.

⁶ 42 U.S.C. § 7411(b)(1).

⁷ *Id.*

⁸ 42 U.S.C. § 7411(a)(1).

⁹ 42 U.S.C. § 7411(c).

¹⁰ 42 U.S.C. § 7411(d).

¹¹ *Id.*

¹² 42 U.S.C. § 7411(d).

¹³ *Id.*

Under the authority granted in section 111(b) of the CAA,¹⁴ the EPA, on April 13, 2012, proposed rules setting forth performance standards for carbon emissions¹⁵ from new electric power plants.¹⁶ The adoption of performance standards for this new source triggered the development of federal guidelines and state standards under section 111(d) of the CAA for carbon emissions from existing power plants.

On June 18, 2014, the EPA published a proposed rule to address greenhouse gas emissions from existing power plants (the “Clean Power Plan”).¹⁷ In its proposed rule, the EPA proposed state-specific, rate-based goals for carbon emissions from existing plants and guidelines for states to follow in developing plans to achieve the goals. The proposed rule required Florida to reduce carbon emissions from its 2012 rate of 1,238 pounds per megawatt-hour to a rate of 740 pounds per megawatt-hour by 2030, a 38 percent reduction. The proposed rule established an interim goal of 794 pounds per megawatt-hour, with much of the reduction required by 2020 to meet the EPA’s interim compliance schedule.¹⁸

The EPA invited public comment on the proposed rule. The Public Service Commission, Department of Environmental Protection, Office of Public Counsel, Department of Agriculture and Consumer Services, and the Attorney General (jointly with other state attorneys general) each submitted comments in response to the proposed rule.¹⁹ The EPA reviewed these comments and all other public comments, submitted on the proposed Clean Power Plan, totaling over 4.3 million.²⁰

On August 3, 2015, the EPA issued its final Clean Power Plan, which establishes interim and final carbon dioxide emission performance rates for each state for two subcategories of fossil fuel-fired power plants that states can apply directly to their power plants:

- Fossil fuel-fired electric steam generating units (generally, coal- and oil-fired power plants) and
- Natural gas-fired combined cycle generating units.²¹

EPA established interim and final statewide goals in three forms:

- A rate-based state goal measured in pounds per megawatt hour (lb/MWh);
- A mass-based state goal measured in total short tons of carbon dioxide; and
- A mass-based state goal with a new source complement measured in total short tons of carbon dioxide.

¹⁴ In *Am. Elec. Power Co., Inc. v. Connecticut*, 131 S. Ct. 2527 (2011), the U.S. Supreme Court affirmed the EPA’s authority to regulate stationary sources of greenhouse gases (like electric power plants), so long as the EPA made an “endangerment finding” to justify the regulation.

¹⁵ According to the EPA’s website, carbon dioxide is a greenhouse gas that is naturally present in the atmosphere as part of the Earth’s carbon cycle (the natural circulation of carbon among the atmosphere, oceans, soil, plants, and animals). The main human activity that emits carbon dioxide is the combustion of fossil fuels (coal, natural gas, and oil) for energy and transportation. The combustion of fossil fuels to generate electricity is the largest single source of carbon dioxide emissions in the nation, accounting for about 37 percent of total U.S. carbon dioxide emissions and 31 percent of total U.S. greenhouse gas emissions in 2013. The type of fossil fuel used to generate electricity will emit different amounts of carbon dioxide, but to produce a given amount of electricity, burning coal will produce more carbon dioxide than oil or natural gas. See <http://www.epa.gov/climatechange/ghgemissions/gases/co2.html> (last accessed Jan. 8, 2016).

¹⁶ Notice of Proposed Rulemaking entitled “Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units”; Docket ID No. EPA-HQ-OAR-2013-0495.

¹⁷ “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units”; Docket ID No. EPA-HQ-OAR-2013-0602. See <https://federalregister.gov/a/2014-13726> (last accessed Jan. 8, 2016).

¹⁸ Presentation by the Department of Environmental Protection to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

¹⁹ Presentation by the Public Service Commission to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

²⁰ U.S. Environmental Protection Agency, Overview of the Clean Power Plan: Cutting Carbon Pollution from Power Plants, available at <http://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan> (last accessed Jan. 8, 2016).

²¹ U.S. Environmental Protection Agency, Overview of the Clean Power Plan: Cutting Carbon Pollution from Power Plants, available at <http://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan> (last accessed Jan. 8, 2016).

States are to develop and implement plans to ensure that the power plants in their state – individually, together, or in combination with other measures – achieve the interim carbon dioxide emissions performance rates over the period of 2022 to 2029 and the final carbon dioxide emission performance rates by 2030.²²

Also on August 3, EPA issued final carbon pollution standards for new, modified, and reconstructed power plants; a model rule to assist states in implementing the Clean Power Plan; and a proposed federal plan that would apply to states that do not submit a plan to the EPA.²³ States have until September 6, 2016, to submit a final state plan or an initial state plan, which is a non-binding status report with an extension request. If a state elects to submit an initial state plan with an extension request, the final state plan will be due September 6, 2018.²⁴ Extensions will be granted if states:

- Identify the state plan approaches under consideration;
- Explain why additional time is needed; and
- Demonstrate opportunity for public comment on initial submittal and “meaningful engagement with stakeholders, including vulnerable communities.”²⁵

Florida’s current and projected emissions and state-specific goals required by the EPA are shown here (all numbers are EPA calculations):²⁶

Florida’s current and projected emissions and state-specific goals required by the EPA			
History	CO₂ Rate (lbs/net MWh)	CO₂ Emissions (short tons)	
2012 Historic Emissions	1,247	118,395,844	
2020 Projected Emissions (w/o Clean Power Plan)	1,170	122,443,236	
Goal Years	Rate-Based Goal	Mass-Based Goal	Mass-Based Goal (Existing) and New Source Complement
Interim Goal (2022-2029)	1,026	112,984,729	114,738,005
Interim Step 1 Period 2022-2024	1,097	119,380,477	120,099,944
Interim Step 2 Period 2025-2027	1,006	110,754,683	113,181,823
Interim Step 3 Period 2028-2029	949	106,736,177	109,029,369
Final Goal 2030 and Beyond	919	105,094,704	106,641,595

In meeting the state-specific goals, states are not limited to the measures that EPA suggested. States may develop plans that also use demand-side energy efficiency, transmission upgrades, uprates of existing nuclear plants and renewables, and deployment of under-construction nuclear plants to meet

²² *Id.*

²³ *Id.*

²⁴ Presentation by the Department of Environmental Protection to the Energy & Utilities Subcommittee, Florida House of Representatives, on October 20, 2015.

²⁵ *Id.*

²⁶ U.S. Environmental Protection Agency, Clean Power Plan: State at a Glance, Florida, *available at* <http://www.epa.gov/cleanpowerplanttoolbox/clean-power-plan-state-specific-fact-sheets> (last accessed Jan. 7, 2016).

their goals.²⁷ The final Clean Power Plan allows the trading of emission reduction credits across states using a similar type of goal (i.e., states using rate-based goals can trade credits with other states using rate-based goals, and states using mass-based goals can trade credits with other states using mass-based goals) under an EPA-approved or administered tracking system.²⁸

Effects of Proposed Changes

The bill provides the following legislative findings:

- A reliable and affordable electricity supply is vital to ensure the nation's and each state's continued economic growth and for the maintenance of environmental quality.
- Regulations issued by the EPA²⁹ that limit carbon dioxide emissions from existing stationary sources³⁰ will significantly affect the state's economy and impact how electricity is generated, transmitted, distributed, and used within the state.
- The Legislature must establish and direct the state's energy policy to best protect the standard of living of its citizens and to ensure that state agencies and instrumentalities of the state remain accountable to state interests.

The bill prohibits any state agency or instrumentality of the state from implementing rules or regulations or submitting a state or multistate implementation plan to the EPA that limits or attempts to limit carbon dioxide emissions from existing stationary sources to comply with the Clean Power Plan until:

- The United States Congress enacts legislation regulating carbon dioxide emissions from existing stationary sources; or
- A federal court issues a final judgment upholding the legality of regulations addressing carbon dioxide from existing stationary sources issued pursuant to the federal Clean Air Act.

B. SECTION DIRECTORY:

Section 1. Provides legislative findings regarding federal Clean Air Act regulations that limit certain carbon dioxide emissions from existing stationary sources; prohibits each state agency and instrumentality thereof from implementing certain rules or submitting certain plans to the Environmental Protection Agency regarding such emissions before the occurrence of specified events.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²⁷ U.S. Environmental Protection Agency, Overview of the Clean Power Plan: Cutting Carbon Pollution from Power Plants, available at <http://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan> (last accessed Jan. 8, 2016).

²⁸ *Id.*

²⁹ Pursuant to the federal CAA, 42 U.S.C. s. 7411(d).

³⁰ Per the Florida Public Service Commission, with regard to this legislation, "stationary sources" is synonymous with "power plants."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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A bill to be entitled
 An act relating to carbon dioxide emissions from
 existing stationary sources; providing legislative
 findings regarding federal Clean Air Act regulations
 that limit certain carbon dioxide emissions from
 existing stationary sources; prohibiting each state
 agency and instrumentality thereof from implementing
 certain rules or submitting certain plans to the
 Environmental Protection Agency regarding such
 emissions before the occurrence of specified events;
 providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The Legislature finds that:

(a) A reliable and affordable electricity supply is vital
 to ensure the nation's and each state's continued economic
 growth and for the maintenance of environmental quality.

(b) Regulations issued by the Environmental Protection
 Agency pursuant to the federal Clean Air Act, 42 U.S.C. s.
 7411(d), that limit carbon dioxide emissions from existing
 stationary sources will significantly affect the state's economy
 and impact how electricity is generated, transmitted,
 distributed, and used within the state.

(c) The Legislature must establish and direct the state's
 energy policy to best protect the standard of living of its

27 citizens and to ensure that state agencies and instrumentalities
 28 of the state remain accountable to state interests.

29 (2) Except as provided in this section, no state agency or
 30 instrumentality of the state shall implement rules or
 31 regulations or submit a state or multistate implementation plan
 32 to the Environmental Protection Agency that limits or attempts
 33 to limit carbon dioxide emissions from existing stationary
 34 sources to comply with regulations issued pursuant to the
 35 federal Clean Air Act, 42 U.S.C. s. 7411(d), until:

36 (a) The United States Congress enacts legislation
 37 regulating limiting carbon dioxide emissions from existing
 38 stationary sources; or

39 (b) A federal court issues a final judgment upholding the
 40 legality of regulations addressing carbon dioxide from existing
 41 stationary sources issued pursuant to the federal Clean Air Act,
 42 42 U.S.C. s. 7411(d).

43 Section 2. This act shall take effect July 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER

1 Committee/Subcommittee hearing bill: Energy & Utilities
 2 Subcommittee

3 Representative Diaz, M. offered the following:

Amendment (with title amendment)

6 Between lines 42 and 43, insert:

7 (3) The Department of Environmental Protection may submit
 8 a progress report to the Environmental Protection Agency which
 9 includes a request for an extension of time to submit a state or
 10 multistate implementation plan.

11 -----
 12
 13 **T I T L E A M E N D M E N T**

14 Between lines 10 and 11, insert:

15 authorizing the Department of Environmental Protection
 16 to request an extension for submitting such plans;