

By Senator Campbell

33-1306-02

1 A bill to be entitled
2 An act relating to electric utilities; amending
3 s. 403.503, F.S.; redefining the term "electric
4 utility"; amending s. 403.519, F.S.; providing
5 that wholesale generators operating under
6 federal law are electric utilities for purposes
7 of qualifying as an applicant for a
8 determination of need; providing criteria for a
9 determination of need for a wholesale power
10 plant; creating s. 366.052, F.S.; providing for
11 review and approval of proposed transfers of
12 public utility assets by the Florida Public
13 Service Commission; providing an effective
14 date.

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

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18 Section 1. Subsection (13) of section 403.503, Florida
19 Statutes, is amended to read:

20 403.503 Definitions relating to Florida Electrical
21 Power Plant Siting Act.--As used in this act:

22 (13) "Electric utility" means cities and towns,
23 counties, public utility districts, regulated electric
24 companies, electric cooperatives, wholesale generators
25 operating under federal law, and joint operating agencies, or
26 combinations thereof, engaged in, or authorized to engage in,
27 the business of generating, transmitting, or distributing
28 electric energy.

29 Section 2. Section 403.519, Florida Statutes, is
30 amended to read:

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1 403.519 Exclusive forum for determination of need.--On
2 request by an applicant, as defined in s. 403.503, or on its
3 own motion, the commission shall begin a proceeding to
4 determine the need for an electrical power plant subject to
5 the Florida Electrical Power Plant Siting Act. The commission
6 shall publish a notice of the proceeding in a newspaper of
7 general circulation in each county in which the proposed
8 electrical power plant will be located. The notice shall be
9 at least one-quarter of a page and published at least 45 days
10 prior to the scheduled date for the proceeding. The
11 commission shall be the sole forum for the determination of
12 this matter, which accordingly shall not be raised in any
13 other forum or in the review of proceedings in such other
14 forum. In making its determination, the commission shall take
15 into account the need for electric system reliability and
16 integrity, the need for adequate electricity at a reasonable
17 cost, and whether the proposed plant is the most
18 cost-effective alternative available. When a wholesale
19 generator applies for a determination of need for a proposed
20 wholesale power plant, the determination is to be made by
21 applying these factors on a statewide basis, and the applicant
22 is not required to demonstrate that a utility serving retail
23 customers has a specific committed need for all of the
24 electrical power to be generated at the proposed power plant
25 or that the proposed power plant output is fully committed to
26 use by customers in this state who purchase electrical power
27 at retail rates. Additionally, because the wholesale
28 generator's costs are not recoverable directly from retail
29 rate payers, the commission is not to consider whether a
30 proposed power plant is the most cost-effective alternative
31 available to meet the need.The commission shall also

1 expressly consider the conservation measures taken by or
2 reasonably available to the applicant or its members which
3 might mitigate the need for the proposed plant and other
4 matters within its jurisdiction which it deems relevant. The
5 commission's determination of need for an electrical power
6 plant shall create a presumption of public need and necessity
7 and shall serve as the commission's report required by s.
8 403.507(2)(a)2. An order entered pursuant to this section
9 constitutes final agency action.

10 Section 3. Section 366.052, Florida Statutes, is
11 created to read:

12 366.052 Commission review of asset transfers.--

13 (1) As used in this section, the term "assets"
14 includes, but is not limited to, real assets, financial
15 assets, construction work in progress, and allowances for
16 funds used during construction. However, the commission may
17 establish, by rule, minimum levels of value of asset transfer
18 that are considered to be immaterial and therefore not subject
19 to the requirements of this section.

20 (2) A public utility may not sell, assign, lease, or
21 transfer its facilities or assets or any portion thereof
22 without approval of the commission based upon its
23 determination that the proposed sale, assignment, lease, or
24 transfer is in the public interest and that the buyer,
25 assignee, lessee, or transferee will fulfill the commitments,
26 obligations, and representations of the public utility.
27 However, a sale, assignment, lease, or transfer of its
28 facilities or assets or any portion thereof may occur before
29 the commission approval if the contract for sale, assignment,
30 lease, or transfer is made contingent upon commission
31 approval.

1 (3) In its determination of whether a proposed sale,
2 assignment, lease, or transfer is in the public interest, the
3 commission shall consider all relevant factors, including, but
4 not limited to, whether:

5 (a) The proposed transaction will adversely affect the
6 adequacy, efficiency, and reliability of electric service
7 provided to the public utility's end use customers;

8 (b) The proposed transaction will create undue market
9 power within an area or region of the state, and if so,
10 whether that market power can be mitigated;

11 (c) The proposed transaction will result in increased
12 cost of electric service provided to the public utility's end
13 use customers without offsetting benefits;

14 (d) The proposed transaction will harm the financial
15 condition of the public utility; and

16 (e) Comparable economic savings can be achieved
17 through other means while avoiding the possible adverse
18 consequences of the proposed transaction.

19 (4) The commission may approve, deny, or require
20 modification to any proposed sale, assignment, lease, or
21 transfer.

22 Section 4. This act shall take effect upon becoming a
23 law.

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26 SENATE SUMMARY

27 Redefines the term "electric utility" for purposes of the
28 Florida Electrical Power Plant Siting Act. Provides that
29 wholesale generators operating under federal law are
30 electric utilities for purposes of qualifying as an
31 applicant for a determination of need. Requires the
 Florida Public Service Commission to review and approve
 proposed transfers of public utility assets.