STORAGE NAME: h1601.utco.doc
DATE: February 11, 2002

HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND TELECOMMUNICATIONS
ANALYSIS

BILL #: HB 1601

RELATING TO: Air Quality Costs/Electric Utilities

SPONSOR(S): Representative(s) Maygarden

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) UTILITIES AND TELECOMMUNICATIONS (RIC)
(2) FISCAL RESPONSIBILITY COUNCIL
(3)
(4)
(5)

I. SUMMARY:

Section 366.8255, Florida Statutes, provides for an environmental cost recovery clause. The statute authorizes the recovery of prudently incurred environmental compliance costs through the environmental cost recovery factors that are separate and apart from the utility's base rates.

The bill provides that, pursuant to an agreement, entered into prior to January 1, 2003, between a utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency, for the purpose of preventing imminent noncompliance with ozone ambient air quality standards, a utility may have its incurred costs or expenses reviewed by the Florida Public Service Commission for recovery through the Environmental Cost Recovery Clause (ECRC).

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

The bill becomes effective upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The passage of the Clean Air Act Amendments of 1990, signed into law as P.L. 101-549 on November 15, 1990, has been represented as the most significant development in environmental legislation in years. Only two prior clean air legislative efforts are considered as comparable in magnitude--the Clean Air Act of 1970 and the 1977 Clean Air Act Amendments.

The 1990 Amendments contain 7 separate titles with an extensive list of features that cover different regulatory programs. Summarily, new regulatory requirements were created to have industries install more advanced pollution control equipment, to make other changes in industrial operations, and to make changes in community lifestyle, all aimed at efforts that would lead to reductions in emission of air pollutants.

According to the U. S. Department of Environmental Protection (USEPA), although the 1990 Amendments significantly alter and add to the regulatory requirements of the Clean Air Act, the basic framework and procedural aspects of the Act have remained as established by the 1970 Act and 1977 Amendments. Even though the 1990 Clean Air Act is a federal law covering the entire country, the states do much of the work to carry out the Act. For example, state environmental agencies may fine a company for violating air pollution limits.

Under this law, the USEPA has established limits for the amount of a pollutant that can be in the air anywhere in the United States. This ensures that all Americans have the same basic health and environmental protections. The law allows individual states to have stronger pollution controls, but states are not allowed to have weaker pollution controls than those controls set for the whole country.

Further, the law recognizes, according to Office of Air Quality Planning and Standards, that it makes sense for states to take the lead in carrying out the Clean Air Act, because pollution control problems often require a special understanding of local industries, geography, housing patterns, etc. States are required to develop state implementation plans that explain how each state will do its job under the Clean Air Act. A state implementation plan is a collection of the regulations a state will use to clean up polluted areas. The states must involve the public, through hearings and opportunities to comment, in the development of each state implementation plan.

The USEPA must approve each state plan, and if the plan is unacceptable, the USEPA can take over enforcing the Clean Air Act in that state. Additionally, according to the USEPA, the 1990 Clean Air Act has granted it new enforcement powers. The 1990 law enables the USEPA to directly fine violators. Other parts of the 1990 law increases penalties for violating the Act and brings the enforcement powers of the Clean Air Act more in line with other environmental laws.

In 1999, the Justice Department, on behalf of the USEPA, filed seven separate lawsuits against electric utility companies in the Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Mississippi, Ohio, Tennessee, and West Virginia, charging that the companies' power plants illegally released massive amounts of air pollutants for years, which have contributed to some of the most severe environmental problems facing the United States today. The USEPA also issued an administrative order against the Tennessee Valley Authority, charging the federal agency with similar violations at seven plants.

In Florida, chapter 366, Florida Statutes, governs the jurisdiction of its Public Service Commission (PSC) over electric utilities. Pursuant to section 366.04, Florida Statutes, the PSC fully regulates five investor-owned utilities (IOU), with limited rate structure jurisdiction over the rural electric cooperatives and municipally owned electric utilities.

Rate regulation has historically been cost based. Utilities are allowed to charge rates that recover the actual cost of producing and delivering electricity plus a fair return on investment. The PSC has established numerous procedures to ensure that electric rates are fair. The ratemaking and rate review methods currently in use by the PSC include:

- A full revenue requirements rate case – all costs and expenses are justified by the utility and recurring operating expenses and prudent expenses are included in the net operating income. A fair rate of return on investment is determined based on prevailing market conditions.

- Monthly surveillance reports – are filed monthly by each IOU with the PSC showing current and year to date accounting and financial data. The information is used to ensure that the rates being charged remain reasonable.

- Recovery clauses – annual evidentiary hearings are conducted by the PSC to consider charges passed through to ratepayers. This method pertains only to the IOU. There are four separate cost recover clauses available to utilities. These are:

  -Fuel and Purchased Power
  -Purchased Capacity
  -Environmental
  -Energy Conservation

The Florida Legislature, through section 7 of chapter 93-35 of the Laws of Florida, created section 366.8255, Florida Statutes, to address environmental cost recovery through environmental compliance cost recovery factors that are separate and apart from the utility's base rates. Section 366.8255(1)(d), Florida Statutes, provides that environmental compliance costs include all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including but not limited to the following:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon;
2. Operation and maintenance expenses;
3. Fuel procurement costs;

4. Purchased power costs;
5. Emission allowance costs; and
6. Direct taxes on environmental equipment.

The statute further states in section 366.8255(2), Florida Statutes, that

> (a)n electric utility may submit to the commission a petition describing the utility's proposed environmental compliance activities and projected environmental compliance costs in addition to any Clean Air Act compliance activities and costs shown in a utility's filing under s. 366.825. If approved, the commission shall allow recovery of the utility's prudently incurred environmental compliance costs, including the costs incurred in compliance with the Clean Air Act, and any amendments thereto or any change in the application or enforcement thereof, through an environmental compliance cost-recovery factor that is separate and apart from the utility's base rates. An adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses must be included in the filing.

Finally, section 366.8255(5) provides that

> (r)ecovery of environmental compliance costs under this section does not preclude inclusion of such costs in base rates in subsequent rate proceedings, if that inclusion is necessary and appropriate; however, any costs recovered in base rates may not also be recovered in the environmental cost-recovery clause.

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 366.8255(1)(d), Florida Statutes. It adds an additional category to the list of expenses that should be recoverable through the ECRC. The bill provides that utilities, pursuant to a voluntary agreement entered into prior to January 1, 2003, between an electric utility and the Florida Department of Environmental Protection (DEP) or the USEPA for the purpose of preventing imminent noncompliance with ozone ambient air quality standards by an electric generating facility owned by the electric utility, a utility may recover incurred costs and expenses.

The bill becomes effective upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Please see “Effect of Proposed Changes” section.

III. 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:

The bill adds an additional category to the list of expenses that are reviewed for recovery through the ECRC in lieu of exposure to the costs associated with a full revenue requirements rate case.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The DEP supports the bill provided the term “prudently” is added to the new language.

The PSC is unable to ascertain the full impact of the bill because it is not possible to know which companies will be filing for review of agreements pursuant to the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

Prepared by:	Staff Director:
Wendy G. Holt	Patrick L. "Booter" Imhof