

By Senator Argenziano

3-1623B-04

See HB 1631

1                                   A bill to be entitled  
2           An act relating to air quality; amending s.  
3           366.8255, F.S.; redefining the term  
4           "environmental laws or regulations" to include  
5           certain agreements entered into by electric  
6           utilities with the Department of Environmental  
7           Protection; redefining the term "environmental  
8           compliance costs" to include costs related to  
9           certain air pollution control equipment;  
10          providing for cost recovery by electric  
11          utilities under certain circumstances; creating  
12          s. 366.8252, F.S.; providing for compliance  
13          with the Air Quality Improvement Act; providing  
14          a definition; requiring specified public  
15          utilities to submit a petition to the Public  
16          Service Commission for recovery of costs  
17          related to plans to achieve compliance;  
18          requiring the commission to establish  
19          regulatory conditions for approval of cost  
20          recovery; providing legislative findings that  
21          certain conditions imposed by the act are in  
22          the public interest; creating s. 403.0874,  
23          F.S.; creating the Air Quality Improvement Act;  
24          providing definitions; providing limits on  
25          emissions of nitrogen oxide and sulfur dioxide  
26          from certain electric generating units;  
27          requiring the department to expedite certain  
28          permits under certain circumstances; providing  
29          an effective date.  
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1           WHEREAS, the Legislature intends to encourage and  
2 promote the reduction of air emissions throughout the state,  
3 and

4           WHEREAS, in an attempt to improve the state's air  
5 quality, the Legislature wishes to provide incentives for and  
6 encourage innovative approaches to lowering emissions from  
7 existing generating facilities, NOW, THEREFORE,

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

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11           Section 1. Paragraphs (c) and (d) of subsection (1)  
12 and subsection (2) of section 366.8255, Florida Statutes, are  
13 amended to read:

14           366.8255 Environmental cost recovery.--

15           (1) As used in this section, the term:

16           (c) "Environmental laws or regulations" includes all  
17 federal, state, or local statutes, administrative regulations,  
18 orders, ordinances, resolutions, or other requirements,  
19 including, but not limited to, voluntary agreements for air  
20 quality improvement programs entered into with the Florida  
21 Department of Environmental Protection prior to December 31,  
22 2011, that apply to electric utilities and are designed to  
23 protect or improve the environment.

24           (d) "Environmental compliance costs" includes all  
25 costs or expenses incurred by an electric utility in complying  
26 with environmental laws or regulations, including, but not  
27 limited to:

28           1. Inservice capital investments, including the  
29 electric utility's last authorized rate of return on equity  
30 thereon.†

31           2. Operation and maintenance expenses.†

- 1           3. Fuel procurement costs.~~†~~  
2           4. Purchased power costs.~~†~~  
3           5. Emission allowance costs.~~†~~  
4           6. Direct taxes on environmental equipment.~~†~~ and  
5           7. Costs or expenses prudently incurred by an electric  
6 utility pursuant to an agreement entered into on or after the  
7 effective date of this act and prior to October 1, 2002,  
8 between the electric utility and the Florida Department of  
9 Environmental Protection or the United States Environmental  
10 Protection Agency for the exclusive purpose of ensuring  
11 compliance with ozone ambient air quality standards by an  
12 electrical generating facility owned by the electric utility.  
13           8. Costs or expenses the commission determines are  
14 prudently incurred by an electric utility for the addition of  
15 air pollution control equipment for purposes of attaining or  
16 maintaining compliance status with ambient air quality  
17 standards or reducing emissions of hazardous air pollutants or  
18 visibility-impairing pollutants. In order to seek recovery of  
19 costs and expenses described in this subparagraph, an electric  
20 utility must enter into an agreement with the Florida  
21 Department of Environmental Protection prior to December 31,  
22 2011, for the expeditious installation of this pollution  
23 control equipment.  
24           (2) An electric utility may submit to the commission a  
25 petition describing the utility's proposed environmental  
26 compliance activities and projected environmental compliance  
27 costs in addition to any Clean Air Act and Air Quality  
28 Improvement Act compliance activities and costs shown in a  
29 utility's filing under ss.~~s~~-366.825 and 366.8252 and may  
30 include a proposal for nontraditional recovery of any such  
31 costs and the reasons supporting approval of the proposal. If

1 approved, the commission shall allow recovery of the utility's  
2 prudently incurred environmental compliance costs, including  
3 the costs incurred in compliance with the Clean Air Act and  
4 the Air Quality Improvement Act, and any amendments thereto or  
5 any change in the application or enforcement thereof, through  
6 an environmental compliance cost-recovery factor that is  
7 separate and apart from the utility's base rates. An  
8 adjustment for the level of costs currently being recovered  
9 through base rates or other rate-adjustment clauses must be  
10 included in the filing.

11 Section 2. Section 366.8252, Florida Statutes, is  
12 created to read:

13 366.8252 Air Quality Improvement Act compliance;  
14 definitions; plans; conditions.--

15 (1) For the purposes of this section, the term " Air  
16 Quality Improvement Act" or "act" refers to s. 403.0874.

17 (2) Each public utility subject to the air emission  
18 limitations of the Air Quality Improvement Act may petition  
19 the commission for approval to recover the costs of a plan to  
20 achieve compliance with the act. Such petition shall be filed  
21 with the commission on or before September 1 of the year prior  
22 to the calendar year for which requested cost recovery is to  
23 commence and shall include:

24 (a) The number and identity of affected generating  
25 units.

26 (b) A description of the compliance plan submitted by  
27 the public utility to the Department of Environmental  
28 Protection for certification pursuant to s. 403.0874(7).

29 (c) The estimated effects of the compliance plan on  
30 the public utility's requirements for construction and  
31 operation of proposed or alternative generating facilities.

1           (d) The public utility's proposed schedule for  
2 implementation of compliance activities.

3           (e) The estimated costs, including capital investment  
4 and operating expenses, that the public utility will incur to  
5 implement its compliance plan.

6           (f) A description of any changes in the public  
7 utility's future sources of fuel as a result of the compliance  
8 plan and the estimated effects of any such changes on the  
9 public utility's fuel costs.

10           (3) The commission shall review the costs submitted  
11 pursuant to paragraph (2)(e) to determine whether such  
12 estimated costs are reasonable. If, after such review, the  
13 commission determines that the estimated costs of the public  
14 utility's plan are reasonable, it shall approve the costs for  
15 recovery from the utility's retail customers in accordance  
16 with the provisions of s. 366.8255, subject to the additional  
17 regulatory conditions provided in subsection (4). The  
18 commission shall render its decision on a plan filed by a  
19 public utility within 8 months after the date of filing.  
20 Notwithstanding the date of the commission's decision,  
21 recovery of the public utility's estimated costs shall be  
22 allowed commencing with the beginning of the calendar year  
23 requested in the utility's petition and shall be made subject  
24 to refund if the commission has not rendered its decision  
25 prior to such time. Approval by the commission shall establish  
26 that the public utility's estimated costs to implement the  
27 plan are recoverable, subject to true-up based on a subsequent  
28 determination of the utility's reasonable actual costs.

29           (4) The commission shall establish the following  
30 regulatory conditions in conjunction with the approval of cost  
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1 recovery for a public utility's compliance plan pursuant to  
2 subsection (3):  
3 (a) If requested by the public utility in its petition  
4 filed pursuant to subsection (2), the commission shall  
5 authorize recovery of the public utility's total costs to  
6 implement the compliance plan on a levelized basis over a  
7 period not to exceed 7 years beginning with the year in which  
8 cost recovery commences. The public utility shall have the  
9 discretion in any year during such cost recovery period to  
10 increase or decrease such levelized recovery amount to the  
11 extent of any net over-recovery or under-recovery in the  
12 aggregate for its combined adjustment clauses, provided that  
13 the utility's estimated costs to implement the compliance plan  
14 are fully recovered by the conclusion of the cost recovery  
15 period. Any over-recovery or under-recovery of the public  
16 utility's actual costs to implement the compliance plan shall  
17 be trued up in the year following the conclusion of the cost  
18 recovery period. Costs to implement the compliance plan that  
19 are incurred beyond the recovery period shall be recovered  
20 through applicable adjustment clauses in accordance with the  
21 commission's normal practice and procedure.  
22 (b) If cost recovery is implemented pursuant to  
23 paragraph (a), the base rates and related rate schedules of  
24 the public utility in effect on the effective date of this  
25 section shall remain unchanged and frozen during the initial 5  
26 years of the recovery period, the adjustment clause recovery  
27 factors of the public utility in effect on the effective date  
28 of this section shall remain unchanged and frozen during the  
29 recovery period, and the depreciation rates and any annual  
30 adjustments to depreciation expenses and reserves allowed in a  
31 rate settlement agreement approved by the commission for the

1 public utility that are in effect on the effective date of  
2 this section shall remain in effect and capped during the  
3 recovery period, provided, however, that:

4 1. The base rate freeze shall not apply during the  
5 initial fixed term of any such base rate settlement agreement.  
6 Beyond the initial fixed term, any such rate settlement  
7 agreement shall be deemed to be superseded and replaced by the  
8 provisions of this subsection. The public utility may elect to  
9 extend the base rate freeze for the full cost recovery period  
10 by written notice to the commission at least 3 months prior to  
11 the expiration of the initial 5-year rate freeze period.

12 2. Any revenue-sharing mechanism contained in a base  
13 rate settlement agreement approved by the commission in lieu  
14 of rate of return regulation that is in effect on the  
15 effective date of this section shall be extended for the  
16 period of the base rate freeze and shall be the appropriate  
17 and exclusive mechanism to address earnings levels; provided,  
18 however, that:

19 a. The revenue-sharing threshold for the year  
20 following the initial fixed term of the base rate settlement  
21 agreement shall be established by using actual calendar year  
22 2003 gross retail base rate revenues increased annually for  
23 the intermediate years by the average annual growth rate in  
24 retail kilowatt hour sales for the 10-calendar-year period  
25 ending December 31, 2003. The revenue cap for the year  
26 following the initial fixed term of the base rate settlement  
27 agreement shall be established by adding to the aforementioned  
28 threshold the difference between the threshold and the cap  
29 amounts for 2003, increased annually for the intermediate  
30 years by the average growth rate in retail kilowatt hour sales  
31 for the 10-calendar-year period ending December 31, 2003.

1 Thereafter, both the revenue-sharing threshold and the cap  
2 shall increase annually by the average annual growth rate in  
3 retail kilowatt hour sales for the 10-calendar-year period  
4 ending December 31, 2003.

5 b. Incremental revenues attributable to a business  
6 combination or acquisition involving the public utility or to  
7 a change in rates pursuant to paragraph (d) shall be excluded  
8 in determining retail base rate revenues for purposes of  
9 revenue sharing.

10 c. For purposes other than reporting or assessing  
11 earnings, such as cost recovery clauses and allowance for  
12 funds used during construction, the public utility shall have  
13 an authorized return-on-equity rate of 12 percent.

14 3. The commission shall continue to review and approve  
15 the public utility's costs and programs subject to the  
16 adjustment clauses as it would in the absence of the  
17 adjustment clause freeze. During the adjustment clause freeze,  
18 the utility may allocate the total annual revenues from all  
19 adjustment clause cost recovery factors combined among the  
20 adjustment clauses in a manner that minimizes the year-end  
21 over-recovery or under-recovery balance in each individual  
22 clause. For any calendar year in which the net year-end  
23 over-recovery or under-recovery balance, after any  
24 discretionary adjustment to levelized compliance cost recovery  
25 pursuant to paragraph (a), for the utility's combined  
26 adjustment clauses in the aggregate is projected to exceed 10  
27 percent of the total costs subject to the clauses, the  
28 commission shall make an adjustment to be implemented through  
29 a separate credit or charge on customer bills no later than  
30 the beginning of the following calendar year. Any year-end  
31 over-recovery or under-recovery balance in the utility's



1 adjustment clauses for the final year of the cost recovery  
2 period shall be trued up in the following year in accordance  
3 with the commission's normal practice and procedure.

4 (c) During the cost recovery period set forth in  
5 paragraph (a), the public utility shall be allowed to:

6 1. Recover through the capacity cost recovery  
7 mechanism of the fuel and purchased power adjustment clause  
8 its annual revenue requirements associated with any generating  
9 unit subject to the Florida Electrical Power Plant Siting Act,  
10 ss. 403.501-403.518, that is placed in service by the public  
11 utility during such period.

12 2. Suspend up to 100 percent of the annual accruals to  
13 its reserves for the dismantlement and decommissioning of  
14 generating facilities without limiting the utility's right to  
15 recover through future accruals or otherwise the reasonable  
16 and prudent costs of such dismantlement and decommissioning.

17 3. Accelerate the amortization of regulatory assets  
18 previously approved by the commission.

19 (d) Notwithstanding the foregoing base rate and  
20 adjustment clause freeze, the commission may take the  
21 following actions consistent with the public interest, which  
22 shall not be construed to impair the continued effectiveness  
23 of the regulatory conditions provided in this subsection:

24 1. Allow adjustments to the rates, defer costs or  
25 revenues, or implement other remedial regulatory treatment of  
26 the public utility to take into account one or more of the  
27 following conditions occurring during the rate freeze period:

28 a. Governmental action pursuant to any law,  
29 regulation, rule, or order that results in significant cost  
30 reductions or requires major expenditures. Such actions  
31 include, but are not limited to, a requirement for the utility

1 to alter its structure, to divest itself of assets, to  
2 establish a regional transmission organization, or to install  
3 pollution control equipment solely for compliance purposes  
4 pursuant to a settlement agreement entered into with or  
5 approved by a government agency.

6 b. Major expenditures to restore or replace property  
7 damaged or destroyed by force majeure, including, but not  
8 limited to, hurricanes, tropical storms, or tornadoes.

9 c. The public utility's retail base rate earnings  
10 falling below a 10-percent return on equity as reported on a  
11 commission-adjusted or pro forma basis on a monthly earnings  
12 surveillance report. The public utility's achieved return on  
13 equity shall be calculated based upon an adjusted equity ratio  
14 to the extent provided for in the public utility's last base  
15 rate settlement agreement approved by the commission.

16 d. Changes in accounting requirements that  
17 substantially affect the utility's recognition of revenues and  
18 expenses.

19 2. Approve any reduction in base rates or base rate  
20 charges requested by the public utility or approve any new or  
21 revised tariff provisions or rate schedules requested by the  
22 utility, provided that such tariff request does not increase  
23 any existing base rate component of a tariff or rate schedule  
24 during the period the base rate freeze is in effect unless the  
25 application of such new or revised tariff or rate schedule is  
26 optional to the utility's customers.

27 (e) The Legislature finds that the regulatory  
28 conditions established by this subsection provide the  
29 necessary and appropriate recognition of the obligations  
30 imposed on a public utility by the Air Quality Improvement Act  
31 and that such conditions are therefore in the public interest.

1 Notwithstanding the other provisions of this subsection, in  
2 the event circumstances arise which demonstrate that there  
3 will be a substantial harm to the public interest, the  
4 commission may take such action otherwise within its  
5 jurisdiction as it finds necessary to prevent or mitigate such  
6 harm.

7 Section 3. Section 403.0874, Florida Statutes, is  
8 created to read:

9 403.0874 Emissions of nitrogen oxide, sulfur dioxide,  
10 and particulate matter from certain electric generating  
11 units.--

12 (1) This section shall be known by the popular name  
13 the "Air Quality Improvement Act."

14 (2) As used in this section:

15 (a) "Electric utility steam generating unit" means an  
16 electric utility steam generating unit that has more than 100  
17 megawatts of potential electric output capacity and supplies  
18 more than one-third of such capacity to any utility power  
19 distribution system for sale.

20 (b) "Investor-owned public utility" means a public  
21 utility, as defined in s. 366.02, that supplies electricity to  
22 or for the public in this state.

23 (3) An investor-owned public utility that on the  
24 effective date of this act owns or operates coal-fired  
25 electric utility steam generating units for which the  
26 collective emissions of nitrogen oxide from all such  
27 coal-fired generating units were between 32,000 tons and  
28 36,000 tons in calendar year 2002, as reported in the United  
29 States Environmental Protection Agency clean air markets  
30 program database, shall not collectively emit from all such  
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1 coal-fired generating units more than 17,000 tons of nitrogen  
2 oxide in calendar year 2010 or any calendar year thereafter.

3 (4) An investor-owned public utility that on the  
4 effective date of this act owns or operates coal-fired  
5 electric utility steam generating units for which the  
6 collective emissions of sulfur dioxide from all such  
7 coal-fired generating units were between 96,000 tons and  
8 100,000 tons in calendar year 2002, as reported in the United  
9 States Environmental Protection Agency clean air markets  
10 program database, shall not collectively emit from all such  
11 coal-fired generating units more than 50,000 tons of sulfur  
12 dioxide in calendar year 2010 or any calendar year thereafter.

13 (5) An investor-owned public utility that on the  
14 effective date of this act owns or operates residual oil and  
15 natural gas-fired or residual oil-fired electric utility steam  
16 generating units for which the collective emissions of  
17 nitrogen oxide from all such oil and gas-fired or oil-fired  
18 generating units exceeded 11,000 tons in calendar year 2002,  
19 as reported in the United States Environmental Protection  
20 Agency clean air markets program database, shall not  
21 collectively emit from all such oil and gas-fired or oil-fired  
22 generating units more than an annual weighted average of 0.26  
23 pounds of nitrogen oxide per million BTUs of fuel consumed in  
24 calendar year 2010 or any calendar year thereafter.

25 (6) An investor-owned public utility that on the  
26 effective date of this act owns or operates residual oil and  
27 natural gas-fired or residual oil-fired electric utility steam  
28 generating units for which the collective emissions of  
29 particulates from all such oil and gas-fired or oil-fired  
30 generating units exceeded 7,000 tons in calendar year 2002, as  
31 reported in the Annual Operating Reports of the investor-owned

1 public utility filed under Title V of the Clean Air Act, shall  
2 not collectively emit from all such oil and gas-fired or  
3 oil-fired generating units more than an annual weighted  
4 average of 0.030 pounds per million BTUs of fuel consumed in  
5 calendar year 2012 or any calendar year thereafter.

6 (7) An investor-owned public utility to which this  
7 section applies may determine how it will achieve compliance  
8 with the collective air emissions limitations imposed by this  
9 section and shall submit its compliance plan to the Department  
10 of Environmental Protection no later than August 1 of the year  
11 this section becomes effective. Within 30 days after such  
12 compliance plan or any subsequent revised compliance plan is  
13 submitted, the department shall certify whether the compliance  
14 plan or revised compliance plan is capable of achieving the  
15 emissions limitations required under this section. Compliance  
16 with the air emissions limitations set out in this section  
17 does not alter any obligation to comply with any other federal  
18 or state law, regulation, or rule related to air quality or  
19 visibility.

20 (8) The electric utility steam generating units that  
21 are subject to the collective air emissions limitations set  
22 out in this section on the effective date of this act shall  
23 remain subject to the collective air emissions limitations  
24 regardless of whether each individual generating unit  
25 thereafter continues to be owned or operated by an  
26 investor-owned public utility.

27 (9) The Department of Environmental Protection shall  
28 expedite the issuance of any permit or modified permit to an  
29 investor-owned public utility for electric utility steam  
30 generating units subject to this section and shall include  
31 conditions that provide for compliance with the requirements

1 of this section by incorporating the emissions limitations  
2 contained herein and requiring testing, monitoring,  
3 recordkeeping, and reporting adequate to ensure compliance  
4 therewith.

5           Section 4. This act shall take effect upon becoming a  
6 law.

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