

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Transportation and Economic Development Appropriations Committee

BILL: CS/CS/CS/SB 1366

SPONSOR: Transportation and Economic Development Appropriations Committee, Government Efficiency Appropriations Committee, Communications and Public Utilities Committee and Senators Constantine and Dockery

SUBJECT: Storm Infrastructure Recovery

DATE: April 21, 2005

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Wiehle	Caldwell	CU	Favorable/CS
2. Cibula	Maclure	JU	Fav/1 amendment
3. Fournier	Johansen	GE	Favorable/CS
4. Noble	Martin	TA	Fav/CS
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The committee substitute authorizes investor-owned electric utilities to issue bonds secured by surcharges to utility bills for the costs of storm damage and to restore depleted reserves. Bonding is available when the Public Service Commission determines that the proposed bond-based recovery is reasonably expected to result in lower overall costs or to avoid or significantly mitigate rate impacts to customers as compared with traditional methods of recovery.

The committee substitute amends section 679.1091, Florida Statutes, and creates section 366.8260, Florida Statutes.

II. Present Situation:

Prior to Hurricane Andrew in 1992, Florida Power and Light (FP&L) (in whose territory the hurricane made landfall) had commercial insurance on its generation, transmission, and distribution facilities. The transmission and distribution (T&D) insurance limit was \$350 million per occurrence with a premium of \$3.5 million. Hurricane Andrew caused approximately \$270 million in damages to FP&L's T&D facilities. As a result, the insuring company offered FP&L new T&D coverage that consisted of a \$100 million annual aggregate loss limit with a minimum premium of \$23 million. At the time, FP&L explored other options for T&D coverage, but they proved economically inadequate given the damage caused by Hurricane Andrew.¹

¹ PUBLIC SERVICE COMMISSION, FISCAL IMPACT FORM-SENATE FOR SB 1366, March 9, 2005.

In 1993, FP&L petitioned the Public Service Commission (PSC) to implement a self-insurance mechanism for storm damage to its T&D system and to address contributions to its Storm and Property Insurance Reserve Fund. The petition was granted June 17, 1993. Subsequently, the other three investor-owned utilities, Progress Energy, Tampa Electric Company, and Gulf Power, also obtained authorization to implement and fund reserve funds.

A reserve fund is money accrued to pay costs related to storm damage. At the utility's option, the reserve fund may be either funded or unfunded. With a funded reserve, the amount of the reserve is set aside in a special fund to be used in the event of a storm. With an unfunded reserve, the utility books a reserve amount, but is free to use the money to meet its current obligations. The utility is liable for that amount in the event of a storm.

During August and September 2004, Hurricanes Charley, Frances, Ivan, and Jeanne struck Florida, causing power outages and damage throughout the state. In order to restore power, the utilities were required to expend significantly more than their respective storm damage reserves. The estimated short-falls are as follows:

Utility	Estimated Storm Damage Costs (Net of Insurance)	Estimated Storm Damage Reserve	Estimated Damage Short-Fall	Damaging Storms
Florida Power and Light ²	\$890 Million	\$357 Million	\$533 Million	Charley, Frances, Jeanne
Gulf Power Company ³	\$124 Million	\$28 Million	\$97 Million	Ivan
Progress Energy Florida ⁴	\$366 Million	\$47 Million	\$319 Million	Charley, Frances, Ivan, Jeanne
TECO Energy	\$72 Million	\$44 Million	\$28 Million	Charley, Frances, Jeanne
Total	\$1.452 Billion	\$476 Million	\$977 Million	

Currently, a utility may recover storm damage costs: 1) through its current base rates; 2) through a full evidentiary rate proceeding; or 3) through PSC approval of a surcharge on the customer's bill. Progress Energy Florida (PEF) and FP&L currently have petitions pending at the PSC requesting storm recovery surcharges be added to customer bills. On January 18, 2005, the PSC approved FPL's petition to begin collecting the surcharge of approximately \$2.09 per 1000 kWh residential bill, subject to refund. The petition for approval filed by PEF was conditionally approved by the PSC at its March 1, 2005, Agenda Conference. These pending requests are for surcharges to recover the deficiencies and bring each utility's storm reserve fund to zero. Additions to the reserves would come from the existing reserve charge over time.

² Source: PSC Docket No. 041291-EI, amended petition filed February 4, 2005.

³ Source: PSC Docket No. 050093-EI, filed February 2, 2005.

⁴ Source: PSC Docket No. 041272-EI, filed November 2, 2004

III. Effect of Proposed Changes:

The committee substitute authorizes investor-owned electric utilities to issue bonds secured by surcharges to utility bills for the costs of storm damage and to restore depleted reserves. Bonding is available when the Public Service Commission (PSC or commission) determines in a financing order that the proposed bond-based recovery is reasonably expected to result in lower overall costs or to avoid or significantly mitigate rate impacts to customers as compared with traditional methods of recovery.

In a petition by a utility to the PSC for a financing order, the utility is required to set out what it has done to repair storm damage and why it did so; what the costs of these activities were; how much of its reserve fund it is seeking to establish or replenish through the bonds; how much financing costs are estimated to be; how much the storm-recovery charge is estimated to be; and how using storm-recovery bonds will benefit customers as opposed to using traditional methods, through either estimated total cost savings or a demonstration of how bonding would avoid or significantly mitigate rate impacts to customers.

In an financing order, the PSC must determine the amount of storm-recovery costs and the level of reserves to be recovered, taking into consideration, to the extent the commission deems appropriate, any other methods used by the utility to recover these costs; describe and estimate the financing costs to be recovered; and specify the period over which the recovery is to be made. In the order, the PSC will set forth whether any of the reserves must be funded reserves, and, if so, any limitations on the reserves. The PSC also will include in its order a formula-based mechanism for making any periodic adjustments to the monthly storm-recovery charge which is necessary to ensure that all costs are recovered in full and that there is no over-recovery. The PSC is authorized to hire outside consultants during the hearing, with the expense included as a part of financing costs and recovered in the storm recovery charges.

During the hearing, both the utility and the commission will estimate financing costs. The committee substitute provides a mechanism for reconciling estimated versus actual financing costs. Within 120 days after the issuance of storm-recovery bonds, the electric utility is to file with the commission information on the actual costs of the storm-recovery-bond issuance. The commission is to review the information to determine if actual costs incurred in the issuance of the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and the terms of the financing order. The commission may disallow any incremental issuance costs in excess of the lowest overall costs by requiring the utility to make a contribution to the storm reserve in an amount equal to the excess of actual issuance costs incurred, and paid for out of storm recovery bond proceeds, and the lowest overall issuance costs as determined by the commission. The commission may not make adjustments to the storm-recovery charges for any such excess issuance costs.

The PSC is required to either reject the petition or issue a financing order no later than 135 days after the filing of the petition. The PSC must issue a financing order if it finds that the issuance of the bonds and the imposition of storm-recovery charges on customers are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing or recovering storm-recovery costs and storm-recovery reserves.

Within 30 days after the PSC issues a financing order or denies a request for reconsideration of a petition for an order, or if the request is granted, within 30 days of the decision on reconsideration, an adversely affected party may petition for judicial review in the Florida Supreme Court. Appellate review is based solely on the record before the PSC and briefs and is limited to whether the commission's order conforms to the constitution and laws of this state and the United States and is within the commission's discretion under this section. The committee substitute provides that, as delay in the appeal will delay issuance of storm-recovery bonds, thereby diminishing savings that might otherwise be achieved, the Supreme Court must act on the appeal as expeditiously as practicable and give the appeal precedence over other matters not accorded similar precedence by law.

A financing order becomes irrevocable and the PSC may not alter the order after the earlier of the transfer of storm-recovery property by the utility to an assignee or the issuance of storm-recovery bonds. After issuance of a financing order, the utility retains sole discretion as to whether to issue bonds.

The utility is to adjust the storm-recovery charge at least twice per year. The utility must file a letter with the PSC applying the formula-based adjustment mechanism set forth in the financing order and requesting approval to make the adjustments to the storm-recovery charges assessed on its customers to ensure recovery of all costs and prevent over-recovery. PSC review of the request is limited to whether there is any mathematical error.

The monthly charge to customers results from allocation of the storm-recovery charge discussed above among the utility's customers. The utility must explicitly reflect the storm-recovery charge on a customer's bill. The commission may determine whether to require this disclosure as a separate line item. If it does so and the utility does not comply, the failure to comply does not impair the bonds or the collection of the storm recovery charges, but does subject the utility to penalties under the existing penalty statute.

The right of the utility or its successor to collect storm-recovery charges and to obtain periodic adjustments to the charges constitutes a right in "storm-recovery property." The property exists until the storm-recovery bonds are paid and the financing costs recovered. The committee substitute provides for perfection of an interest in the property; for sequestration of storm-recovery charge payments upon default of payment by the utility; for an exemption from any setoff, counterclaim, surcharge, or defense by the utility or any other person in connection with any insolvency of the utility; for an exemption from the Uniform Commercial Code; and for priority of liens on the property.

The state pledges not to take any action that will alter the provision of this law making storm recovery charges irrevocable, binding, and nonbypassable, and not to take or permit any action to impair the value of storm recovery property, or to reduce storm recovery charges, except as permitted by the committee substitute. Utilities that violate the provisions of this act or the financing order issued under the provisions of this act are subject to penalties under s. 366.095, F.S., or other penalties or remedies that the commission determines are necessary to achieve the intent of this act. Any monetary penalty or remedy imposed, and the costs of defending against

the penalty or remedy may not be recovered from the ratepayers, and the commission may not make adjustments to storm-recovery charges for any penalties or remedies.

The committee substitute also provides that a transfer or pledge of, or creation of a security interest in, any interest or right or portion of any interest or right in any storm-recovery property is governed by the committee substitute rather than the Uniform Commercial Code.

The committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference included an estimate of surcharges for excess damages in its March 2005 Gross Receipts Tax forecast. These estimates were to provide for recovery over a two year period. This committee substitute will impact gross receipts revenue by reducing the utilities' taxable receipts in the next two years below the level on which the gross receipts tax estimate was based. Over the total life of the storm recovery charges, though, taxable receipts are expected to be higher than they would be under current law, since the recovery charge allows the utilities to replenish their reserves. The revenue estimating conference estimates that this committee substitute will reduce gross receipts tax revenue by \$4.1 million in FY 2005-06 and by \$4.2 million in FY 2006-07, but will increase revenue by \$4.2 million annually over the remaining life of the storm recovery charges.

B. Private Sector Impact:

The committee substitute is expected to allow the investor-owned utilities to pay hurricane-related expenses more quickly than with surcharges and with lower interest expenses than with other available debt. This would allow a smaller increase in customers' monthly payments in the short term, although total costs over the life of the storm recovery charges could be greater. Authority to issue bonds would place the utilities in a better position to restore their generation, transmission, and distribution facilities in subsequent hurricane seasons.

C. Government Sector Impact:

The committee substitute's impact on gross receipts tax revenue will affect the state's ability to issue PECO bonds. PECO bonding capacity will be affected as follows:

Fiscal Year	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16
PECO impact \$millions	-4.2	-38.0	-17.6	62.4	54.2	4.7	2.6	0.7	0.5	0.5	0.5

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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