HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 303 Storm Recovery Financing
SPONSOR(S): Benson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Cater	Bohannon
2) Finance & Tax Committee			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

Over a six week period from August through September, 2004, Florida experienced an unprecedented number and scope of tropical storm and hurricane events across the State. It is estimated that the four investor-owned electric utilities[1] (IOUs) spent more than $1.4 billion over this time period to repair hurricane damage and restore electric service. The reserve fund for such disasters has been exhausted and a deficit in excess of $900 million has been created. The majority of the damage incurred was to the utilities' transmission and distribution (T&D) facilities. These facilities are self-insured because commercial insurance has not been economically available since Hurricane Andrew.

The bill creates s. 366.8260, F.S. The provisions of the bill grant the Public Service Commission (PSC or commission) another method to use in considering storm cost recovery. The definition of "storm" is a named tropical storm or hurricane that occurred during calendar year 2004. The bill allows an electric utility to petition the PSC or a financing order in order to recover the costs of restoring electric service, as a result of storm damage sustained in 2004, including replenishment of the storm recovery reserve fund and costs incurred beyond the reserve fund balance. If a petition is approved, the PSC is granted the authority to authorize a dedicated revenue stream.[2] These bonds do not create a public debt, nor do they require an appropriation from the state. However, the issue was has been raised about the measure binding future Legislatures.

Securitization means the "creation of a transferable property right to collect from the utility's ratepayers a 'nonbypassable' obligation." The bill adds the specific language to meet the necessary securitization criteria such as the creation of a property right, and the creation of a revenue stream to recover these costs. Additionally, the state pledges that it will not take certain actions including any action that impairs or would impair storm recovery property.

Revenues received pursuant to these bonds, and the transactions related to these bonds are exempt from state and local taxes. As a result, the revenue impact is indeterminate at this time.

This section shall expire on January 1 on the second year following payment in full of all issued storm recovery bonds issued, all related financing costs, but shall continue to apply to any causes of action timely made.

The bill takes effect upon becoming law.

[1] The four investor-owned electric utilities in Florida are Florida Power & Light, Progress Energy, Gulf Power, and TECO Energy.
[2] Under s. 364.04(1), F.S., the PSC has the authority to approve an IOU's debt issuance, but not the authority to dedicate a revenue stream.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill gives the PSC temporary authority to allow IOUs to issue securitized bonds to recover their 2004 storm recovery costs.

B. EFFECT OF PROPOSED CHANGES:

Background

Prior to Hurricane Andrew in 1992, Florida Power and Light (FP&L) had commercial insurance on its generation, transmission, and distribution facilities. The T&D insurance limit was $350 million per occurrence with a premium of $3.5 million. Following Hurricane Andrew, FP&L sustained T&D damage of approximately $270 million.

As a result, the insuring company offered new T&D coverage to FP&L which 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.

In 1993, FP&L petitioned the 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[3].

A reserve fund is money accrued to recover 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, but is liable for that amount in the event of a storm.

During August and September 2004, Hurricanes Charley, Frances, Ivan, and Jeanne, as well as Tropical Storm Bonnie struck Florida, causing power outages and damage throughout the state. In order to restore power, the IOUs 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[4]
Florida Power and Light[5]	$890 Million	$357 Million	$533 Million	Charley, Frances, Jeanne
Gulf Power Company[6]	$124 Million	$28 Million	$97 Million	Ivan

[3] PSC Order No. 93-0918-FOF-EI, issued June 17, 1993. Additional orders were issued for self insurance as follows: Progress Energy, PSC 93-1522-FOF-EI, issued October 15, 1993; Tampa Electric Company PSC-93-1522-FOF-EI, issued March 25, 1994: Gulf PSC 96-0023, issued January 8, 1996; Florida Public Utilities Co. PSC 94-0170-FOF-EI, issued February 10, 1994.
[4] Tropical Storm Bonnie is not included in these damage estimates.
[5] Source: PSC Docket No. 041291-EI, amended petition filed February 4, 2005.

Progress Energy Florida[7]	$366 Million	$47 Million	$319 Million	Charley, Frances, Ivan, Jeanne
TECO Energy	$72 Million	$44 Million	$28 Million	Charley, Frances, Ivan
Total	$1,452 Million	$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 both currently have proceedings pending at the PSC requesting storm recovery surcharges are 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. PEF's petition is currently pending. Additionally, Gulf Power Company (Gulf) has entered into a stipulation with the Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) concerning Gulf's recovery of costs related to the damage it received in Hurricane Ivan. The petition for approval is scheduled to be voted on by the PSC at its March 1, 2005, Agenda Conference. These pending requests are for surcharges to bring each utility's storm reserve fund to zero, but does not replenish the reserve.

Securitization

Securitization is defined as the "creation of a financial security that is backed by a revenue stream that is pledged to pay the principal and interest of that security. Securitization requires the creation of a transferable property right to collect from the utility's ratepayers a 'nonbypassable' obligation." Securitization provides the utility with the up-front funds to replenish their reserve funds for the upcoming hurricane season and recover the amounts prudently incurred above the reserve fund balances. From the sale of bonds the cost will be paid through a charge to its customers.

With other types of storm recovery, monies are received in increments throughout the recovery period. Other utilities have used this method of financing to recover stranded investment following the restructuring of the electric industries in various states, but this method has not previously been used to recover reserves and storm damages.

In general, securitization gives the bonds a better rating than if there were no secure stream of revenue, since the utilities receive a transferable right to collect a specific revenue stream from the rate payers and the bonds are secured by this revenue stream.

Additionally, while securitization requires authorization by the state, it is not a request for an appropriation from the state or a pledge of the states full faith and credit.

Proposed Statute Changes

The bill creates 366.8260, F.S., and provides definitions to be used in this section. The provisions of the bill grant the PSC another method to use in considering storm cost recovery. The bill allows an investor owned utility to petition the PSC for consideration of the issuance of a financing order authorizing the financing of reasonable and prudent storm recovery costs as a result of storm damage sustained in 2004. The definition of "storms" is a named tropical storm or hurricane that occurred during calendar year 2004.

The bill requires the utility's to petition the PSC for a financing order. The petition must contain the following:

- Details of storm recovery activities
- Estimates of its storm recovery expenses

[6] Source: PSC Docket No. 050093-EI, filed February 2, 2005.
[7] Source: PSC Docket No. 041272-EI, filed November 2, 2004

- Portion of the storm recovery costs it proposes to issue through bonds
- Estimates of the charges to customers to recover storm recovery costs
- Estimates of financing costs
- Estimates of cost savings of financing through storm recovery bonds.

The PSC has the final determination as to whether or not the IOUs can issue these bonds and the appropriate amount of storm costs to be recovered through the bonds. The PSC will render a final determination and issue a financing order if it finds that the issuance of storm recovery bonds and the imposition of storm recovery charges if they are reasonably expected to result in a lower overall costs or significantly mitigate a larger rate impact resulting from an alternative form of storm recovery. Any determination of whether or not storm recovery costs are reasonable and prudent shall be made with reference to the general public interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric service.

The bill requires the PSC to render a decision on the petition within 120 days and issue an order within 135 days of filing. The bill also specifies that the financing order shall specify the following:

- The amount of storm recovery costs that can be recovered through bonds
- The time period of the recovery
- Provide that these charges are nonbypassable
- Include a mechanism for periodic adjustment of the storm recovery charge to the customer
- Specify the property that is created to pay and/or secure the bonds
- Allow the flexibility of the terms and conditions of the bonds
- Allow that once the terms of the bond issuance are final, they are effective within 48 hours of being filed with the PSC
- How the charges are to be allocated among customer classes, requiring that the charges be allocated among customer classes in the same manner as cost were allocated in the cost-of-service study in the IOUs most recent rate case.

The bill requires the utility to, at least biannually, file a petition or letter with the PSC for administrative approval of an adjustment (true-up) of the storm recovery charge. This adjustment is based on the formula contained in the financing order. This request must be approved by the PSC within 60 days, and the PSC's review is limited to determining whether there is a mathematical error in the application of the formula based mechanism relating to the appropriate amount of the over collection or under collection of storm recover charges. If there is a mathematical error, the PSC must inform the utility of any mathematical error discovered and provide it with the opportunity to correct the error.

The bill provides exceptions to the PSC's current rate-making jurisdiction[8] where it cannot consider the storm recovery bonds debt except for federal income tax purposes, cannot consider the storm recovery charges to be income to the utility, nor can it determine that any action taken by the utility consistent with the financing order as unjust or unreasonable. The PSC cannot require the utility to use these bonds unless the purpose is stated in the petitions. Review upon appeal is limited to whether the order conforms to the law and is within the authority of the commission.

The bill creates storm recovery property rights which continue to exist until the storm recovery bonds are paid in full. The bill allows the storm recovery property to be transferred to a successor company or an assignee, including a separate affiliate set up for the purpose of collecting the revenues. The bill contains provisions concerning the default of payment, insolvency, and successor utilities. The bill also contains provisions as to the storm recovery bond's exclusion from certain provisions of Article 9 of the Uniform Commercial Code.[9]

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[8] In a standard PSC rate proceeding, any debt is included in the utility's capital structure, and costs associated with the debt are factored into the utility's revenue requirements.

[9] Article 9 of the Uniform Commercial Code is contained in ch. 379, F.S.

The storm recovery bonds issued pursuant to this section are not considered public debt and neither the state nor its political subdivisions are liable on any storm recovery bonds. Nor may they levy any tax or make a payment on the bonds, except in their capacity as consumers of electricity.

With this bill, the state pledges that it will neither: 1) alter the section which impacts the irrevocability and nonbypassability of the financing charges; nor 2) reduce the value of storm recovery property. The state also pledges that it will not take or permit any action that impairs or would impair the value of the storm recovery property, or impair the collection of the storm recovery charges, except if full compensation by law.

The bill provides a tax exemption for all revenues collected pursuant to a financing order and transactions involving the transfer and ownership of storm recovery property.

The bill provides that any assignee or financing party of storm recovery property is not considered an electric utility.

In the event there is a conflict between this section and another section concerning attachment, assignment, transfer, or security interest, to the extent there is a conflict, this section governs.

The bill contains an effect of invalidity of action clause where, effective the on date that storm recovery bonds are first issued, if any provision of this section is held invalid, is invalidated, superseded, replaced, repealed, or expired, that occurrence will not affect the validity of any action taken under this section prior to the date where the provision is held to be invalid, invalidated, superseded, replaced, repealed, or expired or that expires for any reason.

The bill only gives the PSC the authority to issue financing orders on petitions that are filed within 12 months of the effective date of this section. This statute also expires on January 1 of the second year following the full payment of all storm recovery bonds and related financing cost and notice to the Joint Administrative Procedures Committee with a copy published in the Florida Administrative Weekly.

The bill also amends s. 679.191, F.S. to show that certain provisions of Article 9 of the Uniform Commercial Code do not apply to the transfer or pledge of, or creation of a security interest or right or portion of interest or right in any storm recovery property.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1. Creates s. 366.8260, F.S., to allow investor owned electric utilities to recover storm related costs through the issuance of bonds, following the approval of the PSC.

Section 2. Amends s. 679.1091, F.S., to show that ch. 679, F.S., does not apply to transactions pertaining to storm recovery property.

Section 3. Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   While the state is not pledging any of its funds to pay the storm-recovery bonds, this bill provides that the revenue collected pursuant to a financing order, and the transactions involved in transferring storm recovery property and receiving storm recovery charges are exempt from state taxes. Based on the terms and conditions of the financing orders, this could have an impact on gross receipts tax and intangible tax revenues.

2. Expenditures:

None.

According to the PSC, it could handle these proceedings with its existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill provides that revenues collected pursuant to a financing order and transactions involved in transferring storm recovery property and receiving storm recovery charges are exempt from local taxes. Based on the terms and conditions of the financing orders, this could have an impact on local government revenues including the s. 366.231 F.S. municipal utility tax, s. 337.401 municipal franchise fees, sales taxes and property taxes.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides a means for the electric utilities, upon the issuance of storm-recovery bonds, to completely recover their 2004 hurricane recovery expenses and replenish their storm damage reserves. This allows the utilities to have the financial capability to respond to future storms.

D. FISCAL COMMENTS:

If all eligible utilities fully fund the permitted bonds, then the total issuance will be approximately $1.4 billion, exclusive of the costs of issuance.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

While the bill does not require a direct expenditure of funds by municipalities and counties, it exempts revenues received by the IOU pursuant to the financing order. The transactions related to the bonds are exempt from local taxes and fees, reducing the authority that municipalities and counties have to raise revenue. Because this bill has not been to an impact conference, it is not possible to determine if there is a material impact on the ability of local governments to raise revenues.

2. Other:

The bill contains a pledge from the state where the state agrees that it will not alter certain provisions of this section, take or permit any action that would impair the value of storm recovery property or reduce, alter, or impair storm recovery charges until the storm recovery bonds and all related charges have been paid in full. With this pledge, there is a concern that this Legislature may bind future Legislatures by pledging that certain statutes will not be changed.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES