

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1259

Siting of Electric Transmission Lines

SPONSOR(S): Coley

TIED BILLS:

IDEN./SIM. BILLS: SB 2164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	_____	Cater	Holt
2) Environmental Regulation Committee	_____	_____	_____
3) Agriculture & Environment Appropriations Committee	_____	_____	_____
4) Commerce Council	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Transmission Line Siting Act (TLSA) is a highly procedural, centralized, coordinated permitting process. The process encompasses permitting and other authorizations, including the proprietary interest of all state, regional, and local agencies having jurisdiction for electric transmission lines. Transmission lines subject to the TLSA currently are those lines which are 230 kilovolts or greater, 15 miles or more in length, and cross a county line. The process includes a mandatory hearing by an administrative law judge, a determination of need by the Public Service Commission (PSC), with ultimate approval/denial authority vested in the Siting Board (Governor and Cabinet). The Department of Environmental Protection (DEP) coordinates the entire process.

The proposed revisions to the TLSA are intended to make the process more efficient, more open to the public, and enhance the focus on energy reliability in the state. Under current provisions, a typical application takes approximately 14 months to complete, and an optimal application is completed in about 10-1/2 months. In optimal situations, the bill reduces the processing time by roughly five months.

The key provisions include:

- Changes the popular name from "Transmission Line Siting Act" to "Florida Electric Transmission Line Siting Act"
- Combines separate "sufficiency" and "completeness" determinations into a single "completeness" review.
- Expands the definition of "electric utility" to include entities created and approved pursuant to Order 2000 issued by the Federal Energy Regulatory Commission (FERC),
- Allows the parties to stipulate that there are no disputed issues of fact and eliminate the need for a certification hearing.
- Authorizes DEP to issue final orders in an emergency and in a non-controversial case that requires no hearing.
- Changes the TLSA exemption for transmission lines built on established transmission line rights-of-way (ROWs) from those ROWs established prior to October 1, 1983, to those ROWs established for at least five years.
- Moves up the date for issuance of the PSC determination of need to the same date for agency reports, rather than by date of certification hearing.
- Adds the Florida Department of Transportation (DOT) as a statutory party to the certification hearing.
- Requires applicant to pay expenses and costs associated with conducting hearings and preparation of the transcript.
- Allows Regional Planning Councils (RPCs) to hold informational public hearings when a local government in its region does not conduct one.
- Authorizes post-certification amendments to the application.
- Clarifies that the PSC is the sole forum for determination of need.
- Changes the allocation of the application fee.
- Clarifies existing DEP rules concerning postcertification review.
- Amends the fee section to take into the account changes in the hearing processes.

There appears to be a minimal fiscal impact to state and local government.

This act takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/31/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill streamlines the process for siting electric transmission lines. The bill subsumes the sufficiency review into the completeness review. It also authorizes DEP to issue final orders in an emergency and in a non-controversial case that requires no hearing. The bill also codifies current practices being used in siting transmission lines.

Maintain Public Security- The bill provides legislative intent that electric transmission lines are critical infrastructure facilities. In creating a streamline process, it a positive effect is anticipated on the reliability of the electric power system, environment, land use, and the general population welfare.

B. EFFECT OF PROPOSED CHANGES:

Background

Enacted in 1980, the Transmission Line Siting Act (TLSA) is a highly procedural, centralized, coordinated permitting process that is coordinated by the DEP. The process encompasses permitting and other authorizations, including the proprietary interest of all state, regional, and local agencies having jurisdiction for electric transmission lines as well as intermediary substations. No construction of any transmission line may be undertaken without first obtaining a certification under the TLSA; however, certain transmission lines are exempt from the act. Transmission lines subject to the TLSA are those which are 230 kilovolts (kV) or greater, 15 miles or more in length and cross a county line. Applicants under the TLSA may also request that corridors of up to a mile wide be approved, rather than designating a specific right-of-way corridor. Specific locations of rights-of-way are addressed in the post-certification process.

There are exemptions to transmission lines being certified pursuant the TLSA. Those exemptions include: a transmission line certified pursuant to the Florida Electrical Power Plant Siting Act¹; a lower voltage distribution line located solely within one county; transmission line development in which all construction is limited to established rights-of-way²; transmission line rights-of-way, transmission lines established in rights-of-way created before or after October 1, 1983.³ Further, a utility is required to notify DEP in writing of its intent to construct a transmission pursuant to the exemption criteria listed in section 403.524, F.S., prior to the start of construction,

The TLSA process includes a determination of need by the PSC, a mandatory “certification” hearing by an administrative law judge (ALJ), with ultimate approval/denial authority vested in Governor and Cabinet acting as the Siting Board. The DEP coordinates the process. An ALJ is involved from the beginning, and the process is handled as litigation and requires the exchange of most documents as legal filings. Persons wishing to become formally involved in the process, for the most part, must become parties to the proceeding. Opportunities exist for public comment.

The number of individuals and agencies that may be affected by a certification project can be very large. A minimal project, assuming the corridor applied for is one mile wide and 15 miles in length, could cover 15 square miles; however, much longer projects are the norm. The TLSA includes a process where parties may propose alternate corridors other than those proposed by the applicant. Subsequently, more

¹ The Florida Electrical Power Plant Siting Act at ss. 403-501-403.518, F.S., provides that an “electrical power plant” includes “. . . associated transmission lines which connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect. . . .”

² Established rights-of-way include rights-of-way for roads, highways, railroads, gas, water, oil, electricity, or sewage and any other public purpose rights-of-way.

³ s. 403.524.F.S.

individuals may become affected and will have the right to become parties to the proceeding. Additionally, the scope of the review required by agencies may significantly increase.

Currently, a certification hearing is a mandatory administrative hearing feature of the TLSA. This hearing is held whether or not there are any controversial issues or intervenors in the case. This procedure requires the expenditure of significant resources by the applicants and the state. Also, the TLSA has several provisions that add time to the process, including a bifurcated completeness and sufficiency review of the application.

In Order 2000 issued by FERC, among other things related to Regional Transmission Organizations (RTOs), Independent System Operators (ISOs), or their counterparts, it provided provide for the consolidation of utility management of transmission systems into large networks. However, the TLSA does not appear to allow applications submitted by RTOs, ISOs, or their counterparts.

Florida Energy Plan

On November 10, 2005, Governor Bush issued an Executive Order requiring the DEP to develop a comprehensive energy plan.⁴ On December 14, 2005, DEP hosted the Florida Energy Forum where various parties were able to provide input on the energy plan focus. As a result of the forum, the DEP issued Florida's Energy Plan on January 17, 2005. The Energy Plan recommended changes to the TLSA to expedite the review process, improve efficiency and enhance reliability, while protecting the environment and maintaining public participation. These changes include:

- Simplifying and streamlining completeness and sufficiency procedures
- Reducing mandatory hearings
- Revising time limits
- Clarifying who may be an applicant
- Clarifying comprehensive planning and zoning issues

The purpose of these changes is to improve the efficiency of the TSLA and clarify provisions that will expedite transmission line licensing and ensure faster development of more reliable electric transmission infrastructure.

Proposed Changes

The bill amends the "Transmission Line Siting Act" contained in ss. 403.52 through 403.5365, F.S. In addition to amending various other sections, the bill makes grammatical and conforming changes.

Popular Name

The bill amends s. 403.52, F.S. to change the popular name from "Transmission Line Siting Act" to "Florida Electric Transmission Line Siting Act." This change clarifies that the act applies only to electric transmission lines and not to transmission pipelines for natural gas, gasoline, oil, or other substances.

Legislative Intent

The bill amends the legislative intent contained in s. 403.521, F.S. to clarify that the act establishes a licensing process rather than a means for issuance of an individual permit. It adds "operation" of the electric transmission line to the list of subjects the certification process covers. The bill also designates transmission lines as critical infrastructure facilities, and adds language to specify that the legislature is concerned with energy system reliability.

Definitions

⁴ Executive Order No. 05-241

Several definitions at s. 403.522, F.S., are amended, added or deleted to conform to the provisions of the act.

(5) "Application" means the documents required by the department to be filed to initiate and support a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information proceeding. An electric utility may file a comprehensive application encompassing all or a part of one or more proposed transmission lines.

(7) "Certification" means the approval by the board of the license for a corridor proper for certification pursuant to subsection (10) and the construction, operation, and maintenance of transmission lines within the ~~such~~ corridor with the ~~such~~ changes or conditions as the siting board deems appropriate. Certification shall be evidenced by a written order of the board.

(9) "Completeness" means that the application has addressed all applicable sections of the prescribed application format that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.526. (Note: this change now incorporates the sufficiency review.)

(10) "Corridor" means the proposed area within which a transmission line right-of-way, including maintenance and access roads, is to be located. The width of the corridor proposed for certification by an applicant or other party, at the option of the applicant, may be the width of the transmission line right-of-way, or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the transmission line right-of-way and maintenance and access roads have been acquired by the applicant, the boundaries of the area certified shall narrow to only that land within the boundaries of the transmission line right-of-way. The corridors proper for certification shall be those addressed in the application, in amendments to the application filed under pursuant to s. 403.5275, and in notices of acceptance of proposed alternate corridors filed by an applicant and the department pursuant to s. 403.5271 for which the required ~~sufficient~~ information for the preparation of agency supplemental reports was filed.

(12) "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, regional transmission organizations, operators of independent transmission systems, or other transmission organizations approved by the Federal Energy Regulatory Commission or the commission for the operation of transmission facilities, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy. (Note: The current language only allows cities, towns, counties, public utility districts, regulated electric companies, and electric cooperatives to transmit electric energy and to apply for a need determination. Florida does not currently have an independent transmission provider or a regional transmission organization; however, this language would expand the eligible providers to include such transmission companies in the future.)

(14) "Licensee" means an applicant that has obtained a certification order for the subject project.

(16) "Maintenance and access roads" mean roads constructed within the transmission line right-of-way. Nothing in this act prohibits an applicant from constructing a road to support construction, operation, or maintenance of the transmission line that lies outside the transmission line right-of-way.

~~(20) "Sufficiency" means that the application is not only complete but that all sections are adequate in the comprehensiveness of data and in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports authorized by s. 403.526.~~

~~(22)(21) "Transmission line" or "electric transmission line" means structures, maintenance and access roads, and all other facilities that need to be constructed, operated, or maintained for the purpose of conveying electric power any electrical transmission line extending from, but not including, an existing or proposed substation or power plant to, but not including, an existing or proposed transmission network or rights-of-way or substation to which the applicant intends to connect which defines the end of the proposed project and which is designed to operate at 230 kilovolts or more. The starting point and ending point of a transmission line must be specifically defined by the applicant and must be verified by the commission in its determination of need. A transmission line includes structures and maintenance and access roads that need to be constructed for the project to become operational.~~

The transmission line may include, at the applicant's option, any proposed terminal or intermediate substations or substation expansions necessary to serve the transmission line.

(23)(22) "Transmission line right-of-way" means land necessary for the construction, operation, and maintenance of a transmission line. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant ~~subsequent to certification~~ in documents filed with the department before ~~prior~~ to construction.

Department of Environmental Protection-Powers and Duties

The bill expands and codifies certain other powers and duties of DEP at s. 403.523, F.S., to include:

- To adopt procedural rules to administer this act.
- To provide that post certification reviews are to be processed on an expedited and priority basis.
- To prescribe the means for monitoring the effects arising from the location of the transmission line corridor operation.
- To issue final orders after receipt of an ALJ's order relinquishing jurisdiction pursuant to s. 403.527(6).
- To act as clerk for the Siting Board
- To administer and manages the terms of the certification order for the life of the facility.
- To issue emergency orders when conditions require a short turn-around time.

Applicability and Certification

The bill amends s. 403.524, F.S., relating to the applicability and certification to include exemptions. Changes to this section are to clarify the facilities that are exempt under the act. Of the four basic types of exemptions, one is based on transmission lines located on established rights-of-ways (ROWs), and the meaning of "established" is based on a past date (October 1, 1983). The bill deletes the date. Additionally, the revisions provide that ROWs for transmission lines would have to have been created five years prior to construction of a new line in order for it to be deemed "established." ROWs for other types of state or local projects (roads, gas pipelines, water pipelines, etc.) may have been created at any time. This change is to prevent applicants from establishing transmission line rights of ways simply to create an exemption for a proposed line. Additionally, if an established right-of-way is relocated to accommodate a public project, the date of establishment of the original right-of-way continues to apply for purposes of qualifying for the exemption.

The bill also clarifies the exemption language for lines not subject to the act (those less than 15 miles in length or which did not cross a county line). Other technical revisions were made to incorporate revisions to the definitions section and to streamline applicant notification of the intent to construct.

Administrative Law Judge-Appointment Powers and Duties

Section 403.525, F.S, provides for the appointment of an ALJ to conduct the hearings required by the act. This section is amended to include a technical correction that relocates existing ALJ powers and duties from other sections in the TLSA to this section. The provision that is added to this section reads that:

- (2) The administrative law judge has all powers and duties granted to administrative law judges under chapter 120 and by the laws and rules of the department.

Application Schedules

The bill amends s. 403.5251, F.S., to change the date of process initiation to the date the application is filed with the DEP and distributed to the other agencies. This amendment results in a time savings as agencies get to review an application earlier in the process. The bill also clarifies that transmission line starting and ending points must be included in the application. The bill deletes from this section provision related to completeness. Completeness issues are now relocated to a separate section. It

also amends and clarifies the application filing schedule and notice provisions. Additionally, the bill provides for electronic application filing which can save time and funds for the state and applicant.

Determination of Completeness

Numerous technical corrections are made to s. 503.5252, F.S., to consolidate the sufficiency review (whether adequate information to review the application) with the completeness review (did the application contain the required chapters). This change is to streamline steps and expedite the review process. Agencies currently file completeness comments with DEP 30 days after the filing of the application, and DEP issues its initial completeness determination 7 days (day 45). If the application is initially determined incomplete, the applicant has 14 days to file additional information to make the application complete. DEP then has an additional 21 days to issue a second determination of completeness of the application. If the application is again determined incomplete, the time clocks stop at that point. Numerous existing provisions relating to hearings on completeness and other options for the applicant are relocated to this section to further enhance a streamlined process.

Preliminary Statement of Issues, reports, project analyses, and studies

The bill amends s. 403.526, F.S. to change the filing date for preliminary statements of issues from 60 days after distribution of the application, to 50 days after filing. It clarifies that agency reports are due 90 days after filing of the application. This is 18 days after the second determination of completeness if the application was initially incomplete, compared to 15 days from a second sufficiency determination in the existing law. It also clarifies that the Department of Community Affairs shall include issues related to emergency management in their report.

Section 403.526, F.S. is also amended to include the Department of Transportation (DOT) to the list of agencies that must file reports. The addition of DOT incorporates it into the list of parties to a proceeding, and it makes DOT eligible for reimbursement from the application fee.

The bill requires other agencies, at DEP's request, to perform studies and prepare reports on subjects within their jurisdiction which may be affected by the proposed transmission line.

The bill requires receipt of an affirmative finding of need by the PSC as condition for further processing of an application. While the need determination currently is a condition precedent to conducting a certification hearing, the bill clarifies that requirement. Also, the PSC has authority to include comments with respect to any other subject under its jurisdiction, such as fuel diversity or the need for secondary transmission lines for hurricane backup.

The bill also amends the date of the issuance of DEP's project analysis from 135 days after distribution of the application to 115 days after the application is filed. DEP will now issue its report 25 days after receipt of agency reports. Other existing sections relating to agency reports are also incorporated into this section.

Certification Hearing, Parties and Participants

Section 403.52, F.S., is substantially reworded. The bill changes the date for the holding of the certification hearing from 185 days after application filing, to 145 days after the application is filed. The DEP analysis will have been issued 30 days prior to the certification hearing. The bill retains existing provisions related to the conduct of the hearing, parties, and intervention. It also keeps existing provisions related to public participation and public hearings, though relevant dates are changed to conform to changes in the dates of the overall process.

A key substantive change to s. 403.52, F.S., is the addition of a mechanism for the cancellation of the otherwise mandatory certification hearing. The ALJ, upon request, can order cancellation of the hearing for a non-controversial project upon stipulation by all parties. The ALJ would relinquish jurisdiction, and

the department would prepare the final order. Using this new option the process would be shortened by several months, and would save money for the applicant and the agencies.

The bill also makes numerous technical changes to this section. These changes include grouping related activities that are currently spread throughout the TLSA, events are chronologically sequenced, DOT is added to the list of parties to a proceeding, process deadlines are revised to conform with other deadline changes. The language regarding public notice currently contained in this section has been relocated to a new notice section pertaining to the entire process, as opposed to just the hearing proceeding.

Alternate Corridors

The alternative corridor provision of the law, which does not occur in the Power Plant Siting Act, allows parties to the TLSA proceeding to propose corridors which are alternate in location to the one proposed by the applicant.⁵ These alternative corridors must be reviewed by the agencies and may be the one (or variation thereof) which is ultimately certified.

The bill makes numerous technical changes to s. 403.5271, F.S., predominately correcting glitches in the existing law, clarifying procedures, and conforming process deadlines. Under this revision, alternate corridor proposals must now be made no later than 45 days before the certification hearing, rather than 50 days prior. The bill also changes deadlines for the processing of alternate corridor proposals by the agencies to conform to other time frame changes in the Act.

In addition to addressing the primary corridor route, if any alternative corridors are proposed the bill provides the party proposing the alternative corridor has the burden to prove that the alternate corridor can be certified at the certification hearing. This act does not require an applicant or agency that is not proposing the alternate corridor to submit data in support of the alternate corridor. Further, the bill requires parties proposing an alternative corridor to provide all necessary data to the agencies listed in section 403.526(2), F.S. Similar to the primary route, all reviewing agencies must then notify the DEP if the data is incomplete. If the alternative route data is complete, then the reviewing agencies must under new section 403.5271 (f) and (g), F.S., file supplemental reports with the applicant and the DEP addressing the alternative corridor no later than 24 days after it is submitted or determined complete. The supplemental reports must include all the same information as required for the primary submission.

Informational Public Meetings

The bill clarifies provisions related to the conduct of public hearings by local governments. Regional planning councils have been added as agencies that may conduct early public meetings about the project, thereby expanding opportunities for public interaction in the process. Existing statutory language limits this authority to local governments. Technical corrections are included to conform to process deadlines and provide for notice

Amendment to the Application

Technical corrections are made to s. 403.5275, F.S., to clarify that this section only applies to amendments filed prior to certification. Amendments made after certification are handled separately.

Alteration of Time Limits

Section 403.528, F.S., is amended to provide that an ALJ may for good cause alter any time limitation upon stipulation between the DEP and the applicant unless objected to by any party within five days after notice. This provision makes the filing of applications for projects that are larger than normal good cause of the alteration of deadlines in the procedures and agencies may seek additional time if necessary under such circumstances.

⁵ The corridor is an area in which the final right-of-way may be located.

Final Disposition of Application

The bill adds a new provision to s. 403.529, F.S., allowing DEP to issue the final order on certification if the ALJ has cancelled the certification hearing. This will allow a time savings of several months in the overall process, and is procedurally sound when there are no controversial issues in a case.

The bill also changes the deadline for the Siting Board hearing from 30 days to 60 days after the ALJ issues the recommended order. According to DEP, this edit is a non-controversial recognition of real processing time frames that occur in every case, and does not affect the actual date that final orders are actually issued.

Effect of Certification

This section is amended to make technical and grammatical corrections conforming to changes in various sections. This section also clarifies that the certification is only in lieu of state or local permits, which would not include federal permits.

Filing of Notice of Certified Corridor Route

Section 403.5312, F.S., requires that within 60 days after the certification of a directly associated transmission line under the Florida Electric Power Plant Siting Act⁶ or a transmission line under the Transmission Line Siting Act⁷ the applicant is required to provide notice of the certified route to the DEP and the clerk of the circuit court in each county through which the corridor will pass. This section is amended to make technical changes improving notification to the DEP.

Modification of Certification

Section 403.5315, F.S., is amended to make minor edits to clarify and streamline former unclear provisions related to modification of certifications.

Additions are also made to this section to provide if objections are raised or DEP denies the proposed modification, the licensee may request a hearing with DEP, which is to be handled pursuant to ch. 120. If a request for hearing is referred to DOAH, it shall be disposed of in the same manner as an application, but with the ALJ establishing time periods commensurate with the significance of the modification requested.

Postcertification Activities

Section 403.5317, F.S., is created, relating to postcertification activities. This new section is essentially a technical addition clarifying the difference between actions required for amendments submitted by the applicant during the application review and amendments submitted after certification. It also includes a provision regarding the review of postcertification submittals. These changes codify and clarify existing DEP rules, and provide regulatory certainty for licensees.

Public Notices; Requirements

Section 403.5363, F.S., is created, relating to public notice requirements. This section relocates the bulk of the notice provisions from various places in the act into this section. It deletes language regarding a "reminder notice" less than 10 days prior to the certification hearing currently contained in s. 403.527, F.S. According to DEP the reason for this is that the timing of the notice did not fit with the new possibility of cancellation of a hearing, and experience indicated that this newspaper notice was often overlooked.

⁶ ss. 403.501-503.518, F.S.

⁷ ss. 403.52-403.5365, F.S.

The bill adds requirements for notices of alternate corridors are to be paid for by the proponent of the alternate route.

Disposition of Fees

Under the TLSA, the applicant is responsible for paying application fees. The fees are designed to cover various reviews by the large number of agencies that may be involved in the process. The last time DEP addressed primary application fee was in 1993.

Currently, the application fee is \$100,000, plus \$750 per mile for each mile of transmission line right-of-way proposed to be located within an existing electrical transmission line right-of-way or within any existing right-of-way for any road, highway, railroad, or other aboveground linear facility, or \$1,000 per mile for each mile of transmission line corridor proposed to be located outside existing right-of-way.⁸

Sixty percent of the fee is allocated to DEP to cover costs associated with reviewing and acting upon the application, as well as costs for field services associated with monitoring construction and operation of the facility. Twenty percent of the fee, except for postcertification fees, is transferred to the Administrative Trust Fund of the Division of Administrative Hearings (DOAH) of the Department of Management Services.⁹

Upon written request with proper itemized accounting, DEP is authorized to reimburse the expenses and costs of the DCA, the FWCC, the water management districts, regional planning councils, and local government in the jurisdiction of which the transmission line is to be located. Such reimbursement is authorized for the preparation of any studies required of the agencies by this act, and for the local government to participate in the proceedings. In the event the amount available for allocation is insufficient to provide for complete reimbursement to the agencies, the reimbursement will be on a prorated basis. If any sums are remaining, DEP has the authority to retain them for its use in the same manner as is otherwise authorized under statute. However, if a certification is withdrawn, the remaining sum will be refunded to the applicant.¹⁰

This section amends s. 403.5365, F.S., relating to the disposition of fees to account for changes in the process resulting from the potential cancellation of the certification hearing. Under the new fee schedule, DOAH would now receive an initial fee of 5 percent up front rather than 20 percent to cover initial administration costs. DOAH would receive an additional 10 percent if a certification hearing is held. The bill adds provisions to allow reimbursement of agency expenses for applications held in abeyance for more than one year. Further, DOT will also be eligible for reimbursement from DEP for its costs associated with the act.

Determination of Need

Although s. 403.537 is not part of the TLSA, ss. 503.53-403.5363, it is intrinsically related to it. Section 403.537 charges the PSC with responsibility for determining whether a proposed transmission line is needed. The need determination is a prerequisite to TLSA proceedings, and a hearing to determine need may be held upon request of the electric utility or upon motion of the PSC. Further, s. 403.537(1), F.S., requires the PSC, among other things, to notice in newspapers of general circulation and in the Florida Administrative Weekly at least 45 days before the hearing date.

In determining the need for the proposed transmission line, the PSC must consider "the need for electric system reliability and integrity, the need for abundant, low-cost electric energy to assure the economic well-being of the citizens of this state, the appropriate starting and ending point of the line, and other matters within its jurisdiction deemed relevant to the determination of need. Once the PSC's determination

⁸ s. 403.5365(1), F.S.

⁹ s. 403.5365(1)(a-b), F.S.

¹⁰ s. 403.5365(1)(c-d), F.S.

of need is rendered, it is binding on all parties to the certification hearing. The determination is then included in the proposed project analysis submitted by DEP to the ALJ.

The bill amends s. 403.537, F.S. to require the applicant publish notice in newspapers of general circulation at least 21 days before the hearing date, and the PSC notice in the manner specified in chapter 120. In addition, the bill clarifies that the PSC is the sole forum for the determination of need, and that determination may not be raised or be the subject of review in another proceeding.

The bill adds to the variables taken into account by the PSC in its determination of need that the appropriate starting and ending points of the transmission line must be verified. Cross-references are also corrected in this section.

Conforming Changes

The bill makes technical changes to ss. 373.441(3), 403.061(30), 403.0876(3)(a), and 403.809(3)(b), F.S., to conform references to the name Florida Electric Transmission Siting Act.

Repealed Statutes

The bill repeals s. 403.5253, F.S. relating to sufficiency and s. 403.5369, F.S., which is an outdated provision on applicability.

Effective Date

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

- Section 1 Amends S.403.52, F.S. to change the popular name of ss. 403.52-403.5365, F.S., to the "Florida Electric Transmission Siting Act.
- Section 2 Amends s. 403.521, F.S., relating to Legislative intent.
- Section 3 Amends s. 403.522, F.S., to update, add, and delete definitions applicable to this Act.
- Section 4 Amends s. 403.523, F.S., relating to the powers and duties of the Department of Environmental Protection.
- Section 5 Amends s. 403.524, F.S., relating to applicability, certification; and exemptions from the Act.
- Section 6 Amends s. 403.525, F.S., relating to the appointment, powers, and duties of the Administrative Law Judge.
- Section 7 Amends s. 403.5251, F.S., relating to the application schedule.
- Section 8 Amends s. 403.5252, F.S., relating to the determination of completeness.
- Section 9 Amends s. 403.526, F.S., relating to the preliminary statement of issues, project analyses, and studies.
- Section 10 Substantially rewords s. 403.527, F.S., relating to the certification hearing, parties, and participants.
- Section 11 Amends s. 403.5271, F.S., relating to alternative corridors.
- Section 12 Amends s. 403.5272, F.S., relating to informational public meetings.

- Section 13 Amends s. 403.5275, F.S., relating to amendments to the application.
- Section 14 Amends s. 403.528, F.S., relating to the alteration of time limits.
- Section 15 Amends s. 403.529, F.S., relating to the final disposition of the application.
- Section 16 Amends s. 403.531, F.S., relating to the effect of certification.
- Section 17 Amends s, 403.5312, F.S., relating to filing notice of certified corridor routes.
- Section 18 Amends s. 403.5315, F.S., relating to modification of certification.
- Section 19 Creates s. 403.5317, F.S., relating to postcertification activities.
- Section 20 Creates s. 403.5363, F.S., relating to public notice requirements.
- Section 21 Amends s. 403.5365, F.S., relating to the disposition of fees.
- Section 22 Amends s, 403.537, F.S., relating to the determination of need.
- Section 23 Amends s. 373.441(3), F.S., to conform.
- Section 24 Amends s. 403.061(30), F.S., to conform.
- Section 25 Amends s. 403.0876(3)(a), F. S., to conform.
- Section 26 Amends s. 403.809(3)(b), F.S., to conform.
- Section 27 Repeals s. 403.5253, F.S., relating to the determination of sufficiency and s. 403.5369, F.S., relating to applicability.
- Section 28 This act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill changes the allocation of funds from the application fee. DOAH currently receives the 20 percent of the application fee. Under the bill, it would currently receive five percent up front and an additional 10 percent if a hearing is held. DOT becomes eligible to receive a portion of the application fee.

2. Expenditures:

DEP will have some non-recurring expenditures associated with amending the TSLA rules to reflect changes in the statute. The costs to conduct hearings should decrease as a result of the provision allowing for cancellation of hearings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The costs to conduct hearings should decrease as a result of the provision allowing for cancellation of hearings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DEP projects that applicants will receive a direct economic benefit from shortening the application process. With a shorter process, construction contracts can be completed sooner and installations can begin at an earlier date.

D. FISCAL COMMENTS:

DOAH provided the following comments:

Currently, the law provides that 20% of the application filing fee be transferred to the Administrative Trust Fund of the Division of Administrative Hearings (DOAH) to apply to DOAH's expenses in conducting these hearings. Since these cases are reimbursed to DOAH pursuant to the statutory schedule, the hours spent on these cases are not included within DOAH's report of hours spent in hearing by agency, which report is utilized by the Legislature in determining the amount of money to be transferred by each agency to DOAH to fund DOAH's budget.

These cases are labor-intensive. The final hearings last for several weeks resulting in high travel expenses, and the recommended orders produced by DOAH Administrative Law Judges (ALJs) thereafter are extremely detailed and lengthy. An ALJ who is assigned one of these cases will have little time from shortly before the final hearing through the final hearing and the preparation of the recommended order to hear or resolve other cases.

Under the Bills, DOAH's share of the application filing fee is reduced from 20% to 15%. The 15% is further divided so that only 5% of the application filing fee is transferred to DOAH to cover DOAH's expenses associated with the filing of the application at DOAH up to the final hearing. The additional 10% to make up the total 15% is only transferred to DOAH if a final hearing is held.

Although DOAH's share of the application filing fee is reduced under the Bills, DOAH's costs, including travel costs and the amount of time spent on these cases by the ALJ, are not reduced. DOAH has received no explanation as to why DOAH's share is reduced while its travel costs have increased and the amount of ALJ time spent on these cases will, under the Bills, also be increased. It is interesting to note that the Department of Environmental Protection's share of the application fee is 60% under current law and will remain at 60% if either Bill becomes law. The remainder of the application fee remains at the Department's discretion to distribute however the Department believes equitable among the other state and local agencies participating in the proceeding. Further, the application fee itself would not be increased by either Bill, so the only change related to fees is the reduction of the money paid to DOAH.

DOAH requests that its share of the application fee remain at the 20% provided under current law if a final hearing on the application is held. In the event the matter is filed with DOAH and is resolved or dismissed short of final hearing, DOAH agrees that it would be equitable to reduce its share to only 10% of the application filing fee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The DEP has authority to implement the bill provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES