

Bill No. SB 1202

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CHAMBER ACTION

Senate

House

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 19, delete everything after the enacting clause

and insert:

Section 1. Section 366.93, Florida Statutes, is amended to read:

366.93 Cost recovery for the siting, design, licensing, and construction of nuclear and advanced technology coal power plants.--

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

(a) "Advanced technology coal power plant" means an electrical power plant as defined in s. 403.503 which uses coal as a fuel and either is an integrated gasification combined cycle power plant or includes a demonstration project for carbon capture and sequestration.

~~(b)~~(a) "Cost" includes, but is not limited to, all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance

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1 expenses, related to or resulting from the siting, licensing,
2 design, construction, or operation of the nuclear or
3 integrated gasification combined cycle power plant.

4 (c)(b) "Electric utility" or "utility" has the same
5 meaning as that provided in s. 366.8255(1)(a).

6 (d) "Integrated gasification combined cycle power
7 plant" or "plant" is an electrical power plant as defined in
8 s. 403.503(13) that uses synthesis gas produced by integrated
9 gasification technology.

10 (e)(c) "Nuclear power plant" ~~or "plant"~~ is an
11 electrical power plant as defined in s. 403.503(13) which ~~s.~~
12 ~~403.503(12) that~~ uses nuclear materials for fuel.

13 (f) "Power plant" or "plant" means a nuclear power
14 plant or an advanced technology coal power plant.

15 (g)(d) "Preconstruction" is that period of time after
16 a site has been selected through and including the date the
17 utility completes site clearing work. Preconstruction costs
18 shall be afforded deferred accounting treatment and shall
19 accrue a carrying charge equal to the utility's allowance for
20 funds during construction (AFUDC) rate until recovered in
21 rates.

22 (2) Within 6 months after the enactment of this act,
23 the commission shall establish, by rule, alternative cost
24 recovery mechanisms for the recovery of costs incurred in the
25 siting, design, licensing, and construction of a nuclear or
26 advanced technology coal power plant. Such mechanisms shall be
27 designed to promote utility investment in nuclear or advanced
28 technology coal power plants and allow for the recovery in
29 rates of all prudently incurred costs, and shall include, but
30 are not limited to:

31 (a) Recovery through the capacity cost recovery clause

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1 of any preconstruction costs.

2 (b) Recovery through an incremental increase in the
3 utility's capacity cost recovery clause rates of the carrying
4 costs on the utility's projected construction cost balance
5 associated with the nuclear or advanced technology coal power
6 plant. To encourage investment and provide certainty, for
7 nuclear or advanced technology coal power plant need petitions
8 submitted on or before December 31, 2010, associated carrying
9 costs shall be equal to the pretax AFUDC in effect upon this
10 act becoming law. For nuclear or advanced technology coal
11 power plants for which need petitions are submitted after
12 December 31, 2010, the utility's existing pretax AFUDC rate is
13 presumed to be appropriate unless determined otherwise by the
14 commission in the determination of need for the nuclear or
15 advanced technology coal power plant.

16 (3) After a petition for determination of need is
17 granted, a utility may petition the commission for cost
18 recovery as permitted by this section and commission rules.

19 (4) When the nuclear or advanced technology coal power
20 plant is placed in commercial service, the utility shall be
21 allowed to increase its base rate charges by the projected
22 annual revenue requirements of the nuclear or advanced
23 technology coal power plant based on the jurisdictional annual
24 revenue requirements of the plant for the first 12 months of
25 operation. The rate of return on capital investments shall be
26 calculated using the utility's rate of return last approved by
27 the commission prior to the commercial inservice date of the
28 nuclear or advanced technology coal power plant. If any
29 existing generating plant is retired as a result of operation
30 of the nuclear or advanced technology coal power plant, the
31 commission shall allow for the recovery, through an increase

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1 in base rate charges, of the net book value of the retired
2 plant over a period not to exceed 5 years.

3 (5) The utility shall report to the commission
4 annually the budgeted and actual costs as compared to the
5 estimated inservice cost of the nuclear or advanced technology
6 coal power plant provided by the utility pursuant to s.
7 403.519(4), until the commercial operation of the nuclear or
8 advanced technology coal power plant. The utility shall
9 provide such information on an annual basis following the
10 final order by the commission approving the determination of
11 need for the nuclear or advanced technology coal power plant,
12 with the understanding that some costs may be higher than
13 estimated and other costs may be lower.

14 (6) In the event the utility elects not to complete or
15 is precluded from completing construction of the nuclear or
16 advanced technology coal power plant, the utility shall be
17 allowed to recover all prudent preconstruction and
18 construction costs incurred following the commission's
19 issuance of a final order granting a determination of need for
20 the nuclear or advanced technology coal power plant. The
21 utility shall recover such costs through the capacity cost
22 recovery clause over a period equal to the period during which
23 the costs were incurred or 5 years, whichever is greater. The
24 unrecovered balance during the recovery period will accrue
25 interest at the utility's weighted average cost of capital as
26 reported in the commission's earnings surveillance reporting
27 requirement for the prior year.

28 Section 2. Subsection (4) of section 403.519, Florida
29 Statutes, is amended to read:

30 403.519 Exclusive forum for determination of need.--

31 (4) In making its determination on a proposed

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1 electrical power plant using nuclear materials as fuel or an
 2 advanced technology coal power plant, the commission shall
 3 hold a hearing within 90 days after the filing of the petition
 4 to determine need and shall issue an order granting or denying
 5 the petition within 135 days after the date of the filing of
 6 the petition. The commission shall be the sole forum for the
 7 determination of this matter and the issues addressed in the
 8 petition, which accordingly shall not be reviewed in any other
 9 forum, or in the review of proceedings in such other forum. In
 10 making its determination to either grant or deny the petition,
 11 the commission shall consider the need for electric system
 12 reliability and integrity, including fuel diversity, the need
 13 for base-load generating capacity, and the need for adequate
 14 electricity at a reasonable cost.

15 (a) The applicant's petition shall include:

16 1. A description of the need for the generation
 17 capacity.

18 2. A description of how the proposed nuclear or
 19 advanced technology coal power plant will enhance the
 20 reliability of electric power production within the state by
 21 improving the balance of power plant fuel diversity and
 22 reducing Florida's dependence on fuel oil and natural gas.

23 3. A description of and a nonbinding estimate of the
 24 cost of the nuclear or advanced technology coal power plant.

25 4. The annualized base revenue requirement for the
 26 first 12 months of operation of the nuclear or advanced
 27 technology coal power plant.

28 5. Information on whether there were any discussions
 29 with any electric utilities regarding ownership of a portion
 30 of the nuclear or advanced technology coal power plant by such
 31 electric utilities.

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1 (b) In making its determination, the commission shall
 2 take into account matters within its jurisdiction, which it
 3 deems relevant, including whether the nuclear or advanced
 4 technology coal power plant will:

- 5 1. Provide needed base-load capacity.
- 6 2. Enhance the reliability of electric power
 7 production within the state by improving the balance of power
 8 plant fuel diversity and reducing Florida's dependence on fuel
 9 oil and natural gas.
- 10 3. Provide the most cost-effective source of power,
 11 taking into account the need to improve the balance of fuel
 12 diversity, reduce Florida's dependence on fuel oil and natural
 13 gas, reduce air emission compliance costs, and contribute to
 14 the long-term stability and reliability of the electric grid.

15 (c) No provision of rule 25-22.082, Florida
 16 Administrative Code, shall be applicable to a nuclear or
 17 advanced technology coal power plant sited under this act,
 18 including provisions for cost recovery, and an applicant shall
 19 not otherwise be required to secure competitive proposals for
 20 power supply prior to making application under this act or
 21 receiving a determination of need from the commission.

22 (d) The commission's determination of need for a
 23 nuclear or advanced technology coal power plant shall create a
 24 presumption of public need and necessity and shall serve as
 25 the commission's report required by s. 403.507(4)(a). An order
 26 entered pursuant to this section constitutes final agency
 27 action. Any petition for reconsideration of a final order on a
 28 petition for need determination shall be filed within 5 days
 29 after the date of such order. The commission's final order,
 30 including any order on reconsideration, shall be reviewable on
 31 appeal in the Florida Supreme Court. Inasmuch as delay in the

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1 determination of need will delay siting of a nuclear or
 2 advanced technology coal power plant or diminish the
 3 opportunity for savings to customers under the federal Energy
 4 Policy Act of 2005, the Supreme Court shall proceed to hear
 5 and determine the action as expeditiously as practicable and
 6 give the action precedence over matters not accorded similar
 7 precedence by law.

8 (e) After a petition for determination of need for a
 9 nuclear or advanced technology coal power plant has been
 10 granted, the right of a utility to recover any costs incurred
 11 prior to commercial operation, including, but not limited to,
 12 costs associated with the siting, design, licensing, or
 13 construction of the plant, shall not be subject to challenge
 14 unless and only to the extent the commission finds, based on a
 15 preponderance of the evidence adduced at a hearing before the
 16 commission under s. 120.57, that certain costs were
 17 imprudently incurred. Proceeding with the construction of the
 18 nuclear or advanced technology coal power plant following an
 19 order by the commission approving the need for the nuclear or
 20 advanced technology coal power plant under this act shall not
 21 constitute or be evidence of imprudence. Imprudence shall not
 22 include any cost increases due to events beyond the utility's
 23 control. Further, a utility's right to recover costs
 24 associated with a nuclear or advanced technology coal power
 25 plant may not be raised in any other forum or in the review of
 26 proceedings in such other forum. Costs incurred prior to
 27 commercial operation shall be recovered pursuant to chapter
 28 366.

29 Section 3. This act shall take effect upon becoming a
 30 law.

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