

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1315 Construction of Electric Transmission Lines

SPONSOR(S): Brisé

TIED BILLS: None.

IDEN./SIM. BILLS: SB 2644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Energy & Utilities Policy Committee		Keating	Collins
2) Military & Local Affairs Policy Committee			
3) General Government Policy Council			
4) Policy Council			
5)			

SUMMARY ANALYSIS

Sections 403.52 through 403.5365, Florida Statutes, are referred to as the Florida Electric Transmission Line Siting Act (TLSA). The purpose of the TLSA is to establish a centralized and coordinated licensing process for the location of electric transmission line corridors and the construction, operation, and maintenance of electric transmission lines. The TLSA applies to transmission lines designed to operate at 230 kilovolts (kV) or greater, although there are exemptions under the TLSA. Almost 90% of the transmission line miles planned in peninsular Florida through 2011 is exempt from the TLSA requirements.

As part of the certification process under the TLSA, several state and regional agencies provide input and may participate as parties. Each affected local government submits a report that addresses the consistency of a proposed transmission line or corridor with applicable local ordinances, regulations, standards, or criteria that apply to the proposed transmission line or corridor. Each affected local government is a party to the certification proceeding, may choose to hold a separate public hearing where members of the public who are not parties may testify, and may hold an informational public meeting.

HB 1315 amends the TLSA to eliminate all exemptions, thus requiring all transmission lines designed to operate at 230 kV or greater to be certified through the TLSA. The bill also amends the TLSA to require that an electric utility notify every affected municipality of proposed sites and routes for transmission lines and provide full disclosure of the method used to determine the route of the transmission lines and all efforts to minimize the impact on the affected municipality.

In addition, the bill amends the TLSA to provide that any affected municipality: (1) may request the Public Service Commission to hear and resolve disputes between a municipality and an electric utility regarding transmission line routes; and (2) may bring an action in circuit court challenging the siting of transmission line routes.

The Public Service Commission requires that a person or entity who requests that electric transmission lines be placed underground must pay the differential between the costs of underground and overhead installation, unless the PSC determines that the project provides quantifiable benefits to customers outside of the immediate area. The bill provides that when a local government entity requests that electric transmission lines located within its boundaries be placed underground, that local government entity may share the associated installation costs with any surrounding governmental entities that benefit from the underground installation.

The bill likely will increase revenues to state government, in an indeterminate amount, as a result of filing fees for additional transmission lines. The bill likely will increase state government expenditures, in an indeterminate amount, as a result of agency workload associated with additional certification proceedings and potential dispute resolution proceedings. The bill should have no impact on local government revenues, though local government expenditures may increase, in an indeterminate amount, as a result of additional workload associated with participating in additional certification proceedings.

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

STORAGE NAME: h1315.EUP.doc

DATE: 3/16/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Transmission Line Siting

Sections 403.52 through 403.5365, Florida Statutes, are referred to as the Florida Electric Transmission Line Siting Act (TLSA).¹ The purpose of the TLSA "is to establish a centralized and coordinated licensing process for the location of electric transmission line corridors and the construction, operation, and maintenance of electric transmission lines, which are critical infrastructure facilities."² This centralized and coordinated process is intended to further the goal of ensuring, through available and reasonable methods, that the location of transmission line corridors and the construction, operation, and maintenance of transmission lines produce minimal adverse effects on the environment and public health, safety, and welfare, while recognizing the need to ensure the reliability and integrity of the electric power system and the need to meet electric energy needs in a timely fashion. The TLSA is intended to balance these interests.³

The Department of Environmental Protection (DEP) is designated in the TLSA as the agency responsible for receiving and processing, on an expeditious and priority basis, applications for approval of transmission line corridors and construction of lines within those corridors.⁴ DEP must request an administrative law judge to conduct the hearings required by the TLSA.⁵ At the outset of the certification process, an applicant must obtain a determination of need for a proposed line from the Public Service Commission (PSC). In its determination of need, the PSC must consider the need for electric system reliability and integrity and the need for abundant low-cost electrical energy to assure the economic well-being of Florida's residents. The determination of need establishes the appropriate starting and ending points for the line and is binding on all parties to a subsequent certification hearing.⁶

No later than 90 days after an application is filed, affected agencies – DEP, water management districts, the Department of Community Affairs, the Fish and Wildlife Conservation Commission, local

¹ Section 403.52, F.S.

² Section 403.521, F.S.

³ *Id.*

⁴ Section 403.523, F.S.

⁵ Section 403.525, F.S.

⁶ Section 403.537, F.S.

governments, regional planning councils, the Department of Transportation, the PSC, and any other agency asked by DEP – are required to prepare reports concerning the impact of the proposed transmission line or corridor on matters within the agency’s jurisdiction. The report of each affected local government must address the consistency of the proposed transmission line or corridor with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed transmission line or corridor, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations.⁷ DEP must then prepare a project analysis, containing a compilation of these reports, and file it with the assigned administrative law judge. The project analysis must indicate whether the proposed corridor or line will be in compliance with the rules of DEP and the affected agencies, and it must include DEP’s recommendation on how to dispose of the applications.⁸

Within 145 days of the application being filed, a certification hearing is held at a location near the proposed transmission line or corridor. By law, each of the affected agencies listed above are parties to the certification hearing, although other affected agencies, specified associations, and persons whose substantial interests are affected may petition to intervene.⁹ Any party may propose alternative routes for the transmission line or corridor at least 45 days before the scheduled hearing.¹⁰ As part of the certification hearing process, local government may choose to hold a separate public hearing where members of the public who are not parties may testify.¹¹ A local government whose jurisdiction is crossed by a proposed corridor may also hold an informational public meeting, which DEP and the applicant must attend and all other parties may attend.¹²

No later than 45 days after the transcript of the certification hearing and any public hearing has been filed, the administrative law judge must issue a recommended order. Within 60 days of receipt of the recommended order, the Governor and Cabinet, sitting as the siting board, may approve the application, approve it with conditions, or deny it. In making its determination, the siting board must consider whether, and the extent to which, the location of the transmission line corridor and the construction, operation, and maintenance of the transmission line will: ensure electric power system reliability and integrity; meet the electrical energy needs of the state in an orderly, economical, and timely fashion; comply with applicable nonprocedural requirements of agencies; be consistent with applicable provisions of local government comprehensive plans, if any; and effect a reasonable balance between the need for the transmission line as a means of providing reliable, economically efficient electric energy, as determined through the PSC’s determination of need, and the impact upon the public and the environment.

The TLISA applies only to transmission lines designed to operate at 230 kilovolts (kV) or greater. Many of these transmission lines are exempt from the certification requirements of the TLISA. First, a line that has been certified under the Florida Electrical Power Plant Siting Act¹³ does not require additional approval under the TLISA. In addition, the TLISA does not apply to the following:

- Transmission lines for which development approval has been obtained under Chapter 380, F.S.
- Transmission lines that have been exempted by a binding letter of interpretation issued under s. 380.06(4), or in which the Department of Community Affairs or its predecessor has determined the utility to have vested development rights.
- Transmission line development in which all construction is limited to established rights of way.
- Transmission lines that are less than 15 miles in length and are located in a single county within the state.

Exemption of a transmission line under the TLISA does not constitute an exemption for the transmission line from other applicable permitting processes under other provisions of law or local government

⁷ Section 403.526, F.S.

⁸ *Id.*

⁹ Section 403.527, F.S. An affected agency may waive its right to participate as a party.

¹⁰ Section 403.5271, F.S.

¹¹ Section 403.527(4), F.S.

¹² Section 403.5272, F.S.

¹³ Sections 403.501 - 403.518, F.S.

ordinances. For information purposes, an electric utility is required to notify DEP in writing of its intent to construct a line exempt from the TLSA requirements.¹⁴

Cost Responsibility for Placing Transmission Lines Underground

Section 366.03, F.S., provides that no public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

The cost of installing electric transmission lines underground typically exceeds the cost of installing such facilities overhead. By Rule 25-6.064, Florida Administrative Code, the PSC requires that a person or entity who requests that electric transmission lines be placed underground must pay the utility the differential between the costs of underground and overhead installation. The rule, as amended in 2007, allows for sharing some portion of the costs of undergrounding facilities in a specific location with all ratepayers, if the PSC finds that the project provides quantifiable benefits to the utility's customers outside of the immediate area.

Effect of Proposed Changes

Transmission Line Siting

HB 1315 amends s. 403.524, F.S., to eliminate the exemptions to the Florida Electric Transmission Line Siting Act (TLSA). The TLSA would apply to all transmission lines designed to operate at 230 kV or greater. This would require an electric utility to obtain certification through the TLSA for every such transmission line it wishes to construct in Florida. Certification under the TLSA requires a determination of need from the PSC, a certification hearing before an administrative law judge, and a decision by the Governor and Cabinet sitting as the siting board. The bill makes conforming changes to s. 403.524, F.S., by removing provisions that relate to transmission lines exempted from the TLSA.

Since adoption of the TLSA in 1980, only 13 transmission corridors and lines have required certification under the TLSA. According to a March 2007 report by the PSC, utility plans for the period 2007-2011 indicated the planned addition of 467 miles of transmission lines designed to operate at 230 kV or greater, with 56 miles of that total coming from two lines that require certification under the TLSA.¹⁵ Thus, the bill would require TLSA certification for more transmission lines than the law currently requires.

The bill also amends s. 403.524, F.S., to add a requirement that an electric utility notify every affected municipality of proposed sites and routes for transmission lines. The bill provides that this notification must provide full disclosure of the method used to determine the route of the transmission lines and all efforts to minimize the impact on the affected municipality.

The bill further provides that any affected municipality: (1) may request the PSC to hear and resolve disputes between a municipality and an electric utility regarding transmission line routes; and (2) may bring an action in circuit court challenging the siting of transmission line routes.

Cost Responsibility for Placing Transmission Lines Underground

The bill provides that when a local government entity requests that electric transmission lines located within its boundaries be placed underground, that local government entity may share the associated installation costs with any surrounding governmental entities that benefit from the underground installation. Rule 25-6.064, Florida Administrative Code, allows for some cost sharing if the PSC finds that an undergrounding project provides quantifiable benefits to the utility's customers outside of the

¹⁴ Section 403.524, F.S.

¹⁵ *Report On Transmission System Reliability And Response To Emergency Contingency Conditions In The State Of Florida*, Florida Public Service Commission, March 2007. <http://www.psc.state.fl.us/publications/pdf/electricgas/transmissionreport2007.pdf>

immediate area. Otherwise, the PSC's existing policy requires an entity that requests underground placement of transmission lines to be solely responsible for the cost.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.524, F.S., relating to applicability, certification, and exemptions.

Section 2. Provides for cost sharing among local governments for underground placement of transmission facilities.

Section 3. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments, below.

2. Expenditures:

See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It appears that the bill would increase costs to electric utilities, because it would require more transmission lines and corridors to be certified under the TLSA. It may also increase utility litigation costs associated with siting transmission lines, if a challenge over a route is filed by a local government at the PSC or in circuit court. Any increased costs would be passed on to ratepayers through electric service rates.

D. FISCAL COMMENTS:

State Government

Revenues to state government will likely increase, in an indeterminate amount, as a result of filing fees for additional transmission lines.

Section 403.5365, F.S., establishes a filing fee for applications under the TLSA. The application fee is \$100,000 plus \$750 per mile for each mile of corridor within an existing right-of-way and \$1,000 per mile for each mile of corridor located outside the existing right-of-way. DEP receives sixty percent of this fee to cover costs of the certification proceedings and monitoring of construction and operation of lines. Fifteen percent of the application fee is transferred to the Operating Trust Fund of the Division of Administrative Hearings of the Department of Management Services to cover costs associated with the application and hearing process. The agencies that provide reports or participate in a certification hearing may submit a request to DEP for reimbursement, from remaining funds, for expenses incurred. If insufficient funds remain to provide full compensation to the agencies, reimbursement is provided on a prorated basis.

Expenditures from state government will likely increase, in an indeterminate amount, as a result of additional agency workload. The DEP, the PSC, the Division of Administrative Hearings, and other affected agencies will likely be required to expend resources to administer and participate in additional certification proceedings. The PSC and circuit courts will also be required to expend resources to hear and resolve disputes over transmission line routes.

Local Government

Expenditures from local government may increase, in an indeterminate amount, as a result of additional workload associated with participating in additional certification proceedings.

If a local government requests that electrical transmission lines with its boundaries be placed underground, surrounding governmental entities that benefit may be required to expend funds to share in the associated costs. Quantifying the fiscal impact to the surrounding local governments would require speculation concerning the amount of transmission line facilities that other local governments may ask to have placed underground.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that any affected municipality: (1) may request the PSC to hear and resolve disputes between a municipality and an electric utility regarding transmission line routes; and (2) may bring an action in circuit court challenging the siting of transmission line routes. It is not clear how these dispute proceedings would fit within the processes and timeframes established for handling applications under the TLSA.

Currently, the PSC issues a determination of need based on reliability and economic needs for a new line and establishes only the appropriate starting and ending points for a new line. The route taken between those two points is established through the certification hearing process. The Governor and Cabinet, sitting as the siting board, take final administrative action on the certification of transmission line routes. Thus, in granting the PSC authority to resolve disputes concerning transmission line routes, this provision of the bill appears to conflict with the existing authority of the Governor and Cabinet under the TLSA. It is not clear how this dispute resolution process would fit within the processes and timeframes established for handling applications under the TLSA. Further, in appointing the PSC as an arbiter of disputes over transmission line routes, the bill would place new authority in the PSC that it may not have the expertise to exercise.

It is also not clear how any circuit court action brought under the bill may fit within the processes and timeframes established for handling applications under the TLSA, or whether the circuit court's authority is intended to provide for review of the final administrative action under the TLSA.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES