

By Senator Simpson

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1 A bill to be entitled
2 An act relating to municipal power regulation;
3 amending s. 163.01, F.S.; requiring certain entities
4 created under the Interlocal Cooperation Act of 1969
5 to submit independently prepared financial statements
6 for certain electric power projects to specified
7 public entities; providing statement requirements;
8 providing eligibility requirements for membership on
9 the governing body of certain entities created under
10 the Interlocal Cooperation Act of 1969; amending s.
11 350.0611, F.S.; expanding the duties of the Public
12 Counsel to include proceedings involving the Florida
13 Municipal Power Agency; amending s. 366.02, F.S.;
14 revising the definition of the term "public utility"
15 to include the Florida Municipal Power Agency;
16 defining the term "Florida Municipal Power Agency";
17 amending s. 366.04, F.S.; exempting the agency from
18 regulation by the Public Service Commission for
19 purposes of rates and service; providing an effective
20 date.

21
22 WHEREAS, The Florida Municipal Power Agency is a joint-use
23 action agency created pursuant to a series of interlocal
24 agreements with the state's municipalities to finance, acquire,
25 contract, manage, and operate its own electric power projects or
26 jointly accomplish the same purposes with other public or
27 private utilities, and

28 WHEREAS, the Florida Municipal Power Agency is governed by
29 a board of directors, consisting of one board member from each

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30 member municipality, which decides all issues concerning each
31 project except for the "All-Requirements" power supply project,
32 and

33 WHEREAS, the All-Requirements power supply project is
34 governed by an executive committee, with each All-Requirements
35 project member municipality that purchases power from the
36 project appointing one executive committee member, and

37 WHEREAS, the Auditor General conducted an operational audit
38 of the Florida Municipal Power Agency and released Report No.
39 2015-165 to the Joint Legislative Auditing Committee on March
40 30, 2015, which included findings and recommendations, and

41 WHEREAS, the Auditor General found many of the Florida
42 Municipal Power Agency's hedging activities to be inconsistent
43 with other joint-use action agencies, leading to net losses of
44 \$247.6 million over the past 12 fiscal years, and

45 WHEREAS, the Auditor General concluded that several of the
46 Florida Municipal Power Agency's personnel and payroll
47 administration activities may negatively affect future rates,
48 including the Chief Executive Officer's employment contract that
49 provides severance pay and lifetime benefits even if employment
50 is terminated for cause, and

51 WHEREAS, the Florida Municipal Power Agency did not
52 consistently follow its own procurement and competitive
53 selection policies, one of which may increase the cost of future
54 bond issues, and

55 WHEREAS, the Florida Municipal Power Agency's All-
56 Requirements project agreement to curtail peak-shaving
57 activities is primarily voluntary, relies on self-reporting, and
58 contains no penalties for noncompliance, and

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59 WHEREAS, certain All-Requirements project contract
60 provisions relating to the withdrawal of members are ambiguous,
61 use a fixed discount rate rather than one based on current
62 capital costs, and do not provide for independent verification
63 by a withdrawing member, and

64 WHEREAS, even though the Florida Municipal Power Agency is
65 a governmental entity, many of the laws that apply to local
66 governments do not apply to the agency, and

67 WHEREAS, the Florida Municipal Power Agency is not subject
68 to any rate-setting authority, including by the Public Service
69 Commission, and

70 WHEREAS, there exists a need to promote transparency and
71 consistency and to increase public understanding and confidence
72 in the operation of the Florida Municipal Power Agency by the
73 member municipalities and the public, including those electric
74 ratepayers who are not residents of the municipality supplying
75 electric power but who are subject to a municipality that is
76 receiving power from the agency, NOW, THEREFORE,

77

78 Be It Enacted by the Legislature of the State of Florida:

79

80 Section 1. Subsection (19) is added to section 163.01,
81 Florida Statutes, to read:

82 163.01 Florida Interlocal Cooperation Act of 1969.—

83 (19) (a) Any entity created pursuant to this section that
84 supplies electricity through an interlocal agreement to its
85 member municipalities shall annually submit to the Public
86 Service Commission, the Public Counsel, and each member
87 municipality that participates in the electric power project an

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88 independently prepared financial statement for each individual
89 generation asset. The financial statement must include:

90 1. A balance sheet that reflects assets and liabilities
91 associated with each generation asset, including the plant in
92 service, accumulated additions and removals, net plant,
93 depreciation, operations and maintenance expenses, allocations,
94 and any other material asset and liability categories.

95 2. An income statement that reflects each generation
96 asset's operational and financial activities for the reporting
97 period, including revenues, expenses, gains, and losses. Any
98 gains or losses from hedging activities associated with the
99 generation asset shall be separately itemized.

100 3. A statement of cash flows that identifies changes in the
101 generation asset's cash flows during the reporting period.

102 4. The current fair market value for each generation asset.
103 The current fair market value shall be determined assuming the
104 price that a willing buyer would pay a willing seller for the
105 generation asset, with neither party being under any compulsion
106 to buy or sell and both having reasonable knowledge of relevant
107 facts, and assuming all risk of ownership, loss, and
108 decommissioning, as applicable. The current fair market value
109 statement shall include the overall fair market value of the
110 generation asset as a whole and each member municipality's
111 equity position net of the entity's debt, based on the current
112 fair market generation asset value. The current fair market
113 value statement shall include, after considering the market
114 value of the generation assets, the net return of equity or the
115 cost to exit the entity for each member municipality.

116 (b) To serve as a member of the governing body of an entity

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117 created pursuant to this section for the purpose of supplying
118 electricity to its member municipalities, each member of the
119 governing body must be an elected official from one of the
120 entity's member municipalities. Current members of a governing
121 body of such an entity who are not elected officials may
122 continue to serve until expiration of their terms but no later
123 than July 1, 2018.

124 Section 2. Section 350.0611, Florida Statutes, is amended
125 to read:

126 350.0611 Public Counsel; duties and powers.—It shall be the
127 duty of the Public Counsel to provide legal representation for
128 the people of the state in proceedings before the commission,
129 and in proceedings before counties pursuant to s. 367.171(8),
130 and in proceedings before the Florida Municipal Power Agency.

131 The Public Counsel shall have such powers as are necessary to
132 carry out the duties of his or her office, including, but not
133 limited to, the following specific powers:

134 (1) To recommend to the commission, ~~or~~ the counties, or the
135 Florida Municipal Power Agency, by petition, the commencement of
136 any proceeding or action or to appear, in the name of the state
137 or its citizens, in any proceeding or action before the
138 commission, ~~or~~ the counties, or the agency, and urge therein any
139 position which he or she deems to be in the public interest,
140 whether consistent or inconsistent with positions previously
141 adopted by the commission, ~~or~~ the counties, or the agency, and
142 utilize therein all forms of discovery available to attorneys in
143 civil actions generally, subject to protective orders of the
144 commission or the counties which shall be reviewable by summary
145 procedure in the circuit courts of this state;

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146 (2) To have access to and use of all files, records, and
147 data of the commission, ~~or~~ the counties, or the Florida
148 Municipal Power Agency available to any other attorney
149 representing parties in a proceeding before the commission, ~~or~~
150 the counties, or the agency;

151 (3) In any proceeding in which he or she has participated
152 as a party, to seek review of any determination, finding, or
153 order of the commission, ~~or~~ the counties, the Florida Municipal
154 Power Agency, or ~~of~~ any hearing examiner designated by the
155 commission, ~~or~~ the counties, or the agency, in the name of the
156 state or its citizens;

157 (4) To prepare and issue reports, recommendations, and
158 proposed orders to the commission, the Governor, and the
159 Legislature on any matter or subject within the jurisdiction of
160 the commission or the Florida Municipal Power Agency, and to
161 make such recommendations as he or she deems appropriate for
162 legislation relative to commission or agency procedures, rules,
163 jurisdiction, personnel, and functions; and

164 (5) To appear before other state agencies, federal
165 agencies, and state and federal courts in connection with
166 matters under the jurisdiction of the commission or the Florida
167 Municipal Power Agency, in the name of the state or its
168 citizens.

169
170 As used in this section, the term "Florida Municipal Power
171 Agency" or "agency" has the same meaning as provided in s.
172 366.02.

173 Section 3. Subsection (1) of section 366.02, Florida
174 Statutes, is amended, and subsection (4) is added to that

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175 section, to read:

176 366.02 Definitions.—As used in this chapter:

177 (1) "Public utility" means every person, corporation,
178 partnership, association, or other legal entity and their
179 lessees, trustees, or receivers supplying electricity or gas
180 (natural, manufactured, or similar gaseous substance) to or for
181 the public within this state, including the Florida Municipal
182 Power Agency. However, ~~but~~ the term "public utility" does not
183 include either a cooperative now or hereafter organized and
184 existing under the Rural Electric Cooperative Law of the state;
185 a municipality or any agency thereof; any dependent or
186 independent special natural gas district; any natural gas
187 transmission pipeline company making only sales or
188 transportation delivery of natural gas at wholesale and to
189 direct industrial consumers; any entity selling or arranging for
190 sales of natural gas which neither owns nor operates natural gas
191 transmission or distribution facilities within the state; or a
192 person supplying liquefied petroleum gas, in either liquid or
193 gaseous form, irrespective of the method of distribution or
194 delivery, or owning or operating facilities beyond the outlet of
195 a meter through which natural gas is supplied for compression
196 and delivery into motor vehicle fuel tanks or other
197 transportation containers, unless such person also supplies
198 electricity or manufactured or natural gas.

199 (4) "Florida Municipal Power Agency" means the legal
200 entity, or a successor entity, formed under s. 163.01 by
201 interlocal agreement among municipalities.

202 Section 4. Subsection (1) of section 366.04, Florida
203 Statutes, is amended to read:

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204 366.04 Jurisdiction of commission.—

205 (1) In addition to its existing functions, the commission
206 shall have jurisdiction to regulate and supervise each public
207 utility with respect to its rates and service, except for the
208 Florida Municipal Power Agency; assumption by it of liabilities
209 or obligations as guarantor, endorser, or surety; and the
210 issuance and sale of its securities, except a security which is
211 a note or draft maturing not more than 1 year after the date of
212 such issuance and sale and aggregating (together with all other
213 then-outstanding notes and drafts of a maturity of 1 year or
214 less on which such public utility is liable) not more than 5
215 percent of the par value of the other securities of the public
216 utility then outstanding. In the case of securities having no
217 par value, the par value for the purpose of this section shall
218 be the fair market value as of the date of issue. The
219 commission, upon application by a public utility, may authorize
220 the utility to issue and sell securities of one or more
221 offerings, or of one or more types, over a period of up to 12
222 months; or, if the securities are notes or drafts maturing not
223 more than 1 year after the date of issuance and sale, the
224 commission, upon such application, may authorize the utility to
225 issue and sell such securities over a period of up to 24 months.
226 The commission may take final action to grant an application by
227 a public utility to issue and sell securities or to assume
228 liabilities or obligations after having given notice in the
229 Florida Administrative Register published at least 7 days in
230 advance of final agency action. In taking final action on such
231 application, the commission may deny authorization for the
232 issuance or sale of a security or assumption of a liability or

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233 obligation if the security, liability, or obligation is for
234 nonutility purposes; and shall deny authorization for the
235 issuance or sale of a security or assumption of a liability or
236 obligation if the financial viability of the public utility is
237 adversely affected such that the public utility's ability to
238 provide reasonable service at reasonable rates is jeopardized.
239 Securities issued by a public utility or liabilities or
240 obligations assumed by a public utility as guarantor, endorser,
241 or surety pursuant to an order of the commission, which order is
242 certified by the clerk of the commission and which order
243 approves or authorizes the issuance and sale of such securities
244 or the assumption of such liabilities or obligations, shall not
245 be invalidated by a modification, repeal, or amendment to that
246 order or by a supplemental order; however, the commission's
247 approval of the issuance of securities or the assumption of
248 liabilities or obligations shall constitute approval only as to
249 the legality of the issue or assumption, and in no way shall it
250 be considered commission approval of the rates, service,
251 accounts, valuation, estimates, or determinations of cost or any
252 other such matter. The jurisdiction conferred upon the
253 commission shall be exclusive and superior to that of all other
254 boards, agencies, political subdivisions, municipalities, towns,
255 villages, or counties, and, in case of conflict therewith, all
256 lawful acts, orders, rules, and regulations of the commission
257 shall in each instance prevail.

258 Section 5. This act shall take effect July 1, 2016.