HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7071 PCB EUS 17-01 Utility Regulation
SPONSOR(S): Energy & Utilities Subcommittee, Peters
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee	11 Y, 2 N	Keating	Keating
1) Government Operations & Technology Appropriations Subcommittee	10 Y, 2 N	Helpling	Topp
2) Commerce Committee			

SUMMARY ANALYSIS

The bill amends processes related to selection of Public Service Commission (PSC) commissioners, consumer advocacy before the PSC, and utility ratemaking. In particular, the bill:

- Requires that PSC commissioners be appointed to represent each of five regions in the state as defined by the boundaries of the five District Courts of Appeals and requires that each commissioner reside in the district they are appointed to represent.
- Decreases term limits for PSC commissioners from a maximum of three 4-year terms to a maximum of two 4-year terms.
- Prohibits the appointment of state legislators to the PSC within 6 years of leaving legislative office, excepting individuals currently serving on the PSC.
- Requires the PSC to conduct a customer service meeting, open to the public, at least annually in the service territory of each investor-owned electric utility.
- Transfers the Office of Public Counsel from the Legislature to the Attorney General's Office.
- Eliminates an exemption from rulemaking for PSC policies and practices related to cost recovery clauses, factors, and mechanisms.
- Requires the PSC, when setting rates for an investor-owned electric utility, to:
    - Establish utility-specific performance criteria for various aspects of utility operations, including system reliability, customer service, power plant performance, utility costs, employee and public safety, energy efficiency and conservation programs, implementation of distributed generation programs, efficient use of alternative energy resources, and any other areas identified by the PSC or elsewhere in chapter 366, F.S.
    - Establish a mechanism to adjust a utility's maximum allowed rate of return on equity on an annual basis based on its performance in relation to the established criteria.
    - Develop a rate plan for the utility that has a minimum 3-year term and includes the performance criteria and return adjustment mechanism established in the rate proceeding and may include provisions for rate adjustments during the term and provisions to address potential earnings surpluses or deficits during the term.
- Authorizes the PSC to establish financial incentives for investor-owned electric utilities to achieve excellent performance.
- Specifies that the PSC may not approve a planned reserve margin of greater than 15% for an investor-owned electric utility, absent a finding of extraordinary circumstances.

The bill has a negative fiscal impact on the PSC. The bill does not have a fiscal impact on local governments. See *Fiscal Analysis and Economic Impact Statement*.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Public Service Commission ("PSC" or "commission") is an arm of the legislative branch of government.[1] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.[2] In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[3]

Selection of Public Service Commissioners

The PSC is comprised of five commissioners appointed to staggered 4-year terms.[4] Commissioners appointed after July 1, 2015, may not serve more than three consecutive terms.[5] Although the PSC is an arm of the legislative branch of government, the Legislature has delegated to the Governor a "limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members" in a specific manner[6]: commissioners are appointed by the Governor from a slate of nominees selected by the Public Service Commission Nominating Council (PSC Nominating Council), and the Governor's appointments must be confirmed by the Senate.[7]

The PSC Nominating Council consists of 12 members, with six appointed by the President of the Senate and six appointed by the Speaker of the House of Representatives. The President and the Speaker must each appoint three members from their own chamber, including one member from the minority party, and three nonlegislator members. Council members have four-year terms, except that legislator members serve two-year terms concurrent with the two-year elected terms of House members. Council meetings are subject to public records and public meetings law.[8]

Before nominating a person to the Governor for appointment, the PSC Nominating Council must determine that the person is competent and knowledgeable in one or more fields, including but not limited to: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or "another field substantially related to the duties and functions of the commission."[9] The law requires that the commission fairly represent these fields.[10] Further, a commissioner may not, at the time of appointment or during his or her term of office, have a financial interest in, be employed by, or engage in any business activity regarding any public utility.[11]

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[1] s. 350.001, F.S.
[2] FLA. PUBLIC SERVICE COMMISSION, *The PSC's Role*, http://www.psc.state.fl.us/ (last visited Mar. 3, 2017).
[3] *Id.* During 2016, the PSC regulated five investor-owned electric companies, eight investor-owned natural gas utilities, and 151 investor-owned water and/or wastewater utilities. While the PSC does not fully regulate publicly owned municipal or cooperative electric utilities, the Commission does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations, and planning, over 35 municipally owned electric systems and 18 rural electric cooperatives. The PSC has jurisdiction, with regard to territorial boundaries and safety, over 27 municipally owned natural gas utilities and also exercises safety authority over all electric and natural gas systems operating in the state. FLA. PUBLIC SERVICE COMMISSION, 2016 ANNUAL REPORT 14 (2017), http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2016.pdf.
[4] ss. 350.01 and 350.031, F.S.
[5] s. 350.01(3), F.S.
[6] s. 350.001, F.S.
[7] s. 350.031, F.S.
[8] *Id.*
[9] s. 350.031(5), F.S.
[10] *Id.*
[11] s. 350.04, F.S.

Consumer Advocacy before the Public Service Commission

The Office of Public Counsel was created by the Legislature in 1974, as an office of the Legislature. The Public Counsel represents the general public of Florida in proceedings before the PSC and in proceedings before counties that have elected to regulate private water and wastewater companies.[12] The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court.[13] The Public Counsel serves at the pleasure of the Joint Committee on Public Counsel Oversight, subject to biennial reconfirmation by the committee.[14] The Public Counsel must perform his or her duties independently.[15] To perform its duties, the Public Counsel is granted the following specific powers in s. 350.0611, F.S.:

- To appear in, or petition to initiate, proceedings before the PSC or counties and advocate any position which he or she deems to be in the public interest, and to conduct discovery in such proceedings.
- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in such proceedings.
- To seek review of any determination, finding, or order of the commission or the counties in any proceeding in which he or she has participated as a party.
- To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions.
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission.

The Office of Public Counsel handles a variety of cases including proceedings involving utility base rates, charges for the recovery of nuclear power plant development costs, and other types of cost-recovery and pass-through charges for electric, natural gas, water, and wastewater utilities. The Office of Public Counsel also administers a portion of the Lifeline program that provides credits from the federal Universal Service Fund to certain low-income customers for local phone service.[16]

In addition to the Office of Public Counsel, the Office of the Attorney General historically has intervened from time to time in high-profile utility rate-setting proceedings at the PSC to represent the citizens of Florida.

Ratemaking for Investor-Owned Electric Utilities

The PSC has broad jurisdiction over the rates and service of public ("investor-owned") electric utilities in Florida.[17] Under this broad grant of authority, and through more specific grants of authority in Chapter 366, F.S., the PSC sets rates for such utilities through five primary components, each of which is established in a separate administrative proceeding:

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[12] s. 350.0611, F.S.
[13] s. 350.061(1), F.S.
[14] *Id.*
[15] *Id.*
[16] s. 364.10(1)(f), F.S.
[17] *See*, *e.g.*, ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S. There are five public electric utilities in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company.

- Base rates
    - Adjusted as needed in a general rate case, conducted through a formal hearing evidentiary hearing.[18]
    - Designed to recover most operations and maintenance expenses, depreciation expense (recovery of capital investment over time), and a return on capital investment.
- Fuel and purchased power cost recovery charges
    - Adjusted annually through a formal evidentiary hearing.
    - Designed to recover the costs of fuel and the energy component of wholesale power purchases.
    - By PSC order, may include recovery of certain capital investments, including a return on investment.
- Capacity cost recovery charges
    - Adjusted annually through a formal evidentiary hearing.
    - Designed to recover costs of the capacity component of wholesale power purchases.
    - By statute, may include recovery of certain costs related to development of new nuclear power plants, including a return.[19]
- Environmental cost recovery charges
    - Adjusted annually through a formal evidentiary hearing.
    - Designed to recover costs to comply with government-mandated environmental standards.
    - By statute, may include recovery of certain capital investments, including a return on investment.[20]
- Energy conservation and efficiency cost recovery charges
    - Adjusted annually through a formal evidentiary hearing.
    - Designed to recover costs of implementing PSC-approved energy conservation and efficiency programs.

As required by law, the PSC sets base rates that are designed to allow these utilities to recover their legitimate costs of providing service (not otherwise recovered through another cost recovery mechanism), including a return on the utility's prudent capital investments ("rate base").[21] In each rate case, the PSC sets a "reasonable" rate of return on equity for each utility. After rates are set, the actual rate of return on equity earned by a utility fluctuates over time as utility revenues and expenses fluctuate.

To account for fluctuations in a utility's actual rate of return on equity over time, the PSC establishes a range within which the rate may fall and still be considered "reasonable." By convention, the range is generally set from 100 basis points (1 percentage point) above to 100 basis points below the rate of return on equity that the PSC deems reasonable. For example, if the PSC determines in a rate case that a reasonable rate of return on equity is 10%, 10% will be considered the midpoint and the "range of reasonableness" will be from 9% to 11%. If the utility begins to consistently earn outside of that range, a new rate case will be held to adjust the utility's base rates.

Under this process, a utility may increase its profits through a combination of adding new facilities (adding to the rate base upon which it earns a return), increasing electricity sales, and reducing the expenses upon which base rates were set.

Florida law authorizes the PSC, when setting rates for investor-owned electric utilities, to consider certain factors, including, among other things, the "efficiency, sufficiency, and adequacy of facilities

[18] A public electric utility whose annual sales to end-use customers amount to less than 500 gigawatt hours may request that the PSC process the utility's petition for rate relief using an informal "proposed agency action" procedure. s. 366.06(4), F.S. Currently, no public electric utility qualifies for this treatment.

[19] s. 366.93, F.S.

[20] s. 366.8255, F.S.

[21] ss. 366.041(1) and 366.06(1), F.S.

provided and services rendered," the "cost of providing such service," and "energy conservation and efficient use of alternative energy resources."[22] The PSC monitors almost all aspects of utility performance on an ongoing basis and requires detailed qualitative reporting of many aspects of utility performance; this information can be considered for purposes of setting rates going forward. For example, the PSC requires annual reports on distribution service reliability[23] and interconnection of customer-owned renewable devices[24] and requires quarterly reports concerning compliance of transmission and distribution system work with safety standards.[25] In some instances, the PSC has established financial incentive mechanisms related to specific aspects of utility performance. For example, the PSC has implemented a program since 1980 that provides for financial rewards and penalties based on an annual review of power plant performance compared to target levels.[26] In addition, the PSC has encouraged certain wholesale sales from excess utility capacity by allowing utility shareholders to retain a portion of the proceeds and crediting the remainder to customers.[27] Further, the PSC is authorized by statute to adopt financial incentives for performance in relation to energy efficiency and conservation goals,[28] though it has not exercised this authority.

Over the last 20 years, the PSC has approved several negotiated rate case settlements that set rates for a fixed minimum term, subject to adjustments and other terms identified in each individual settlement. These "rate plans" help provide certainty for utilities and customers and can provide utilities with incentives for more efficient performance during the term of the plan.[29]

Section 120.54, F.S., provides that "[r]ulemaking is not a matter of agency discretion" and requires that "[e]ach agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable." Section 120.52, F.S., defines a "rule" as "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency." The PSC is exempt from rulemaking for its policies and practices related to "cost-recovery clauses, factors, or mechanisms implemented pursuant to chapter 366, relating to public utilities."[30] Accordingly, PSC policy and practice related to fuel and purchased power cost recovery, capacity cost recovery, and environmental cost recovery has developed over decades through a series of PSC orders issued in evidentiary proceedings rather than through rulemaking proceedings.

Planned Reserve Margins

By rule, the PSC requires that "[e]ach electric utility shall maintain sufficient generating capacity, supplemented by regularly available generating and non-generating resources, in order to meet all reasonable demands for service and provide a reasonable reserve for emergencies."[31] The PSC rule further provides that "to achieve an equitable sharing of energy reserves, Peninsular Florida utilities shall be required to maintain, at a minimum, a 15% planned reserve margin."[32] A utility's reserve

[22] s. 366.041(1), F.S.
[23] Rule 25-6.0455, F.A.C.
[24] Rule 25-6.065, F.A.C.
[25] Rule 25-6.0346, F.A.C.
[26] PSC Order No. 9558, issued September 19, 1980, establishing the Generating Performance Incentive Factor.
[27] PSC Order No. 12923, issued January 24, 1980, as modified by Order No. PSC-00-1744-PAA-EI, issued September 26, 2000.
[28] s. 366.82(8) and (9), F.S.
[29] *See, e.g.*, *Stipulation and Settlement*, filed August 22, 2005, in PSC Docket Nos. 050045-EI and 050188-EI, p. 2 (stating that "the Parties to this Stipulation and Settlement have undertaken to resolve the issues raised in these proceedings so as to maintain a degree of stability to FPL's base rates and charges, and to provide incentives to FPL to continue to promote efficiency through the term of this Stipulation and Settlement."); Lowry, M. and Woolf, T., *Performance Based Regulation in a High Distributed Energy Resources Future*, Future Electric Utility Regulation, p. 2 (2016) (noting that "[multi-year rate plans] give utilities more opportunities to profit from improved performance.")
[30] s. 120.80(13)(a), F.S.
[31] Rule 25-6.035, F.A.C.
[32] *Id.* In this context , Peninsular Florida refers to all areas east of the Apalachicola River.

margin is the percentage by which the amount of dependable resources expected to be available at the time of its annual peak load exceeds the expected peak load on its system.[33]

North America is divided into several regions for purposes of promoting and ensuring electric grid reliability. Florida utilities are included in one of two regions: the Florida Reliability Coordinating Council (FRCC) region, which includes all of Florida east of the Apalachicola River; and the SERC Reliability Corporation region, which includes all of Florida west of the Apalachicola River and several other southeastern states.[34] Both FRCC and SERC operate with delegated authority from the North American Electric Reliability Corporation[35] for the purpose of proposing and enforcing reliability standards within their respective regions. Both FRCC and SERC use a 15% planned reserve margin criterion.[36]

In 1998, the PSC approved a stipulation between three utilities – Florida Power & Light Company (FPL), Duke Energy Florida (Duke), and Tampa Electric Company (TECO) – that provides for those utilities to use a 20% planned reserve margin criterion. Gulf Power Company (Gulf) uses a 15% criterion. There were a number of factors that motivated the PSC's decision at the time this stipulation was approved. Among those factors were the following:

- Several states had restructured their electricity markets in the mid to late 1990s, generally making power generation a competitive business. In its 1999 review of utilities' ten-year generation planning plans, the PSC noted that utilities were deferring construction of new plants due to the risk that such plants may not be competitive in a restructured market.[37]
- In the same review of utilities' ten-year generation planning documents, the PSC noted that demand response programs (i.e., programs under which customers receive discounted rates or credits by agreeing to have service interrupted or curtailed during peak usage times) comprised 45% of the FRCC region's summer reserve margin and 70% of its winter reserve margin statewide. The PSC expressed concern that actual power plants comprised as little as 6% of reserves.[38]

This stipulation is still in effect. Some of the conditions under which it was approved have changed. First, the wave of industry restructuring has diminished. Second, demand response programs in 2016 comprised 25% of the FRCC's summer reserve margin and an even smaller percentage of winter reserve margin;[39] thus, a greater proportion of today's reserves are represented by actual power plants. Third, due at least in part to the impact of energy efficiency codes and standards for buildings, appliances, and lighting and to slow growth of wages and income, electricity demand growth in Florida has slowed from pre-2008 levels of over 2% annually to current forecasts of 0.9% annually through 2025.[40]

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[33] *Id.*
[34] FRCC, *Home*, http://www.frcc.com/ (last visited March 5, 2017).
[35] The North American Electric Reliability Corporation (NERC) is the electric reliability organization for North America, subject to oversight by the Federal Energy Regulatory Commission and governmental authorities in Canada. NERC's jurisdiction includes users, owners, and operators of the bulk power system. NERC develops and enforces reliability standards; annually assesses seasonal and long- term reliability; monitors the bulk power system through system awareness; and educates, trains, and certifies industry personnel. NERC, http://www.nerc.com/Pages/default.aspx (last visited March 6, 2017).
[36] *FRCC Presentation to the Florida Public Service Commission*, 2016 Ten-Year Site Plan Workshop, September 14, 2016, *available at* http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2016/FRCC_Presentation.pdf (last visited March 6, 2017); NERC 2016 Summer Reliability Assessment, *available at* http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/2016%20SRA%20Report_Final.pdf (last visited March 6, 2017).
[37] FLA. PUBLIC SERVICE COMMISSION, *Review of Electric Utility 1999 Ten-Year Site Plans*, pp. 11-13, *available at* http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/archive/tysp1999.pdf (last visited March 6, 2017).
[38] *Id.*
[39] FLA. PUBLIC SERVICE COMMISSION, *Review of the 2016 Ten-Year Site Plans of Florida's Electric Utilities*, p. 38, *available at* http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2016/Review.pdf (last visited March 6, 2017).
[40] U.S. ENERGY INFORMATION ADMINISTRATION, *Florida Profile Analysis* (updated August 18, 2016), *available at* http://www.eia.gov/state/analysis.php?sid=FL (last visited March 6, 2017); FLA. PUBLIC SERVICE COMMISSION, *Review of the*

For regions within the Unites States, the North American Electric Reliability Corporation reported regional reserve margin reference levels between 13.6% and 17.6% for the summer of 2016.[41]

A higher planned reserve margin can put pressure on utilities to build additional power plants. Such plants are ultimately funded through utility rates.

Effect of Proposed Changes

Selection of Public Service Commissioners

The bill provides for the creation of five districts whose boundaries align with those of the five state district courts of appeal established under ch. 35, F.S. The bill requires one commissioner to be appointed to represent each district. The PSC Nominating Council must select nominees who are residents of the district they are being nominated to represent. Though these provisions will likely limit the pool of potential nominees for a given seat on the PSC, these provisions may enhance the PSC's perspective on regional concerns and issues.

The bill establishes term limits of two consecutive terms for persons appointed to serve on the PSC after July 1, 2017. Commissioners appointed before July 1, 2017, continue to be subject to a limit of three consecutive terms, thus current commissioners are not directly affected by the term limits established in the bill. However, the bill's requirement that commissioners be selected by district beginning in 2018 may impact the potential reappointment of current commissioners who otherwise are not precluded by term limits from seeking reappointment.

The bill prohibits any state legislator from serving on the commission within 6 years of leaving legislative office. The bill excludes persons who have previously been appointed to the commission.

Consumer Advocacy before the Public Service Commission

The bill moves the Office of Public Counsel from the Legislature to the Attorney General's office. Because the Attorney General's office is authorized to intervene in actions affecting the citizens of Florida and has done so in numerous PSC proceedings, transfer of the Office of Public Counsel to the Attorney General's office should avoid the situation in which more than one state entity participates on behalf of the same client, i.e., Floridians.

To effect this change, the bill provides that the Public Counsel shall be appointed by, and serve at the pleasure of, the Attorney General. The bill removes the provision subjecting the Public Counsel to biannual reconfirmation. The bill also provides that the Attorney General may authorize the Public Counsel to employ personnel and retain experts. The bill provides that the Attorney General shall allocate salaries and expenses of the Public Counsel and his or her employees from funds appropriated by the Legislature from the General Revenue Fund.

The bill transfers the Office of Public Counsel from the legislative branch to the Office of the Attorney General as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel is \$2.3 million and 16.5 full time equivalent positions from the General Revenue Fund for the 2016-2017 fiscal year.

2016 Ten-Year Site Plans of Florida's Electric Utilities, p. 14, *available at* http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2016/Review.pdf (last visited March 6, 2017).

[41] The NERC 2016 Summer Reliability Assessment indicates the following reserve margin reference levels for regions within the United States: Peninsular Florida – 15%; Midwest – 15.2%; New England – 17.6%; New York – 17.5%; Mid-Atlantic – 16.4%; Southeast – 15%; Southwest – 13.6%; Texas – 13.75%; West – 15.37%.

The bill requires the PSC, at least annually, to hold a customer service meeting, open to the public, in the service territory of each public electric utility regulated by the commission.

Ratemaking for Investor-Owned Electric Utilities

The bill establishes a performance-based ratemaking process that aligns each investor-owned electric utility's allowed rate of return on equity with its performance in specified areas.

First, the bill requires the PSC, when setting rates for investor-owned electric utilities, to establish utility-specific performance criteria for the following areas of utility performance:

- System reliability.
- Customer service.
- Power plant performance.
- Utility costs.
- Employee and public safety.
- Energy efficiency and conservation programs.
- Implementation of distributed generation programs.
- Efficient use of alternative energy resources.
- Any other areas identified by the PSC or elsewhere in chapter 366, F.S.

The bill requires that these performance criteria, to the greatest extent possible, be based on quantitative metrics that are objective, easily measurable and verifiable, and reasonably within the utility's control.

Next, the bill requires the PSC to establish a mechanism by which overall utility performance will be reviewed and evaluated annually based on the established performance criteria. The bill provides that a utility's allowed rate of return on equity for each annual review period will be adjusted based on its overall performance. The bill authorizes the PSC to establish financial incentives to encourage excellent performance and provides a maximum allowed rate of return, inclusive of any incentive rewards and penalties, based on the following performance levels:

- Excellent – 100 basis points above the midpoint of the range approved by the PSC
- Good – 50 basis points above the midpoint of the range approved by the PSC
- Adequate – the midpoint of the range approved by the PSC
- Unsatisfactory – 80% of the top of the range approved by the PSC

Further, the bill requires the PSC, when setting rates for investor-owned electric utilities, to establish fixed-term rate plans. The bill requires that such plans have a minimum term of 3 years and include the performance criteria and the rate of return adjustment mechanism established in the rate case. The bill does not set other minimum criteria for such plans, though it specifies other types of provisions that may be included. First, the bill provides that each plan may provide for clearly defined rate adjustments during the fixed term of the plan to account for expected changes in utility revenues and costs. The bill provides that these adjustments may include, but are not limited to: index-based adjustments that account for factors such as inflation, customer growth, and industry productivity; predetermined percentage adjustments; adjustments for planned capital additions, subject to commission approval; or a combination of one or more types of adjustments. Second, the bill provides that each plan may include provisions to address potential earnings surpluses or deficits during the term, such as a mechanism to share surpluses or deficits or an escape clause.

Taken together, these provisions may shift utility financial incentives from growing rate base and sales to achieving specified performance outputs in an efficient manner.

The bill eliminates the rulemaking exemption for PSC statements related to its cost recovery clauses, factors, and mechanisms. Thus, the bill requires the PSC to adopt, through the rulemaking process established in chapter 120, F.S., each policy and practice related to fuel and purchased power cost recovery, capacity cost recovery, and environmental cost recovery, if the policy or practice meets the definition of a rule under s. 120.52, F.S. The rulemaking process will allow for greater transparency of these policies and practices, which are currently established through decades of PSC orders. The bill exempts such rules from potential legislative ratification if adopted within 3 years. This provision may avoid a potential situation where essential PSC practices or policies could become ineffective by operation of law during ratification.

Planned Reserve Margins

The bill requires the PSC to establish by rule a planned reserve margin applicable to each investor-owned electric utility under its jurisdiction, including FPL, Duke, TECO, and Gulf. Existing PSC rules may already meet this requirement.

The bill prohibits the PSC from approving or recognizing a reserve margin planning criterion above 15% for any of these utilities, absent a finding of extraordinary circumstances. This provision ends the 1998 stipulation under which FPL, Duke, and TECO use a 20% reserve margin. This provision does not change Gulf's planned reserve margin criterion (15%) or the FRCC's planned reserve margin criterion (15%). It also does not change the ability of municipal electric utilities and rural electric cooperatives to establish their own planned reserve margin criteria.

Lowering the 20% planned reserve margin criterion to 15% reduces the pressure on those utilities to acquire additional resources that are funded through utility rates. Lowering the reserve margin to 15% for these utilities also provides less "cushion" to meet unusually high electricity demand in emergency situations. However, a 15% planned reserve margin appears to be consistent with industry standards across the country.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.80, F.S., relating to exceptions and special requirements for agencies under ch. 120, F.S.

Section 2. Amends s. 350.01, F.S., relating to the terms of commissioners and vacancies on the Florida Public Service Commission.

Section 3. Amends s. 350.031, F.S., relating to the Florida Public Service Commission Nominating Council.

Section 4. Amends s. 350.061, F.S., relating to appointment of the Public Counsel.

Section 5. Amends s. 35.0613, F.S., relating to employees of the Public Counsel.

Section 6. Amends s. 350.0614, F.S., relating to expenses and compensation of the Public Counsel.

Section 7. Provides for a type two transfer of the Office of Public Counsel from the Legislature to the Office of the Attorney General.

Section 8. Amends s. 366.041, F.S., relating to rate fixing and adequacy of facilities.

Section 9. Amends s. 366.05, F.S., relating to powers of the Florida Public Service Commission.

Section 10. Amends s. 366.06, F.S., relating to the procedure for fixing and changing rates.

Section 11. Limits the application of a specified portion of this act.

Section 12. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The required development of rules related to cost recovery clauses, factors, and mechanisms and planned reserve margin criteria will require the expenditure of PSC resources. The establishment of performance criteria and rate of return adjustment mechanisms in investor-owned electric utility rate cases will likely require the expenditure of additional PSC resources beyond those currently required to process rate cases. By providing for the appointment of PSC commissioners by district, the bill may increase expenditures for commissioner travel.

   The PSC provided the following estimates to implement specific provisions in the bill.[42]

Commissioner Travel

	FY 17-18	FY 18-19	FY 19-20
FTE (Recurring)	2	1	1
Recurring	$228,184	$462,734	$688,298
Nonrecurring	$23,196	$11,598	$11,598
TOTAL	$251,380	$474,332	$699,896

Rulemaking Modifications, Requirements and Customer Service Meetings

	FY 17-18	FY 18-19	FY 19-20
FTE (Recurring)	7	-	-
Recurring	$817,276	$817,276	$817,276
Nonrecurring	$27,782	$0	$0
TOTAL	$845,058	$817,276	$817,276

Establishment of Performance Criteria and Utility Specific Three-Year Rate Plans and Review

	FY 17-18	FY 18-19	FY 19-20
FTE (Recurring)	15	-	-
Recurring	$1,064,619	$1,064,619	$1,064,619
Nonrecurring	$60,150	$0	$0
TOTAL	$1,124,769	$1,064,619	$1,064,619

PSC Estimated Total for All Issues:

	FY 17-18	FY 18-19	FY 19-20
TOTAL	$2,221,231	$2,356,228	$2,581,792
TOTAL FTE	24	1	1

[42] Public Service Commission, Agency Analysis of House Bill 7071 (March 30, 2017) on file with the Government Operations and Technology Appropriations Subcommittee.

The above costs are a maximum estimate, provided by the PSC, and likely do not reflect the resources needed to accomplish the provisions of the bill.

Commissioner Travel

Currently, there are public service commissioners that incur travel cost to attend meetings; however they are not reimbursed for these costs. Additionally, there should not be any additional costs associated with travel in the first year of the bill becoming law. The selection of commissioners residing in the districts outlined in the bill will be staggered as the terms of the current commissioners expire. Any reimbursement for travel for commissioners required to live in the specified districts will be minimal and can be absorbed within existing PSC resources. Therefore, there should be no additional costs for travel in fiscal year 2017-18. As members are replaced on the commission, there may need to be additional resources appropriated in future years. The PSC should request any additional resources needed in future years for travel in their legislative budget request with supporting documentation for the increased cost.

Rulemaking Modifications, Requirements and Customer Service Meetings

There will be additional workload for the PSC to adopt, through the rulemaking process established in chapter 120, F.S., each policy and practice related to fuel and purchased power cost recovery, capacity cost recovery, and environmental cost recovery. However, these policy and practices already exist within the PSC. Additionally, the PSC manages and updates numerous rules related to the regulation of utilities with current staffing and expertise. There may need to be additional resources to accomplish this in the time provided in the bill to avoid requirement for legislative ratification. An additional senior attorney position coupled with current PSC staff and expertise should be sufficient to accomplish the rule making requirements in the bill. The cost for one senior attorney would include 51,627 in salary rate and $72,819 in salaries and benefits. This position would include the standard expense package for professional staff of $10,221 ($6,175 recurring and $4,046 nonrecurring) for a total cost of $83,040 ($78,994 recurring and $4,046 nonrecurring).

The PSC analysis contemplates significant resources to hold customer service meetings. The analysis notes, "Depending on how the bill is interpreted, the Commission would have to hold five meetings annually if one customer service meeting is required, or as many as 30 meetings annually if meetings must be held throughout the IOU's service territory." However, the bill says specifically, "**At least** annually, the commission shall hold **a** customer service meeting, open to the public, in the service territory of each public utility that supplies electricity and is regulated by the commission." There are five regulated utilities within the state that would apply to this section, requiring, at a minimum, five customer service meetings in a given year. Any additional meetings would need to be accomplished within existing PSC resources.

Establishment of Performance Criteria and Utility Specific Three-Year Rate Plans and Review

The PSC notes the establishment of performance criteria and three-year rate plans would require significant additional resources. However, the development of performance criteria and modified rate plans could be accomplished with workshops with industry experts and utility representatives. Additionally, once the performance criteria are developed, they would be applied to specific utilities for individual rate cases. This would add some additional review required in each rate case. However, these rate cases are not yearly. The criteria and review would only be applied to future rate cases. There is unlikely to be enough cases in any given year that would require additional resources to apply these performance criteria to future rate cases.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Lowering the 20% planned reserve margin criterion for certain utilities to 15% will reduce the pressure on those utilities to acquire additional resources that are funded through utility rates. Thus, those utilities may develop a smaller rate base upon which to earn a return, while customers of those utilities may pay less than they otherwise would have paid through utility rates.

D. FISCAL COMMENTS:

The bill transfers the Office of Public Counsel from the legislative branch to the Office of Attorney General as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel is $2.3 million and 16.5 full time positions from the General Revenue Fund for the 2016-2017 fiscal year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides for expiration of the rulemaking exemption for PSC statements related to cost recovery clauses, factors, and mechanisms. Currently, several such statements of policy and practice are contained in orders issued by the PSC rather than rules. To the extent that any such statement meets the statutory definition of a rule and the PSC wishes to continue using the policy or practice expressed in the statement, the bill has the effect of requiring the PSC to codify each such statement through rulemaking under ch. 120, Florida Statutes. The bill exempts such rules from the potential requirement of legislative ratification under s. 120.541(3), F.S.

The bill requires the PSC to establish by rule a planned reserve margin criterion applicable to each public utility under its jurisdiction that provides electric service.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.