

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1982

SPONSOR: Communications & Public Utilities Committee and Senator Posey

SUBJECT: Electric Transmission Line Siting

DATE: March 9, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	_____	_____	CP	_____
3.	_____	_____	NR	_____
4.	_____	_____	FT	_____
5.	_____	_____	AGG	_____
6.	_____	_____	AP	_____

I. Summary:

The bill:

- Changes the maximum width of the corridor within which a transmission line right-of-way is to be located from one mile to one-half mile, and provides that this includes maintenance and access roads.
- Includes in the definition of “electric utility” those entities created and approved pursuant to the Federal Energy Regulatory Commission’s Order 2000, e.g., Regional Transmission Organizations, Independent System Operators, or similar entities.
- Revises the definitions of “completeness” to include the current definition of “sufficiency” to reflect that DEP will now be determining sufficiency of filings at the time of determining their completeness.
- Revises the exemption standard of “established rights-of-way.”
- Revises and shortens the certification process.
- Creates a mechanism for cancellation of the certification hearing if all parties stipulate that there are no disputed issues of fact.
- Increases the amount of the application fee and revises the percentages allocable to the Department of Environmental Protection and the Division of Administrative Hearings.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 403.52, 403.521, 403.522, 403.523, 403.524, 403.525, 403.5251, 403.5252, 403.5253, 403.526, 403.527, 403.5271, 403.5272, 403.5275, 403.529, 403.531, 403.5312, 403.5317, 403.5363, 303.5365, 403.537, 373.441, 403.061, 403.0876, and 403.809.

II. Present Situation:

The Transmission Line Siting Act (TLSA), administered by the Department of Environmental Protection (DEP), provides for the determination of the location of electric power lines which are 230 kilovolts or greater, 15 miles or more in length, and cross a county line. Currently, applicants under the TLSA may request that corridors of up to a mile wide be approved, rather than designating a precise right-of-way corridor. Specific location of right-of-way and intermediate substations are determined in the post-certification process.

The TLSA is a highly procedural act. The process includes a determination of need by the PSC, a mandatory certification hearing by an administrative law judge, with ultimate approval or denial authority vested in the Siting Board (Governor & Cabinet). The DEP coordinates this process. Since an administrative law judge is involved from the beginning, the process is handled as though in litigation and requires the exchange of most documents as legal filings. Generally, persons wishing to become formally involved in the process must become parties to the proceeding. Opportunities exist for public comment, but those opportunities are largely dependent upon the degree of interaction by a particular local government.

According to DEP, the number of persons and agencies that may be affected by one of these project certification reviews 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. Moreover, much longer projects are the norm. The TLSA includes a process where parties may propose alternate corridors to the one proposed by the applicant. Subsequently, more persons may become affected and have the right to be parties to the proceeding. The scope of possible routes to be evaluated roughly tripled in one previous case because of alternate proposals that entailed the review of nearly 800 miles of corridors. As a result, public participation is an important feature of the TLSA.

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

Application fees under the TLSA are designed to cover the cost of reviews by the large number of agencies that may be involved. According to DEP, this presents bookkeeping challenges in reimbursing the affected agencies. Additionally, DEP states that if the application is withdrawn, the unexpended portion of the fee is refundable. The later in the process the refund occurs, the more bookkeeping is involved. DEP states that in other programs, permitting-type fees are not refundable. In addition, no fees are received for the review of alternate corridors, although the alternates may be the routes ultimately certified. Finally, the application fee was last increased in 1993.

According to the commission, the Federal Energy Regulatory Commission (FERC) has issued orders relating to "Regional Transmission Organizations" (RTOs), Independent System Operators (ISOs), or their counterparts. These orders provide for the consolidation of utility management of transmission systems into large networks. The TLSA does not appear to allow applications submitted by RTOs, ISOs, or their counterparts.

III. Effect of Proposed Changes:

Section 1 amends s. 403.52, F.S., to change the short title of the act, the Transmission Line Siting Act, to the “popular name” the Florida Electric Transmission Line Siting Act.

Section 2 amends s. 403.521, F.S., to clarify that the act applies to electric transmission lines, not to transmission pipelines for natural gas, gasoline, oil, or other substances. It creates a legislative recognition that electric transmission lines have an effect on electric power system reliability, the environment, and land use.

Section 3 amends s. 403.522, F.S., which provides definitions relating to the act. The most significant changes include:

- Changing the maximum width of the corridor within which a transmission line right-of-way is to be located from one mile to one-half mile, and provides that this includes maintenance and access roads.
- Including in the definition of “electric utility” those entities created and approved pursuant to the Federal Energy Regulatory Commission’s Order 2000, e.g., Regional Transmission Organizations, Independent System Operators, or similar entities.
- Revises the definitions of “completeness” to include the current definition of “sufficiency” to reflect that DEP will now be determining sufficiency of filings at the time of determining their completeness.

Section 4 amends s. 403.523, F.S., relating to DEP powers and duties, to allow DEP to administer and manage the terms and conditions of the certification order for the life of the facility. The bill also provides that DEP will act as the clerk of the Siting Board. Finally, it deletes the authority for DEP to present rebuttal evidence at the certification hearing.

Section 5 amends s. 403.524, F.S., relating to applicability and exemptions. Transmission line development in which all construction is limited to “established rights-of-ways” is exempt from the act. For rights-of-way other than for transmission lines, the term includes rights-of-way created both before or after October 1, 1983. For transmission rights-of-way, the term includes only those rights-of-way created before that date. The bill changes this, so that “established rights-of-way” includes rights-of-way created for roads, highways, railroads, gas, water, oil, electricity, sewage, or any other public purpose which were established at any time. However, for transmission line rights-of-way, established rights-of-way must have been established at least five years prior to construction of the new line. Also, if an established transmission line right-of-way is relocated to accommodate a public project, the date of establishment of the original transmission right-of-way continues to apply to the relocation project for purposes of the exemption.

Section 6 amends s. 403.525, F.S., relating to administrative law judges, moving the provision on the administrative law judge’s powers and duties from s. 403.527(6), F.S., to this section.

Section 7 amends s. 403.5251, F.S., relating to distribution of the application and schedules. The bill establishes the formal date of application filing and revises related process deadlines. This date marks the commencement of the certification review process and other deadlines are determined based upon this established date. The bill establishes notice requirements and also provides for electronic filing of the application.

Section 8 amends s. 403.5252, F.S., relating to the determination of completeness. The bill consolidates the sufficiency provisions that determine whether adequate information to review the application with the completeness review provisions that determine whether the application contains all the required information. This finishes these two determinations at least one week earlier than under current law. (Current law is 15 days after DEP receives an application, DEP determines the completeness; 7 days after this determination, the applicant must make distribution; and 45 days after distribution, DEP must determine sufficiency; a total of 67 days. Under the bill, 15 days after filing the application, the applicant must distribute copies; and 45 days after distribution DEP must determine completeness, which now includes sufficiency; a total of 60 days.) The bill also provides that any substantially affected person who wishes to become a party to the completeness hearing must file a motion no later than 10 days prior to the date of the hearing.

Section 9 repeals s. 403.5253, F.S. relating to the sufficiency determination, as this is made a part of the determination of completeness discussed at Section 8 above.

Section 10 amends s. 403.526, F.S., relating to preliminary statements, reports and project impact analyses. The bill adds the Department of Transportation (DOT) to the list of agencies that must file reports as to the impact of the proposed transmission line. The bill also authorizes any other agency within the jurisdiction of which the proposed transmission line and corridor would be located to prepare a report on the impact on matters within that agency's jurisdiction.

Section 11 amends s. 403.527, F.S., relating to certification hearings, notice, and parties. The bill moves all public notice requirements, as revised, to newly created s. 403.5363, F.S., section 19 of the bill. Such notice must be published at least 65 days before the date set for the certification hearing.

The bill creates an order of presentation of arguments and evidence at the hearing, unless changed by the administrative law judge (ALJ). The bill provides that when appropriate any person may be given an opportunity to present oral or written communication to the ALJ. If the ALJ proposes to consider such a communication, all parties shall be given an opportunity to cross-examine, challenge, or rebut such communications.

The bill shortens the time within which the ALJ must issue a recommended order by 15 days.

The bill adds a mechanism for cancellation of the certification hearing if all parties stipulate that there are no disputed issues of fact. By this cancellation, the ALJ would relinquish jurisdiction to DEP and it would prepare the recommended order for consideration by the Siting Board. DEP states that this option shortens the process time by a month or more and saves money for the applicant and the agencies.

Section 12 amends s. 403.5271, F.S., relating to alternate corridors to conform with changes to other statutes. It also provides that the party proposing an alternative corridor has the burden of proof on that corridor.

Section 13 amends s. 403.5272, F.S., relating to informational public meetings. Existing statutory language limits the authority to conduct early public meetings to local governments. The bill authorizes regional planning councils to conduct these public meetings.

Section 14 amends s. 403.5275, F. S., relating to application amendments. The bill clarifies that amendments must be made prior to certification.

Section 15 amends s. 403.529, F.S., relating to final disposition of the application. The bill amends references to the recommended order to clarify that it may come from DEP pursuant to the amendments section 11 makes to s. 403.527, F.S., relating to the ALJ relinquishing jurisdiction to DEP to make the recommended order.

Section 16 amends s. 403.531, F.S., relating to effect of certification. The bill conforms the section to changes made elsewhere in the bill.

Section 17 amends s. 403.5312, F.S., relating to filing of notice of certified corridor. The bill requires that after a transmission line route is certified, the applicant must file notice of the certified route for a transmission line with DEP.

Section 18 creates s. 403.5317, F.S., to provide for post-certification amendments. If, subsequent to certification by the board, a licensee proposes any material change to the application as certified, the licensee must submit to DEP a written request for amendment and description of the proposed change to the application. If DEP concludes that the change would not require a modification of the conditions of certification, it is to notify, in writing, the licensee, all agencies, and all parties of the approval of the proposed amendment. If DEP concludes that the change would require a modification of the conditions of certification, it is to notify the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.5315.

Section 19 creates s. 403.5363, F.S., relating to public notices and requirements. The bill moves these provisions from s. 403.527, F.S., to this section, with modifications. Most importantly, current law requires a reminder notice no more than 10 days before the certification hearing, requires that published notices be of specified size, and requires specified content. The department is authorized to adopt rules specifying the content of the notices required in this section, but this provision is in current law in addition to specific content requirements.

Section 20 amends s. 403.5365, F.S., relating to fees. The bill increases the amount of the application fee from \$100,000 to \$150,000. The bill also changes the allocation of the application fee. Currently DEP retains 60 percent of the fee to cover the costs of review and monitoring construction and operation of the line. The bill reduces this to 50 percent. Currently the division of Administrative Hearings (DOAH) gets 20 percent. This is reduced and divided. DOAH gets 5 percent for initial expenses, and an additional 10 percent if an administrative certification hearing is held. Agencies that participated in the certification process may request to have their expenses reimbursed, with the process being clarified. The bill also revises provisions on refund upon withdrawal of a certification application. Current law provides that upon withdrawal, any remaining sums are to be refunded. The bill provides that if the withdrawal is made before the initial determination of completeness, one-half of the fee will be refunded.

Section 21 repeals s. 403.5369, F.S. relating to applicability. This section is not part of the TLISA, but is worded as if it were. Moreover, it contains outdated references.

Section 22 amends s. 403.537, F.S., relating to determination of need for a transmission line. The bill changes the deadline for publication of notice of the PSC hearing to determine the need for the proposed transmission line to 21 days before the date set for the hearing, from 45 days.

Sections 23, 24, 25, and 26 amend ss 373.411(3), 403.061, 403.0876, and 403.809(3)(b), F.S., to conform references to the re-named Florida Electric Transmission Line Siting Act.

Section 27 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill increases the application fee by \$50,000.

B. Private Sector Impact:

The bill increases the application fee to be paid by electric utilities by \$50,000.

C. Government Sector Impact:

Although the bill decreases the percentages of the application fee which DEP and DOAH receive, the total amount each agency will receive will increase due to the increase in the total fee. According to DEP, the increase in the fee will also increase the amount available to reimburse other agencies and local governments for their expenses.

VI. Technical Deficiencies:

Section 4 deletes from existing s. 403.523, F.S., the authority for DEP responsibility to present rebuttal evidence at the certification hearing. This appears to mean that if an opposing party offers evidence at the hearing which DEP thinks is incorrect, DEP cannot offer any evidence to rebut the other party's evidence. For example, section 11 adds a provision to s. 403.527, F.S., stating that

when appropriate any person may be given an opportunity to present oral or written communication to the ALJ in the certification hearing. If the ALJ proposes to consider such a communication, all parties shall be given an opportunity to cross-examine, challenge, or rebut such communications. In reading these two provisions together, an argument can be made that DEP cannot rebut such communications.

The bill moves the current provisions on public notice of matters relating to the certification of transmission lines from s. 403.527, F.S., to newly-created s. 403.5363, F.S. The bill also modifies these provisions, most notably by deleting current requirements: that a reminder notice be published no more than 10 days before the certification hearing, that published notices be of specified size, and that published notices contain specified content. While the bill does authorize DEP to adopt rules specifying the content of the notices, this provision is in current law in addition to specific content requirements. Given that DEP states that public participation is an important feature of the TLSA, thought should be given to retaining these current requirements.

VII. Related Issues:

None.

VIII. Amendments:

None.