

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 0689 w/CS Electric Transmission Line Siting

**SPONSOR(S):** Littlefield

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1982

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Environmental Regulation (Sub)</u>	<u>5 Y, 0 N</u>	<u>Perkins</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>17 Y, 1 N w/CS</u>	<u>Perkins</u>	<u>Lotspeich</u>
3) <u>Business Regulation</u>	<u>32 Y, 0 N</u>	<u>Holt</u>	<u>Liepshutz</u>
4) <u>Finance &amp; Tax</u>	<u>21 Y, 0 N</u>	<u>Levin</u>	<u>Diez-Arguelles</u>
5) <u>Agriculture &amp; Environment Apps. (Sub)</u>	<u></u>	<u>Dixon</u>	<u>Dixon</u>
6) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill addresses the Transmission Line Siting Act (TLSA or act) which is a centralized licensing process encompassing permitting and other authorizations, including propriety interest, of all state, regional, and local agencies having jurisdiction for electric transmission lines.

The bill provides revisions to the TLSA which appear to make the administrative process more streamlined and efficient, increase public awareness, and enhance the focus of energy reliability in the state. The bill revises the TLSA to conform to changes made by the Federal Energy Regulatory Commission relating to "Regional Transmission Organizations," "Independent System Operators," or their counter parts.

The bill increases the base application fee from \$100,000 to \$150,000. The fee was last increased in 1993. The portion of the fee retained by DEP has been reduced from 60 percent to 50 percent. Funds transferred to the Division of Administrative Hearings range from 5 percent to 15 percent, depending upon whether it is necessary to schedule an administrative hearing. The remaining funds are distributed among the numerous agencies and local governments which have responsibilities in the TLSA. The list of agencies is expanded to include the Department of Transportation.

The bill may have a minor fiscal impact on the state or local governments as a result of the changes which no longer require an administrative hearing to be held if all parties to the proceeding stipulate that there are no disputed issues of fact to be raised at the certification hearing.

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

**STORAGE NAME:** h0689f.ap.doc

**DATE:** March 30, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

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|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill increases the base fee paid by applicants who choose to utilize the transmission line siting process from \$100,000 to \$150,000.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Issue - The Transmission Line Siting Act**

###### Background

Section 403.52, Florida Statutes, is known as the “Transmission Line Siting Act” (TLSA) which was passed by the Legislature in 1980. The legislative intent of this act is to establish a centralized and coordinated permitting process for the location of transmission line corridors and the construction and maintenance of transmission lines, which necessarily involves several broad interests of the public addressed through the subject matter jurisdiction of several agencies.<sup>1</sup> Section 403.522, Florida Statutes, provides several key definitions associated with the location of a transmission line:

**“Transmission line”** means any electrical transmission line extending from, but not including, an existing or proposed substation or power plant to, but not including, an existing or proposed transmission network or rights-of-way or substation to which the applicant intends to connect which defines the end of the proposed project and which is designed to operate at 230 kilovolts or more. The starting point and ending point of a transmission line must be specifically defined by the applicant and must be verified by the commission in its determination of need. A transmission line includes structures and maintenance and access roads that need to be constructed for the project to become operational. The transmission line may include, at the applicant's option, any proposed terminal or intermediate substations or substation expansions necessary to serve the transmission line.

**“Transmission line right-of-way”** means land necessary for the construction and maintenance of a transmission line. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

**“Corridor”** means the proposed area within which a transmission line right-of-way is to be located. The width of the corridor proposed for certification by an applicant or other party, at the option of the applicant, may be the width of the transmission line right-of-way, or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property

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<sup>1</sup> s. 403.521, F.S.

interests required for the transmission line right-of-way have been acquired by the applicant, the boundaries of the area certified shall narrow to only that land within the boundaries of the transmission line right-of-way. The corridors proper for certification shall be those addressed in the application, in amendments to the application filed pursuant to section 403.5275, Florida Statutes, and in notices of acceptance of proposed alternate corridors filed by an applicant and the department pursuant to section 403.5271, Florida Statutes, for which sufficient information for the preparation of agency supplemental reports was filed.

**“Electric utility”** means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

**“Application”** means the documents required by the department to be filed to initiate a certification proceeding. An electric utility may file a comprehensive application encompassing all or a part of one or more proposed transmission lines.

**“Completeness”** means that the application has addressed all applicable sections of the prescribed application format, but does not mean that those sections are sufficient in comprehensiveness of data or in quality of information provided.

**“Sufficiency”** means that the application is not only complete but that all sections are adequate in the comprehensiveness of data and in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports authorized by section 403.526, Florida Statutes, (Preliminary statements of issues, reports, and studies).

Recognizing the need to ensure electric power system reliability and integrity, and in order to meet the electric electrical energy needs in an orderly and timely fashion, the centralized and coordinated permitting process established by the TLSA is intended to further the legislative goal of ensuring through available and reasonable methods that the location of transmission line corridors and the construction and maintenance of transmission lines produce minimal adverse effects on the environment and public health, safety, and welfare while not unduly conflicting with goals established by the applicable comprehensive plan.<sup>2</sup>

The provisions of the TLSA apply to each transmission line that is 230 kilovolts or greater, 15 miles or more in length, and cross a county line, except a transmission line certified pursuant to the Florida Electrical Power Plant Siting Act. Jurisdiction over the lower voltage distribution lines and over the transmission lines located solely within one county remains with the local governments and the various other involved agencies, including the Department of Environmental Protection (DEP). No construction of any transmission line may be undertaken without first obtaining a certification under the TLSA; however, certain transmission lines are exempt from the act. Of the four basic types of exemption criteria, one is based on the transmission line development in which all construction is limited to established rights-of-way. Established rights-of-way include such rights-of-way for roads, highways, railroads, gas, water, oil, electricity, or sewage and any other public purpose rights-of-way. Except for transmission line rights-of-way, established rights-of-way include rights-of-way created before or after October 1, 1983. For transmission line rights-of-way, established rights-of-way include rights-of-way created before October 1, 1983.<sup>3</sup> A utility is directed to notify DEP in writing, prior to the start of construction, of its intent to construct a transmission pursuant to the exemption criteria listed in section 403.524, Florida Statutes.

Recently the Federal Energy Regulatory Commission (FERC) issued orders relating to Regional Transmission Organizations (RTO's), Independent System Operators (ISO's), or their counterparts. These

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<sup>2</sup> s. 403.521, F.S.

<sup>3</sup> s. 403.524.F.S.

orders provide for the consolidation of utility management of transmission systems into large networks. The current version of the TLSA does not appear to allow applications submitted by RTO's, ISO's, or their counterparts.

### TLSA Administrative Process

The TLSA involves an administrative process. The TLSA process includes a mandatory hearing by an administrative law judge and a determination of need by the Public Service Commission (PSC), with ultimate approval/denial authority vested in the Siting Board (Governor and Cabinet). The Department of Environmental Protection (DEP) coordinates the TLSA process and the following steps listed below highlight the major components of the process:

- The PSC is responsible for determining whether a proposed transmission line is needed. A hearing to determine need may be held upon request of the electric utility or upon motion of the PSC. In determining the need for the proposed transmission line, the PSC must consider "the need for electric system reliability and integrity, the need for abundant, low-cost electric energy to assure the economic well-being of the citizens of this state, the appropriate starting and ending point of the line, and other matters within its jurisdiction deemed relevant to the determination of need. It is the applicant's duty to specify the starting and ending points of a proposed transmission line and the PSC's duty only to verify these points. Once the PSC's determination of need is rendered, it is binding on all parties to the certification hearing. The determination is a prerequisite to the certification hearing and is included in a written analysis of the proposed project submitted to the administrative law judge by the DEP.<sup>4</sup>
- The applicant is responsible for paying application fees under the TLSA which are designed to cover reviews by the large number of agencies that may be involved in the process. DEP last updated the primary application fee in 1993.

Currently, the application fee is \$100,000, plus \$750 per mile for each mile of transmission line right-of-way proposed to be located within an existing electrical transmission line right-of-way or within any existing right-of-way for any road, highway, railroad, or other aboveground linear facility, or \$1000 per mile for each mile of transmission line corridor proposed to be located outside such existing right-of-way.<sup>5</sup>

Sixty percent of the fee is allocated to DEP to cover any costs associated with reviewing and acting upon the application and any costs for field services associated with monitoring construction and operation of the facility. Twenty percent of the fee, except for postcertification fees, is transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services.<sup>6</sup>

Upon written request with proper itemized accounting, DEP is authorized to reimburse the expenses and costs of the Department of Community Affairs, the Fish and Wildlife Conservation Commission, the water management districts, regional planning councils, and local government in the jurisdiction of which the transmission line is to be located. Such reimbursement is authorized for the preparation of any studies required of the agencies by this act, and for the local government to participate in the proceedings. In the event the amount available for allocation is insufficient to provide for complete reimbursement to the agencies, the reimbursement will be on a prorated basis. If any sums are remaining, DEP has the authority to retain them for its use in the same manner as is otherwise authorized under statute. However, if a certification is withdrawn, the remaining sums will be refunded to the applicant.<sup>7</sup>

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<sup>4</sup> s. 403.537, F.S.

<sup>5</sup> s. 403.5365(1), F.S.

<sup>6</sup> s. 403.5365(1)(a-b), F.S.

<sup>7</sup> s. 403.5365(1)(c-d), F.S.

- After the receipt of an application, whether complete or not, DEP will request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required under the TLSA.<sup>8</sup> An administrative hearing is held as a mandatory feature of the TLSA and is held whether or not there are any controversial issues associated with the citing. This procedure requires the expenditure of resources by the applicants and government. Since an administrative law judge is involved in this process, it is handled as though in litigation and requires the exchange of most documents as legal filings. Persons wishing to become formally involved in the process must become parties to the proceeding.
- DEP will provide the applicant and the Division of Administrative Hearings, the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments.<sup>9</sup> Upon DEP's determination of the application completeness, DEP will file a statement of the completeness, not the sufficiency, of the application.<sup>10</sup>
- DEP will file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to sufficiency of the application or amendment.<sup>11</sup>
- DEP, water management districts, Department of Community Affairs, Fish and Wildlife Conservation Commission, local governments, and regional planning councils will submit a preliminary statement of issues, if any, to DEP and the applicant no later than 60 days after the distribution of the complete application to be made available to each local government for use in public meetings as it relates to matters within their jurisdiction. Each affected agency will prepare reports and submit them to DEP and the applicant within 90 days after the distribution of the complete application. DEP will prepare a written analysis which contains a compilation of agency reports and summaries with the administrative law judge and served on all affected parties.<sup>12</sup>
- DEP and the applicant will provide notice of the application and of the proceedings.<sup>13</sup>
- The administrative law judge will conduct a certification hearing no later than 185 days after receipt of a complete application by DEP. The certification hearing will be held at a central location in proximity to the proposed transmission line corridor. Parties who are not associated with the certification hearing are also given an opportunity to testify at a public hearing held at the option of any local government.<sup>14</sup>

Opportunities exist for public comment throughout the process and are an important feature of the TLSA. Local governments may hold informational public meetings in addition to the hearings specifically authorized by this act on any matter associated with the transmission line proceeding. The purpose of an informational public meeting is for the local government to further inform the general public about the transmission line proposed, obtain comments from the public, and formulate its recommendation with respect to the proposed transmission line. Informational public meetings are held solely at the option of each local government and are encouraged by legislative intent.<sup>15</sup>

Given the magnitude of the project, the number of persons and agencies that may be affected by one of these project certification reviews can be extensive. The TLSA includes a process where parties may propose alternate corridors to that proposed by the applicant. The Alternate Corridor

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<sup>8</sup> s. 403.525, F.S.

<sup>9</sup> s. 403.5251, F.S.

<sup>10</sup> s. 403.5252, F.S.

<sup>11</sup> s. 403.5253, F.S.

<sup>12</sup> s.403.526, F.S.

<sup>13</sup> s.403.527, F.S.

<sup>14</sup> s. 403.527(2), F.S.

<sup>15</sup> s. 403.5272, F.S.

provision of the law is intended to provide affected persons the opportunity to address their concerns about the projects location.<sup>16</sup>

At the conclusion of the certification hearing and after consideration of all evidence of record, the administrative law judge will issue a recommended order disposing of the application no later than 60 days after the transcript of the certification hearing is filed with the Division of Administrative Hearings.<sup>17</sup>

- Upon the issuance of a recommended order from the administrative law judge, the Governor and Cabinet , sitting as the siting board will act upon the application by written order, approving in whole, approving with such conditions as the siting board deems appropriate, or denying the certification and stating reasons for issuance or denial. The issuance or denial of the certification by the siting board is the final administrative action required as to the application.<sup>18</sup>
- The certification will constitute the sole license of the state and any agency as to the approval of the location of the transmission line corridors and the construction and maintenance of transmission lines. The certification is valid for the life of the transmission line, provided that construction on, or condemnation or acquisition of, the right-of-way is commenced within 5 years of the date of the certification or such later date as may be authorized by the siting board.<sup>19</sup> The applicant will file with the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.<sup>20</sup>

## **Effect of Proposed Change**

### **ISSUE - TLSA**

The bill amends section 403.52, Florida Statutes, currently known as the TLSA and renames the act by a popular name known as the “Florida Electric Transmission Line Siting Act.” This technical correction appears to clarify that the act applies to electric transmission lines, not to transmission pipelines for natural gas, gasoline, oil, or other substances.

Section 403.521, Florida Statutes, relates to the legislative intent of the TLSA. The bill amends this section and provides for incorporation of federal energy legislation and concepts to demonstrate conformance with federal policy . The bill specifies that the transmission lines are for the transmission of electrical energy and emphasizes that the intent of the act is to establish a centralized and coordinated licensing process for the siting of electric transmission lines, and that the legislature recognizes that the electric transmission lines will have an effect upon electric power system reliability, the environment, land use, and welfare of the population. This section is also amended to balance the need for transmission lines with the broad interests of the public in order to effect a reasonable balance between the need for the facility as a means of providing reliable, economically efficient electric energy.

The bill amends certain definitions in section 403.522, Florida Statutes, applicable to the Florida Electric Transmission Line Siting Act as follows:

The definition of “**Application**” is revised to provide that the application contain the documents required by DEP for filing purposes. These documents include the information needed to initiate and support a certification review and evaluation, including the initial document filing, amendments, and responses to requests from DEP for additional data and information. The revised definition is comprehensive and allows DEP the ability to obtain all the information needed to support a

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<sup>16</sup> s. 403.5271, F.S.

<sup>17</sup> s. 403.527(3)(a), F.S.

<sup>18</sup> s. 403.529, F.S.

<sup>19</sup> s. 403.531, F.S.

<sup>20</sup> s. 403.5312, F.S.

certification review and evaluation of the application ultimately leading to a determination of “Completeness”. The previous definition requirement that an electric utility may file a comprehensive application encompassing a proposed transmission line is deleted from the application definition.

The definition of “**Completeness**” is revised to provide that the application has addressed all applicable sections of the of the prescribed application format and that those sections are sufficient in comprehensiveness of data to allow DEP to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by section 403.526, Florida Statutes. The revised definition of “Completeness” streamlines the application process because it incorporates the element of sufficiency in comprehensiveness of data which previously required a separate DEP determination of “Sufficiency”.

The definition of “**Corridor**” is revised to provide that the right-of-way area for a proposed transmission line include maintenance and access roads. In addition, the bill redefines the maximum width of the right-of-way area to one-half mile (previously 1 mile).

The definition of “**Electric Utility**” is revised to include regional transmission organizations, independent transmission system operators, or similar entities created and approved pursuant to the Federal Energy Regulatory Commission’s Order 2000.

The definition of “**Licensee**” is added to this section which means an applicant that has obtained a certification order for the subject project.

The definition of “**Transmission line**” is revised to include all structures, maintenance and access roads, and all other facilities that need to be constructed, operated, or maintained for the purpose of conveying electric power. The bill further deletes definition language that requires the applicant to specifically define the starting and ending point of a transmission line for the PSC in its determination of need. This requirement is addressed in section 403.537, Florida Statutes, (PSC determination of need).

The definition of “**Sufficiency**” is deleted. This deletion will streamline a component of the administration process.

*Note: Additional changes made to other definitions contained in this section were technical and provides conformity to other language contained in this act.*

## **Issue - TLSA Administrative Process**

- The bill amends section 403.523, Florida Statutes, relating to DEP powers and duties. DEP is authorized to act as the clerk for the Siting Board and is responsible for the administration and management of the terms and conditions of the certification order and supporting documents and records for the life of the facility. Statutory language is deleted pertaining to DEP being authorized to present rebuttal evidence on any issue properly raised at the certification hearing. Reference to DEP determining the sufficiency of an application is deleted, as it will no longer be applicable under the passage of this bill and will streamline the process. In addition, DEP is authorized to collect and process fees and is responsible to prepare a project impact analysis allowed under the act.
- The bill requires the applicant to define in the application the starting point and ending point of a transmission line and provides that it must be verified by the PSC in its determination of need. The exemption criteria allowing transmission lines that are located in established rights-of-way created before or after October 1, 1983 is deleted and is amended to include transmission lines being located within established rights-of-way established at any time. The bill requires transmission rights-of-way to be created at least 5 years prior to the start of construction of the proposed

transmission line. If an established transmission line right-of-way is relocated to accommodate a public project, the date of establishment of the original transmission line right-of-way will apply to the relocated transmission line right-of-way for purposes of this exemption. The bill requires a utility to notify DEP of the electric utility's intent to construct a transmission line exempted under statute for informational purposes and specifies that the utility may include in such notice that prior to construction, the transmission line complies with electric and magnetic field standards.

- The bill provides for clarification that the administrative law judge appointed by the Division of Administrative Hearings has all the powers and duties granted to administrative law judges by chapter 120, Florida Statutes, (Administrative Procedure Act) and by the laws and rules of DEP.
- The bill amends section 403.5251, Florida Statutes, to define the formal date of certification application filing and commencement of the certification review process to be the date on which the applicant has submitted to DEP copies of the certification application. The bill requires one copy of the application to be submitted in electronic format. The bill directs DEP to prepare a proposed schedule of dates for the determination of completeness, submission of statements of issues, submittal of final reports, and other significant dates to be followed during the certification process. The determination of sufficiency by DEP is deleted. This deletion will further streamline the process. In addition, the bill provides a schedule of events required by the applicant related to the filing of the application and notice associated with the filing of the application.
- The bill requires for DEP to consult with affected agencies and may include their recommendations on the completeness of the application. The agencies are required to submit to DEP their recommendations on the completeness of the application within 30 days after the distribution of the application. The bill deletes DEP having to file a statement with the Division of Administrative Hearings with regards to the sufficiency of the application. In the event DEP declares an application incomplete, the bill provides notification requirements and dates associated with such notice. Also, the bill defines the parties to a hearing on the issue of completeness.
- Section 403.5253, Florida Statutes, relating to the sufficiency determination of an application is repealed. This section removal streamlines the administrative process. All references to determination of sufficiency contained within this act are deleted.
- The bill adds the Department of Transportation to the list of agencies that are required to issue a report. The Department of Transportation report is to address the impact of the proposed transmission line or corridor on roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction. The bill shortens the time for each affected agency to submit preliminary statement of issues from 60 days to 15 days after the application has been determined to be complete, and the bill shortens the time for each affected agency to submit reports to DEP and the applicant from 90 days to 60 days after the certification application has been determined to be complete. Technical changes are provided for report requirements. DEP will prepare a project impact analysis gathered from agency reports, and the analysis will be filed with the administrative law judge and served on all parties no later than 90 days after the determination that the application is complete (rather than 135 days as provided in current law).
- The bill amends section 403.527, Florida Statutes, and authorizes the administrative law judge to cancel a certification hearing as requested by the applicant or DEP if all parties of the proceeding stipulate that there are no disputed issues of fact to be raised at the certification hearing. If the administrative law judge grants the request to cancel the certification hearing, DEP will prepare a recommended order and present it to the Siting Board for final action. This could shorten the overall administrative process by at least a month or more pursuant to DEP. In the event a certification hearing is required, the administrative law judge is required to conduct a certification hearing no later than 125 days (previously 185 days) after the application has been determined to be complete. The schedule of the order of presentation at the



certification hearing is outlined in the bill along with the applicant costs associated with the hearings. The bill shortens the administrative law judge's time to issue a recommended order to 45 days (instead of 60 days) as currently provided after the certification hearing and public hearings is filed with the Division of Administrative Hearings. Notice requirements and technical issues are relocated pursuant to the proposed newly created section of this bill known as section 403.5363, Florida Statutes.

- The bill provides for an amendment to section 403.5271, Florida Statutes, regarding alternate corridor considerations. Technical issues related to the filing and review of the alternate corridor by affected agencies and reports associated with their findings are provided for in the bill. It is incumbent on the party proposing an alternate corridor to have the burden of proof on the certifiability of the alternate corridor.
- Section 403.5272, Florida Statutes, is amended to give regional planning councils the ability to conduct informational public meetings to further inform the public about the transmission line proposed. This would facilitate forums for the public to learn about and comment on the transmission line project in instances where a local government does not wish to conduct a public meeting. These meetings by local governments or regional planning councils are optional.
- The bill provides that any amendment to an application made prior to certification must be sent by the applicant to the administrative law judge. This is a technical change regarding a timing issue.
- Section 403.529, Florida Statutes, is amended to recognize that DEP may issue a recommended order regarding the final disposition of an application. This is a technical change to conform with other changes associated with the bill. This section is also amended to provide that the Siting Board in determining whether to approve the application, must consider the extent to which the project effects a reasonable balance between the need for the transmission line as a means of providing "reliable, economically efficient electric energy" and the impact on the public and the environment.
- The bill provides for minor technical changes regarding the effect of certification to conform with other changes contained within the proposed bill along with filing of notice of the certified corridor route with DEP by the applicant.
- Section 403.5317, Florida Statutes, is created to provide direction for postcertification amendments. Any material change to the certified application proposed by the licensee subsequent to the certification by the board, requires the licensee to submit to DEP a written request for the amendment and the description of the proposed change to the application. DEP will make a determination as to whether the proposed change requires a modification of the conditions of certification. If DEP determines that the change would not require a modification of the conditions of certification, DEP will notify the licensee, all agencies, and all parties of the approval of the proposed amendment. If DEP determines that the change would require a modification of the conditions of certification, DEP will notify the licensee that the proposed change to the application requires a modification pursuant to section 403.5315, Florida Statutes. Petitions for modification filed pursuant to section 403.5315, Florida Statutes, will be disposed of in the same manner as an application, but with the time periods established by the administrative law judge commensurate with the significance of the modification requested.
- The bill creates section 403.5363, Florida Statutes, to address requirements for the notices required within the administrative process. This appears to be a technical change to move the public noticing requirements into a centralized section of the act. DEP is required to adopt rules to specify the content of notices required by this section. All notices published by the applicant will be paid by the applicant and will be in addition to the application fee.

- Section 403.5365, Florida Statutes, is amended regarding application fees and their disposition along with providing terminology to conform with other language contained within the act. Unless otherwise specified, fees will be deposited into the Florida Permit Fee Trust Fund. The application fee is increased to \$150,000 (a \$50,000 increase) plus \$750 per mile of corridor in which the transmission line right-of-way is proposed to be located within an existing electric transmission line right-of-way. Fifty percent of the fee, as opposed to a previous 60 percent, will go to DEP to cover any costs associated with coordinating the review of the application and any costs for devices associated with monitoring construction and operation of the electric transmission line facility.

The following sums will be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services: 1) Five percent to compensate for expenses from the initial exercise of duties associated with the filing of an application; and 2) An additional 10 percent if an administrative hearing is held. The bill provides that upon written request with proper itemized accounting, agencies that prepared reports or participated in a hearing may submit a written request to DEP for reimbursement of expenses incurred during the certification proceedings. The request will contain an accounting of expenses incurred, which may include time spent reviewing the application, preparation of any studies required of the agencies by this act, agency travel and per diem to attend any hearing held pursuant to this act, and local government's or regional planning council's provision of additional notice of the informational public meetings. DEP will review each request and determine if the request is valid. Valid expenses will be reimbursed; however, in the event the amount of funds available for reimbursement is insufficient to provide for full compensation to the agencies requesting reimbursement, the reimbursement will be on a prorated basis. DEP will retain funds remaining for its use in the same manner as is otherwise authorized by this section. However, if the certification is withdrawn prior to the initial determination on completeness, one-half of the application fee will be refunded to the applicant.

DEP reports that the fee increase is the first increase since 1993 and better reflects the cost of the life of the facility case management/administrative duties. The reallocation of fees available to DEP and other affected agencies is intended to provide a more equitable amount of reimbursement to the numerous affected agencies. The refund of the application fee, if applicable, will simplify the accounting required for each application.

- Section 403.5369, Florida Statutes, is repealed regarding the applicability of the act which does not apply to any application for certification of an electrical power plant or transmission line corridor which has been determined to be complete prior to July 3, 1990. DEP reports this section is not part of the TLSA, but is worded as if it was, and contains long outdated references no longer applicable to this act.
- The bill provides for an administrative change to section 403.537, Florida Statutes, related to noticing requirements of the PSC for scheduling a public hearing to determine the need for a transmission line regulated by the Florida Electric Transmission Line Siting Act. Such notice will be published 21 days (currently 45 days) before the date set for the hearing. Currently, the statute does not permit adequate time to place a notice in Florida Administrative Weekly without the applicant giving the PSC a pre-filing notice of their intent to file under the TLSA. This ministerial problem is solved with this amendment.
- The bill provides for technical changes to several sections of the Florida Statutes to reference the proposed name change of the act to the Florida Electric Transmission Line Siting Act: section 373.441(3), Florida Statutes, (Role of counties, municipalities, and local pollution control programs in permit processing); section 403.061(30), Florida Statutes, (DEP; powers and duties), section 403.0876(3)(a), Florida Statutes, (Permits; Processing), and section 403.809(3)(b), Florida Statutes, (Environmental districts; establishment; managers; functions).

C. SECTION DIRECTORY:

Section 1. Amends s. 403.52, Florida Statutes, to revise the name of the act.

Section 2. Amends s. 403.521, Florida Statutes, to provide additional criteria relating to the legislative intent of the act.

Section 3. Amends s. 403.522, Florida Statutes, to update various definitions contained within the act; and deletes s. 403.522(20), F.S, definition of sufficiency.

Section 4. Amends s. 403.523, Florida Statutes, to provide DEP powers and duties pursuant to the act and deletes reference to determination of sufficiency; and deletes s. 403.523(11), Florida Statutes, regarding DEP responsibility to present rebuttal evidence at the certification hearing.

Section 5. Amends s. 403.524, Florida Statutes, relating to exemption criteria for a transmission line obtaining a certification under this act.

Section 6. Amends s. 403.525, Florida Statutes, to provide administrative law judges additional powers and duties.

Section 7. Amends s. 403.5251, Florida Statutes, to provide for the distribution of applications and the schedule of notice requirements.

Section 8. Amends s. 403.5252, Florida Statutes, relating to the determination of completeness of the application.

Section 9. Repeals s. 403.5253, Florida Statutes, to remove DEP's requirement to determine the sufficiency of an application.

Section 10. Amends s. 403.526, Florida Statutes, to provide direction to the issuance of preliminary statement of issues, reports, and studies associated with the application.

Section 11. Amends s. 403.527, Florida Statutes, to update requirements for certification hearings and public meetings.

Section 12. Amends s. 403.5271, Florida Statutes, regarding alternate corridors.

Section 13. Amends s. 403.5272, Florida Statutes, to allow regional planning council to participate in public hearings.

Section 14. Amends s. 403.5275(1), Florida Statutes, to provide that amendments made prior to certification be sent to administrative law judge and to all parties to the proceeding.

Section 15. Amends s. 403.529, Florida Statutes, regarding the final disposition of an application.

Section 16. Amends s. 403.531, Florida Statutes, regarding the effect of certification.

Section 17. Amends s. 403.5312, Florida Statutes, to provide requirements for filing of the notice of certified corridor route with DEP in addition to the clerk of the circuit court.

Section 18. Creates s. 403.5317, Florida Statutes, to provide postcertification amendment requirements to the certification.

Section 19. Creates s. 403.5363, Florida Statutes, to provide public notice requirements relating to the administrative process for the application.

Section 20. Amends s. 403.5365, Florida Statutes, related to the application fee and distribution of such fee to the various agencies.

Section 21. Repeals s. 403.5369, Florida Statutes, to delete outdated and confusing language.

Section 22. Amends s. 403.537(1)(a) and (c), Florida Statutes, to specify that the Florida Public Service Commission determination of need is applicable to the renamed Florida Electric Transmission Line Siting Act.

Section 23. Amends s. 373.441(3), Florida Statutes, to specify the role of counties, municipalities, and local pollution control programs in the environmental resource permit processing to be applicable to the renamed Florida Electric Transmission Line Siting Act.

Section 24. Amends 403.061(30), Florida Statutes, to specify DEP powers and duties to be applicable to the renamed Florida Electric Transmission Line Siting Act.

Section 25. Amends 403.0876(3)(a), Florida Statutes, to specify that the application for renewal permits are required under the renamed Florida Electric Transmission Line Siting Act.

Section 26. Amends 403.809(3)(b), Florida Statutes, to provide that the DEP secretary may not delegate his authority to act on certifications under the renamed Florida Electric Transmission Line Siting Act.

Section 27. Provides that the act will take effect upon being a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill provides for an increase of the base application fee from \$100,000 to \$150,000.

#### **2. Expenditures:**

Application fees retained by DEP are reduced from 60 percent to 50 percent and this will make more monies available for reimbursement of other agencies' expenses for the project.

The bill gives the administrative law judge the authority to cancel a certification hearing as requested by the applicant or DEP if all parties to the proceeding stipulate that there are no disputed issues of fact to be raised at the certification hearing. In the event the certification hearing is canceled, the costs to state agencies will be reduced. Costs of attorney time, witnesses, travel, and per diem expenses would no longer be necessary.

#### **Non-recurring Effects:**

The bill includes rulemaking authority to implement the new notice provisions of section 403.5363, Florida Statutes. Rulemaking costs will be insignificant and non-recurring. These costs include DEP's efforts to publicize a proposed rule through mail-outs and public workshops around the state, as well as costs associated with publication and process requirements pursuant to Chapter 120, Florida Statutes.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill provides for an increase of application fees and makes more monies available to offset local government expenses for the project.

2. Expenditures:

The bill authorizes the administrative law judge the authority to cancel a certification hearing as requested by the applicant or DEP if all parties of the proceeding stipulate that there are no disputed issues of fact to be raised at the certification hearing. In the event the certification hearing is canceled, the costs to local governments will be reduced. Costs of attorney time, witnesses, travel, and per diem expenses would no longer be necessary.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides for a \$50,000 increase in the base application fee. If the certification hearing is cancelled, the costs to the applicant will be reduced.

D. FISCAL COMMENTS:       None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:       None

B. RULE-MAKING AUTHORITY:

DEP would be required to create additional rules for the implementation of the new noticing requirements in section 403.5363, Florida Statutes.

C. DRAFTING ISSUES OR OTHER COMMENTS:       None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 4, 2004, the Committee on Natural Resources favorably adopted one amendment to HB 689. The amendment provides revised exemption criteria for transmission lines located within established rights-of-way.