

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 579 Municipal Power Regulation
SPONSOR(S): Energy & Utilities Subcommittee; Mayfield and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 840

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------------------------|-----------------|---------|------------------------------------------|
| 1) Energy & Utilities Subcommittee | 6 Y, 5 N, As CS | Keating | Keating |
| 2) Government Operations Appropriations Subcommittee | | | |
| 3) Regulatory Affairs Committee | | | |

SUMMARY ANALYSIS

The Florida Municipal Power Agency (FMPA) was created in 1978 through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale electrical power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities. Through various joint electrical power supply projects, it supplies all of the electrical power needs of 13 member utilities (through its All-Requirements Project) and some of the power needs for seven other member utilities. FMPA member utilities that do not participate in power supply projects may use other FMPA services, including training.

FMPA is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each of FMPA's power supply projects. The All-Requirements Project is governed by an Executive Committee that reports to the Board. Each municipality that participates in the All-Requirements Project appoints a member to the Executive Committee. Through public meetings of these governing bodies, FMPA establishes a budget and the rate structures applicable to its electrical power supply projects.

Pursuant to proviso language accompanying a specific appropriation in the 2014-2015 budget, FMPA was subject to a full operational audit by the State of Florida Auditor General. The audit report was completed in March 2015 and produced fifteen findings and recommendations related to FMPA's operations.

The bill requires that any entity created under s.163.01, F.S., that supplies electricity to member municipalities must annually submit independently prepared financial statements for each individual generating asset to its member municipalities and to the Public Service Commission. The bill further provides that only an elected official of a member municipality may be appointed to serve on the governing body of such an entity. Each current appointee that is not an elected official may continue to serve until expiration of his or her term but no later than July 1, 2018. These provisions appear to apply only to FMPA, as it is the only entity created under s. 163.01, F.S., to supply electricity to member municipalities.

The bill does not appear to impact state or local government revenues or expenditures.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Municipal Power Agency

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.¹ Through various joint power supply projects², it supplies all of the electrical power needs of 13 member utilities (referred to as “All-Requirements Project” or “ARP” members) and some of the power needs for seven other member utilities.³ Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida.⁴ FMPA manages the transmission of electrical power over facilities owned by FMPA or its ARP members.⁵ FMPA also manages a “power pool” that includes the generating resources of its All-Requirements Project, Lakeland Electric, and Orlando Utilities Commission.⁶ According to its website, FMPA provides economies of scale in electrical power generation, allowing its members, through coordination of their individual power needs, to utilize larger, more efficient power plants and to diversify their power sources.⁷ FMPA members that do not participate in power supply projects may use other FMPA services, including training.⁸

FMPA is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each of FMPA’s power supply projects except the All-Requirements Project. The ARP is governed by an Executive Committee. Each member municipality of the ARP appoints one Executive Committee member. The Board is responsible for approving the rate structures for all non-ARP projects, and the Executive Committee is responsible for approving the rate structure for the ARP project.⁹ As required by law, the Board and Executive Committee must conduct their public business, including rate-setting and budgeting, in open, public meetings after providing reasonable notice.^{10,11} A financial audit of FMPA is conducted annually by an independent auditor and is filed with the state.¹²

¹ Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. FLORIDA MUNICIPAL POWER AGENCY, *Members*, <http://fmpa.com/about/members/> (last visited January 5, 2016).

² Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, section 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

³ FLORIDA MUNICIPAL POWER AGENCY, *Energy Overview*, <http://fmpa.com/energy/overview-2/> (last visited January 5, 2016). For a list of the projects and the cities participating in each project, see FLORIDA MUNICIPAL POWER AGENCY, *Projects*, <http://fmpa.com/energy/projects/> (last visited January 5, 2016).

⁴ FLORIDA MUNICIPAL POWER AGENCY, *Plants*, <http://fmpa.com/energy/plants/> (last visited January 5, 2016).

⁵ FLORIDA MUNICIPAL POWER AGENCY, *Transmission*, <http://fmpa.com/energy/transmission/> (last visited January 5, 2016).

⁶ FLORIDA MUNICIPAL POWER AGENCY, *Power Pool*, <http://fmpa.com/energy/power-pool/> (last visited January 5, 2016).

⁷ FLORIDA MUNICIPAL POWER AGENCY, *About Overview*, <http://fmpa.com/about/overview/> (last visited January 5, 2016).

⁸ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015, at p.3.

⁹ *Id.*

¹⁰ Article I, section 24 of the Florida Constitution requires, among other things, that all meetings of any collegial body of a county or municipality at which public business is to be transacted must be open and noticed to the public. Section 286.011(1), F.S., implements this provision and applies it to any board or commissions of any political subdivision of the state, which includes boards formed by interlocal agreement. See 84-16, Fla. Op. Att’y Gen. (1984).

¹¹ In addition to public notice, FMPA states that it provides call-in numbers to allow public participation by phone and includes an opportunity for public comment at each meeting. FMPA also states that it uses a “two-read” practice under which significant business

Pursuant to proviso language accompanying a specific appropriation in the 2014-2015 budget¹³, the State of Florida Auditor General was directed to retain subject matter experts to conduct a full audit of any entity created under s. 361.10, F.S.¹⁴ The audit was required to analyze all revenues, expenditures, administrative costs, bond agreements, contracts, and employment records and to provide a complete review of the rates of such entities. Under this direction, the Auditor General retained consultants and conducted an operational audit of FMPA and submitted its final audit report to the Speaker of the House of Representatives and the President of the Senate in March 2015.¹⁵ The audit report produced fifteen findings and recommendations related to FMPA's hedging activities, investments, personnel and payroll administration, procurement practices, ARP contract provisions, and information technology practices. The audit report was presented to the Joint Legislative Auditing Committee on March 30, 2015, with a follow-up discussion on October 5, 2015.¹⁶

Regulation of Wholesale Power Sales

The Federal Energy Regulatory Commission (FERC) has exclusive authority to regulate rates for certain wholesale transmission and power sales.¹⁷ However, FERC is not authorized to regulate rates for such wholesale sales by any political subdivision of a state or any rural electric cooperative.¹⁸ Accordingly, FMPA's rates and rate structure are not regulated by FERC. The Public Service Commission does not regulate wholesale transmission and power sales.¹⁹

Effect of Proposed Changes

The bill requires that any entity created under s.163.01, F.S., that supplies electricity to member municipalities must annually submit an independently prepared financial statement for each individual generating asset to its member municipalities and to the Public Service Commission. This provision appears to apply only to FMPA, as it is the only entity created under s. 163.01, F.S., that supplies electricity to member municipalities.

The bill requires that these financial statements include the following:

- A balance sheet that reflects assets and liabilities associated with each generation asset, including the plant in service, accumulated additions and removals, net plant, depreciation, operations and maintenance expenses, allocations, and any other material asset and liability categories.
- An income statement that reflects each generation asset's operational and financial activities for the reporting period, including revenues, expenses, gains, and losses, with gains or losses from hedging activities associated with the generation asset to be separately itemized.
- A statement of cash flows that identifies changes in the generation asset's cash flows during the reporting period.

or policy decisions are brought to the Board or Executive Committee as an information item at one meeting then brought forward for action at a second meeting, allowing additional time for public notice and discussion.

¹² State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015 at 36 (Exhibit C, FMPA Management Response).

¹³ Specific Appropriation 2685, 2014-2015 General Appropriations Act, Ch. 2014-51, Laws of Fla.

¹⁴ The reference in the appropriation to section 361.10, F.S., was likely misplaced. That section does not authorize the creation of any type of entity. Rather, it authorizes various types of existing utility entities to participate in joint electrical power supply projects.

¹⁵ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015. The Auditor General did not audit any other entities that participate in joint electrical power supply projects authorized by s. 361.10, F.S.

¹⁶ At the October 5, 2015, meeting of the Joint Legislative Auditing Committee, FMPA indicated that it had addressed 10 of the 15 audit report findings and anticipated addressing the remaining findings by the end of 2015. FMPA committed to provide the committee with progress reports every 60 days until each of the audit report's findings have been addressed. The committee indicated that it may conduct additional meetings to discuss FMPA's progress.

¹⁷ 16 U.S.C. §824.

¹⁸ 16 U.S.C. §824(f).

¹⁹ In *Lee County Electric Cooperative, Inc. v. Jacobs*, 820 So. 2d 297 (Fla. 2001), the Florida Supreme Court upheld an order of the Public Service Commission determining that it lacked jurisdiction over the wholesale rate structure of a rural electric cooperative.

- A statement of the current fair market value for each generation asset,²⁰ which must include the overall fair market value of the generation asset as a whole and each member municipality's equity position net of the entity's debt, based on the current fair market generation asset value. This statement must also include, after considering the market value of the generation assets, the "net return of equity or the cost to exit the entity" for each member municipality.

The bill does not require the PSC or any member municipality to take any specific action after receiving a financial statement pursuant to this provision.

The bill further provides that only an elected official of a municipality may be appointed to serve on the governing body of an entity created under s. 163.01, F.S., to supply electricity to member municipalities. The bill provides that a current member of such a governing body who is not an elected official may continue to serve until expiration of his or her term but no later than July 1, 2018. This provision appears to apply only to FMPA, as it is the only entity created under s. 163.01, F.S., to supply electricity to member municipalities.

B. SECTION DIRECTORY:

Section 1. Creates s. 163.01(19), F.S., establishing financial reporting requirements for certain entities created under s. 163.01, F.S., and requiring that the governing bodies of such entities consist solely of elected officials.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

²⁰ The bill provides that current fair market value shall be determined assuming the price that a willing buyer would pay a willing seller for the generation asset, with neither party being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, and assuming all risk of ownership, loss, and decommissioning, as applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

FMPA may incur costs to comply with the financial reporting requirements imposed by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2016, the Energy & Utilities Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment removed provisions that required the Public Counsel to participate in FMPA rate-setting proceedings and removed provisions that defined FMPA as a public utility for purposes of regulation by the PSC. This analysis reflects the committee substitute.