

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: SB 1586

INTRODUCER: Senator Simmons

SUBJECT: Energy Grid

DATE: January 24, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Pre-meeting
2.			RI	
3.			GO	
4.			RC	

I. Summary:

SB 1586 requires the Florida Public Service Commission (commission or PSC) to develop disaster hardening standards and a disaster preparation and energy grid improvement plan for each electric utility. As part of this process, the commission must hold a series of public hearings relating to each electric utility, including customer hearings throughout the state. The bill sets out factors the commission must consider in determining these standards and disaster preparation and energy grid improvement plans.

Upon development of standards and a plan for each electric utility, the commission must issue an order requiring each electric utility to implement the plan to meet the standards and specifying the method for payment of the plan, including each utility's authorized assessment to ratepayers for plan costs. The order may allow up to 20 years to implement a plan, and the commission must allow for the plan to be modified at least every 5 years. During any 5-year period, an electric utility may apply to the commission for a single extension for one or more plan deadlines specified in the order. The commission may grant the extension if the electric utility provides to the commission sufficient evidence that an extension is in the best interest of the utility's ratepayers.

The commission is required to adopt rules and issue orders as are necessary and proper to implement this section. It is required to submit a report to the President of the Senate and the Speaker of the House of Representatives by February 1, 2019, and every 5 years thereafter. The report must describe, for each electric utility, the commission's determination and order for that electric utility on its standards, plan for grid improvement, the timetable for completion of the plan, and the projected costs and benefits of the plan.

II. Present Situation:

Chapter 366, F.S., provides for regulation of electric utilities in Florida. Section 366.02, F.S., provides definitions for these purposes.

- “Commission” means the Florida Public Service Commission.
- “Electric utility” means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.
- “Public utility” means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity ... to or for the public within this state; but the term “public utility” does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof;

The Commission has full economic regulation authority over the public utilities, including setting rates ensuring service quality standards.¹ It has grid reliability authority over all Florida electric utilities.^{2,3}

III. Effect of Proposed Changes:

The bill creates s. 366.96, F.S., on hardening of Florida’s energy grid, a term defined to mean an electric utility’s interconnected generation, transmission, and distribution infrastructure.

The bill establishes legislative intent that the number of electric utility customers without electricity after natural and manmade disasters and other major events and the duration of such outages be reduced, and that these reductions be accomplished at a cost that is fair and reasonable for the state’s electric utility customers.

To accomplish this, the Public Service Commission is directed to hold a series of public hearings, including customer hearings throughout the state, to determine for various critical circumstances, especially for each category of storm and hurricane, the following disaster hardening standards that each electric utility may be able to achieve at a reasonable cost:

- The highest acceptable percentage of customers without electricity for each 24-hour period after a storm; and
- The longest period of time for complete restoration, replacement, or renovation of the energy grid.

During this process, the commission must determine a disaster preparation and energy grid improvement plan for each electric utility to achieve the developed standards, including all necessary improvements and the time within which the electric utility must complete each improvement. The plan implementation period may be up to 20 years, and the commission must

¹ Section 366.04(1), F.S.

² Sections 366.04(2)(c) and 366.05(8), F.S.

³ According to the commission, there are 5 public utilities, 34 municipally owned electric utilities, and 18 rural electric cooperatives, for a total of 57 electric utilities. Florida Public Service Commission, *2017 Facts and Figures of the Florida Utility Industry*, page 1.

<http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/March%202017.pdf>

allow for the plan to be modified at least every 5 years. In determining these standards and disaster preparation and energy grid improvement plans, the commission must consider all of the following factors:

- The available projections for the number and severity of storms in the future and for changes in sea level, storm surge, and flooding;
- The projected costs of outages and of restorations which would be avoided by the standards and plans;
- The projected benefits of the standards and plans;
- Any alternatives to the traditional energy grid which provide strengthening or resiliency benefits to the energy grid, including distributed generation and microgrids; and
- The individual circumstances and characteristics of each electric utility, including:
 - The utility's energy grid, taking into account its history of outages, restorations, the time necessary to complete each restoration, and the factors involved in restoration and timing of completion;
 - The utility's ratepayer base;
 - The utility's existing cost recovery structure and rates;
 - Any potential alternative standards and goals for the utility, including implementing alternative forms of renewable energy;
 - Available energy grid improvements for the utility, including the benefits and costs of such improvements and the impact of such improvements on rates;
 - The total cost of each utility's plan. This must include the expected cost to consumers of implementing the plan shown in relation to the benefits to be achieved, such as the potential savings from outages and restoration costs avoided; and
 - A reasonable period for the utility to implement the plan.

Upon completion of the development of standards and a plan for each electric utility, the commission is required to issue an order requiring each electric utility to implement the plan to meet the standards and specifying the method for payment of the plan, including each utility's authorized assessment to ratepayers for plan costs. During any 5-year period, an electric utility may apply to the commission for a single extension for one or more plan deadlines specified in the order. The commission may grant the extension if the electric utility provides to the commission sufficient evidence that an extension is in the best interest of the utility's ratepayers.

The commission is required to adopt rules and issue orders as are necessary and proper to implement this section.

By February 1, 2019, and every 5 years thereafter, the commission must submit a report to the President of the Senate and the Speaker of the House of Representatives which describes, for each electric utility, the commission's determination and order for that electric utility on its standards, plan for grid improvement, the timetable for completion of the plan, and the projected costs and benefits of the plan.

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.

D. Other Constitutional Issues:

The bill creates new types of costs and benefits to be identified, quantified, and considered by the PSC in its storm hardening proceedings: the costs of outages which would be avoided by the standards and plans and the benefits of the potential savings from avoiding these outage costs. The bill does not define these costs and benefits or otherwise provide guidance as to what they are to include. The only guidance on this point is that they are distinguished from the costs of restoration of the grid after a storm and the benefits of avoiding incurring these restoration costs. This lack of guidance and uncertainty leaves the bill open to include every possible cost that may be avoided related to any conceivable storm. This provision appears overly broad and vague, so as to subject the bill to a potential challenge that it is an unconstitutional delegation of legislative authority.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Electric utility customers will pay the electric utilities' costs of implementation discussed in Government Sector Impact.

The benefits to customers are uncertain as they depend on what is done in implementing the bill; details of future outages, including type of cause of the outage and its severity, location, and damage done; and uncertainties in interpretation and implementation, see Technical Deficiencies.

C. Government Sector Impact:

The costs to implement the bill are indeterminable, but will be incurred in two stages.

In the first stage, the PSC is required to:

- “hold a series of public hearings, including customer hearings throughout the state” (lines 42-44);
- “determine ... disaster hardening standards that each electric utility may be able to achieve at a reasonable cost” (lines 47-48);
- “determine a disaster preparation and energy grid improvement plan for each electric utility to achieve the developed standards, including all necessary improvements and the time within which the electric utility must complete each improvement” (lines 53-58); and
- “issue an order requiring each electric utility to implement the plan to meet the standards and specifying the method for payment of the plan, including each utility’s authorized assessment to ratepayers for plan costs” (lines 93-98).

These hearings and proceedings will involve the PSC, the Office of Public Counsel⁴ (OPC), and each of the utilities. As noted above, there are 57 electric utilities, and so, at least 57 public customer hearings throughout the state. Additionally, in developing the disaster preparation and energy grid improvement plans, the commission is to consider at least seven circumstances and characteristics of each individual electric utility. For some utilities, notably Florida Power and Light and Duke Energy Florida, the service territory is so large and varied that multiple hearings in multiple locations may be necessary to develop plans and orders that will appropriately address the varying circumstances. As such, developing the plans and orders will require significant time and expense for the PSC, OPC, and the individual utilities.

The second stage will be the continuing implementation of the disaster preparation and energy grid improvement plans and orders. Again, the PSC, OPC, and the individual utilities will incur costs. At this stage, most of the costs will be in making the grid improvements and will be borne initially by the individual electric utilities and later recovered from their ratepayers. The PSC and OPC will incur costs associated with monitoring improvements and related hearings.

VI. Technical Deficiencies:

In developing disaster hardening standards, disaster preparation and energy grid improvement plans, and orders, the PSC must consider:

- “the projected costs of outages and of restorations which would be avoided by the standards and plans” (lines 66-67);
- “the projected benefits of the standards and plans” (line 68); and

⁴ The Office of Public Counsel provides legal representation for utility customers in proceedings before the PSC (s. 350.0611, F.S.).

- the total cost of each utility's plan ... [with the determination to] include the expected cost to consumers of implementing the plan shown in relation to the benefits to be achieved, such as the potential savings from outages and restoration costs avoided (lines 87-90).

This language creates new types of costs and benefits to be identified, quantified, and considered by the PSC in its storm hardening proceedings, the costs of outages which would be avoided by the standards and plans, and the benefits of the potential savings from avoiding these outage costs. The bill is unclear and gives little guidance as to what these costs and benefits are to include; all that is certain on this point is that they are distinguished from the costs of restoration of the grid after a storm and the benefits of avoiding incurring these restoration costs. This uncertainty appears to leave the bill to be interpreted to include every possible cost that may be avoided related to any conceivable storm. These costs will be most significant for businesses, and mostly for large commercial businesses. Allocation of hardening costs incurred to avoid these large business costs is not prescribed and raises the possibility of allowing subsidization of one customer class by another. Finally, the provision appears overly broad and vague as to potentially subject the bill to a challenge that it is an unconstitutional delegation of legislative authority.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 366.96 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.