HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENRC 08-01 Energy
SPONSOR(S): Environment & Natural Resources Council
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1544

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council		Blalock, Larson, Whittier, Perkins	Dixon / Hamby
Committee on Energy	13 Y, 0 N	Blalock, Larson, Whittier	Collins
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

During the 2007 Legislative Session, the Legislature enacted comprehensive legislation to promote energy security and affordability by encouraging energy efficiency and diversity. Although this legislation was vetoed, approximately $62 million in funds were made available to address energy goals. During the Summer of 2007, Governor Crist issued three executive orders addressing issues related to global climate change. The executive orders established reduction targets for greenhouse gas (GHG) emissions, directed the Department of Environmental Protection to develop a regulatory rule to cap electric utility GHG emissions, and created the Governor's Action Team on Energy and Climate Change. The Action Team's initial report includes numerous recommendations, including the development of a "cap and trade" program to reduce GHG emission. The Florida Energy Commission, created by the 2006 Legislature, has also issued a series of recommendations addressing energy reliability, efficiency, affordability, and diversity and climate change.

In response to these developments the Environment & Natural Resources Council and the Committee on Energy conducted a symposium on the "Science and Economics of Climate Change" and a series of workshops to discuss the interrelated issues of energy reliability, efficiency, affordability, and diversity and global climate change. These discussions focused on international, national and state options to mitigate climate change and their potential costs and benefits. This bill builds on last year's legislation and includes policies developed through these discussions, including:

- Creating a 7-member Florida Energy and Climate Commission.
- Creating the Florida Energy Systems Consortium with participation from five state universities.
- Authorizing the Department of Environmental Protection to adopt rules for a Cap-and-Trade Regulatory Program to address GHG emissions from electric utilities, subject to legislative ratification and not prior to the 2010 Legislative Session.
- Revising the State Comprehensive Plan to include goals and policies addressing low carbon electricity generation.
- Creating a Renewable Portfolio Standard for electric utilities.
- Revising laws governing state lands and power plant and power line siting to facilitate expanded power generation.
- Providing for standardized interconnection agreements and net metering for all electric utilities.
- Reauthorizing an ad valorem tax exemption for renewable energy source devices.
- Extending the Public Service Commission's jurisdiction to municipal utilities meeting certain criteria.
- Creating a Renewable Fuel Standard requiring by December 31, 2010, all gasoline sold in Florida to contain, at a minimum, 10 percent ethanol.
- Adopting energy standards for the construction of new state, county, municipal, school district, state university, community college, state court, and water management district buildings.
- Requiring all new construction and renovation of state agency buildings to meet increased energy standards.
- Revising current law governing guaranteed energy performance savings contracting.
- Adopting Climate Friendly Public Business requirements for the use of "green" products, lodging, vehicles, and fuel.

See Fiscal Analysis and Economic Impact Statement section of analysis for impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government –
The bill combines a majority of the energy-area duties and responsibilities of the Department of Environmental Protection (DEP), and the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of the Florida Energy Commission to a new 7-member commission – Florida Energy and Climate Commission – which will develop, coordinate, and implement energy policies for the state. The bill does the following:

- Directs the Public Service Commission (PSC) to establish a Renewable Portfolio Standard, which requires utilities to provide to consumers a certain percentage of electricity generated from renewable energy sources.
- Requires that all gasoline sold or offered for sale in the state be 10 percent agriculturally-derived, denatured ethanol on and after December 31, 2010.
- Requires the DEP to establish reporting procedures and methodologies for electric utilities to report to The Climate Registry and authorizes the DEP to adopt rules to implement a state greenhouse gas cap-and-trade program.
- Requires the Department of Management Services (DMS) to identify and compile a list of projects suitable for guaranteed energy performance savings contracting and directs the DMS to furnish the Florida Energy and Climate Commission data on agencies' emissions of greenhouse gases.
- Requires state agencies to only contract for meeting and conference space with hotels or conference facilities that have received the "Green Lodging" designation from the DEP.
- Requires that green building standards be used for the construction of new county, municipal, school district, state university, community college, state court, and water management district buildings.
- Requires the DEP to develop a market based regulatory program to reduce GHG from electric utilities.
- Revises sections of the power plant siting and transmission line siting laws, which will result in a streamlining of those processes, for government as well as the private sector.
- Encourages Metropolitan Planning Organizations to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions.
- Directs the Agency for Enterprise Information Technology to define objective standards for measuring data center energy consumption and efficiency, and for calculating the total cost of ownership of energy efficient information technology products over the life-cycle of the products.
- Extends the jurisdiction of the PSC to any municipal utility that serve customers who reside both inside and outside the corporate boundaries of the municipality and 33% or more of the municipal utility's customers reside outside the corporate boundaries of the municipality.
- Provides various departmental rule-making authorizations and report requirements.

Ensure Lower Taxes –
The bill authorizes a property tax exemption for real property on which renewable energy source devices have been installed and are being operated. The bill makes clarifications in the sales tax and use exemption for renewable energy technologies language, and the corporate renewable energy technologies investment and production tax credit programs, so that more people can take advantage of the incentives.

Promote Personal Responsibility/Empower Families –
The bill provides energy efficient standards for additional appliances, increases energy efficiency standards for construction, and provides incentives and requirements for the use of renewable energy.

The provisions should result in a decrease in energy bills for rate payers, as well as a reduction in greenhouse gas emissions. The bill provides for net metering which allows customers with a renewable energy electricity-generating system to offset their electricity consumption. The bill allows hybrids and other low-emission and energy-efficient vehicles to be driven in High-Occupancy-Vehicle lanes, regardless of their occupancy.

Maintain Public Security –
The state's dependence on imported fossil fuels may be lessened by the following provisions:

- Requirement of a renewable portfolio standard;
- Requirement of a renewable fuel standard;
- Incentives regarding the production and use of alternative fuels and renewable energy;
- Incentives regarding research and development of renewable energy technologies;
- Incentives regarding the use of energy-efficient products;
- Incentives regarding the use of renewable energy devices;
- Requirements of state government regarding energy efficiency, "green" buildings and lodging, energy-efficient vehicles, and renewable fuel; and
- Establishment of a state greenhouse gas cap and trade program.

B. EFFECT OF PROPOSED CHANGES:

TAKING OF PROPERTY BY ELECTRIC UTILITIES (s. 74.051, F.S.)

Present Situation
In any eminent domain action, a rural electric cooperative or public utility corporation can take possession and title in advance of the entry of final judgment in an eminent domain action.[1] A defendant to the taking can request a hearing on the petition for order of taking.[2]

Section 74.051, F.S., provides that if a defendant does request a hearing on the order of taking, the defendant may appear and be heard on all matters properly before the court, including the jurisdiction of the court, the sufficiency of pleadings, whether the petitioner is properly exercising its delegated authority, and the amount to be deposited for the property sought to be appropriated.[3]

Effect of Proposed Changes
The bill amends s. 74.051, F.S., to require that a hearing on an order of taking be conducted within 120 days after the petition is filed when the petitioner is an electric utility that is seeking to appropriate property for an electric generation plant, associated facility of such plant, an electric substation, or a power line. The bill also requires that the court issue its final judgment no more than 30 days after the hearing.

STATE COMPREHENSIVE PLAN (s. 186.007, F.S.)

Present Situation
Section 186.007(3), F.S., provides that in the State Comprehensive Plan, the Executive Office of the Governor may include goals, objectives, and policies related to the following program areas:

- Economic opportunities;
- Agriculture;
- Employment;
- Public safety;
- Education;
- Health concerns;
- Social welfare concerns;

[1] Section 74.001, F.S.
[2] Section 74.041(3), F.S.
[3] Section 74.051(1), F.S.

- Housing and community development;
- Natural resources and environmental management;
- Recreational and cultural opportunities;
- Historic preservation;
- Transportation; and
- Governmental direction and support services

Effect of Proposed Changes

The bill amends s. 186.007(3), F.S., to add "energy" and "global climate change" to the program areas that the Executive Office of the Governor may include in the state comprehensive plan.

STATE COMPREHENSIVE PLAN (s. 187.201(10), (11), and (15), F.S.)

Present Situation

Section 187.201, F.S., provides specific goals and policies that make up the State Comprehensive Plan. The State Comprehensive Plan consists of several subject areas and each of these subject areas includes specific goals and policies, which provide long-range policy guidance for the orderly social, economic, and physical growth of the state. The goals and policies contained in the State Comprehensive Plan must be reasonably applied where they are economically and environmentally feasible, not contrary to the public interest, and consistent with the protection of private property rights. The Florida Legislature has, by statute, adopted as the State Comprehensive Plan specific goals and policies with regard to education, children, families, the elderly, housing, health, public safety, water resources, coastal and marine resources, natural systems and recreational lands, air quality, energy, hazardous and nonhazardous materials and waste, mining, property rights, land use, urban and downtown revitalization, public facilities, cultural and historical resources, transportation, governmental efficiency, the economy, agriculture, tourism, employment, and plan implementation.

Section 187.201(10), F.S., provides for the specific goals and policies related to "air quality." The goal for air quality in the State Comprehensive Plan requires Florida to comply with all national air quality standards by 1987, and by 1992, meet standards which are more stringent than 1985 state standards. The policies provided in the State Comprehensive Plan related to air quality are as follows:

- Improve air quality and maintain the improved level to safeguard human health and prevent damage to the natural environment.
- Ensure that developments and transportation systems are consistent with the maintenance of optimum air quality.
- Reduce sulfur dioxide and nitrogen oxide emissions and mitigate their effects on the natural and human environment.
- Encourage the use of alternative energy resources that do not degrade air quality.
- Ensure, at a minimum, that power plant fuel conversion does not result in higher levels of air pollution.

Section 187.201(11), F.S., provides for the specific goals and policies related to "energy." The goal for energy in the State Comprehensive Plan requires Florida to reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors, while at the same time promoting an increased use of renewable energy resources. The policies provided in the State Comprehensive Plan related to energy are as follows:

- Continue to reduce per capita energy consumption.
- Encourage and provide incentives for consumer and producer energy conservation and establish acceptable energy performance standards for buildings and energy consuming items.
- Improve the efficiency of traffic flow on existing roads.
- Ensure energy efficiency in transportation design and planning and increase the availability of more efficient modes of transportation.
- Reduce the need for new power plants by encouraging end-use efficiency, reducing peak demand, and using cost-effective alternatives.

- Increase the efficient use of energy in design and operation of buildings, public utility systems, and other infrastructure and related equipment.
- Promote the development and application of solar energy technologies and passive solar design techniques.
- Provide information on energy conservation through active media campaigns.
- Promote the use and development of renewable energy resources.
- Develop and maintain energy preparedness plans that will be both practical and effective under circumstances of disrupted energy supplies or unexpected price surges.

Section 187.201(15), F.S., provides for the specific goals and policies related to "land use." The goal for land use in the State Comprehensive Plan requires development to be directed to those areas which have in place, or have agreements to provide, the land and water resources, fiscal abilities, and service capacity to accommodate growth in an environmentally acceptable manner. The policies provided in the State Comprehensive Plan related to land use are as follows:

- Promote state programs, investments, and development and redevelopment activities which encourage efficient development and occur in areas which will have the capacity to service new population and commerce.
- Develop a system of incentives and disincentives which encourages a separation of urban and rural land uses while protecting water supplies, resource development, and fish and wildlife habitats.
- Enhance the livability and character of urban areas through the encouragement of an attractive and functional mix of living, working, shopping, and recreational activities.
- Develop a system of intergovernmental negotiation for siting locally unpopular public and private land uses which considers the area of population served, the impact on land development patterns or important natural resources, and the cost-effectiveness of service delivery.
- Encourage and assist local governments in establishing comprehensive impact-review procedures to evaluate the effects of significant development activities in their jurisdictions.
- Consider, in land use planning and regulation, the impact of land use on water quality and quantity; the availability of land, water, and other natural resources to meet demands; and the potential for flooding.
- Provide educational programs and research to meet state, regional, and local planning and growth-management needs.

Effect of Proposed Changes

The bill amends s. 187.201(10), F.S., related to air quality, to provide that it is a policy under the State Comprehensive Plan to "encourage the development of low carbon emitting electric power plants." The bill amends the goals provided in s. 187.201(11), F.S., related to energy, to require Florida to reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources and low carbon emitting electric power plants. This bill also amends the policies, related to energy, to provide that it is a policy under the State Comprehensive Plan to promote low carbon emitting electric power plants.

The bill amends s. 187.201(15), F.S., related to land use, to provide that it is a policy under the State Comprehensive Plan to "provide for the siting of low carbon emitting electric power plants, including nuclear power plants, to meet the state's determined need for electric power generation."

PROPERTY TAX EXEMPTION FOR RENEWABLE ENERGY SOURCE DEVICE (ss. 196.012(14) and 196.175, F.S.)

Present Situation

Section 3(d), Article VII, Florida Constitution, provides the following:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

In 1980, the Legislature authorized a property tax exemption for real property on which a renewable energy source device is installed and is being operated. However, the exemption expired after 10 years. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

Effect of Proposed Changes

The bill removes the expiration date of the property tax exemption for real property on which a renewable energy source device[4] is installed and is being operated, thereby allowing property owners to once again apply for the exemption. The period of each exemption, however, remains at 10 years. The bill also revises the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

The bill also removes outdated and obsolete language from the definition of "renewable energy source device," provided in s. 196.012(14), F.S.

SALES AND USE TAX EXEMPTION FOR RENEWABLE ENERGY TECHNOLOGIES (s. 212.08(7)(ccc), F.S.)

Present Situation

Section 212.08, F.S., provides a state sales tax exemption for equipment, machinery, and other materials used for renewable energy technologies, such as biodiesel, ethanol, and hydrogen fuel cells. The law provides that within 30 days after receipt of an application, the Department of Environmental Protection (DEP) is to review and evaluate the application for exemption and issue a written certification of whether or not the applicant is eligible for a refund of the taxes paid for that item. The exemption is authorized from July 1, 2006, through June 30, 2010.

Effect of Proposed Changes

The bill revises the definition of "ethanol" by specifying that it means anhydrous denatured alcohol produced by the *conversion of carbohydrates* rather than by the *fermentation of plant sugars*. It specifies that eligible items for the sales tax exemption are limited to one refund and requires a purchaser who receives a refund to notify a subsequent purchaser that the item is no longer eligible for

[4] Section 196.012(14), F.S., specifies equipment which, when installed in connection with a dwelling unit or other structure, collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits.

a tax refund. The bill also gives rule-making authority to the DEP to adopt the form for the application for a certificate and to determine the criteria for content and format and other procedural requirements regarding the certificate.

RENEWABLE ENERGY TECHNOLOGIES INVESTMENT TAX CREDIT (s. 220.192, F.S.)

Present Situation

Section 220.192, F.S., provides for a corporate income tax credit for investment costs associated with hydrogen vehicles and hydrogen vehicle fueling stations; commercial stationary fuel cells; and biofuels, including biodiesel and ethanol. Costs include all capital costs, operation and maintenance, and research and development costs. The exemption is authorized from July 1, 2006, through June 30, 2010.

The DEP and the Department of Revenue (DOR) administer the program jointly. The DEP approves the credit upon application, and tax returns are filed with the DOR with the credit attached.

Effect of Proposed Changes

The bill provides a definition of "corporation" which expands the types of business entities that may apply for and receive an allocation of the renewable energy technologies investment tax credit. The bill authorizes the tax credits to be transferred or passed through to underlying partners, members, and owners, or to any taxpayer (which includes corporations) by written agreement. In order to affect the transfer, the transferor is to provide a statement to the DOR supplying specified information, at which point, the department will issue a certificate reflecting the tax credits transferred, which the transferee attaches to its Florida corporate income tax return. The bill authorizes the DOR to adopt rules regarding the transfer and reporting of a tax credit to the partner, member, or owner of a corporation.

RENEWABLE ENERGY TECHNOLOGIES PRODUCTION TAX CREDIT (s. 220.193, F.S.)

Present Situation

The Florida Renewable Energy Production Credit program was established to encourage the development and expansion of facilities that produce renewable energy in Florida. The credit is available to new or expanded (increases its electrical production by more than 5 percent) facilities placed in service after May 1, 2006. A credit against the tax imposed by this chapter is available to a taxpayer, based on the taxpayer's production and sale of electricity production. For a new facility, the credit is based on the taxpayer's sale of the facility's entire electrical production and for an expanded facility, the credit is based on the increases in the facility's electrical production that are achieved after May 1, 2006.

The credit is $0.01 for each kilowatt-hour of electricity produced and sold by the taxpayer to an unrelated party during a given tax year, and the credit may be claimed for electricity produced and sold on or after January 1, 2007. Ten years is the maximum period for which this credit may be claimed beginning the first tax year the credit is earned. The program is capped at $5 million per fiscal year, between January 1, 2007, and June 30, 2010.

Effect of Proposed Changes

The bill expands the corporate renewable energy technologies production tax credit so that it may be earned both for electricity *sold* and electricity *used* by the producer when the producer would have otherwise been required to purchase the electricity, and also allows taxpayers using the alternative minimum tax process to be able to utilize the credit. The bill clarifies that corporations that own an interest in a partnership can claim the tax credits earned by those partnerships for generating renewable energy. The bill provides rule-making authority to the DOR regarding notification that a credit is attributed to a corporation and for a corporation to claim the credit.

The bill provides for retroactivity of the amended paragraphs, so that entities that have been prohibited from taking advantage of the production tax credits, due to a lack of clarification, may now claim them.

SALE AND TRANSFER OF STATE LANDS BY THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND (s. 253.02, F.S.)

Present Situation

The Board of Trustees of the Internal Improvement Trust Fund is composed of four trustees, specifically the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture and their successors in office.[5] The trustees are merely agents of the state, which remains the beneficial proprietor of the fund and of any property that comes into their possession in the course of the management of the fund.[6] All lands held in the name of the Board of Trustees must continue to be held in trust for the use and benefit of the people of Florida pursuant to the state constitution.[7]

The Board of Trustees of the Internal Improvement Trust fund is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards, or commissions, with certain exceptions.[8]

Section 253.02, F.S., provides that the board of trustees of the internal improvements trust fund cannot sell, transfer, or otherwise dispose of any lands the title to which is vested in the board of trustees except by vote of at least three of the four trustees.

Effect of Proposed Changes

The bill amends s. 253.02(2), F.S., to provide that if the Public Service Commission has determined a need exists or the Federal Energy Regulatory Commission has granted a Certificate of Public Convenience and Necessity, the authority to grant easements for rights-of-way over, across, and upon lands the title to which is vested in the board of trustees for the construction and operation of natural gas pipeline transmission and linear facilities, including electric transmission and distribution facilities, may be delegated to the Secretary of the DEP for facilities subject the Power Plant Siting Act or facilities subject to part IV of chapter 373, F.S., relating to the management and storage of surface waters. The bill also provides that the board of trustees may review and approve such uses of state lands if delegation would be inappropriate in regard to the amount or location of state lands involved.

USE OF STATE LANDS BY ELECTRIC UTILITIES (s. 253.034, F.S.)

Present Situation

Section 253.034, F.S., provides that all state lands must be managed to serve the public interest by protecting and conserving land, air, water, and the state's natural resources, which contribute to the public health, welfare, and economy of the state. These lands shall be managed to provide for areas of natural resource based recreation, and to ensure the survival of plant and animal species and the conservation of finite and renewable natural resources.

Effect of Proposed Changes

The bill creates subsection (14) in s. 253.034, F.S., to provide that if a public utility, regional transmission organization, or natural gas company shows competent and substantial evidence that the utility's use of non-sovereignty state-owned lands is reasonably based on multiple economic and environmental factors, then the utility, regional transmission organization, or natural gas company may be granted fee simple title, easements, or other interests in such lands (of which title is vested in the board of trustees, a Water Management District, or state agency) for:

- Electric transmission and distribution lines;
- Natural gas pipelines; or

[5] Section 253.02(1), F.S.
[6] *Littlefield v. Bloxham*, 117 U.S. 419, 6 S. Ct. 793, 29 L. Ed. 930 (1886).
[7] Section 253.001, F.S.
[8] Section 253.03(1), F.S.

- Other public utility infrastructure linear facilities for which the Public Service Commission has determined that a need exists, or for which the Federal Energy Regulatory Commission has issued a Certificate of Public Convenience and Necessity.

The bill also provides that in exchange for a less than fee simple interest acquired, the public utility must pay an amount equal to the fair market value of the interest acquired. In addition, for the initial grant of such interests only, the public utility must also vest in the grantor fee simple interest to other available land that is 1.5 times the size of the land acquired by the utility. The grantor agency must approve the property, and the determination is based on the economic and ecological or recreational value and whether it is at least equivalent to the property transferred. In exchange for fee simple interests, the public utility must pay an amount equal to the fair market values of the interest acquired. In addition, for the initial grant of such interests only, the public utility must also vest in the grantor a fee simple title to other available land that is 2 times the size of the land acquired from the agency grantor. The grantor agency must approve the land to be acquired on its behalf based on a determination that the economic and ecological or recreational value is at least equivalent to the property transferred. As an alternative the grantee may, subject to the grantor's approval, pay the fair market value of the state-owned land plus one-half of the cost differential between the cost of constructing on state lands and the cost of avoiding state-owned lands, up to a maximum of twice the fair market value of the land acquired by the public utility. The grantor may use the money to acquire fee simple or less than fee simple interest in other available land.

ENERGY CONSERVATION AND SUSTAINABLE BUILDINGS (ss. 255.251- 255.257, F.S.)

Present Situation

The Leadership in Energy and Environmental Design (LEED) program was developed by the United States Green Building Council (USGBC).[9] The LEED program is intended to reduce energy consumption, reduce energy costs, provide for sustainable development, create water savings, and improve indoor environment quality. The LEED program uses a green building rating system to evaluate buildings for their consideration of these factors, and then scores them to determine if they meet or exceed LEED conservation goals. Buildings that meet the minimum LEED standards are placed in one of four categories: "certified," "silver," "gold," and "platinum," with platinum being the highest building standard and "certified" being the lowest.[10]

A number of other programs to promote the creation of green buildings also have been developed. These programs include the Florida Green Building Coalition and the Green Building Initiative's Green Globes program.[11] Similar to the USGBC LEEDs program, the Florida Green Building Coalition standards, and the Green Globes programs use a checklist to rate buildings on their efficiency levels.[12] Also, much like the USGBC LEEDs program, Florida Green Building Coalition evaluates buildings in a variety of categories.[13] These categories include energy, water, lot choice/site, health, materials, disaster mitigation, and other general measures.[14] The Green Globes rating system focuses more on the energy use of the buildings that it evaluates.[15]

There are currently 26 certified LEED buildings in the state, 19 of which are government buildings.[16]

[9] United States Green Building Council, http://www.usgbc.org/
[10] Id.
[11] The Green Building Initiative, www.thegbi.com, and The Florida Green Building Coalition, www.floridagreenbuilding.org.
[12] Id.
[13] The Florida Green Building Coalition, www.floridagreenbuilding.org.
[14] The Florida Green Building Coalition, www.floridagreenbuilding.org. Also see "Sarasota County, Planning & Development Services: Florida Green Home Standard Checklist."
[15] The Green Building Initiative, www.thegbi.com.
[16] LEED Certified Project website: http://www.usgbc.org/LEED/Project/CertifiedProjectList.aspx.

Effect of Proposed Changes

The bill amends ss. 255.251-255.252, F.S., relating to energy conservation and sustainable buildings to:

- Rename the short title so that those statutes focus on both energy conservation and sustainable buildings.
- Provide intent language relating to the need to build energy-efficient, state-owned buildings that meet environmental standards using sustainable materials.
- Provide that facilities constructed and financed by the state attain Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services (DMS) for all buildings currently owned and operated by the department.
- Provide that the renovation of existing state buildings meet Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the DMS for all buildings currently owned and operated by the department.
- Require each state agency occupying space within buildings owned or managed by the DMS to compile a list of state-owned buildings (that are over 5,000 square feet in area and for which the agency is responsible for paying utility and operating expenses as they relate to energy use) suitable for a guaranteed energy performance saving contracts. Further, the bill requires the list to be submitted to the DMS by December 31, 2008, and to include all criteria used to determine suitability.
- Require the DMS to consult with state agencies and create a schedule to prioritize state-owned buildings suitable for energy conservation projects by July 1, 2009. The schedule is to provide a deadline for guaranteed energy performance savings contract improvements to be made.

The bill amends s. 255.253, F.S., relating to sustainable buildings, to provide the following definitions:

- "Sustainable building" means a building that is healthy and comfortable for its occupants and is economical to operate while conserving resources, including energy, water, raw materials and land, and minimizing the generation and use of toxic materials and waste in its design, construction, landscaping, and operation.
- "Sustainable building rating" means a rating established by the United States Green Building Council's LEED rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the DMS.

The bill amends ss. 255.254 and 255.255, F.S., relating to public facilities and life-cycle cost, to provide that:

- The evaluation of life-cycle costs be based on sustainable building ratings.
- Each energy performance analysis (projection of annual energy consumption in dollars per square foot of major energy consuming equipment and systems) be provided for leased buildings of 5,000 square feet or greater.
- Any building leased by the state from the private sector include monthly energy use data and that the owner of the building provide that data to the DMS on a monthly basis.
- The DMS promulgate rules and procedures, including energy conservation performance guidelines, based on sustainable building ratings.

The bill amends s. 255.257, F.S., relating to energy management in state buildings to require:

- Data be gathered on energy consumption and cost for each state-owned facility over 5,000 net square feet and that the data be reported annually to the DMS.

- Each energy management coordinator appointed to advise the heads of state agencies, to assist the DMS in the development of the State Energy Management Plan.
- All state agencies to adopt the United States Green Building Council's LEED rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the DMS for all new buildings and renovations to existing buildings.
- Leasing agreements entered into by state agencies meet Energy Star building standards if no other cost-effective alternative exists.
- State agencies develop energy conservation measures for new and existing office space where the state agency occupies more 5,000 square feet.

COMPLIANCE FOR NEW CONSTRUCTION (Undesignated Statutory citation)

Current Situation

Current law does not mandate green building standards for county, municipal, school districts, community colleges, the State University System, the State Court System, or water management districts. However, several local communities in Florida are showing interest in creating a higher standard of conservation for new buildings. Particularly, Sarasota County has enacted ordinances encouraging builders to achieve a higher standard of conservation and efficiency in building design than is currently required under the Florida Building Code.[17]

Effect of Proposed Changes

The bill declares that the construction of energy efficient and sustainable buildings is an important state interest. The bill mandates that all county, municipal, school districts, community colleges, the State University System, the State Court System, and water management district buildings be constructed to meet the LEED rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services. This section applies to those buildings whose architectural plans are started after July 1, 2008.

CLIMATE FRIENDLY PUBLIC BUSINESS (s. 286.28, F.S.)

Present Situation

In Executive Order 07-126, the Governor directed the Department of Management Services (DMS), in an effort to reduce carbon emissions associated with state government operations, to:

- Develop a "Climate Friendly Preferred Products List;"
- Measure and report agency compliance with vehicle maintenance schedules shown to reduce fuel consumption;
- Approve procurement of new vehicles shown to have the greatest fuel efficiency in a given class; and
- Assess biofuel fueling potential by state government vehicles within each metropolitan statistical area to demonstrate demand for biofuels to industry.

The Executive Order further directed the DEP to develop a "green lodging" program.

Currently, in state law there are no provisions for recognizing or rewarding climate friendly preferred products and businesses. However, as the public becomes more conscious of "going green," the issue has come to the forefront for many consumers looking to purchase climate friendly products.

The DMS has an internal policy of ensuring the state purchase quality and energy efficient vehicles, equipment, and watercraft as economically as possible. However, transportation-related energy use is

[17] Resolutions No. 2005-648 and 2006-174 of the Board of County Commissioners of Sarasota County, Florida.

not currently addressed in statute. Currently, in statute, the DMS has the duty to obtain "the most effective and efficient use of motor vehicles, watercraft, and aircraft."[18]

The DEP has recognized environmentally conscious lodging facilities with a voluntary "green lodging designation." The program recognizes lodging facilities that demonstrate water and energy conservation, waste minimization, recycling, indoor air quality, environmentally friendly purchasing, program sustainability, and pollution prevention.[19]

According to the U.S. Department of Energy, biofuels are liquid, solid, or gaseous fuels derived from renewable biological sources. Biodiesel is a biologically derived diesel fuel substitute created by chemically reacting vegetable oils or animal fats with alcohol.[20] In the U.S., ethanol is currently made primarily from the starch in corn grain; it is most commonly used as an additive for petroleum-based fuels to reduce toxic air emissions and increase octane.[21] The most common form of ethanol blended fuel in the U.S. is E10, which is 10 percent ethanol. E85, which may not be used in standard vehicles, has an energy content that is 70 percent that of gasoline, so about 1.4 gallons of E85 are needed to displace one gallon of gasoline.[22] Biofuel and ethanol blended fuels may currently be sold in the state.[23] As part of the Governor's Lead by Example Initiative, Executive Order 07-126 provides that all state agencies and departments under the direction of the Governor use ethanol and biodiesel fuels when locally available. The Governor's Action Team on Energy and Climate Change also recommended "continued support for existing tax incentives in Florida Statute for alternative transportation fueling infrastructure development in Florida."[24]

Effect of Proposed Changes

The bill provides the following changes:

- Requires the DMS to develop a "Florida Climate Friendly Preferred Products List." Requires products of comparable cost that have clear energy efficiency or other environmental benefits over competing products to be purchased under State Term Contracts.
- Provides that effective July 1, 2008, state agencies shall only contract for meeting and conference space with hotels or conference facilities that have received the "Green Lodging" designation from the DEP, and authorizes the DEP to adopt rules to implement the "Green Lodging" program.
- Specifies that each state agency shall meet vehicle maintenance schedules shown to reduce fuel consumption and shall measure and report compliance to the DMS through the Equipment Management Information System.
- Provides that when procuring new vehicles, state agencies, state universities, community colleges, and local governments, that purchase vehicles under a state purchasing plan are required to define the intended purpose for a vehicle and determine for which "use classes" the vehicle is being procured. The bill further requires that the vehicle with the highest fuel efficiency available be selected. The bill provides for exceptions for emergency response vehicles and approval of exception requests by the entity's chief executive officer.
- Requires state agencies to use ethanol and biodiesel blended fuels, when available, and requires entities administering central fueling operations for state-owned vehicles to procure biofuels for fleet needs to the greatest extent practicable.

DEFERRED-PAYMENT COMMODITY CONTRACTS (s. 287.063, F.S.)

Present Situation

Section 287.063, F.S., provides that when any commodity contract requires deferred-payments and the payment of interest, such contract is to be submitted to the Chief Financial Officer (CFO) for the

[18] Section 287.16, F.S.
[19] Florida Energy Commission, "Recommendations to the Florida Legislature." 2007
[20] http://genomicsgtl.energy.gov/biofuels/transportation.shtml, last referenced on February 28, 2008.
[21] http://www.eere.energy.gov/consumer/renewable_energy/biomass/index.cfm/mytopic=50002, last referenced on February 28, 2008.
[22] http://genomicsgtl.energy.gov/biofuels/ethanol_quick_facts.shtml, last referenced on February 28, 2008.
[23] Section 526.06, F.S.
[24] Phase 1 Report by the Energy and Climate Change Action Plan.

purpose of preaudit review and approval prior to acceptance by the state. No funds appropriated may be used to acquire equipment through a lease or deferred-payment purchase arrangement unless approved by the CFO as economically prudent and cost-effective. The CFO is required by statute to establish, by rule, criteria for approving purchases made under deferred-payment contracts which require the payment of interest, which criteria must include statutorily specified provisions. The CFO must require written justification based on need, usage, size of the purchase, and financial benefit to the state for deferred-payment purchases made pursuant to the applicable provision.

Deferred-payment commodity contracts for replacing state accounting and cash management systems may include equipment, accounting software, and implementation and project management services. In addition, for purposes of these provisions, any such deferred-payment commodity contract must be supported from available recurring funds appropriated to the agency in an appropriation category, other than the expense appropriation category, that the CFO has determined is appropriate or that the Legislature has designated for payment of the obligation incurred.

Effect of Proposed Changes

The bill deletes a subparagraph limiting agencies' authority to obligate an annualized amount of payments in excess of current operating capital outlay appropriations. The bill adds a provision that the payment term may not exceed the useful life of the equipment unless the contract provides for the replacement or extension of the useful life of the equipment during the term of the loan. The bill further provides that the annualized amount of a deferred-payment contract must be supported from available recurring funds.

CONSOLIDATED FINANCING OF DEFERRED-PAYMENT PURCHASES (s. 287.064, F.S.)

Present Situation

Currently, state agencies rarely use the state's line of credit under the state's Deferred-Payment Commodity Contracts and Consolidated Financing of Deferred-Payment Purchases[25] programs to fund energy performance contract payments because these programs only allow for 10 years of project financing instead of the 20 years authorized for guaranteed energy performance savings contracts. The "useful life" of the equipment is not currently considered in the contract.

Effect or Proposed Changes

The bill adds a provision that repayment terms may not exceed 20 years for energy conservation measures defined in s. 489.145, F.S., excluding costs for training, operation, and maintenance. The contractor must provide for the replacement or extension of the useful life of the equipment during the term of the contract.

HIGH OCCUPANCY VEHICLE LANES (s. 316.074, F.S.)

Present Situation

Current federal law (23 U.S.C. sec. 166) provides that a state agency with jurisdiction over the operation of a High Occupancy Vehicle (HOV) facility shall establish occupancy requirements for HOV lanes, allowing no fewer than two vehicle occupants with the following exceptions:

- Motorcycles and bicycles are allowed to use the HOV facility, unless either or both create a safety hazard. If so, the state must certify, the Department of Transportation (DOT) Secretary must accept certification, and it must be published in the Federal Register with opportunity for public comment.
- Public transportation vehicles are allowed if vehicle identification requirements are established and enforced.
- High occupancy toll (HOT) vehicles are allowed to use the facility if the vehicles pay a toll; if a program is established to address enrollment and participation; if the vehicles are prepared to accommodate automatic toll collections; and if variable pricing and enforcement procedures have been established.

[25] Sections 287.063 and 287.064, F.S.

- Inherently low-emission and energy-efficient vehicles (as established by the U.S. Environmental Protection Agency (EPA) prior to September 30, 2009), may be allowed to use HOV facilities if procedures for enforcing restrictions on use are established; and if vehicles are certified and labeled under federal regulations.
- Other low emission and energy-efficient vehicles (as established by EPA prior to September 30, 2009) may be allowed to use the facilities if they pay a toll; if the vehicles are certified and labeled by the EPA; and if a program is established for vehicle selection and enforcement of restrictions on use of facility. A state agency may charge "no toll," or a toll that is less than tolls charged for public transportation vehicles.

A state agency that chooses to allow exceptions to HOV requirements for vehicles in the latter two exception categories must certify to the United States Department of Transportation (USDOT) Secretary that it has established a program to monitor, assess, and report on the impacts that the vehicles may have on the operation of the facility and adjacent highways. An adequate enforcement program is also required, as well as provision for limiting or discontinuing exemptions if the facility becomes seriously degraded.

Pursuant to the provisions of the Federal Transportation Reauthorization Act, (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users SAFETEA-LU), the EPA was to promulgate a rule by February 6, 2006, to establish requirements for certification of vehicles as low-emission and energy-efficient vehicles and requirements for their labeling, as well as to establish guidelines and procedures for making vehicle comparisons and performance calculations necessary to determine which vehicles qualify as low emission and energy-efficient vehicles. To date, that final rule has not been promulgated.

Section 316.0741, F.S., authorizes the following vehicles to use an HOV lane without regard to occupancy:

- Inherently low-emission vehicles that are certified and labeled in accordance with federal regulations; and
- Hybrid vehicles upon the state's receipt of written notice authorizing such use.

No provision of current state law requires such vehicles to comply with the specified minimum fuel economy standards and no provision addresses compliance with the anticipated EPA final rule. The Department of Highway Safety and Motor Vehicles (DHSMV) is required by statute to issue decals for the use of HOV lanes by such vehicles, but DHSMV has no authority to limit or discontinue decal issuance to drivers of these vehicles for reasons of operation and management of HOV lanes.

Rulemaking authority with regard to s. 316.0741, F.S., relating to HOV lanes, currently rests with DHSMV, but DHSMV has promulgated no applicable rule.

Current law does not address toll payment for use of HOV lanes redesignated as open tolling lanes.

Effect of Proposed Changes

The bill makes the following changes:

- Requires all hybrid and other low-emission and energy-efficient vehicles that do not meet the minimum occupancy requirement and are driven in an HOV lane to comply with federally-mandated minimum fuel economy standards;
- Provides for determination of continued eligibility of hybrid and other low-emission and energy-efficient vehicles for operation in an HOV lane;
- Authorizes limitation or discontinuance of vehicle decals for use of an HOV lane if the facilities are degraded by DOT due to congestion (a lowering of minimum average operating speed); and
- Provides that vehicles eligible to be driven in an HOV lane that is redesignated as an open tolling lane may continue to be driven in the lane without payment of a toll.

PLACEMENT OF ELECTRIC TRANSMISSION LINES ALONG THE RIGHT-OF-WAY OF DEPARTMENT OF TRANSPORTATION CONTROLLED PUBLIC ROADS (s. 337.401, F.S.)

Present Situation

Section 337.401(1), F.S., provides that the Department of Transportation (DOT) and local governmental entities which have jurisdiction and control of public roads or publicly-owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions any electric transmission lines.[26]

Effect of Proposed Changes

The bill amends s. 337.401(1), F.S., to provide that for transmission lines that operate more than 69 kilovolts, and where there is no practical alternative available, DOT rules must provide for placement of, and access to, transmission lines adjacent to and within the right-of-way of any department-controlled public roads, including longitudinally within limited access facilities to the greatest extent allowed by federal law, provided that compliance with minimum clear zone and other safety standards established by rules or regulations is achieved.

The bill also provides that when the DOT notifies an electric utility that the property where the transmission lines have been co-located is to be expanded, the electric utility will relocate their transmission lines at the utility's expense. Such relocation must occur under a schedule mutually agreed upon by the department and the electric utility, taking into consideration the maintenance of overall grid reliability and minimizing the relocation costs to the electric utility's customers. If the utility fails to meet the agreed upon schedule for relocation, the utility is responsible for damages due to the sole negligence of the electric utility as determined by a court. For purposes of this section, "base load generating facilities" are those electrical power plants certified pursuant to the Power Plant Siting Act.

METROPOLITAN PLANNING ORGANIZATIONS (s. 339.175, F.S.)

Present Situation

Metropolitan planning organizations are required by statute to develop, in cooperation with the state and public transit operators, transportation plans and programs for metropolitan areas,[27] in order to effectuate the intent of the legislature to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight within and through urbanized areas of this state, while minimizing transportation-related fuel consumption and air pollution.[28]

The plans and programs for each metropolitan area must provide for the development and integrated management and operation of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities that will function as an intermodal transportation system for the metropolitan area based upon the prevailing principles of preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility.[29] The process for developing such plans and programs will provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive, to the degree appropriate, based on the complexity of the transportation problems to be addressed.[30] To ensure that the process is integrated with the statewide planning process, metropolitan planning organizations must develop plans and programs that identify transportation facilities that should function as an integrated metropolitan transportation system, giving emphasis to facilities that serve important national, state, and regional transportation functions. Those facilities include the facilities on the Strategic Intermodal

[26] Section 337.401(1), F.S.
[27] Section 339.175, F.S.
[28] Section 339.175, F.S.
[29] Section 339.175, F.S.
[30] Section 339.175, F.S.

System and facilities for which projects have been identified pursuant to the Transportation Regional Incentive Program.[31]

Effect of Proposed Changes

The bill amends the intent language in s. 339.175(1), F.S., to add "greenhouse gas emissions" to the list of the negative impacts of transportation systems that the Legislature wishes to minimize while promoting the management, operation, and development of these transportation systems.

The bill also amends s. 339.175(7), F.S., to provide that each Metropolitan Planning Organization is encouraged to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions.

JURISDICTION OF THE PUBLIC SERVICE COMMISSION (s. 366.04, F.S.)

Present Situation

Section 366.04, F.S., provides for the jurisdiction of the Public Service Commission (PSC) as it pertains to "public utilities." The jurisdiction of the PSC extends to public utilities.[32] The term "public utility" does not include a municipality or any agency thereof, nor does it include cooperatives now or hereafter organized and existing under the rural electrification law of the state.[33] The PSC has power over electric utilities, which includes municipal electric utilities[34] for certain purposes, including the prescription of a rate structure and requiring electric power conservation and reliability within a coordinated grid.[35]

While the PSC has no jurisdiction to set rates for a municipal utility, it has authority over the "rate structure" of all electric utilities in the state.[36] Moreover, the sale of electricity to even a single customer makes the provider a "public utility" subject to the PSC's jurisdiction, and thus a property management company is a "utility" within the PSC's regulatory jurisdiction.[37] The jurisdiction conferred on the PSC over such public utilities is exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in case of conflict therewith all lawful acts, orders, rules, and regulations of the PSC is to prevail.[38] In consequence, the PSC's jurisdiction over a public utility excludes concurrent supervision of it by a municipality on a matter subsidiary to one within the province of the PSC,[39] or by the circuit court on the matter of the reasonableness of a utility's electricity surcharge and whether it is discriminatory.[40]

Effect of Proposed Changes

The bill creates 366.04(7), F.S., to require each municipality that operates an electric utility that serves two cities in the same county, is located in a non-charter county, has between 30,000 and 35,000 retail electric customers as of September 30, 2007, and does not have a service territory that extends beyond its home county as of September 30, 2007, to conduct a referendum election of all its retail electric customers concurrent with the next regularly scheduled general election to vote "yes" or "no" on the following question:

"Should a separate electric utility authority be created to operate the business of the electric utility in the affected municipal electric utility?"

The bill also provides that the notice provisions in the Election Code must be followed, and cost of the referendum election must be paid by the affected municipal electric utility. If a majority of the retail

[31] Section 339.175, F.S.
[32] Section 366.04(1), F.S.
[33] Section 366.02(1), F.S.
[34] Section 366.02(2), F.S.
[35] Section 366.04(2), F.S.
[36] *City of Tallahassee v. Mann*, 411 So. 2d 162 (Fla. 1981).
[37] *Florida Public Service Com'n v. Bryson*, 569 So. 2d 1253 (Fla. 1990); *Fletcher Properties, Inc. v. Florida Public Service Commission*, 356 So. 2d 289 (Fla. 1978).
[38] Section 366.04(1), F.S.
[39] *Florida Power & Light Co. v. City of Miami*, 72 So. 2d 270, 5 Pub. Util. Rep. 3d (PUR) 281 (Fla. 1954).
[40] *Lake Worth Utilities Authority v. Barkett*, 433 So. 2d 1278 (Fla. Dist. Ct. App. 4th Dist. 1983).

electric customers vote “yes” on the question posed in the referendum, then the municipal electric utility must transfer operations of its electric utility business to a duly-created authority on or before July 1, 2009.

ENVIRONMENTAL COST RECOVERY (s. 366.8255, F.S.)

Present Situation

Section 366.8255(1)(d), F.S., provides that "environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including:

- In-service capital investments, including the electric utility's last authorized rate of return on equity thereon;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs;
- Direct taxes on environmental equipment; and
- Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into, on, or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

Effect of Proposed Changes

The bill amends s. 366.8255(1)(d), F.S., to revise the definition of “environmental compliance costs” to include:

- Costs or expenses prudently incurred for the quantification, reporting, and third party verification as required for participation in greenhouse gas emission registries for greenhouse gases as defined in s. 403.44, F.S.; and
- Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in Florida for the purpose of reducing an electric utility’s greenhouse gas emissions when such costs or expenses are incurred in joint research projects with the State of Florida government agencies and State of Florida universities.

NET METERING (s. 366.91, F.S.)

Present Situation

Currently, in s. 366.91, F.S., which deals with renewable energy, “biomass” is defined as a power source that is comprised of, but not limited to, combustible residues or gases from the following:

- Forest products;
- Agricultural and orchard crops;
- Waste from livestock and poultry operations and food processing;
- Urban wood waste;
- Municipal solid waste;
- Municipal liquid waste treatment operations; and
- Landfill gas.

The definition does not directly address byproducts or co-products from any of those products.

In this section, “renewable energy” is defined as electrical energy produced from a method that uses one or more of the following fuels or energy sources:

- Hydrogen produced from sources other than fossil fuels;

- Biomass;
- Solar energy;
- Geothermal energy;
- Wind energy;
- Ocean energy; and
- Hydroelectric power.[41]

On July 13, 2007, Governor Crist issued Executive Order 07-127, which directed the Public Service Commission (commission) to initiate rulemaking to authorize a uniform, statewide method to enable residential and commercial customers who generate electricity from on-site renewable technologies of up to 1 megawatt in capacity to offset their consumption over a billing period when they generate electricity. In addition, CS/HB 7123, which was vetoed by the Governor, required the Florida Energy Commission to study and recommend incentives for investment in energy efficiency and customer-sited solar energy systems, including standards for net metering and interconnection.

Beginning in the Fall of 2007, the commission held workshops to study interconnection and net metering of customer-owned renewable generation. Stakeholders were encouraged to testify and assist the commission in crafting the rule. On March 4, 2008, the commission adopted a rule that requires investor-owned utilities to enable net metering for each customer-owned renewable generation facility that is interconnected to the grid. The rule does not apply to municipal electric utilities or rural electric cooperatives. It also does not provide for conjunctive billing.

Effect of Proposed Changes

The bill expands the term "biomass" to include waste, byproducts or products from agricultural and orchard crops, waste and co-products from livestock and poultry operations, and waste and byproducts from food processing.

The bill defines "customer-owned renewable generation" as an "electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy." The bill defines "net metering" as a "metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on-site."

The bill requires that if a utility is purchasing power generated from biogas produced by the anaerobic digestion[42] of agricultural waste, including food waste and other agricultural byproducts, that net metering be available at a single metering point or be available as a part of conjunctive billing of multiple points for a customer at a single location.

The bill requires investor-owned utilities to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation on or before January 1, 2009. It also authorizes the Public Service Commission to establish requirements and adopt rules to administer the provision.

Further, the bill directs municipal electric utilities and rural electric cooperatives to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation. The bill provides for the following for municipal electric utilities and rural electric cooperatives:

- Requires the standardized interconnection agreement to provide explicit directions for the application and interconnection process, including due dates for action by the utility and the customer, and incorporate nationally recognized standards for interconnection and safety;

[41] The term also includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations.

[42] Anaerobic digestion is a process which, with the absence of oxygen, produces a biogas that can be used to generate electricity.

- Requires the net metering program to provide for any excess energy delivered to the grid in one billing period to be carried over to the next billing period for up to 12 months;
- Provides that any excess energy credits remaining at the end of the calendar year be purchased from the utility at a rate to be determined by the governing body of the municipal utility or cooperative;
- Requires requirements to be consistent with the rules adopted by the Public Service Commission for investor-owned utilities; and
- Requires the utilities to file a report, by April 1 of each year, detailing customer participation in the program, including the number and total capacity of interconnected generating systems and the total energy net metered in the previous year.

RENEWABLE PORTFOLIO STANDARD (s. 366.92, F.S.)

Present Situation

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA), which required promotion of energy efficiency, cogeneration, and the use of renewables. The act required utilities to purchase power from Qualifying Facilities and small power producers, and to interconnect them to the grid. Qualifying Facilities are cogenerators that meet specified qualifications and have a level of efficiency in their operations whereby they produce enough excess steam to drive turbines and provide energy to the grid. The PURPA directed the Federal Energy Regulatory Commission to implement the provisions, which in turn, directed the states to implement the provisions. In response, the Florida Legislature created s. 366.051, F.S., directing the utilities to purchase power from the cogenerators or small power producers and defining "full avoided costs." The Public Service Commission (PSC or commission) held workshops and promulgated rules. The law and subsequent rules only applied to investor-owned utilities.

In 2005, the Legislature created s. 366.91, F.S., to address renewable energy. The section requires the utilities to *continuously* offer a purchase contract to renewable energy producers. It also includes municipal electric utilities and rural electric cooperatives whose annual sales are greater than 2,000 gigawatt hours. "Continuously" means that a contract can be signed or must be available at any time. Prior to this, the utilities would put out enough contracts to avoid building the next unit and then the window of opportunity was closed until the need arose again. The minimum term for contracts is for a 10-year-term. The PSC promulgated rules, as directed by the statute, to address purchasing power from renewable energy generators.

The power purchases are based on the utility's avoided cost and cannot exceed the avoided costs of building a new unit (although they can be less than the avoided costs). The payments are divided into two categories:

- Capacity – The size of the customer base that has been calculated, as well as how much money it would cost to build a power plant to meet that demand. Once this is determined, the payment is fixed. In order to get the full payment, however, the generator must be operating when needed, especially during peak times. If not, penalties are enforced.
- Energy – The amount of fuel and maintenance that would be required to operate that plant. Based on kilowatt hours produced by the renewable energy generator and sold to the utility, this payment fluctuates because of changes in fuel prices.

In 2006, the Legislature created s. 366.92, F.S., which currently authorizes the PSC to adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable resources.

The Governor, in Executive Order 07-127, directed the PSC to initiate rulemaking to require that utilities produce at least 20 percent of their electricity from renewable sources with a strong focus on solar and wind energy. In September 2007, the PSC began holding workshops to study the issue of renewable portfolio standards.

Currently, there is not a renewable portfolio standard for the state.

Effect of Proposed Changes

The bill creates a renewable portfolio standard (RPS), which requires that, beginning in 2009, each provider (an electric utility)[43] must supply renewable energy to its customers, either directly or through Renewable Energy Credits (RECs),[44] in amounts that equal or exceed the applicable percentages for each of the following calendar years:

- 2009: 2.25 percent
- 2010: 2.50 percent
- 2011: 2.75 percent
- 2012: 2.75 percent
- 2013: 3.00 percent
- 2014: 3.25 percent
- 2015: 3.50 percent
- 2016: 3.75 percent
- 2017: 3.75 percent
- 2018: 4.00 percent
- 2019: 4.25 percent
- 2020: 4.50 percent
- 2021: 5.00 percent

For each year after 2021, the commission is to determine the appropriate RPS, which is not to be less than 5.0%.

If a provider finds that, in any given year, the cost of a particular source of renewable energy or REC that would need to be procured or generated for purposes of compliance with the RPS would be greater than 90% of the provider's current average residential retail price of electricity per kilowatt hour, the provider would not be required to procure or generate such source of renewable energy or REC. However, s. 366.91(3) and (4), F.S., require a utility to pay no more than full avoided costs, which are comprised of energy and capacity estimated costs, unless the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract time (in which case, capacity will not be included in the utility's full avoided cost estimate). The bill provides that if there is ever a conflict between these two provisions, the RPS section will supersede s. 366.91(3) and (4), F.S.

The bill requires each provider to submit a report to the commission describing the steps that have been taken in the previous year and the steps that will be taken in the future to add renewable energy to the provider's energy supply portfolio, whether the provider was in compliance with the RPS during the previous year, and how it will comply with the RPS in the upcoming year. The commission is to ensure that each provider complies with the RPS; however, the commission is to excuse full compliance with the RPS in any year in which the provider demonstrates that the cost of renewable energy was too high or the supply of renewable energy was not adequate.

The bill also provides for an economic and environmental assessment of energy sources and the development of a successor RPS. The bill requires the following:

- By January 1, 2009, the commission is to submit a report to the Florida Energy and Climate Commission evaluating each method used, or proposed to be used, to generate electricity in the state to "determine its efficacy in achieving the goals of reliability, affordability, efficiency, and diversity."
- By January 1, 2009, the DEP is to submit a report to the Florida Energy and Climate Commission measuring the environmental effects of each method used, or proposed to be

[43] As provided in s. 366.02(2), F.S., an "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."
[44] RECs may be used for two years after the date when they are created.

used, to generate electricity in the state in order to create an emission profile and determine a greenhouse coefficient for each generation method measured.

- By July 1, 2009, the Florida Energy and Climate Commission is to prepare and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the commission, providing a current and comprehensive assessment of renewable energy opportunities, and energy efficiency and demand-side management resources and technologies in the state. The report is also to address existing and potential renewable resources and technologies, economic considerations, and environmental issues, and is to:

    - Establish a ranking for all methods used, or proposed to be used, in the generation of electricity in the state based on the quantitative results determined by the commission; and

    - Determine how to mitigate state greenhouse gas emissions using the quantitative results determined by the department within the content of the ranking established above.

- By February 1, 2010, the commission is to use the rankings to develop and adopt, by rule, an RPS to replace the RPS that is established in this bill.

The RPS, however, may not take effect until ratified by the Legislature.

COST RECOVERY FOR THE SITING, DESIGN, LICENSING, AND CONSTRUCTION OF NUCLEAR POWER PLANTS (s. 366.93, F.S.)

Present situation

Section 366.93, F.S., provides that the Public Service Commission (PSC) is required to establish alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear or integrated gasification combined cycle power plant. The mechanisms must be designed to promote utility investment in nuclear or integrated gasification combined cycle power plants and allow for the recovery in rates of all prudently incurred costs and must include:

- Recovery of any preconstruction costs; and
- Recovery of the carrying costs on the utility's projected construction cost balance associated with the nuclear or integrated gasification combined cycle power plant.

Effect of Proposed Changes

The bill amends the definition of “cost” in s. 366.93, F.S., to include expenses relating to any new, enlarged, or relocated electrical transmission lines or facilities of any size that are necessary to serve nuclear or integrated gasification combined cycle power plants.

The bill also amends the definition of “preconstruction” to specify that it relates to the period of time after any related electrical transmission lines or facilities have been selected through and including the date the utility completes site-clearing work.

The bill requires the PSC to establish alternative cost recovery for new, expanded, or relocated electric transmission lines and facilities that are necessary to serve the nuclear or integrated gasification combined cycle power plant. Furthermore, the bill allows utilities to recover preconstruction and construction costs incurred after the issuance of a final order granting a determination of need for nuclear power plant and electrical transmission lines and facilities in the event that the utility elects not to complete or is precluded from completing construction of any new, expanded, or relocated electrical transmission lines or facilities of a nuclear power plant.

FLORIDA ENERGY AND CLIMATE COMMISSION (ss. 377.601 - 377.806 and 377.901, F.S)

Present Situation

During the 2007 Legislative Session, the issue of fragmentation was raised and some legislators noted that the state’s energy policies and programs were not aligned to accomplish core energy policy goals.

To directly address the issue, the Legislature passed CS/HB 7123, which included the creation of a 12-member Energy Policy Governance Task Force to study and recommend a unified approach to developing and implementing the state's energy policies. The bill, however, was vetoed on June 20, 2007, and the task force was not created.

Subsequent to the veto, both the Florida Energy Commission and the Governor's Action Team on Energy and Climate Change raised the question of whether there should be a single state governmental entity responsible for developing, implementing, and coordinating Florida's energy policy.

In the Fall of 2007, the Committee on Energy conducted an interim study to identify how Florida's energy policies are currently developed and implemented, and to compare and contrast how other states similar to Florida develop and implement their energy policies. The other states - California, New York, Ohio, and Texas - were selected because, along with Florida, they are some of the highest consumers of electric and transportation energy in the country and because they have similar populations to Florida.

Under existing law and executive orders, the following entities play a role in administering, coordinating, or developing some aspect of Florida's energy policies: the Florida Energy Office, the Department of Environmental Protection, the Department of Community Affairs, the Florida Building Commission, the Department of Agriculture and Consumer Services, the Public Service Commission, the Florida Energy Commission, the Governor's Action Team on Energy and Climate Change, and a host of colleges and universities.

Effect of Proposed Changes

The bill provides for a Type Two transfer of the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of the Florida Energy Commission to the Florida Energy and Climate Commission (commission), and places the commission within the Executive Office of the Governor. The bill provides for the following:

- The commission is to be comprised of 7 members appointed by the Governor for 3-year terms.
- The Governor is to select from three people nominated by the Florida Public Service Commission Nominating Council for each seat on the commission.
- The Governor is to select a chair from three people nominated for the chair position by the council.
- The Florida Department of Law Enforcement must conduct a background investigation of nominees being appointed to the commission.
- If the Governor does not make an appointment within 30 days of receiving the council's recommendations or if the Senate fails to confirm the Governor's appointment to the commission, the council is to initiate the nominating process within 30 days.
- The Governor or his or her successor can recall an appointee.
- A commission member must be an expert in one or more of the following fields:
    - Energy,
    - Natural resource conservation,
    - Economics,
    - Engineering,
    - Finance,
    - Law,
    - Transportation and land use,
    - Consumer protection,
    - State energy policy, or
    - Another field which is substantially related to the duties and functions of the commission.

- At the time of appointment and at each meeting, members must disclose any financial interest or employment or affiliation with any business entity that may be affected by the policy recommendations of the commission.
- The chair may designate ex-officio non-voting members to provide information and advice to the commission. The following are ex-officio non-voting members of the commission:

    - The chair of the Florida Public Service Commission, or designee;
    - The Public Counsel, or designee;
    - A representative of the Department of Agriculture and Consumer Services;
    - A representative of the Department of Financial Services;
    - A representative of the Department of Environmental Protection;
    - A representative of the Department of Community Affairs;
    - A representative of the Board of Governors of the State University System; and
    - A representative of the Department of Transportation.

- The commission must meet at least six times a year and may employ staff and counsel, as needed. The commission is directed to do the following:

    - Administer the Florida Renewable Energy and Energy Efficient Technologies Grant Program;
    - Develop policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant;
    - Administer the Florida Green Government Grants Act and set annual priorities for grants;
    - Administer information gathering and reporting functions;
    - Administer petroleum planning and emergency contingency planning;
    - Represent Florida in the Southern States Energy Compact;
    - Complete the annual assessment of the efficacy of Florida's Energy and Climate Change Action Plan, upon completion by the Governor's Action Team on Energy and Climate Change and provide specific recommendations to the Governor and the Legislature each year to improve results;
    - Administer the provisions of the Florida Energy and Climate Protection Act;
    - Advocate for energy and climate change issues and provide educational outreach and technical assistance in cooperation with Florida's academic institutions;
    - Be a party in the proceedings to adopt goals and submit comments to the Public Service Commission; and
    - Adopt rules to implement powers and duties delineated in the section.

The bill revises legislative intent language to emphasize the following:

- Florida's energy security can be increased by lessening dependence on foreign oil;
- The impacts of global climate change can be reduced through the reduction of greenhouse gas emissions; and
- The implementation of alternative energy technologies can be the source of new jobs and employment opportunities for many Floridians.

The bill clarifies that the definition of "energy resources" includes "energy converted from solar radiation, wind, hydraulic potential, tidal movements, geothermal sources, biomass, and other energy sources the commission determines to be important to the production or supply of energy."

It requires the commission to submit an annual report to the Governor and Legislature reflecting its activities and making recommendations of policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of citizens.

The bill expands the requirement of the Department of Management Services to furnish data on agencies' energy consumption to include their emissions of greenhouse gases.

The bill renames the "Florida Renewable Energy Technologies and Energy Efficiency Act," as the "Florida Energy and Climate Protection Act." The intent of the act is revised to provide incentives for citizens, businesses, school districts, and local governments to take action to diversify Florida's energy supplies, reduce dependence on foreign oil, and mitigate the effects of climate change by providing funding for activities that will achieve these goals. The grant programs are intended to stimulate capital investment and enhance the market for renewable energy. The act is also intended to provide incentives for the purchase of energy-efficient appliances and rebates for solar energy equipment.

The bill renames the "Renewable Energy Technologies Grants Program," as the "Renewable Energy and Energy Efficient Technologies Grants Program," and adds "innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings" to the list of projects for which the program will provide renewable energy matching grants. The bill also stipulates that each application for a grant be accompanied by an affidavit stating that the statements in it are true. The language directs the commission to solicit the expertise of other state agencies, Enterprise Florida, Inc., and state universities, and authorizes the commission to solicit the expertise of other public and private entities that it deems appropriate.

Many sections make conforming changes reflecting the transferring of responsibilities from the DEP to the commission, and delete outdated findings, intent language, and obsolete terms. The bill repeals the Florida Energy Commission. The provisions for the department's petroleum allocation duties are also repealed. According to the DEP, these duties are already encompassed within other duty descriptions.

FLORIDA GREEN GOVERNMENT GRANTS ACT (s. 377.808, F.S.)

Present Situation

Currently, the law does not provide for grants to local governments, municipalities, counties, and school districts to assist in achieving green standards.

Effect of Proposed Changes

The bill creates s. 377.808, F.S, the "Florida Green Government Grants Act," to provide that the newly-created Florida Energy and Climate Commission (commission) award grants to assist local governments, including municipalities, counties, and school districts, to develop programs that achieve green standards. The commission may provide necessary administrative expenses to local governments from the grants. The green standards, to be determined by the commission, are required to provide cost-efficient solutions that:

- Reduce greenhouse gas emissions;
- Improve the quality of life; and
- Strengthen Florida's economy.

The bill further provides that the commission adopt rules pursuant to Chapter 120, F.S., to administer the grants to:

- Designate one or more green government standards framework;
- Require that projects that plan, design, construct, upgrade, or replace facilities be cost-effective, environmentally sound, reduce greenhouse gas emissions, and be permittable and implementable.
- Require local governments to match state funds with direct project cost share or in-kind services;
- Provide for a scale of matching requirements on the basis of population in order to assist rural and undeveloped areas of the state with any climate change impacts that cause financial burden;
- Require that applications for grants be on commission forms, submitted with supporting documentation, and that records be maintained;
- Establish a system to determine the priority of grant applications, which must consider greenhouse gas reductions, energy savings and efficiencies, and proven technologies;

- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment;
- Provide for termination of grants when requirements are not met; and
- Require each local government to be limited to no more than two grant applications during each application period. A local government may not have more than three active projects that use grant funds during any state fiscal year.

The bill requires that the commission perform adequate overview of each grant, which may include technical review, site inspections, disbursement approvals, and auditing.

FLORIDA CLIMATE PROTECTION ACT (s. 403.44, F.S.)

Present Situation

Current law has established emissions standards for nitrous oxide and some other greenhouse gases (GHG), but current law does not regulate the amount of carbon dioxide emissions from electric utilities. Furthermore, current law does not provide for a state cap-and-trade program for electric utilities to achieve greenhouse gas emissions reductions.

On July 13, 2007, Governor Charlie Crist signed Executive Order 07-127, which directed the Secretary of the DEP to adopt rules establishing maximum allowable emissions of GHG for electric utilities. The Executive Order provided that the rule must require electric utilities to reduce GHG emissions to Year 2000 levels by 2017, Year 1990 levels by 2025, and emissions not greater than 20% of Year 1990 levels by 2050.

Several other states and regions of the country have or are considering implementing a cap-and-trade program for sectors of their economy, specifically electric utilities, to achieve GHG emissions reductions. Furthermore, there is growing support for establishing national GHG emissions standards for electric utilities as well as a comprehensive national cap-and-trade program to cover emissions from other sectors. There are several bills that have been filed in Congress that support setting a GHG emissions standard and implementing a national cap-and-trade program for achieving these emissions reductions.

Effect of Proposed Changes

The bill creates s. 403.44, F.S., to provide that:

- All “major emitters” (all electric utilities) must use The Climate Registry for registering and reporting their emissions;
- The DEP must establish methodologies, reporting periods, and reporting systems to be used by electric utilities for reporting to The Climate Registry;
- The DEP may adopt rules for a cap-and-trade regulatory program to reduce greenhouse gas emissions from electric utilities. In developing rules, the DEP must consult with the Florida Energy and Climate Commission (commission) and the Public Service Commission (PSC), and may consult with the Governor’s Action Team on Energy and Climate Change (Action Team). The DEP cannot adopt rules until after January 1, 2010. The rules cannot become effective until they are ratified by the Legislature.

The bill also provides that the rules of the cap-and-trade regulatory program must include:

- A statewide limit or cap on the amount of GHG emissions emitted by major emitters.
- Methods, requirements, and conditions for allocating the cap among major emitters.
- Methods, requirements, and conditions for emissions allowances and the process for issuing emissions allowances.
- The relationship between allowances and the specific amounts of GHGs they represent.
- The length of allowance periods and the time over which entities must account for emissions and surrender allowances equal to emissions.
- The time path of allowances from the initiation of the program through 2050.

- A process for trading allowances between major emitters.
- Cost containment mechanisms to reduce price and cost risks associated with the electric generation market in the state. Methods to be considered include:
    - Allowing major emitters to borrow allowances from future time periods to meet their emissions limit.
    - Allowing major emitters to bank emissions reductions in the current year to be used to meet future emissions limits.
    - Allowing major emitters to purchase emissions offsets from other entities who produce reductions in unregulated GHGs or who produce reductions in GHGs through capture and storage.
    - Providing a safety valve mechanism to ensure that the market prices for allowances or offsets do not surpass a predetermined level of affordability of electric utility rates and well being of the state's economy.
- A process to allow the DEP to discourage leakage of GHG emissions to neighboring states.
- Provisions for a trial period on the trading of allowances before fully implementing a trading system.

The bill further requires the following factors be considered in recommending and evaluating the proposed features of the cap-and-trade system:

- The overall cost-effectiveness of the cap-and-trade system in combination with other policies and measures in meeting statewide targets.
- Minimizing the administrative burden to the state of implementing, monitoring, and enforcing the program.
- Minimizing the administrative burden on entities covered under the cap.
- The impacts on electricity prices for consumers.
- The potential effects on leakage if economic activity relocates out of the state.
- The effectiveness of the combination of measures in meeting identified targets.
- The implications for near-term periods of long run targets specified in the overall policy.
- The overall cost to the Florida economy.
- How to moderate the economic impacts on low income consumers.
- Consistency of the program with other state and possible Federal programs.
- The feasibility and cost-effectiveness of extending the program scope as broadly as possible among emitting activities and sinks in Florida.
- Evaluation of the conditions under which Florida should consider linking its trading system to other states' or other countries' systems, and how that might be affected by the potential inclusion in the rule of a safety valve.

In addition, the bill requires the DEP, prior to submitting the proposed rules to the Legislature for its consideration, to submit the proposed rules to the commission, which must review the proposed rules and submit a report to the Governor, the President of the Florida Senate, the Speaker of the Florida House of Representatives, and the DEP. The report must address the following:

- The overall cost-effectiveness of the proposed cap-and-trade system in combination with other policies and measures in meeting statewide targets.
- The administrative burden to the state of implementing, monitoring, and enforcing the program.
- The administrative burden on entities covered under the cap.
- The impacts on electricity prices for consumers.
- The potential effects on leakage if economic activity relocates out of the state.
- The effectiveness of the combination of measures in meeting identified targets.
- The economic implications for near-term periods of short-term and long-term targets specified in the overall policy.
- The overall cost to the Florida economy.
- The impacts on low income consumers that result from energy price increases.
- The consistency of the program with other state and possible Federal efforts.

- The evaluation of the conditions under which Florida should consider linking its trading system to other states' or other countries' systems, and how that might be affected by the potential inclusion in the rule of a safety valve.
- The timing and changes in the external environment, such as proposals by other states or implementation of a Federal program that would spur reevaluation of the Florida program.
- The conditions and options for eliminating the Florida program if a Federal program were to supplant it.
- The need for a regular reevaluation of the progress of other emitting regions of the country and of the world, and whether other regions are abating emissions in a commensurate manner.
- The desirability and possibility of broadening the scope of Florida's cap-and-trade system at a later date to include more emitting activities as well as sinks in Florida, and the conditions that would need to be met to do so.

FLORIDA ELECTRICAL POWER PLANT SITING ACT (ss. 403.502 – 403.519, F.S.)

Present Situation

It is the policy of the state that, while recognizing the need for increased power generation facilities, the state must ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life and will not unduly conflict with the goals established by the applicable local comprehensive plans.[45] The Florida Electrical Power Plant Siting Act (PPSA) was passed by the Legislature for the purpose of minimizing the adverse impact of power plants on the environment.[46] The PPSA applies to any electrical power plant, except as otherwise provided.[47]

Under the PPSA, no construction of any new electrical power plant or expansion in steam generating capacity of any existing electrical power plant may be undertaken without first obtaining certification in the manner provided in the PPSA.[48]

Failure to obtain a certification, or to comply with the conditions thereof, or to comply with the provisions of the PPSA, constitutes a violation of the PPSA.[49] Provisions are set forth regarding the modification of certification,[50] as well as the revocation or suspension of certification.[51] The Department of Environmental Protection (DEP), however, has no discretion unilaterally to change the conditions of certification after the siting board's action on the application.[52]

If any provision of the PPSA is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of the state or any political subdivision, municipality, or agency, the PPSA governs and controls and such law, rule, regulation, or ordinance will be deemed superseded for the purposes of the PPSA.[53] Furthermore, the state preempts the regulation and certification of electrical power plant sites and electrical power plants.[54] Except as otherwise provided by statute, nothing in the PPSA may be construed to have altered the authority of county and municipal governments as provided by law.[55]

Effect of Proposed Changes

The bill amends s. 403.502, F.S., to conform the legislative intent regarding an electrical power plant's associated facilities so that the language is consistent with certain revisions to definitions.

[45] Section 403.502, F.S.
[46] *Tampa Elec. Co. v. Garcia*, 767 So. 2d 428 (Fla. 2000), referring to ss. 403.501 - 403.518, F.S.
[47] Section 403.506(1), F.S.
[48] Section 403.506(1), F.S.
[49] Section 403.514, F.S.
[50] Section 403.516, F.S.
[51] Section 403.512, F.S.
[52] *TECO Power Services Corp. v. Department of Environmental Regulation*, 590 So. 2d 1086 (Fla. Dist. Ct. App. 1st Dist. 1991).
[53] Section 403.510(1), F.S.
[54] Section 403.510(2), F.S.
[55] Section 403.5116, F.S.

The bill amends s. 403.503, F.S., to create a definition for an “alternative corridor” to mean an area that is proposed by the applicant or a third party within which all or part of an associated electrical transmission line right-of-way is to be located and that is different from the preferred transmission line corridor proposed by the applicant. The width of the alternate corridor proposed for certification for an associated electrical transmission line may be the width of the proposed right-of-way or a wider boundary not to exceed a width of one mile. The area within the alternate corridor may be further restricted as a condition of certification. The alternate corridor may include alternate electrical substation sites if the applicant has proposed an electrical substation as part of the portion of the proposed electrical transmission line.

The bill also amends s. 403.503, F.S., to revise the definitions for “associated facilities”, “electrical power plant” and “site”, and creates of a new definition for “electrical generating facility”. Amending these terms provides conformity to other revisions made throughout the PPSA. These changes also conform to legislative changes made to the definition of “electrical power plant” in 2006. The bill also amends the definition of “certification” to specify that the term refers to not only the Final Order of the Siting Board, but, when applicable, the Final Order of the Secretary of DEP. The revision to the definition of “ultimate site capacity” in this section of the bill clarifies that unless otherwise specified, “ultimate site capacity” is calculated on a “gross” capacity basis rather than “net”. The bill amends the definition of “corridor” to specify that the corridors proper for certification must be those addressed in the application, in amendments to the application, and in notices of acceptance of proposed alternate corridors filed by an applicant and the DEP.

The bill amends s. 403.504, F.S., to delete the word “site” from the phrase “power plant site certification”. This is a technical change to remove unnecessary language resulting from the revisions to the definition of “electrical power plant” and “site”. The bill also provides that the DEP has the power and duty under the PPSA to determine whether an alternate corridor proposed for consideration is acceptable.

The bill creates s. 403.506(3), F.S., to provide that steam generating facilities that do not produce electricity are not subject to the PPSA. The bill also specifies that the PPSA does not apply to power plants of less than 75 megawatts (MWs) in “gross” capacity, and this is including all “associated facilities”, not just substations. The bill also increases the exemption from the PPSA for expansions of generation capacity for an existing exothermic reaction cogeneration electrical generating facility from 35 MW to 75 MW. The bill further provides that for nuclear power plants, an electric utility may obtain separate licenses and permits for the construction of a facility necessary to construct a power plant without first having to obtain certification. Such facilities can include access and onsite roads, rail lines, electrical transmission facilities to support construction, and facilities necessary for waterborne delivery of construction materials and project components. This exemption does not authorize agency rulemaking and any action taken under this subsection is not subject to chapter 120, F.S. The bill also provides that subsection (3) is to be given retroactive effect and applies to applications filed after May 1, 2008.

The bill amends s. 403.5064, F.S., to provide a timetable and schedule for when an applicant, as part of the certification application, opts to allow consideration of alternate corridors for any associated transmission line corridors.

The bill amends s. 403.5065, F.S., to delete the word “site” in “electric power plant site certification” to conform with changes made in the definitions section of the PPSA.

The bill amends s. 403.50663, F.S., to decrease the public notice requirement for local government informational meetings from 15 days to 5 days prior to the meeting, and specifies that the “general public” along with all parties must be provided notice. The bill also provides the manner in which the notice is to be made and how to be reimbursed for providing such notice.

The bill amends s. 403.50665. F.S., to provide that an applicant must include in the application a statement on the consistency of the site, or any directly associated facilities "that constitutes a development, as defined by s. 380.04, F.S." The term "development" in s. 380.04, F.S., means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels. Facilities and activities that do not constitute "development" as defined in s. 380.04, F.S., are not subject to future land use mapping or zoning ordinances, therefore, this change simply specifies the applicability of the PPSA in order to clarify current law. The application must include an identification of the associated facilities that the applicant believes are exempt from the requirements of land use plans and zoning ordinances under the provisions in s. 380.04, F.S., and chapter 163, F.S.

The bill also amends s. 403.50665, F.S., to provide that local governments do not have to file a Consistency Determination for facilities that are exempt from land use plans and zoning ordinances under chapter 163, F.S., and s. 380.04, F.S. In addition, this bill provides that this requirement to file a consistency determination by local governments does not apply to any new electrical generation unit proposed to be operated on the site of a previously certified electric power plant or on the site of a power plant that was not previously certified that will be wholly contained within the boundaries of the existing site. The bill increases the amount of time beyond the 45-day time limit from 35 to 55 days that a local government has to issue its land use consistency determination if the application has been determined incomplete based in whole or part upon a local government request for additional information. The bill also provides that incompleteness of information can be claimed by the local government as cause for a statement of inconsistency with existing land use plans zoning ordinances, and establishes a deadline for the local government to initiate the proceeding to rule upon a request to address inconsistencies. The bill provides that petitions on land use consistency determinations should be filed with the Administrative Law Judge (ALJ), rather than the DEP, since a case would have already been opened at the Division of Administrative Hearings and an ALJ would have already been assigned to the case. The bill provides that the issue of land use consistency for a proposed alternate electrical substation that is proposed as part of an alternate corridor accepted by the applicant and the DEP must be addressed in the supplemental report prepared by the local government on the proposed alternate corridor and shall be considered at the final certification hearing.

The bill amends s. 403.507, F.S., to provide that certain agencies must prepare reports and submit them to the DEP and the applicant "no later than 100 days after the certification application has been determined complete, unless a final order denying the Determination of Need has been issued."

The bill amends s. 403.508, F.S, to require that when an ALJ receives a petition on land use consistency determinations, he/she set a hearing date within 5 days. The bill also clarifies that since no determinations are required for exempt facilities, no hearing is required, either, and conforms to a change in s. 403.50665, F.S., so that the trigger date for a hearing pertains to the ALJ's receipt of a petition, and not the DEP. The bill relocates a provision on the completeness of information for local governments to make a land use consistency determination into the section on the land use consistency determination from the section on hearings, where it is more germane. The bill deletes a redundant provision on the ALJ's issuance of the recommended order, which is found later in s. 403.508(5), F.S. The bill also includes various clarifications of the use of definitions of "site" and "electrical power plant".

The bill amends s. 403.509, F.S., to specify, under the PPSA, how to handle property rights of agencies when the DEP is issuing the final order, specifies that property rights will be handled as part of the stipulation filed among all parties that there are no disputed issues of fact or law, and requires that such property rights be issued within 30 days of issuance of the final order. The bill also proposes revisions as part of the clarification of the use of the definitions for "site" and "electrical power plant".

The bill also amends s. 403.509, F.S., to specify that any transmission line corridor certified by the board shall meet the criteria of this section. Additionally, it specifies that when there is more than one transmission line corridor that is proper for certification under s. 403.503(10), F.S., which meets the criteria of this section, the board must certify the transmission line corridor that has the least adverse

impact regarding the information in subsection (3), including costs. The bill also specifies that if the board finds an alternate corridor rejected pursuant to s. 403.5271, F.S., and incorporated by reference in 403.5064(1)(b), F.S., meets the criteria of subsection (3) and has the least adverse impact regarding information in subsection (3), including cost, of all the corridors that meet the criteria in subsection (3), the board must either deny certification or allow the applicant to amend the application in order to include the corridor. In addition, the bill specifies that if the board finds that two or more of the corridors that comply with subsection (3) have the least adverse impacts regarding the criteria in subsection (3), including costs, and that the corridors are substantially equal in adverse impacts regarding the criteria of subsection (3), including costs, the board shall certify the corridor preferred by the applicant if the corridor is one proper for certification under s. 403.503(10), F.S.

The bill also amends s. 403.509, F.S., to provide that for certifications issued by the DEP in regard to properties of an agency, any stipulation filed must include a stipulation regarding any issues relating to the use, connection, or crossing for the electrical power plant. Any agency stipulation for these uses must agree to execute, within 30 days after the entry of the certification, a license or easement for such use of the property.

The bill amends s. 403.511, F.S., to conform to the changes to the definitions for “site” and “electrical power plant”.

The bill amends s. 403.5112, F.S., to delete the term “directly” because it could be construed as a differing requirement in relation to certain associated facilities.

The bill amends s. 403.5113, F.S., to clarify the distinction between a post certification review and a post certification amendment, which are two completely separate activities.

The bill amends s. 403.5115, F.S., to specify that certain notice provisions are required only when applicable. The bill also corrects a cross-reference and revised such that multiple notices are not needed if multiple objections are filed to a land use determination at different times. The bill removes the “notice of a supplemental application” and “notice of existing site certification” from the list of notices that are required to be published by the applicant. The bill revises sizing requirements for the various newspaper notices to make them more consistent with the map and text requirements for each notice. The bill also clarifies that when “interested persons” have been requested to be placed on a list for information about power plants being reviewed by the Department, such notice shall be issued for each case, rather than for all cases in perpetuity. In addition, the bill adds a public notice provision for the local government informational public meetings, to be issued seven days before the meetings, and specifies publication requirements, and provides public notice requirements pertaining to the filing of a proposal for an alternate corridor.

The bill also amends s. 403.5115, F.S., to provide that a proponent of an alternate corridor must publish public notices concerning the filing of a proposal for an alternate corridor, the route of the alternate corridor, the revised time schedules, the filing deadline for a petitioner to become a party, and the date of the rescheduled certification hearing. This notice must be published in a newspaper within the county or counties affected by the proposed alternate corridor and comply with the size requirements currently found in this section.

The bill amends s. 403.516, F.S., to delete the word “site” to conform to the revisions made to the definitions in the PPSA.

The bill amends s. 403.517, F.S., to delete the word “directly” and “site” to conform to the revisions made to the definitions in the PPSA.

The bill amends s. 403.5175, F.S., to correct a cross-reference to conform to the renumbering of subsections. The bill also revises the exemption from land use and zoning determination for existing power plant sites, where there will be no expansion in site boundaries to include additional offsite associated facilities that are not exempt from the provisions of s. 403.50665, F.S. The bill further

provides revisions as part of the clarification of the use of the definitions of "site" and "electrical power plant".

The bill amends s. 403.518, F.S., to provide a filing fee for an alternative corridor filed pursuant to s. 403.5064(4), F.S. This bill also amends s. 403.518, F.S., to:

- Specify that the Department may issue the certification, as well as the Siting Board;
- Specify that Regional Planning Councils may be holding the Informational Public Meeting instead of a local government;
- Remove requirement that local governments must provide notice of hearings (as opposed to meetings) because nowhere in the PPSA must local governments provide notice of hearings;
- Provide a benchmark for timing in relation to fee disbursements for projects placed in abeyance; and
- Clarify that the DEP must establish rules for determining a fee based on the "number of agencies involved," along with equipment design, change in site size, increase in generating capacity, or change in an associated facility location.

The bill also amends s. 403.518, F.S., to require an application fee for an alternate corridor. Such fee must be $750 per mile for each mile of the alternate corridor located within an existing right-of-way, or $1000 per mile for each mile of an electric transmission line corridor proposed to be located outside the existing right-of-way.

The bill amends s. 403.519, F.S., to require that an applicant's petition to determine need must include a description of and an estimate of the cost of the nuclear or integrated gasification combined cycle power plant, which "includes any costs associated with new, enlarged, or relocated electrical transmission lines or facilities of any size that are necessary to serve the nuclear power plant." The bill also provides that, after the determination of need, the right of the utility to recover the cost of new, expanded, or relocated electrical transmission lines or facilities of any size that are necessary to serve the nuclear power plant shall not be subject to challenge, unless the commission finds that costs were imprudently incurred.

FLORIDA ELECTRIC TRANSMISSION LINE SITING ACT (ss. 403.5252 – 403.5365, F.S.)

Present Situation

The legislative intent of the Transmission Line Siting Act (TLSA) 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. 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 the goals established by the applicable local comprehensive plan. It is the intent of the TLSA to fully 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 abundant low-cost electrical energy and the impact on the public and the environment resulting from the location of the transmission line corridor and the construction and maintenance of the transmission lines.[56]

The provisions of the TLSA apply to each transmission line, except a transmission line certified pursuant to the Florida Electrical Power Plant Siting Act (PPSA).[57] Except as so provided, and with certain statutory exclusions, no construction of any transmission line may be undertaken without first obtaining certification under the TLSA.[58] The exemption of a transmission line under the TLSA does not constitute an exemption for the transmission line from other applicable permitting processes under

[56] Section 403.521, F.S.
[57] Section 403.524(1), F.S.
[58] Section 403.524(2), F.S.

other provisions of law or local government ordinances.[59] Provisions are set forth regarding the modification of certification,[60] as well as the revocation or suspension of certification.[61]

Failure to obtain a certification, or to comply with the conditions thereof, or to comply with the TLSA, constitutes a violation of the TLSA.[62]

If any provision of the TLSA is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of Florida or any political subdivision, municipality, or agency, the TLSA controls and such law, rule, regulation, or ordinance is superseded for the purposes of the TLSA.[63] Furthermore, the state preempts the certification of transmission lines and transmission line corridors.[64]

Effect of Proposed Changes

The bill amends s. 403.5252, F.S., of the TLSA to clarify that agency completeness statements are due 30 days after the application is filed, rather than after it is distributed. The bill also clarifies that the deadline for the issuance of the determination of completeness by DEP is 37 days after the filing of the application rather than seven days after the filing of agency completeness statements. This clarification ensures that confusion as to which agency completeness submittal triggers the determination deadline does not occur.

The bill amends s. 403.526, F.S., to correct a timing issue in requiring Preliminary Statements prior to an agency having complete information upon which to base such a Statement. It also, provides that agency reviews and reporting requirements are halted if the project is determined by the Public Service Commission to not be needed.

The bill amends s. 403.527, F.S., to clarify that there must be a public hearing component held in conjunction with the main hearing, in addition to those that may be optionally requested by a local government. In addition, the bill corrects a problem in the ability to provide notice of a local hearing, by changing the timing of the notification request for a local hearing. Currently, the notices of the certification hearing are published approximately 20 days prior to the deadline for the Administrative Law Judge (ALJ) to schedule the local components of the certification hearing in each county. The local components of the hearing are required to be noticed, as well. The bill also relocates language regarding the timing of the need for a local public hearing on alternate corridors to a more germane part of statute. It reappears in the alternate corridor section to avoid any potential issues in the future with this requirement being overlooked. The bill adds guidance to the ALJ regarding scheduling a local hearing as part of the certification hearing in addition to those that might be requested, and revises the deadline for the cancellation of the certification hearing. Furthermore, the bill clarifies that any stipulation regarding cancellation of the hearing must also state that there are no disputed issues of law.

The bill amends s. 403.5271, F.S., to add relocated language regarding the timing of the need for a local public hearing on alternate corridors to a more germane part of statute. The bill also adds requirement for notice of the local public hearings, and corrects an issue with the notice requirements to assure that the public does not expect a hearing on a certain date and location, only to find no such hearing. The bill clarifies that the alternate proponent is required to publish this notice, because the requirement only appeared in notice section, potential proponents were not aware of all of the duties accompanying proposal of an alternate corridor. In addition, the bill shifts content language to the notice section where it is more appropriate. The bill also provides for automatic withdrawal of an alternate proposal if the alternate proponent does not meet its obligations regarding notice, and provides a deadline for agency comments on alternate proposals.

[59] Section 403.524(3), F.S.
[60] Section 403.5315, F.S.
[61] Section 403.532, F.S.
[62] Section 403.533, F.S.
[63] Section 403.536(1), F.S.
[64] Section 403.536(2), F.S.

The bill amends s. 403.5272, F.S., to increase the notification requirement to parties for informational public meetings from 5 to 15 days and adds a requirement for public notice of the meeting.

The bill amends s. 403.5312, F.S., to delete a redundant provision for certain PPSA facilities that has been added to the Power Plant Siting Act.

The bill amends s. 403.5363(1), F.S., to specify on a per-notice basis various notice category, size and content provisions in order to clarify certain vague requirements in current law. The bill also provides deadline changes in various notices to match other changes in the bill, in order to enable the DEP to have the time to publish such notice under the new Florida Administrative Weekly publication requirements set out in 2006. The bill further amends certain notice requirements for each proponent of an alternate corridor, and requires the DEP to publish a notice of the deferment of the certification hearing due to the acceptance of an alternate corridor. The bill also revises the TLSA to reflect that there may be more than one alternate proponent, and allows for a combined notice of alternates to avoid confusing the public when a number of notices are published about different alternate proposals for the same transmission line. The bill also adds a notice to assure public knowledge of an informational public meeting by a local government or regional planning council.

The bill amends s. 403.5365, F.S., to provide a benchmark to determine deadlines for reimbursement processing when withdrawal of an application has been informally made.

GENERAL PERMITS FOR PROJECTS WITH MINIMAL ADVERSE ENVIRONMENTAL EFFECT (s. 403.814, F.S.)

Present Situation

Section 403.814, F.S., provides that the Secretary of the Department of Environmental Protection is authorized to adopt rules establishing and providing for a program of general permits for projects or categories of projects which have, either singly or cumulatively, a minimal adverse environmental effect. Section 403.814(6), F.S., provides specifically that the construction and maintenance of electric transmission lines in wetlands must be authorized by general permit provided that certain provisions are implemented. One such provision is that the criteria of the general permit cannot affect the authority of the siting board to condition certification of transmission lines authorized in the Power Plant and Electrical Transmission Line Siting Acts.[65]

Effect of Proposed Changes

The bill amends s. 403.814(6)(i), F.S., to specify that the general permit authorizing the construction of electric transmission lines in wetlands applies to transmission certified pursuant to the Power Plant and Electrical Transmission Line Siting Acts.

GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS CONTRACTING (ss. 489.145 and 287.064, F.S.)

Present Situation

The provisions of the Guaranteed Energy Performance Savings Contracting Act (GEPSCA) are being used by local governments, school districts, and state agencies to improve the energy efficiency of public buildings. The Department of Management Services (DMS), and the Department of Financial Services (DFS) are the two state agencies responsible for administering the act when employed by state agencies. In a Guaranteed Energy Performance Contract, the state and other public entities may contract with a Guaranteed Energy Performance Savings Contractor (ESCO) for energy conservation measures. These contracts are meant to encourage Florida public entities to finance facility energy conservation measures with the energy cost savings received by those measures. As a result, the energy conservation measures encourage the upgrade of public facilities without requiring increased investment from taxpayers. Energy conservation measures must produce a utility savings sufficient to

[65] Section 403.814(6)(i), F.S.

cover the cost of financing, completing, and maintaining the GEPSCA contract. To accomplish this, the ESCO guarantees that the public entity will achieve a utility savings sufficient to finance the proposed energy conservation measures. Further, repayment of the energy conservation measures may not exceed 20 years in length. If the energy savings received do not cover the cost of the energy conservation measures, the contractor must cover the cost of any shortfalls in payment. Before a state agency may enter into a GEPSCA contract, the agency may submit the project to the DMS for technical review and must submit it to the Chief Financial Officer (CFO) for financing approval.

The GEPSCA program was first created in 1994 in s. 489.145, F.S. However, in the original form, the GEPSCA did not clearly allow state agencies to finance Guaranteed Energy Performance Savings Contracts through third party financing.[66] This often caused difficulties as many of the contractors who were interested in the contracts did not have the resources or experience to finance the projects on their own. To fix these problems, the GEPSCA was amended in 2001 to allow for third party financing of Guaranteed Energy Performance Savings Contracts. Currently, the third-party financing contract may be separate from the guaranteed energy performance savings contract. It must include provisions that the third-party financier is not granted rights or privileges that exceed the rights and privileges of the guaranteed energy performance savings contractor. In calculating the amount the agency will finance, the agency is permitted to reduce that amount by grants, rebates, or capital funding. However, when calculating the life-cycle cost, the agency may not apply grants, rebates, or capital funding.

The GEPSCA was amended a second time in 2003 to encourage the CFO, with assistance from the DMS, to create a model GEPSCA contract. A model contract was produced thereafter.

The contract must contain the following provisions:

- A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.
- A provision that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency.
- A requirement that the qualified contractor provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.
- Provision for an allocation of any excess savings among the parties.
- An annual reconciliation of the cost savings, and if there is a shortfall in expected savings, the contractor is liable.
- That all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency. At least ten percent of the price must be paid within two years from the date of complete installation and acceptance by the agency. The remaining costs are to be paid at least quarterly, not to exceed a 20-year-term, based on life-cycle cost calculations.
- A statement that the term of any contract expires at the end of each fiscal year, but may be automatically renewed, subject to the agency making sufficient annual appropriations based upon realized savings.
- A statement that the contract does not constitute a debt, liability, or obligation of the state.

An “energy conservation measure” is defined as a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs and includes, but is not limited to:

- Insulation of the building structure and systems within the building.
- Storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.
- Automatic energy control systems.

[66] Conversation with Mike Crowley, Financial Administrator, Department of Financial Services, March 16, 2007. Also see Conversation with Doug Darling, Director, Division of Accounting and Auditing, Department of Financial Services, March 16, 2007.

- Heating, ventilating, or air-conditioning system modifications or replacements.
- Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system, which, at a minimum, must conform to the applicable state or local building code.
- Energy recovery systems.
- Cogeneration systems that produce steam or forms of energy such as heat and electricity, for use primarily within a facility or complex of facilities.
- Energy conservation measures that provide long-term operating cost reductions and significantly reduce Btu consumed.
- Renewable energy systems, such as solar, biomass, or wind systems.
- Devices that reduce water consumption or sewer charges.
- Storage systems, such as fuel cells and thermal storage.
- Generating technologies, such as microturbines.
- Any other repair, replacement, or upgrade of existing equipment.

In order for an agency to consider entering a guaranteed energy performance savings contract, it must first obtain a report from a qualified provider that estimates the anticipated reduction in energy or operating costs. The agency and contractor may enter into a separate agreement to pay for the report. However, the agency need not pay for the report unless the report indicates that the energy cost savings will be equal to or greater than the cost of the energy conservation measure and the measure that is installed.

The qualified provider must be selected in compliance with s. 287.055, F.S., which sets forth competitive bidding requirements for agencies wishing to procure professional architectural, engineering, or surveying and mapping services. However, if fewer than three firms are qualified to perform the required services, the competitive bidding requirements in ss. 287.055(4)(b) and 287.057, F.S., do not apply. The agency must publicly notice the meeting in which it intends to award the contract.

The DMS may, within available resources, provide technical assistance to state agencies contracting for energy conservation measures, and engage in other activities to promote such contracting. The CFO may develop model contracts and related documents for use by state agencies. In addition, state agencies must submit contracts to the DFS for its approval.

Recently, according to the new program agreed upon by the DMS, the DFS and the ESCO community, the ESCOs now use the model contracts the DMS and the DFS have provided them. This benefits the ESCOs and improves state approval time of the contracts, as the included agencies can review audits and contracts faster if they use the model agreements.

Effect of Proposed Changes

This bill changes the name of the contracts to Guaranteed Energy, Water, and Wastewater Performance Savings Contracts as well as their substance and financing, as follows:

- Renames the Guaranteed Energy Performance Savings Contracting Act as the Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act;
- Clarifies the language so that there is greater flexibility for facility improvements that produce an energy related cost savings or minimize energy consumption;
- Adds water and wastewater efficiency and conservation measures to the types of guaranteed energy, water, and wastewater performance savings contracts that may be entered into by agencies;
- Adds “efficiency” to “conservation” for the types of measures that are authorized for guaranteed performance savings contracting;
- Adds “water and wastewater efficiency” into the legislative findings and definitions sections;
- Redefines “energy cost savings” as “cost savings;”
- Qualifies the term “training programs,” to make the training programs incidental to the contract in the definition of “efficiency and conservation measure;”

- Gives the CFO more authority to review Guaranteed Energy, Water, and Wastewater Performance Savings Contracts for costs that are not fully guaranteed under proposed contracts;
- Requires that the DMS assist the office of the CFO with technical content of contracts;
- Gives the CFO and the DMS greater authority to revise the current Guaranteed Energy, Water, and Wastewater Performance Savings Model Contract;
- Requires that the CFO not approve any Guaranteed Energy, Water, and Wastewater Performance Savings Contract that does not meet the requirements in s. 489.145, F.S.;
- Requires that the state agency entering into a Guaranteed Energy, Water, and Wastewater Performance Savings Contract provide an annual report to the CFO and the DMS so that they may "measure and verify" the savings; and
- Requires that a proposed Guaranteed Energy, Water, and Wastewater Performance Savings Contract for a state agency include supporting information required by s. 216.023(4)(a)9., F.S., showing the availability of recurring funds, approval by the agency head or a designee, and that the agency provide a plan to monitor cost savings.

Changes to the financing of the Guaranteed Energy, Water, and Wastewater Performance Savings Contracts program include:

- Amends s. 287.064, F.S., to allow 20 year financing for guaranteed contracts under the state's line of credit through yearly payments and removing the requirement that the funds come from an appropriation category other than the expense category;
- Requires that the ESCO must replace or extend the life of energy conservation equipment throughout the life of the contract. This is required in ss. 489.145 and 287.064(10), F.S.;
- Requires that all Guaranteed Energy, Water, and Wastewater Performance Savings Contract financing payments under a contract are equal throughout the life of the financing and that the annualized amount of each payment is supported by recurring funds in an appropriation category;
- Requires that contract proposals submitted for state agencies include supporting information, documentation of recurring funds, and approval by the agency head;
- Requires the CFO to review state agency proposals to ensure the most effective financing available; and
- Requires that actual computed cost savings meet or exceed the cost savings estimated for a Guaranteed Energy, Water, and Wastewater Performance Savings Contract and that any baseline adjustments must be specified in the contract.

FLORIDA RENEWABLE FUEL STANDARD ACT (ss. 526.201 - 526.207 and 206.43(2)(b), F.S.)

Present Situation

The Federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuels standard (RFS) minimum annual goal for renewable fuel use at 9.0 billion gallons in 2008 and 36 billion gallons by 2022. Beginning in 2016, all of the fuel increase in the RFS target must be met by advanced biofuels, defined as fuels derived from other than corn starch.[67]

Motor gasoline and diesel fuel, both fossil fuels, make up more than 87 percent of Florida's transportation energy costs, with aviation fuel accounting for less than ten percent.[68] There are approximately 50 ethanol fueling stations open to the public selling E10 (90 percent gasoline and 10 percent ethanol) in Florida. Florida currently has no operational ethanol production plants; however, there are plans for two commercial facilities producing corn-based ethanol in the Tampa area with a combined production capacity of 75 million gallons per year.[69]

Currently, there is no renewable fuel standard in the state.

[67] U.S. Department of Energy's website: http://www.eere.energy.gov/afdc/incentives_laws_security.html.
[68] Florida's Energy and Climate Change Action Plan: 2007, p. 33.
[69] Florida's Energy and Climate Change Action Plan: 2007, p. 35.

Effect of Proposed Changes

The bill establishes the Florida Renewable Fuel Standard Act (act) and provides legislative findings that it is vital to the public interest and the state's economy to establish a market and the necessary infrastructure for renewable fuels by requiring that all gasoline fuel offered for sale in the state include a percentage of agriculturally derived, denatured ethanol. The bill finds that use of renewable fuel "reduces greenhouse gas emissions and dependence on imports of foreign oil, improves the health and quality of life for Floridians, and stimulates economic development and the creation of a sustainable industry that combines agricultural production with state of the art technology."

The bill provides the following definitions:

- "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "Blended gasoline" means a mixture of ninety percent gasoline and ten percent fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services. The ten percent fuel ethanol portion may be derived from any agricultural source.
- "Unblended gasoline" means gasoline that has not been blended with fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "10 percent" means 9-10 percent ethanol by volume.

The bill provides that on and after December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler[70] is to contain, at a minimum, 10 percent of agriculturally derived, denatured ethanol fuel by volume.

The following are exempted from the act:

- Fuel used in aircraft;
- Fuel sold at marinas and mooring docks for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel bulk transferred between terminals;
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with chapter 206, F.S.;
- Fuel at an electric power plant that is regulated by the United States Nuclear Regulatory Commission unless such commission has approved the use of fuel meeting the requirements of the act;
- Fuel for a railroad locomotive; or
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

The bill requires that in the report required for motor fuel in s. 206.43, F.S., each terminal supplier, importer, blender, and wholesaler provide to the Department of Revenue (DOR) the number of gallons of gasoline fuel meeting and not meeting the requirements of this act that is sold and delivered by the terminal supplier, importer, blender, or wholesaler, and the destination as to the county in the state to which the gasoline was delivered for resale at retail or use. This provision is also amended into cross-reference language in s. 206.43(2)(b), F.S.

[70] These terms are defined in s. 206.01, F.S.

Upon determining that a terminal supplier, importer, blender, or wholesaler is not meeting the fuel standard, the DOR is to notify the Department of Agriculture and Consumer Services (DACS), which will either grant an extension or impose one or more of the following penalties:

- Issuance of a warning letter.
- Imposition of an administrative fine of not more than $1,000 per violation for a first-time offender. For a second-time or repeat offender, or any person who is shown to have willfully and intentionally violated any provision of this act, the administrative fine is not to exceed $5,000 per violation. When imposing a fine, the department is to consider the following:
    - The amount of money the violator benefited from by noncompliance;
    - Whether the violation was committed willfully; and
    - The compliance record of the violator.

The act allows for waivers in situations where a terminal supplier, importer, blender, or wholesaler is unable to obtain fuel ethanol or blended gasoline at the same or lower price as unblended gasoline. If requested, documentation of the prices must be provided to DOR or the DACS. Further, if a supplier, importer, blender, or wholesaler has made a good faith effort to comply with the requirements but has been unable to do so for reasons beyond the applicant's control, such as delays in receiving governmental permits, he or she can apply to the DACS, by September 30, 2010, for an extension of time to comply with the requirements. The bill also provides for suspensions of the standard requirement in cases of emergency, which are addressed in s. 252.36(2), F.S.

The bill provides rule-making authority to the DOR and the DACS to implement the provisions of the act.

The act directs the Florida Energy and Climate Commission to conduct a study to evaluate and recommend the lifecycle greenhouse gas emissions associated with all renewable fuels including, but not limited to, biodiesel, renewable diesel, biobutanol, and ethanol derived from any source. In addition, the study will evaluate and recommend a requirement that all renewable fuels introduced into commerce in the state, as a result of the Renewable Fuel Standard, reduce the lifecycle greenhouse gas emissions by an average percentage. The study may also evaluate and recommend any benefits associated with the creation, banking, transfer, and sale of credits. The study is to be submitted to the President of the Senate and the Speaker of the House of Representatives no later than December 31, 2010.

SCHEDULED INCREASES IN THERMAL EFFICIENCY STANDARDS AND APPLIANCE STANDARDS (s. 553.9061, F.S.)

Present Situation

The 2007 Legislature directed the Florida Building Commission (FBC), in consultation with the Florida Energy Commission and several other organizations, to review the Florida Energy Code for Building Construction. The FBC was directed to revisit the analysis of cost-effectiveness that serves as the basis for energy efficiency levels for residential buildings and to identify cost-effective means of improving energy efficiency in commercial buildings. The FBC was directed to provide a report to the Legislature by March 1, 2008, that contained an energy efficiency standard which could be adopted by the commission for the construction of all new residential, commercial, and government buildings.[71] In July, 2007, the Governor issued Executive Order 07-127, which directed the Secretary of the Department of Community Affairs to convene the commission to revise the Florida Energy Code to increase the energy performance of new construction by at least 15 percent over 2007 standards. The target date for implementation of revisions is January 1, 2009.

[71] See s. 48 of chapter 2007-73, Laws of Florida, adopted during the 2007 Regular Session as SB 2802, an act implementing the 2007-2008 General Appropriations Act.

In February 2008, the FBC released its "Report to the 2008 Legislature" which contained an evaluation of the Florida Energy Code for residential cost effective baseline, commercial conservation enhancements, and comparisons with the International Energy Code. The findings showed a significant number of conservation measures already in place that produce cost-effective energy savings with respect to the minimum building code requirements. To achieve the improvements directed by the Executive Order, the FBC determined the best approach was to require a 10 to 15 percent increase in efficiency in residential buildings, and a 15 to 25 percent increase in efficiency for light commercial buildings. The FBC initiated rulemaking to incorporate the efficiency increases into the 2007 Florida Building Code, effective October 1, 2008.

Effect of Proposed Changes

The bill provides that the FBC establish a schedule to increase energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction and implement the following goals through the triennial code adoption process:

- Increase the energy performance of new buildings in the 2010 edition of the Florida Energy Efficiency Code for Building Construction by at least 20 percent;
- Increase the energy efficiency requirements of the 2013 edition of the Florida Energy Efficiency Code for Building Construction by at least 30 percent;
- Increase the energy efficiency requirements of the 2016 edition of the Florida Energy Efficiency Code for Building Construction by at least 40 percent; and
- Increase the energy efficiency requirements of the 2019 edition of the Florida Energy Efficiency Code for Building Construction by at least 50 percent.

The bill also provides that the FBC identify within code support and compliance documentation the building options and elements available to meet the goals above. Furthermore, the bill requires that prior to implementing the standards of an increase of 10 percent every 3 years in energy efficiency goals, the FBC must determine that the proposed increases are cost-effective to the consumer.

PRODUCTS COVERED BY ENERGY CONSERVATION STANDARDS (s. 553.957, F.S.)

Present Situation

In Executive Order 07-127, Governor Crist required the Department of Community Affairs (DCA) to convene the Florida Building Commission to consider incorporating standards for appliances into the Florida Energy Code. The DCA was also required to initiate rulemaking of the Florida Energy Conservation Standards, with an objective to increase the efficiency of applicable consumer products authorized under s. 553.957, F.S., by 15 percent from current standards for implementation by July 1, 2009.[72] New products, sold in the state, currently covered under the authority of s. 553.957, F.S., include certain refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, lighting equipment, and showerheads.

Currently, if a national appliance standard exists, states can only enforce a tougher standard by petitioning the U.S. Department of Energy (DOE) for a waiver. Florida's focus then is on items not currently regulated and possibly those that the DOE has not updated. An example of some of the appliances regulated by federal appliance standards set in the Energy Policy Act of 2005 include: ceiling fan light kits, compact fluorescent lamps, distribution transformers, commercial AC/HPs, lamp ballasts, mercury vapor lamp ballasts, pre-rinse, spray valves, traffic signals, dehumidifiers, torchiere lighting fixtures, commercial clothes washers, exit signs, ice-makers, pedestrian traffic signals, commercial refrigerators and freezers, and unit heaters. According to an ACEEE/ASAP report, overall savings to consumers and businesses from federal compliance and efficiency standards will approach $250 billion by 2020.[73]

[72] Appliances covered under the authority of s. 553.957, F.S., include: certain refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, lighting equipment, and showerheads.
[73] ACEEE/ASAP "Leading the Way" report, March 2006.

Effect of Proposed Changes
The bill applies the testing, certification, and enforcement of energy conservation standards to the following types of new commercial and residential products sold in the state:

- Water heaters being used to heat potable water in homes or businesses;
- Swimming pool pumps; and
- Water heaters for swimming pools.

AGENCY FOR ENTERPRISE INFORMATION TECHNOLOGY (undesignated statutory provision)

Present Situation
The Agency for Enterprise Information Technology was created in 2007 as a successor organization to the State Technology Office. The agency acts as the focal point for large-scale enterprise policy for state agencies. The agency head is the Governor and Cabinet. The new agency is to develop and publish a strategic enterprise information technology plan to ensure effective and efficient government services.

Effect of Proposed Changes
The bill provides that by July 1, 2009, the Agency for Enterprise Information Technology is required to define objective standards for:

- Measuring data center energy consumption and efficiency, including, but not limited to airflow and cooling, power consumption and distribution, and environmental control systems in that facility.
- Calculating total cost of ownership of energy efficient information technology products, including initial purchase, installation, ongoing operation and maintenance, and disposal costs over the life-cycle of the product.

The state data centers and computing facilities designated by the agency are required to evaluate their facilities for energy efficiency using the above standards. Results of the these evaluations will be submitted in a report to the agency, the President of the Senate, and the Speaker of the House of Representatives. By December 31, 2010, and annually thereafter, the bill requires the agency to submit to the Legislature, recommendations for reducing energy consumption and improving the energy efficiency of state data centers.

The bill provides that when the total cost of ownership of an energy efficient product is less than or equal to the existing data center facility or infrastructure, technical specifications for energy efficient products be incorporated in the plans and processes for replacing, upgrading, or expanding data center facilities or infrastructure, including but not limited to, network, storage, or computer equipment and software.

FLORIDA ENERGY SYSTEMS CONSORTIUM (s. 1004.648, F.S.)

Present Situation
The Florida Energy Commission, in Recommendation #78 of the *2007 Recommendations to the Florida Legislature* report, suggested that the Florida Legislature direct the Florida Energy Commission, "in cooperation and coordination with the state university system and the independent colleges and universities, to develop a strategy for enhancing research in support of Florida energy policy with the goal of deploying related research and technology into the marketplace as soon as possible." It observed that the discovery of new energy technologies, or improvements in existing technologies, could provide a major achievement in enhancing Florida's energy security and lowering the state's greenhouse gas emissions. The report stated an intention that the recommendation be a companion to other recommendations that support the development of an economic development plan that targets renewable and alternative energy industries, so that the state creates the research and business climate necessary for Florida to become a world leader in the energy field.

In Recommendation #77, the Florida Energy Commission noted that "Florida is poised to become a national leader in the research needed to meet the challenges of today's energy and environmental problems. By working together, the state's public and private research centers and institutes can generate the synergies that will propel the state into national prominence in this important and timely research arena." In Recommendation #75, it was noted that a high priority should be given to the following categories:

- Basic research to investigate and develop fundamental understanding of very promising, high payoff, long-term, technologies that may provide the basis for substantial advances in renewable energy generation;
- Technology development and prototyping to investigate, develop, and demonstrate the feasibility and practicality of technologies that have advanced beyond basic research and have commercial potential; and
- Commercial scale demonstration to provide proof of technological feasibility, operability, and production capacity at relevant scales.

Effect of Proposed Changes

The bill establishes the Florida Energy Systems Consortium (FESC or consortium), which is designed to promote collaboration between experts in the state university system, the Florida Energy and Climate Commission, industry, and other affected parties, to develop and implement a "comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the [s]tate." Further goals include becoming a world leader in energy research, education, technology, and energy systems analysis.

The consortium is to consist of the following state universities:

- University of Florida,
- Florida State University,
- University of South Florida,
- University of Central Florida, and
- Florida Atlantic University.

It is to be centrally administered at the University of Florida, by a director who is to report to an Oversight Board, consisting of the Vice President for Research at each of the five universities, which will have ultimate responsibility for both the technical performance and financial management of the consortium. Specifically, the consortium is responsible for soliciting and leveraging state, federal, and private funds for the purpose of conducting education and research and development in the area of sustainable energy and the Oversight Board is to ensure that the FESC maintains accurate records of any funds received by the consortium.

The following entities are established to assist the consortium in meeting its goals:

- Advisory Board (an external, "industry-dominated" entity) - Will provide industry input;
- University Council (consisting of one member designated by the Vice President for Research from each university) - Will provide guidance on vision and direction to the director of the consortium; and
- Steering Committee (consisting of the Advisory Board, the chair of the Florida Energy and Climate Commission, and the University Council) - Will establish and assure the success of the consortium's strategic plan.

The consortium is to focus on an overall broad systems approach from energy resource to consumer and for producing innovative energy systems that will lead to:

- Alternative energy strategies;
- Improved energy efficiencies; and
- Expanded economic development for the state.

Specifically, through collaborative research and development across the State University System and industry, the consortium will perform the following tasks:

- Coordinate and initiate increased collaborative interdisciplinary energy research amongst universities and the energy industry;
- Create a Florida energy technology industry;
- Provide a state resource for objective energy systems analysis; and
- Develop education and outreach programs to prepare a qualified energy workforce and informed public.

The bill provides that a "major focus of the FESC will be to expedite commercialization of innovative energy technologies by taking advantage of the State University System energy expertise, high technology incubators, industrial parks, and industry-driven research centers to attract companies to establish manufacturing in the state and transition technologies into the state economy."

Specifically, through research and instructional programs, the faculty associated with the consortium are to coordinate a state-wide workforce development initiative focusing on college-level degrees, technician training, and public and commercial sectors awareness. Further, the consortium will develop specific programs targeted at preparing graduates with a background in energy, continuing education courses for technical and non-technical professionals, and modules, laboratories, and courses to be shared among the universities. The bill provides that the FESC work with the Florida Community College system using the Florida Advanced Technological Education Center (FLATE) for the coordination and design of industry-specific training programs for technicians.

The bill requires that, by November 1 of each year, the consortium submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Florida Energy and Climate Commission, regarding its activities including, but not limited to, education, research, development, and deployment of alternative energy technologies.

WOODY BIOMASS ECONOMIC STUDY (Undesignated statutory provision)

Present Situation

"Woody biomass" is defined by the U.S. Forest Service as the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of forest management.[74] "Renewable energy" is defined as electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations.[75] The definition of "biomass" includes a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing.

In Executive Order 07-128, the Governor created the Action Team on Energy and Climate Change (Action Team) to develop recommendations that address strategies to diversify Florida's electrical generation of fuels to reduce greenhouse gas emissions, protect Florida's consumers from fuel price volatility, and increase the amount of renewable transportation fuels.

The Action Team report stated that one of the principal sources of renewable energy in Florida is biomass. At 377.3 megawatts, biomass accounts for 33.8 percent of Florida's renewable energy. The report further stated that in July 2007, Progress Energy Florida announced a contract to purchase electricity from a 300 megawatt biomass facility that would inject $150 million into the local economy and create 75 new jobs.

[74] U.S. Forest Service website: http://www.fs.fed.us/woodybiomass/whatis.shtml
[75] Section 366.91, F.S.

Effect of Proposed Changes

The bill directs the Department of Agriculture & Consumer Services in conjunction with the Department of Environmental Protection to conduct an economic impact study on the effects of granting financial incentives to energy producers who use woody biomass as fuel. The study will include an analysis of effects on wood supply and prices, impacts on current markets, and on forest sustainability. The results of the study are required to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than March 1, 2010.

C. SECTION DIRECTORY:

Section 1. Amends s. 74.051, F.S., relating to hearing on order of taking.

Section 2. Amends s. 186.007, F.S., relating to state comprehensive plan; preparation; revision.

Section 3. Amends s. 187.201, F.S., relating to state comprehensive plan adopted.

Section 4. Amends s. 196.012, F.S., relating to definitions.

Section 5. Amends s. 196.175, F.S., relating to renewable energy source exemption.

Section 6. Amends s. 206.43, F.S., relating to terminal supplier, importer, exporter, blender, and wholesaler to report to department monthly; deduction.

Section 7. Amends s. 212.08, F.S., relating to sales, rental, use, consumption, distribution, and storage tax; specified exemptions.

Section 8. Amends s. 220.192, F.S., relating to renewable energy technologies investment tax credit.

Section 9. Amends s. 220.193, F.S., relating to Florida renewable energy production credit.

Section 10. Creates an undesignated section, relating to retroactivity of amendments to s. 220.192, F.S.

Section 11. Amends s. 253.02, F.S., relating to board of trustees; powers and duties.

Section 12. Amends s. 253.034, F.S., relating to state-owned lands; uses.

Section 13. Amends s. 255.251, F.S., relating to Energy Conservation and Sustainable Buildings Act; short title.

Section14. Amends s. 255.252, F.S., relating to findings and intent.

Section 15. Amends s. 255.253, F.S., relating to definitions.

Section 16. Amends s. 255.254, F.S., relating to no facility constructed or leased without life-cycle costs.

Section 17. Amends s. 255.255, F.S., relating to life-cycle costs.

Section 18. Amends s. 255.257, F.S., relating to energy management; buildings occupied by state agencies.

Section 19. Creates an undesignated statutory provision relating to construction of buildings that attain green rating system goals.

Section 20. Creates s. 286.28, F.S., relating to climate friendly public business.

Section 21. Amends s. 287.063, F.S., relating to deferred-payment commodity contracts; preaudit review.

Section 22. Amends s. 287.064, F.S., relating to consolidated financing of deferred-payment purchases.

Section 23. Amends s. 316.0741, F.S., relating to high occupancy vehicle lanes.

Section 24. Amends s. 337.401, F.S., relating to use of right-of-way for utilities subject to regulation; permit; fees.

Section 25. Amends s. 339.175, F.S., relating to metropolitan planning organization.

Section 26. Amends s. 366.04, relating to jurisdiction of the Public Service Commission.

Section 27. Amends s. 366.82, F.S., relating to definitions; goals; plans; programs; annual reports; energy audits.

Section 28. Amends s. 366.8255, F.S., relating to environmental cost recovery.

Section 29. Amends s. 366.91, F.S., relating to renewable energy.

Section 30. Amends s. 366.92, F.S., relating to Florida renewable energy policy.

Section 31. Amends s. 366.93, F.S., relating to cost recovery for siting, design, licensing, and construction of nuclear and integrated gasification combined cycle power plants.

Section 32. Amends s. 377.601, F.S., relating to legislative intent.

Section 33. Creates an undesignated statutory provision, relating to Type II Transfer of Energy Commission

Section 34. Creates s. 377.6015, F.S., relating to Florida Energy and Climate Commission.

Section 35. Amends s. 377.602, F.S., relating to the definitions as used in ss. 377.601-377.608, F.S.

Section 36. Amends s. 377.603, F.S., relating to energy data collection and the powers and duties of the Department of Environmental Protection.

Section 37. Amends s. 377.604, F.S., relating to required reports.

Section 38. Amends s. 377.605, F.S., relating to the use of existing information.

Section 39. Amends s. 377.606, F.S., relating to records of the Department of Environmental Protection and limits of confidentiality.

Section 40. Amends s. 377.703, F.S., relating to additional functions of the Department of Environmental Protection, the energy emergency contingency plan, and federal and state conservation programs.

Section 41. Amends s. 377.705, F.S., relating to Solar Energy Center and development of solar energy standards.

Section 42. Amends s. 377.801, F.S., relating to the short title.

Section 43. Amends s. 377.802, F.S., relating to the purpose.

Section 44. Amends s. 377.803, F.S., relating to definitions as used in ss. 377.801-377.808, F.S.

Section 45. Amends s. 377.804, F.S., relating to Renewable Energy Technologies Grant Program.

Section 46. Amends s. 377.806, F.S., relating to Solar Energy System Incentives Program.

Section 47. Creates s. 377.808, F.S., relating to the Florida Green Government Grants Act.

Section 48. Amends s. 380.23, F.S., relating to federal consistency.

Section 49. Amends s. 403.031, F.S., relating to definitions.

Section 50. Creates s. 403.44, F.S., relating to Florida Climate Protection Act.

Section 51. Amends s. 403.502, F.S., relating to legislative intent.

Section 52. Amends s. 403.503, F.S., relating to definitions relating to Florida Electrical Power Plant Siting Act.

Section 53. Amends s. 403.504, F.S., relating to Department of Environmental Protection; powers and duties enumerated.

Section 54. Amends s. 403.506, F.S., relating to applicability, thresholds, and certification.

Section 55. Amends s. 403.5064, F.S., relating to application; schedules.

Section 56. Amends s. 403.5065, F.S., relating to appointment of administrative law judge; powers and duties.

Section 57. Amends s. 403.50663, F.S., relating to informational public meetings.

Section 58. Amends s. 403.50665, F.S., relating to land use consistency.

Section 59. Amends s. 403.507, F.S., relating to preliminary statements of issues, reports, project analyses, and studies.

Section 60. Amends s. 403.508, F.S., relating to land use and certification hearings, parties, participants.

Section 61. Amends s. 403.509, F.S., relating to final disposition of applications.

Section 62. Amends s. 403.511, F.S., relating to effect of certification.

Section 63. Amends s. 403.5112, F.S., relating to filing of notice of certified corridor route.

Section 64. Amends s. 403.5113, F.S., relating to postcertification amendments and review.

Section 65. Amends s. 403.5115, F.S., relating to public notice.

Section 66. Amends s. 403.516, F.S., relating to modification of certification.

Section 67. Amends s. 403.517, F.S., relating to supplemental applications for sites certified for ultimate site capacity.

Section 68. Amends s. 403.5175, F.S., relating to existing electrical power plant site certification.

Section 69. Amends s. 403.518, F.S., relating to fees; disposition.

Section 70. Amends s. 403.519, F.S., relating to exclusive forum for determination of need.

Section 71. Amends s. 403.5252, F.S., relating to determination of completeness.

Section 72. Amends s. 403.526, F.S., relating to preliminary statements of issues, reports, and project analyses; studies.

Section 73. Amends s. 403.527, F.S., relating to certification hearing, parties, participants.

Section 74. Amends s. 403.5271, F.S., relating to alternate corridors.

Section 75. Amends s. 403.5272, F.S., relating to informational public meetings.

Section 76. Amends s. 403.5312, F.S., relating to filing of notice of certified corridor route.

Section 77. Amends s. 403.5363, F.S., relating to public notices.

Section 78. Amends s. 403.5365, F.S., relating to fees; disposition.

Section 79. Amends s. 403.814, F.S., relating to general permits; delegation.

Section 80. Amends s. 489.145, F.S., relating to guaranteed energy, water, and wastewater performance savings contracting.

Section 81. Creates s. 526.201, F.S., relating to Florida Renewable Fuel Standard Act.

Section 82. Creates s. 526.202, F.S., relating to legislative findings.

Section 83. Creates s. 526.203, F.S., relating to renewable fuel standard.

Section 84. Creates s. 526.204, F.S., relating to suspension during declared emergencies; waivers.

Section 85. Creates s. 526.205, F.S., relating to enforcement.

Section 86. Creates s. 526.206, F.S., relating to rules.

Section 87. Creates s. 526.207, F.S., relating to studies and reports.

Section 88. Amends s. 553.9061, F.S., relating to scheduled increases in thermal efficiency standards.

Section 89. Amends s. 553.957, F.S., relating to products covered by this part.

Section 90. Creates an undesignated statutory provision relating to the Agency for Enterprise Information Technology.

Section 91. Creates s. 1004.648, F.S., relating to Florida Energy Systems Consortium.

Section 92. Creates an undesignated statutory provision relating to a Woody Biomass Economic Study.

Section 93. Repeals s. 377.701, F.S., relating to petroleum allocation.

Section 94. Repeals s. 377.901, F.S., relating to the Florida Energy Commission.

Section 95. Providing an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments section.

2. Expenditures:

   The **Department of Revenue** estimates the following expenditures for the Renewable Energy Technologies Investment Tax Credit:

	FY 08-09	FY 09-10
Recurring:		
1 FTE Salary	$41,733	$41,733
Expenses	$6,700	$6,700
HR Contract	$398	$398
Total Recurring Costs	$48,831	$48,831
Non-Recurring:		
Expenses	$3,388	$0
OCO	$1,000	$0
Total Non-Recurring Costs	$4,388	$0
Total Costs	**$53,219**	**$48,831**

   The **Department of Management Services** estimates the following expenditures regarding guaranteed energy, water, and wastewater performance savings contracts:

	FY 08-09	FY 09-10
Recurring:		
2 FTE Salary/Benefits	$182,000	$182,000
Expenses	$31,088	$21,000
HR Contract	$398	$398
Total Recurring Costs	$213,486	$203,398
Non-Recurring:		
Expenses	$0	$0
Total Non-Recurring Costs	$0	$0
Total Costs	**$213,486**	**$203,398**

The **Department of Community Affairs** estimates the following projected expenditures regarding products covered by energy conservation standards:

	FY 08-09	FY 09-10
Recurring:		
1 FTE Salary	$60,000	$60,000
Expenses	$6,700	$6,700
HR Services	$398	$398
Maintenance/Enhancement	$0	$37,500
Total Recurring Costs	$67,098	$104,598
Non-Recurring:		
Expenses package	$3,388	$0
Total Non-Recurring Costs:	$3,388	$0
Total Costs	**$70,486**	**$104,598**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill will have the following negative fiscal impact on local governments regarding the Property Tax Exemption for Renewable Energy Source Devices:

	FY 08-09	FY 09-10
Total Local Impact	**($2.3 m)**	**($3.5 m)**

NOTE: This estimate assumes no change in current millage rates.

2. Expenditures:

County tax offices that issue decals for high occupancy vehicles could experience a reduction in decal issuance and administrative expenses as described by the Department of Highway Safety and Motor Vehicles.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The ad valorem tax exemption for renewable energy source devices will reduce the private sector's tax burden.

Producers of renewable energy and biofuel and manufacturers, retailers, and installers of energy-efficient and renewable energy products and systems should experience an economic boost from those affected by requirements and those taking advantage of renewable energy and energy-efficient incentives provided in the bill.

The bill could impact future rates for electric services by:

- Requiring recovery of costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage for the purposes of reducing a utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with this state's government agencies and universities and for costs or expenses incurred for the quantification, reporting, and verification of greenhouse gas emissions by third parties as

required for participation in emission registries. Recovery of such costs will increase ratepayers' monthly bills. Without information as to the cost of the research and assessments, it is indeterminable as to the monthly costs for the ratepayer.

- Requiring the DEP to adopt rules for a cap-and-trade regulatory program to reduce greenhouse gas emissions from major emitters. The rules cannot become effective until ratified by the Legislature. If a cap-and-trade program is adopted, and depending upon the program adopted, it could have an impact on electric rates.
- Expanding alternative cost recovery to include the siting, design, licensing, and construction of nuclear plants to include operation of any new, enlarged, or relocated electrical transmission lines or facilities of any size which are necessary to serve the qualifying plant. Such recovery is allowed if the utility elects not to complete or is precluded from completing the nuclear plant. This alternative recovery reduces the investment risk of the utility, but could have a significant impact on electric rates.

Other potential private sector implications include:

- The bill creates a Renewable Fuel Standard which requires that all gasoline sold or offered for sale in the state be E10 on and after December 31, 2010, should not affect fuel prices.
- The bill requires the Florida Building Commission to implement increases in thermal efficiency standards on an incremental basis. Increased initial construction and capital costs are expected to be offset by operation and maintenance costs, therefore the fiscal impact is indeterminate. Current market and economic forces will need to adjust to this cost shift.
- The changes to the Transmission Line Siting Act could lower costs to electric utilities for siting transmission and distribution lines, which in turn affect electric rates.

D. FISCAL COMMENTS:

The **Department of Highway Safety & Motor Vehicles** provided the following comments regarding the high occupancy vehicle lanes provision:

> The provisions of the bill that require HOVs to comply with federal standards has an indeterminate fiscal impact. According to DOT, federal law reveals no specific penalty to be assessed against a state for non-compliance, and the DOT assumes the EPA final rule will set forth that penalty. It is expected that the penalty will involve the diversion of use of federal funds for construction purposes to some other program. The number of $5 decals issued could go down if a facility is identified as degraded. DHSMV administrative expenses for decal issuance could decline if an HOV facility is identified as degraded and issuance is limited or discontinued. Nonpayment of tolls for use of open tolling lanes that were formerly HOV lanes is not expected to present a fiscal impact, as vehicles currently eligible to be driven in HOV lanes do not pay tolls.

The **Department of Environmental Protection** provided the following comments regarding rulemaking costs:

> There are numerous authorizations for rulemaking for DMS, DOR, DEP, and others that will have some fiscal impact to those agencies. The costs to DEP of rulemaking could be significant, as we can anticipate the need for outside consultants and economists to assist with rule development and potential rule litigation. DEP estimates it will need an appropriation in the amount of $500,000.00.

The **Department of Management Services** is required by the bill to identify and compile a list of projects determined to be suitable for a guaranteed energy performance savings contracts pursuant to s. 489.145, F.S. This provision may result in an increased workload for DMS requiring additional FTEs.

There would be a fiscal impact associated with the measurement and verification of energy performance contracts. Depending on the volume, DMS has indicated that it may require substantial resources over the life of each agency's contracts. The energy performance contract can last up to 20

years and could require a sufficient number of professional and mechanical engineers familiar with energy saving to conduct the on-going measurements and verifications. The salary cost of one professional engineer is approximately $80,000, plus benefits and expenses.

The provisions relating to green building standards for new and renovated buildings will have a cost associated with them, but cannot be determined at this time. The costs for renovations would depend on the age and condition of each building.

The DMS has indicated that the pump price of E10 and regular unleaded gasoline are comparable for use in state vehicles. However, E10 use will result in reduced fuel economy. It is anticipated that the reduction would result in a 3-4 percent increase in fueling costs for state vehicles.

The **Department of Management Services** provided the following comments related to sustainable buildings:

> The bill would require that all renovations to existing facilities be in accordance with LEED, Green Globes, Florida Green Building Coalition, or another nationally recognized program recognized by the Department of Management Services. Renovations of facilities with green materials and sustainable building practices may lead to higher overall renovation costs.
>
> The bill proposes that all state-owned buildings being constructed apply sustainability standards identified by national organizations such as the Leadership in Energy Environmental Design (LEED). These organizations have varying levels within their standards. Each level requires a specific number of points that are based on the design criteria as well as types of materials that return lower energy consumption. Implementation of the criteria requires an investment in fixed capital outlay appropriations. In order to implement the proposed language identified in ENRC 08-01, it will require such investments by legislative appropriations on an ongoing basis.

The Revenue Estimating Conference has determined that the fiscal impact of the following sections of the bill are insignificant:

- Section 7., regarding the Sales and Use Tax Exemption for Renewable Energy Technologies;
- Section 8., regarding the Renewable Energy Technologies Investment Tax Credit; and
- Section 9., regarding the Renewable Energy Technologies Production Tax Credit.

The bill mandates that all county, municipal, school districts, community colleges, the State University System, the State Court System, and water management district buildings, whose architectural plans are started after July 1, 2008, be constructed to meet “green” building standards. In their fiscal analysis, the Department of Environmental Protection (DEP) estimated a 1-3 percent increase in initial capital costs to “build green” in state buildings. The DEP also estimates that these increases would be offset with reduced operating costs and performance contracting. At this time, a sustainable green building mandate on local and state governmental entities is indeterminate.

The **Public Service Commission** has indicated that it can implement most of its responsibilities under the bill using existing resources; however, the commission may need additional FTE positions to implement the renewable portfolio standard provisions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the impact of the bill will require local governments to increase their building construction costs by at least 1-2 percent. The bill does not

appear to qualify for an exemption or exception. In the absence of an applicable exemption or exception, Article VII, Section 18(a) of the state constitution provides that counties or municipalities shall not be bound by laws requiring them to spend funds or take actions requiring them to spend funds unless the Legislature determines that the law fulfills an important state interest and the law is passed by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The following entities are granted rule-making authority in this bill:

- Department of Agriculture and Consumer Services;
- Department of Environmental Protection;
- Department of Financial Services;
- Department of Management Services;
- Department of Revenue;
- Florida Energy and Climate Commission; and
- Public Service Commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Management Services provided the following comments relating to guaranteed energy, water, and wastewater performance savings contracts:

> The bill requires the Department of Management Services to verify the savings of every energy performance contract. This is an annual review that has typically been handled by the agency that is party to the contract. The agency that is party to the contract has better information on the state of their own facilities, the equipment used, baseline changes and adjustments, and occupancy rates, than the Department of Management Services would. The Department of Management Services currently has only one engineer that is trained to review energy performance audits. This new language without additional resources would significantly slow our response time to agencies that submit new audits and contracts.

D. STATEMENT OF THE SPONSOR

Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 26, 2008, the Environment & Natural Resources Council adopted six (6) amendments to PCB ENRC 08-01 and temporarily postponed passage of the bill. The following amendments have been engrossed into the body of the Staff Analysis:

- Amendment #1 by Rep. Mayfield - Conforms language relating to reporting of fuel standards.

- Amendment #2 by Rep. Kreegel - Places the retroactivity language in a new section of the bill so that it applies to the previous section relating to Renewable Energy Technologies Production Tax Credit.

- Amendment #3 by Rep. Machek - Clarifies that agricultural waste, including food waste “and other agricultural byproducts” can be used to generate power for purposes of net metering.

- Amendment #4 by Rep. Mayfield - Clarifies that renewable fuel standard provisions apply only to blenders, importers, terminal suppliers, and wholesalers.

- Amendment #5 by Rep. Mayfield - Narrows application of the PSC jurisdiction to municipal utility companies in communities of a certain size.

- Amendment #6 by Rep. Sasso - Expands the list of governmental entities required to purchase fuel efficient vehicles to include state agencies, state universities, community colleges, and local governments.