Policy and Budget Council

April 20, 2007
1:00 p.m.
212 Knott Building

Meeting Packet

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Rvised

Marco Rubio
Speaker

Ray Sansom
Chair

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HB 7119

Rvised HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7119 PCB ENRC 07-02 Solid Waste
SPONSOR(S): Environment & Natural Resources Council, Mayfield and Williams
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council	12 Y, 0 N	Kliner	Hamby
Policy & Budget Council		Davila	Hansen MH
1)			
2)			
3)			
4)			

SUMMARY ANALYSIS

HB 7119 makes a number of technical amendments to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes, and addresses other issues which have arisen since the last major rewrite of the Solid Waste Management Act (SWMA). The bill:

- Deletes obsolete definitions, and alphabetizes and consolidates remaining definitions
- Deletes obsolete language relating to Class II landfills and compost standards
- Clarifies the circumstances under which industrial byproducts are not regulated under the SWMA
- Deletes provisions relating to biomedical incinerators
- Provides for the management of storm-generated debris.

HB 7119 also proposes numerous amendments relating to the regulation of hazardous waste. The bill:

- Extends the duration of certain solid and hazardous waste research, development, and demonstration permits
- Deletes a requirement for a separate report on hazardous waste management
- Authorizes the DEP to issue authorizations which include both permits and clean closure orders for hazardous waste facilities
- Clarifies the provisions relating to the posting of signs on certain properties contaminated by hazardous wastes
- Allows the DEP to issue orders requiring the prompt abatement of an imminent hazard caused by a hazardous substance
- Reduces the local match requirement for local governments in order to receive certain hazardous waste collection grants, and provides exceptions from the match requirement.

See Part I.B., EFFECT OF PROPOSED CHANGES, for a complete list of changes proposed by the bill.

This bill has an insignificant fiscal impact on state government.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Limited Government: The Department of Environmental Protection will no longer be required to submit separate reports regarding hazardous waste management and used oil. This information will be consolidated in the department's Solid Waste Management in Florida report, thereby potentially saving personnel time and publication costs.

In order to be eligible to receive a hazardous waste collection grant, local governments currently must match the entire grant amount. This bill reduces the match requirement to 25 percent of the grant amount, and allows the match to be waived under certain circumstances. This may permit more local governments to take advantage of this grant program.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Solid Waste Management Act (SWMA) was enacted in 1988 to provide comprehensive programs to promote recycling and reduce the volume of materials going to landfills. The SWMA mandated waste minimization, conservation of landfill space, litter control and recycling, and required the involvement and cooperation of Florida's residents, businesses, and visitors. Several state agencies were given responsibilities under SWMA, with the Department of Environmental Regulation having the lead responsibility for developing the state program, adopting all regulations and standards, permitting facilities, and managing biohazardous waste.

A major provision of the SWMA required all counties to initiate recycling programs to separate and offer for recycling a majority of aluminum cans, glass, newspaper, and plastic bottles. As part of their recycling programs, local governments were encouraged to separate all plastics, metals, and all grades of paper for recycling prior to final disposal and were also encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

Counties were required to achieve a waste reduction goal of 30 percent by 1994. No more than one-half of the goal could be met with yard trash, white goods (primarily discarded appliances), construction and demolition (C&D) debris, and tires. The goal could be modified or reduced for any county that demonstrated it would have an adverse impact on the financial obligations of the county regarding waste to energy facilities (WTE).

To assist the counties in their recycling efforts, the SWMA established certain grant programs. The types of grants available included small county grants, recycling and education grants, waste tire grants, and litter and marine debris prevention grants.

The SWMA also provided for a waste newsprint fee, a waste tire fee, and the implementation of an advance disposal fee if certain recycling conditions were not met.

The Solid Waste Management Trust Fund (SWMTF) was created to fund solid waste management activities.

In 1993, the SWMA was significantly rewritten to update and refine the act. Major features of this rewrite included:

- Creating the Recycling Markets Advisory Committee in the Department of Commerce.[1]
- Providing significant new provisions relating to the advance disposal fee and statewide litter program. Initially, the advanced disposal fee was 1 cent per container with an increase to 2 cents on January 1, 1995. The estimated proceeds of the fee ($22 million) were deposited into the SWMTF to be used to supplement recycling grants, Surface Water Improvement and Management or SWIM program, Sewage Treatment Revolving Loan, and Small Community Sewer Construction Assistance. The advance disposal fee and the waste newsprint fee provisions expired on October 1, 1995, as provided in ch. 88-130, Laws of Florida.
- Providing new requirements for permitting WTE facilities and commercial hazardous waste incinerators in the state. No commercial hazardous waste incinerator may be permitted or certified in the state without a certificate of need, issued by the Governor and Cabinet, sitting as the Statewide Multipurpose Hazardous Waste Facility Siting Board.
- Establishing the Florida Packaging Council and creating a comprehensive litter and marine debris control and prevention program.
- Providing assistance to smaller counties to aid in meeting their waste reduction and recycling responsibilities.
- Providing for the ownership of solid waste and flow control.
- Providing for the disposal of certain batteries.
- Allowing the SWMTF to be used to fund projects relating to market development for recycled materials.
- Allowing counties of less than 50,000 to be eligible for annual solid waste grants of $50,000.

Another significant revision to the SWMA occurred in 1996 when the provisions relating to construction and demolition (C&D) debris were substantially revised. These provisions included requiring the Department of Environmental Protection (DEP) to establish a separate category for solid waste management facilities which accept only C&D debris for disposal or recycling; and providing that the DEP may not require liners and leachate collection systems at individual facilities unless it demonstrates that the facility is reasonably expected to result in violations of ground water standards. A permit is not required for disposal of C&D debris on the property where it is generated, but such property must be covered, graded, and vegetated as necessary when disposal is complete.

For several years, approximately $30 million was appropriated annually from the SWMTF and used for water quality and restoration projects. As a result, the Legislature in 2002 provided for the permanent reallocation of the sales tax proceeds that were being deposited into the SWMTF. These funds (approximately $30 M annually) are now deposited into the Ecosystem Management and Restoration Trust Fund to be used for water quality improvement and water restoration projects. The SWMTF is now funded almost exclusively from the waste disposal fees imposed on tires purchased at retail. This fee generates approximately $19 million annually and supports not only the grants program, but also the general solid waste activities of the Division of Waste Management.

Also, the counties are no longer required to annually submit to the DEP certain solid waste and recycling information. Instead, the DEP may periodically seek the information from the counties to evaluate and report on the success of meeting the solid waste reduction goal.

Counties must still implement a recyclable materials recycling program; however, the counties are no longer required to recover a majority of the minimum five. Instead, they are encouraged to recover a significant portion of at least four of the following materials: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash.

[1] The Department of Commerce was abolished in 1996 pursuant to ch. 96-320, L.O.F.

The 2002 revisions to the SWMA also:

- Deleted specific language regarding the amount of C&D debris, yard trash, white goods, and tires that may be considered when determining the 30 percent waste reduction goal.
- Redefined "small county" from 75,000 to 100,000 for purposes of providing an opportunity to recycle in lieu of achieving the 30-percent goal.
- Required C&D debris to be separated from the solid waste stream in separate locations at a solid waste disposal facility or other permitted site.
- Refocused the purposes of the SWMTF toward the core solid waste management responsibilities of the DEP and created a new competitive and innovative solid waste management grant program. It also maintained funding for the mosquito control activities in Department of Agriculture and Consumer Services (DACS).
- Redistributed the funds in the SWMTF
  - Up to 40 percent for funding solid waste activities of the DEP and other state agencies.
  - Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
  - Up to 11 percent to DACS for mosquito control.
  - A minimum of 40 percent for funding a competitive and innovative grant program relating to recycling and reducing the volume of municipal solid waste, including waste tires requiring final disposal.

- Provided for the distribution of the available solid waste management grants funds:
  - Up to 15 percent for the competitive and innovative grant program.
  - Up to 35 percent for the consolidated grant program for small counties.
  - Up to 50 percent for the waste tire program.

- Directed DEP to use the $30 million annually transferred from the sales tax proceeds to the Ecosystem Management and Restoration TF for projects to improve water quality and restore lakes and rivers impacted by pollution. At least 20 percent of the funds available are to be used for projects that assist financially disadvantaged small local governments.

The most recent revisions to the SWMA were made in 2005 and included the following:

- Prior to the construction of a new WTE facility or the expansion of an existing WTE, the county must implement and maintain a solid waste management and recycling program designed to meet the 30 percent waste reduction goal. If a WTE is built in a county with a population of less than 100,000 that county would have to have a program designed to achieve the 30 percent waste reduction goal, and not just provide the opportunity to recycle.
- Local government applicants for a permit to construct or expand a Class I landfill are encouraged to consider the construction of a WTE facility as an alternative to additional landfill space.
- Clarified that local governmental entities are required to pay the waste tire fee and the lead-acid battery fee.
- Increased the penalty for a litter violation from $50 to $100. The $50 increase is to be deposited into the SWMTF to be used for the solid waste management grant program.
- Provided for a pilot project to encourage the reuse or recycling of campaign signs. The recovered campaign signs are to be made available to schools and other entities that may have a use for them, at no cost.

The last time the Solid Waste Management Act was substantially rewritten was in 1993. Although there have been several amendments to the statutory provisions since that time, these amendments have been piecemeal and the issues have not been addressed in a comprehensive manner. In the past few years, issues have arisen regarding recycling and disposal of vegetative and construction and

demolition debris. This problem has been exacerbated by the fact that Florida was hit with four major hurricanes in 2004 and by Hurricanes Dennis, Katrina, and Wilma in 2005.

The solid waste provisions in the statutes contain several provisions that need to be updated to delete obsolete provisions and dates that have expired. Some provisions have never been used and certain provisions are no longer needed.

The Senate Environmental Preservation Committee was assigned an interim project to review the Solid Waste Management Act and make recommendations to the Legislature to update the act and make recommendations to address issues that have recently arisen.

Effect of Proposed Changes

This bill would implement the recommendations of the Senate Environmental Preservation Committee's interim report no. 2006-121, Review of the Solid Waste Management Act. The bill makes a number of technical amendments to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes, and address other issues which have arisen since the last major rewrite of the Solid Waste Management Act. Specifically, the bill:

- Amends s. 320.08058, F.S., to provide that the annual use fees from the sale of the Wildflower license plates will be distributed to the Wildflower Foundation, Inc.(foundation), a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code. The fees must be used to establish native Florida wildflower research programs, wildflower educational programs, and wildflower grant programs to municipal, county, and community-based groups in the state. The foundation must develop procedures of operation, research contracts, education and marketing programs and grants. A maximum of 15 percent of the proceeds from the sale of the license plates can be used for administrative costs and marketing.
- Amends s. 403.413, F.S., to clarify who is liable for dumping under the litter law.
- Amends s. 403.4131, F.S., to delete statutory provisions relating to Keep Florida Beautiful, Inc. and the Wildflower Advisory Council that was created within Keep Florida Beautiful, Inc., and deletes obsolete language relating to recycling and education grants which were incorporated into the small county consolidated grants in s. 403.7095, F.S.
- Alphabetizes the definitions used in the Solid Waste Management Act. Deletes obsolete definitions and consolidates definitions that are found elsewhere in the act.
- Deletes certain obsolete language and dates relating to the Department of Environmental Protection's (DEP) powers and duties, including:
    - Holding public hearings to develop rules to implement the state's solid waste management program. This is obsolete because rulemaking provisions of s. 120.54, F.S., include workshops and hearings.
    - Charging certain fees for certain solid waste management services. The DEP does not provide solid waste management services.
    - Acquiring personal or real property for the purpose of providing sites for solid waste management facilities. The DEP does not provide sites for solid waste management facilities.
    - Receiving funds from the sale of certain products, materials, fuel, or energy from any state-owned or operated solid waste facility. The DEP does not operate solid waste management facilities.
    - Deleting certain requirements for Class II landfills. There are no longer Class II landfills being permitted in Florida.
    - Conducting solid waste research to be used in the implementation of certain landfill closure rules. Landfill closure methods have been developed and the rules have been in place for nearly 20 years.
    - Authorizing variances from the solid waste closure rules. Variances are already allowed under s. 403.201, F.S., and s. 120.54, F.S., for any solid waste rule, not just closure rules.
- Deletes obsolete language relating to compost standards.

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- Clarifies the circumstances under which industrial byproducts are not regulated under the Solid Waste Management Act. Industrial byproducts are not regulated under the Solid Waste Management Act if disposal of those byproducts do not constitute a threat of environmental contamination or pose a significant threat to public health. Also, certain dredged material that is generated as part of a project permitted under part IV of ch. 373, F.S., or ch. 161, F.S., or that is authorized to be removed from sovereign submerged lands under ch. 253, F.S., shall be managed in accordance with the conditions of that permit or authorization unless the dredged material is regulated as a hazardous waste.
- Deletes provisions relating to biomedical incinerators because biomedical incinerators are regulated under DEP's air rules.
- Allows the DEP to exempt, by rule, certain facilities from the requirement of a permit if the construction or operation of the facility will not create a significant threat to the environment or public health. For instance, the registration of yard trash processing facilities. For purposes of Part IV of ch. 403, F.S., (Resource Recovery and Management), and only when specified by DEP rule, permits may include other forms of licenses as defined in s. 120.52, F.S. This is intended to address an issue the Joint Administrative Procedures Committee has raised regarding DEP's authority to provide such exemptions, even if they are technically justified. Counties may exempt certain wood material from the definition of "construction and demolition debris" under certain conditions to promote an integrated solid waste management program.
- Provides for the management of storm-generated debris.
    - The DEP may issue field authorizations for staging areas in those counties affected by a storm event. These staging areas may be used for the temporary storage and management of storm-generated debris, including the chipping, grinding, or burning of vegetative debris. A local government shall avoid locating a staging area in wetlands and other surface waters to the greatest extent possible, and the area that is used or affected by a staging area must be fully restored upon cessation of use of the area.
    - Storm-generated vegetative debris managed at a staging area may be disposed of in a permitted lined or unlined landfill, a permitted land clearing debris facility, or a permitted C&D debris disposal facility. Vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility.
    - C&D debris that is mixed with other storm-generated debris need not be segregated from other solid waste prior to disposal in a lined landfill. C&D debris that is source-separated or separated from other hurricane-generated debris at an authorized staging area may be managed at a permitted C&D debris disposal or recycling facility upon approval by the DEP of the methods and operations practices used to inspect the waste during segregation.
    - Unsalvageable refrigerators and freezers containing solid waste, such as rotting food, which may create a sanitary nuisance, may be disposed of in a permitted lined landfill; however, chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable.
    - Local governments may conduct the burning of storm-generated yard trash and other vegetative debris in air-curtain incinerators without prior notice to the DEP. Demolition debris may also be burned in air-curtain incinerators if the material is limited to untreated wood. Within 10 days after commencing such burning, the local government must provide certain information to the DEP. The operator of the air-curtain incinerator is subject to any requirement to obtain an open burning authorization from the Division of Forestry of the DACS or any other agency empowered to grant such authorization.
- Amends s. 403.7095, F.S., to broaden the innovative grants provisions:
    - "Innovative" means that the process, technology, or activity for which funding is sought has not previously been implemented within the jurisdiction of the applicant.
    - Grants must demonstrate technologies or processes that represent a novel application of an existing technology or process to recycle or reduce waste.
- Limits the use of an escrow account for the closure of a landfill to those landfills owned or operated by a local or state government or the Federal Government. Privately owned or operated landfills must provide other means of financial responsibility for the closure of landfills. However, any landfill owner or operator that had established an escrow account in accordance

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with the escrow provisions of this section and the conditions of its permit prior to January 1, 2007, may continue to use that escrow account to provide financial assurance for closure of that landfill, even if that landfill is not owned or operated by a local or state government or the Federal Government. An owner or operator of a landfill owned or operated by a local or state government or by the Federal Government may provide other means of financial assurance to the DEP in lieu of the escrow account.

- Deletes the provisions relating to the training of operators for waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities. The operators of these facilities are subject to the DEP's rules relating to training requirements under air permits. There has never been a separate solid waste training program for these operators.
- Revises the definition of "waste tire" and "waste tire processing facility."
- Exempts certain tire businesses from having to obtain a tire storage permit. The term "waste tire" will not include solid rubber tires and tires that are inseparable from the rim. These constitute a small percentage of the discarded tires and these tires are not amenable to recycling. Further, they pose little threat of fire, floating in standing water, or mosquito breeding. The term "waste tire processing facility" is amended to provide consistency with the term "processed tire." The provisions requiring a tire storage permit for a tire retreading business where fewer than 1,500 waste tires are kept on the premises is deleted. Currently, no permit is needed for storage of less than 1,500 tires anywhere.
- Extends the duration of certain solid and hazardous waste research, development, and demonstration permits. The DEP is allowed to issue a research, development, and demonstration permit to the owner or operator of any solid waste management facility, including any hazardous waste management facility who proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards have not been adopted. The time periods for such permits is extended from 1 year to 3 years, renewable no more than 3 times. This would remove a conflict with a similar Environmental Protection Agency rule regarding their research, development, and demonstration permits.
- Clarifies who must obtain a permit to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility. This section is also amended to provide for authorizations issued by the DEP to include both permits and clean closure orders. The bill further clarifies that if an owner or operator of a hazardous waste facility intends to or is required to discontinue operation, the temporary operation permit must include final closure conditions.
- Deletes a requirement for a separate report on hazardous waste management. This information is included in the DEP's Solid Waste Management in Florida report.
- Authorizes the DEP to issue authorizations which include both permits and clean closure orders for hazardous waste facilities. Further, the amount of financial responsibility that is required for hazardous waste facilities includes the probable costs of properly closing the facility and performing corrective action.
- Clarifies that signs must be placed by the owner or operator at any site in the state which is listed or proposed for listing on the Superfund Site List or any site identified by the DEP as a site contaminated by hazardous waste where this is a risk of exposure to the public. The DEP shall establish requirements and procedures for the placement of signs, and may do so in rules, permits, orders, or other authorizations.
- Allows the DEP to issue orders requiring the prompt abatement of an imminent hazard caused by a hazardous substance. Currently, the DEP may only issue a permit to abate such hazards.
- Requires that local governments match 25 percent of the grant amount for certain hazardous waste collection grants; however, if the DEP finds that the project has statewide applicability and has immediate benefits to other local hazardous waste collection programs in the state, matching funds are not required. Currently, eligible local governments may receive up to $50,000 in grant funds for unique and innovative projects that improve the collection of hazardous waste and lower the incidence of improper management of conditionally exempt or household waste, provided they match the grant amount.
- Repeals a provision relating to the submission of certain solid waste facility construction and operation plans.
- Repeals the requirement for a separate used oil report.
- Repeals the provisions relating to the Multipurpose Hazardous Waste Facility Siting Act.

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C. SECTION DIRECTORY:

Section 1. Section 320.08058, F.S., is amended to provide that the annual use fees from the sale of the Florida Wildflower license plates shall now be distributed to the Florida Wildflower Foundation, Inc., or to the DACS if the aforementioned foundation ceases to exist.

Section 2. Section 403.413, F.S., is amended to clarify who is liable for dumping under the litter law.

Section 3. Section 403.4131, F.S., is amended to delete the statutory provisions relating to Keep Florida Beautiful, Inc., encouraging additional counties to develop a regional approach to coordinating litter control and prevention programs, deleting certain requirements for litter reduction and a litter survey, and deleting the provisions relating to the Wildflower Advisory Council.

Section 4. Section 403.41315, F.S., is amended to conform to the changes in s. 403.4131, F.S., relating to the Keep Florida Beautiful, Inc. program.

Section 5. Section 403.4133, F.S., is amended to place the Adopt-a-Shore Program that was created within Keep Florida Beautiful, Inc., in the Department of Environmental Protection.

Section 6. Section 403.703, F.S., is amended to place the definitions used in the Solid Waste Management Act in alphabetical order. In addition, the following definitions are also amended: "clean debris", "closure", and "yard trash." The following definitions are deleted: "biomedical waste generator" and "palletized paper waste"; and a definition of "landfill" is moved from s. 403.7125, F.S.

Section 7. Section 403.704, F.S., is amended to delete certain obsolete language and dates relating to the Department of Environmental Protection's (DEP) powers and duties.

Section 8. Section 403.7043, F.S., is amended to delete obsolete language relating to compost standards rulemaking.

Section 9. Section 403.7045, F.S., is amended to clarify that industrial byproducts are not regulated under the Solid Waste Management Act if disposal of those byproducts do not constitute a threat of environmental contamination or pose a significant threat to public health, and to clarify provisions governing dredged material.

Section 10. Amends s. 403.705, F.S., to correct a cross reference.

Section 11. Subsection (2) of section 403.7061, F.S., is amended to allow, rather than require, the DEP to initiate certain rulemaking regarding waste-to-energy facilities.

Section 12. Section 403.707, F.S., is amended to allow the DEP to exempt, by rule, certain facilities from the requirement for a permit if the construction or operation of the facility is not expected to create any significant threat to the environment or public health; deletes certain obsolete provisions; removes requirement a requirement

Section 13. Section 403.7071, F.S., is created to provide for the management of storm-generated debris resulting from a storm event that is the subject of an emergency order by the DEP.

Section 14. Section 403.708, F.S., is amended to delete some obsolete dates and to delete the term "degradable" because the term is not used in this section.

Section 15. Amends s. 403.709, F.S., to clarify that the funding for litter prevention and control will be used at the local level by certified Keep America Beautiful affiliates. Time restrictions are placed on real property liens imposed by the DEP for compliance costs associated with the use of the property as an illegal waste tire site.

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Section 16. Amends s. 403.7095, F.S., to broaden the innovative grants provisions:

- "Innovative" means that the process, technology, or activity for which funding is sought has not previously been implemented within the jurisdiction of the applicant.
- Grants must demonstrate technologies or processes that represent a novel application of an existing technology or process to recycle or reduce waste.

Section 17. Section 403.7125, F.S., is amended to delete the definitions of "landfill" and "closure" from this section. These definitions appear in s. 403.704, F.S. This section provides a grandfather provision for certain facilities. Limits the use of an escrow account for the closure of a landfill.

Section 18. Section 403.716, F.S., is amended to delete provisions relating to the training of operators for waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities.

Section 19. Section 403.717, F.S., is amended to revise the definitions of "waste tire" and "waste tire processing facility."

Section 20. Section 403.7221, F.S., is amended, transferred, and renumbered as s. 403.70715, F.S.

Section 21. Section 403.722, F.S., is amended to clarify who must obtain a permit to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility.

Section 22. Section 403.7226, F.S., is amended to delete a requirement to submit an annual state assessment concerning needs for hazardous waste management.

Section 23. Section 403.724, F.S., is amended to provide that authorizations for hazardous waste facilities include both permits and clean closure plan orders.

Section 24. Section 403.7255, F.S., is amended to clarify the provisions relating to the posting of signs on certain properties contaminated by hazardous wastes.

Section 25. Section 403.726, F.S., is amended to allow the DEP to issue an order requiring the prompt abatement of an imminent hazard caused by a hazardous substance.

Section 26. Section 403.7265, F.S., is amended to set the local match requirement for certain hazardous waste collection grants to 25 percent of the grant amount.

Section 27. Amends subsection (2) of section 171.205, F.S., correcting a statutory cross-reference.

Section 28. Amends subsection (69) of section 316.003, F.S., correcting a statutory cross-reference.

Section 29. Amends paragraph (f) of subsection (2) of section 377.709. F.S., correcting a statutory cross-reference.

Section 30. Amends subsection (1) of section 487.048, F.S., correcting a statutory cross-reference.

Section 31. Sections 403.7075, 403.756, 403.7895, 403.78, 403.781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, 403.7893, F.S., are repealed.

Section 32. This act shall take effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   Requires that local governments match 25 percent of the grant amount for certain hazardous waste collection grants; however, if the DEP finds that the project has statewide applicability and has immediate benefits to other local hazardous waste collection programs in the state, matching funds are not required.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An economic impact on the general public is not anticipated. Many of the bill's provisions remove outdated or obsolete provisions and clarify several provisions as they relate to local governments and the Department of Environmental Protection.

D. FISCAL COMMENTS:

The bill deletes provisions relating to Keep Florida Beautiful, Inc., which is a nonfunctioning entity. The annual use fee proceeds from the sale of the Wildflower license plate will go to the Wildflower Foundation, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to continue the wildflower planting program and market Florida wildflowers. In the event the Wildflower Foundation, Inc., ceases to be an active 501(c)(3) nonprofit corporation, the annual use fee proceeds from the sale of the Wildflower license plate will go to the DACS for administration of the wildflower planning program.

The Department of Environmental Protection will no longer be required to submit separate reports regarding hazardous waste management and used oil. This information will be consolidated in the department's Solid Waste Management in Florida report, thereby potentially saving personnel time and publication costs.

In order to be eligible to receive a hazardous waste collection grant, local governments currently must match the entire grant amount. This bill reduces the match requirement to 25 percent of the grant amount, and allows the match to be waived under certain circumstances. This may permit more local governments to take advantage of this grant program.

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III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to solid waste; amending s. 320.08058, F.S.; revising provisions relating to the distribution of the fees paid for Florida Wildflower license plates to conform to changes made by the act; specifying uses of the proceeds; requiring that such proceeds be distributed to the Department of Agriculture and Consumer Services under certain circumstances; amending s. 403.413, F.S.; clarifying who is liable for dumping under the Florida Litter Law; amending s. 403.4131, F.S.; deleting the provisions relating to Keep Florida Beautiful, Inc.; encouraging additional counties to develop a regional approach to coordinating litter control and prevention programs; deleting certain requirements for litter reduction and a litter survey; deleting the provisions relating to the Wildflower Advisory Council; amending s. 403.41315, F.S.; conforming provisions to changes made to the Keep Florida Beautiful, Inc., program; amending s. 403.4133, F.S.; placing the Adopt-a-Shore Program within the Department of Environmental Protection; amending s. 403.703, F.S.; reordering definitions in alphabetical order; clarifying certain definitions and deleting definitions that are not used; amending s. 403.704, F.S.; deleting obsolete provisions relating to the state solid waste management program; amending s. 403.7043, F.S.; deleting obsolete and conflicting provisions relating to compost standards; amending s. 403.7045, F.S.; prohibiting the regulation of industrial byproducts under certain

circumstances; conforming a cross-reference; clarifying provisions governing dredged material; amending s. 403.705, F.S., relating to the state solid waste management program; conforming a cross-reference; amending s. 403.7061, F.S.; authorizing the Department of Environmental Protection to initiate rulemaking regarding waste-to-energy facilities; deleting a requirement to initiate such rulemaking; amending s. 403.707, F.S.; authorizing the Department of Environmental Preservation to exempt certain facilities from the requirement for a permit; authorizing the department to include certain licenses in a permit; deleting certain obsolete provisions; removing a requirement concerning groundwater monitoring of certain facilities; extending the time period for a public hearing when a local government seeks to exempt certain material from the definition of construction and demolition debris; specifying conditions, following the transfer of ownership or control of a solid waste facility, which must be met before the transferee may operate the facility; specifying criteria concerning an application to the Department of Environmental Protection to transfer an operating permit for a solid waste facility; specifying responsibilities for complying with permit requirements, including financial-assurance requirements, when ownership or control of a solid waste facility is transferred; authorizing rulemaking by the department; creating s. 403.7071, F.S.; providing for the management and disposal of certain storm-generated debris;

amending s. 403.708, F.S.; deleting obsolete provisions and clarifying provisions governing landfills; amending s. 403.709, F.S.; revising the provisions relating to the distribution of the waste tire fees; providing for expiration and enforcement of a lien on real property concerning compliance with waste-tire requirements; amending s. 403.7095, F.S.; revising provisions relating to the solid waste management grant program; providing a definition; specifying criteria for grant eligibility; deleting an obsolete provision; conforming a cross-reference; amending s. 403.7125, F.S.; deleting certain definitions that appear elsewhere in law; clarifying requirements concerning financial assurance for closure of a landfill; amending s. 403.716, F.S.; deleting provisions relating to the training and employment of certain facility operators; amending s. 403.717, F.S.; clarifying provisions relating to waste tires and the processing of waste tires; transferring, renumbering, and amending s. 403.7221, F.S.; increasing the duration of certain research, development, and demonstration permits; authorizing issuance of such a permit to a hazardous waste management facility; amending s. 403.722, F.S.; clarifying provisions relating to who is required to obtain certain hazardous waste permits; providing for operation or closure of certain existing facilities that must, due to a rule change, be permitted as hazardous waste facilities; amending s. 403.7226, F.S.; deleting a requirement to submit an annual state assessment concerning needs for

hazardous waste management; amending s. 403.724, F.S.; clarifying certain financial assurance provisions; amending s. 403.7255, F.S.; revising requirements regarding signs to notify the public about hazardous waste contamination of certain sites; amending s. 403.726, F.S.; authorizing the Department of Environmental Protection to issue an order to abate certain hazards; amending s. 403.7265, F.S.; deleting provisions requiring a statewide local hazardous waste management plan; requiring a local government to provide matching funds for grants concerning conditionally exempt or household hazardous waste under certain conditions; repealing s. 403.7075, F.S., relating to the submission of a plan or application for certain permits for a solid waste management facility; repealing s. 403.756, F.S., relating to an annual used oil report; repealing s. 403.7895, F.S., relating to permitting and a certification of need for a commercial hazardous waste incinerator; amending ss. 171.205, 316.003, 377.709, and 487.048, F.S.; conforming cross-references; repealing ss. 403.78, 403.781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, and 403.7893, F.S., relating to the Statewide Multipurpose Hazardous Waste Facility Siting Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (28) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.--

(28) FLORIDA WILDFLOWER LICENSE PLATES.--

(a) The department shall develop a Florida Wildflower license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "State Wildflower" and "coreopsis" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Florida Wildflower Foundation, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code ~~Wildflower Account established by Keep Florida Beautiful, Inc., created by s. 403.4131~~. The proceeds must be used to establish native Florida wildflower research programs, wildflower educational programs, and wildflower grant programs to municipal, county, and community-based groups in this state.

1. The Florida Wildflower Foundation, Inc., shall develop procedures of operation, research contracts, education and marketing programs, and wildflower-planting grants for Florida native wildflowers, plants, and grasses.

2. A maximum of 15 ~~10~~ percent of the proceeds from the sale of such plates may be used for administrative and marketing costs.

3. If the Florida Wildflower Foundation, Inc., ceases to be an active nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, the proceeds from the annual use fee shall be deposited into the General Inspection Trust Fund

created within the Department of Agriculture and Consumer Services. Any funds held by the Florida Wildflower Foundation, Inc., must be promptly transferred to the General Inspection Trust Fund. The Department of Agriculture and Consumer Services shall use and administer the proceeds from the use fee in the manner specified in this paragraph.

Section 2. Subsection (4) of section 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.--

(4) DUMPING LITTER PROHIBITED.--Unless otherwise authorized by law or permit, it is unlawful for any person to dump litter in any manner or amount:

(a) In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor. When any litter is thrown or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section;

(b) In or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals. When any litter is thrown or discarded from a boat, the operator or owner of the boat, or both, shall be deemed in violation of this section; or

(c) In or on any private property, unless prior consent of the owner has been given and unless the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or

regulation.

Section 3. Section 403.4131, Florida Statutes, is amended to read:

403.4131 Litter control ~~"Keep Florida Beautiful, Incorporated"; placement of signs~~.--

~~(1) It is the intent of the Legislature that a coordinated effort of interested businesses, environmental and civic organizations, and state and local agencies of government be developed to plan for and assist in implementing solutions to the litter and solid waste problems in this state and that the state provide financial assistance for the establishment of a nonprofit organization with the name of "Keep Florida Beautiful, Incorporated," which shall be registered, incorporated, and operated in compliance with chapter 617. This nonprofit organization shall coordinate the statewide campaign and operate as the grassroots arm of the state's effort and shall serve as an umbrella organization for volunteer based community programs. The organization shall be dedicated to helping Florida and its local communities solve solid waste problems, to developing and implementing a sustained litter prevention campaign, and to act as a working public private partnership in helping to implement the state's Solid Waste Management Act. As part of this effort, Keep Florida Beautiful, Incorporated, in cooperation with the Environmental Education Foundation, shall strive to educate citizens, visitors, and businesses about the important relationship between the state's environment and economy. Keep Florida Beautiful, Incorporated, is encouraged to explore and identify economic incentives to improve environmental~~

~~initiatives in the area of solid waste management. The membership of the board of directors of this nonprofit organization may include representatives of the following organizations: the Florida League of Cities, the Florida Association of Counties, the Governor's Office, the Florida Chapter of the National Solid Waste Management Association, the Florida Recyclers Association, the Center for Marine Conservation, Chapter of the Sierra Club, the Associated Industries of Florida, the Florida Soft Drink Association, the Florida Petroleum Council, the Retail Grocers Association of Florida, the Florida Retail Federation, the Pulp and Paper Association, the Florida Automobile Dealers Association, the Beer Industries of Florida, the Florida Beer Wholesalers Association, and the Distilled Spirits Wholesalers.~~

~~(2) As a partner working with government, business, civic, environmental, and other organizations, Keep Florida Beautiful, Incorporated, shall strive to assist the state and its local communities by contracting for the development of a highly visible antilitter campaign that, at a minimum, includes:~~

~~(a) Coordinating with the Center for Marine Conservation and the Center for Solid and Hazardous Waste Management to identify components of the marine debris and litter stream and groups that habitually litter.~~

~~(b) Designing appropriate advertising to promote the proper management of solid waste, with emphasis on educating groups that habitually litter.~~

~~(c) Fostering public awareness and striving to build an environmental ethic in this state through the development of~~

~~educational programs that result in an understanding and in action on the part of individuals and organizations about the role they must play in preventing litter and protecting Florida's environment.~~

~~(d) Developing educational programs and materials that promote the proper management of solid waste, including the proper disposal of litter.~~

~~(e) Administering grants provided by the state. Grants authorized under this section shall be subject to normal department audit procedures and review.~~

(1)~~(3)~~ The Department of Transportation shall establish an "adopt-a-highway" program to allow local organizations to be identified with specific highway cleanup and highway beautification projects authorized under s. 339.2405 ~~and shall coordinate such efforts with Keep Florida Beautiful, Inc~~. The department shall report to the Governor and the Legislature on the progress achieved and the savings incurred by the "adopt-a-highway" program. The department shall also monitor and report on compliance with provisions of the adopt-a-highway program to ensure that organizations that participate in the program comply with the goals identified by the department.

(2)~~(4)~~ The Department of Transportation shall place signs discouraging litter at all off-ramps of the interstate highway system in the state. The department shall place other highway signs as necessary to discourage littering ~~through use of the antilitter program developed by Keep Florida Beautiful, Incorporated~~.

(3)~~(5)~~ Each county is encouraged to initiate a litter

control and prevention program or to expand upon its existing program. The department shall establish a system of grants for municipalities and counties to implement litter control and prevention programs. In addition to the activities described in subsection (1), such grants shall at a minimum be used for litter cleanup, grassroots educational programs involving litter removal and prevention, and the placement of litter and recycling receptacles. Counties are encouraged to form working public private partnerships as authorized under this section to implement litter control and prevention programs at the community level. ~~The grants authorized pursuant to this section shall be incorporated as part of the recycling and education grants.~~ Counties that have a population under 100,000 ~~75,000~~ are encouraged to develop a regional approach to administering and coordinating their litter control and prevention programs.

~~(6) The department may contract with Keep Florida Beautiful, Incorporated, to help carry out the provisions of this section. All contracts authorized under this section are subject to normal department audit procedures and review.~~

~~(7) In order to establish continuity for the statewide program, those local governments and community programs receiving grants for litter prevention and control must use the official State of Florida litter control or campaign symbol adopted by Keep Florida Beautiful, Incorporated, for use on various receptacles and program material.~~

~~(8) The Legislature establishes a litter reduction goal of 50 percent reduction from the period January 1, 1994, to January 1, 1997. The method of determination used to measure the~~

~~reduction in litter is the survey conducted by the Center for Solid and Hazardous Waste Management. The center shall consider existing litter survey methodologies.~~

~~(9) The Department of Environmental Protection shall contract with the Center for Solid and Hazardous Waste Management for an ongoing annual litter survey, the first of which is to be conducted by January 1, 1994. The center shall appoint a broad-based work group not to exceed seven members to assist in the development and implementation of the survey. Representatives from the university system, business, government, and the environmental community shall be considered by the center to serve on the work group. Final authority on implementing and conducting the survey rests with the center. The first survey is to be designed to serve as a baseline by measuring the amount of current litter and marine debris, and is to include a methodology for measuring the reduction in the amount of litter and marine debris to determine the progress toward the litter reduction goal established in subsection (8). Annually thereafter, additional surveys are to be conducted and must also include a methodology for measuring the reduction in the amount of litter and for determining progress toward the litter reduction goal established in subsection (8).~~

~~(10)(a) There is created within Keep Florida Beautiful, Inc., the Wildflower Advisory Council, consisting of a maximum of nine members to direct and oversee the expenditure of the Wildflower Account. The Wildflower Advisory Council shall include a representative from the University of Florida Institute of Food and Agricultural Sciences, the Florida~~

~~Department of Transportation, and the Florida Department of Environmental Protection, the Florida League of Cities, and the Florida Association of Counties. Other members of the committee may include representatives from the Florida Federation of Garden Clubs, Inc., Think Beauty Foundation, the Florida Chapter of the American Society of Landscape Architects, Inc., and a representative of the Master Gardener's Program.~~

~~(b) The Wildflower Advisory Council shall develop procedures of operation, research contracts, educational programs, and wildflower planting grants for Florida native wildflowers, plants, and grasses. The council shall also make the final determination of what constitutes acceptable species of wildflowers and other plantings supported by these programs.~~

Section 4. Paragraphs (a) and (j) of subsection (2) of section 403.41315, Florida Statutes, are amended to read:

403.41315 Comprehensive illegal dumping, litter, and marine debris control and prevention.--

(2) The comprehensive illegal dumping, litter, and marine debris control and prevention program at a minimum must include the following:

(a) A local ~~statewide~~ public awareness and educational campaign~~, coordinated by Keep Florida Beautiful, Incorporated,~~ to educate individuals, government, businesses, and other organizations concerning the role they must assume in preventing and controlling litter.

(j) Other educational programs that are implemented at the grassroots level ~~coordinated through Keep Florida Beautiful, Inc.,~~ involving volunteers and community programs that clean up

and prevent litter, including Youth Conservation Corps activities.

Section 5. Subsection (2) of section 403.4133, Florida Statutes, is amended to read:

403.4133 Adopt-a-Shore Program.--

(2) The Adopt-a-Shore Program shall be created within the Department of Environmental Protection ~~nonprofit organization referred to in s. 403.4131(1), named Keep Florida Beautiful, Incorporated~~. The program shall be designed to educate the state's citizens and visitors about the importance of litter prevention and shall include approaches and techniques to remove litter from the state's shorelines.

Section 6. Section 403.703, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 403.703, F.S., for present text.)

403.703 Definitions.--As used in this part, the term:

(1) "Ash residue" has the same meaning as in the department rule governing solid waste combustors which defines the term.

(2) "Biological waste" means solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(3) "Biomedical waste" means any solid waste or liquid waste that may present a threat of infection to humans. The term

includes, but is not limited to, nonliquid human tissue and body parts, laboratory and veterinary waste that contains human-disease-causing agents, discarded disposable sharps, human blood and human blood products and body fluids, and other materials that in the opinion of the Department of Health represent a significant risk of infection to persons outside the generating facility. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(4) "Clean debris" means any solid waste that is virtually inert, that is not a pollution threat to groundwater or surface waters, that is not a fire hazard, and that is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes uncontaminated concrete, including embedded pipe or steel, brick, glass, ceramics, and other wastes designated by the department.

(5) "Closure" means the cessation of operation of a solid waste management facility and the act of securing such facility so that it will pose no significant threat to human health or the environment and includes long-term monitoring and maintenance of a facility if required by department rule.

(6) "Construction and demolition debris" means discarded materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally

results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause the resulting mixture to be classified as other than construction and demolition debris. The term also includes:

(a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;

(b) Except as provided in s. 403.707(9)(j), yard trash and unpainted, nontreated wood scraps and wood pallets from sources other than construction or demolition projects;

(c) Scrap from manufacturing facilities which is the type of material generally used in construction projects and which would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wallboard, siding concrete, and similar materials from industrial or commercial facilities; and

(d) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

(7) "County," or any like term, means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution and, when s. 403.706(19) applies, means a special district or other entity.

(8) "Department" means the Department of Environmental Protection or any successor agency performing a like function.

(9) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or upon any land or water so that such solid waste or hazardous waste or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment.

(10) "Generation" means the act or process of producing solid or hazardous waste.

(11) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this part.

(12) "Hazardous substance" means any substance that is defined as a hazardous substance in the United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767.

(13) "Hazardous waste" means solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(14) "Hazardous waste facility" means any building, site, structure, or equipment at or by which hazardous waste is disposed of, stored, or treated.

(15) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, recycling, and disposal of hazardous waste.

(16) "Land disposal" means any placement of hazardous waste in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt bed formation, salt dome formation, or underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

(17) "Landfill" means any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707 and which receives solid waste for disposal in or upon land. The term does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris.

(18) "Manifest" means the recordkeeping system used for identifying the concentration, quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, storage, or treatment.

(19) "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

(20) "Municipality," or any like term, means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution and, when s. 403.706(19) applies, means a special district or other entity.

(21) "Operation," with respect to any solid waste management facility, means the disposal, storage, or processing of solid waste at and by the facility.

(22) "Person" means any and all persons, natural or artificial, including any individual, firm, or association; any municipal or private corporation organized or existing under the laws of this state or any other state; any county of this state; and any governmental agency of this state or the Federal Government.

(23) "Processing" means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage, or recycling; safe for disposal; or reduced in volume or concentration.

(24) "Recovered materials" means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste.

(25) "Recovered materials processing facility" means a facility engaged solely in the storage, processing, resale, or reuse of recovered materials. Such a facility is not a solid waste management facility if it meets the conditions of s. 403.7045(1)(e).

(26) "Recyclable material" means those materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste.

(27) "Recycling" means any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(28) "Resource recovery" means the process of recovering materials or energy from solid waste, excluding those materials or solid waste under the control of the Nuclear Regulatory Commission.

(29) "Resource recovery equipment" means equipment or machinery exclusively and integrally used in the actual process of recovering material or energy resources from solid waste.

(30) "Sludge" includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water-supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

(31) "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution

control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (24) are not solid waste.

(32) "Solid waste disposal facility" means any solid waste management facility that is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste.

(33) "Solid waste management" means the process by which solid waste is collected, transported, stored, separated, processed, or disposed of in any other way according to an orderly, purposeful, and planned program, which includes closure.

(34) "Solid waste management facility" means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities that meet the requirements of s. 403.7046, except the portion of such facilities, if any, which is used for the management of solid waste.

(35) "Source separated" means that the recovered materials are separated from solid waste at the location where the recovered materials and solid waste are generated. The term does

not require that various types of recovered materials be separated from each other, and recognizes de minimis solid waste, in accordance with industry standards and practices, may be included in the recovered materials. Materials are not considered source-separated when two or more types of recovered materials are deposited in combination with each other in a commercial collection container located where the materials are generated and when such materials contain more than 10 percent solid waste by volume or weight. For purposes of this subsection, the term "various types of recovered materials" means metals, paper, glass, plastic, textiles, and rubber.

(36) "Special wastes" means solid wastes that can require special handling and management, including, but not limited to, white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, yard trash, and biological wastes.

(37) "Storage" means the containment or holding of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(38) "Transfer station" means a site the primary purpose of which is to store or hold solid waste for transport to a processing or disposal facility.

(39) "Transport" means the movement of hazardous waste from the point of generation or point of entry into the state to any offsite intermediate points and to the point of offsite ultimate disposal, storage, treatment, or exit from the state.

(40) "Treatment," when used in connection with hazardous

waste, means any method, technique, or process, including neutralization, which is designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize it or render it nonhazardous, safe for transport, amenable to recovery, amenable to storage or disposal, or reduced in volume or concentration. The term includes any activity or processing that is designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(41) "Volume reduction plant" includes incinerators, pulverizers, compactors, shredding and baling plants, composting plants, and other plants that accept and process solid waste for recycling or disposal.

(42) "White goods" includes discarded air conditioners, heaters, refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

(43) "Yard trash" means vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

Section 7. Section 403.704, Florida Statutes, is amended to read:

403.704 Powers and duties of the department.--The department shall have responsibility for the implementation and enforcement of ~~the provisions of~~ this act. In addition to other powers and duties, the department shall:

(1) Develop and implement, in consultation with local governments, a state solid waste management program, as defined in s. 403.705~~, and update the program at least every 3 years~~. ~~In~~

~~developing rules to implement the state solid waste management program, the department shall hold public hearings around the state and shall give notice of such public hearings to all local governments and regional planning agencies.~~

(2) Provide technical assistance to counties, municipalities, and other persons, and cooperate with appropriate federal agencies and private organizations in carrying out ~~the provisions of~~ this act.

(3) Promote the planning and application of recycling and resource recovery systems which preserve and enhance the quality of the air, water, and other natural resources of the state and assist in and encourage, where appropriate, the development of regional solid waste management facilities.

(4) Serve as the official state representative for all purposes of the federal Solid Waste Disposal Act, as amended by Pub. L. No. 91-512, or as subsequently amended.

(5) Use private industry or the State University System through contractual arrangements for implementation of some or all of the requirements of the state solid waste management program and for such other activities as may be considered necessary, desirable, or convenient.

(6) Encourage recycling and resource recovery as a source of energy and materials.

(7) Assist in and encourage, as much as possible, the development within the state of industries and commercial enterprises which are based upon resource recovery, recycling, and reuse of solid waste.

~~(8) Charge reasonable fees for any services it performs~~

~~pursuant to this act, provided user fees shall apply uniformly within each municipality or county to all users who are provided with solid waste management services.~~

~~(9) Acquire, at its discretion, personal or real property or any interest therein by gift, lease, or purchase for the purpose of providing sites for solid waste management facilities.~~

~~(10) Acquire, construct, reconstruct, improve, maintain, equip, furnish, and operate, at its discretion, such solid waste management facilities as are called for by the state solid waste management program.~~

~~(11) Receive funds or revenues from the sale of products, materials, fuels, or energy in any form derived from processing of solid waste by state-owned or state-operated facilities, which funds or revenues shall be deposited into the Solid Waste Management Trust Fund.~~

(8)~~(12)~~ Determine by rule the facilities, equipment, personnel, and number of monitoring wells to be provided at each ~~Class I~~ solid waste disposal facility ~~area~~.

~~(13) Encourage, but not require, as part of a Class II solid waste disposal area, a potable water supply; an employee shelter; handwashing and toilet facilities; equipment washout facilities; electric service for operations and repairs; equipment shelter for maintenance and storage of parts, equipment, and tools; scales for weighing solid waste received at the disposal area; a trained equipment operator in full time attendance during operating hours; and communication facilities for use in emergencies. The department may require an attendant~~

~~at a Class II solid waste disposal area during the hours of operation if the department affirmatively demonstrates that such a requirement is necessary to prevent unlawful fires, unauthorized dumping, or littering of nearby property.~~

~~(14) Require a Class II solid waste disposal area to have at least one monitoring well which shall be placed adjacent to the site in the direction of groundwater flow unless otherwise exempted by the department. The department may require additional monitoring wells not farther than 1 mile from the site if it is affirmatively demonstrated by the department that a significant change in the initial quality of the water has occurred in the downstream monitoring well which adversely affects the beneficial uses of the water. These wells may be public or private water supply wells if they are suitable for use in determining background water quality levels.~~

(9) ~~(15)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce ~~the provisions of~~ this act, including requirements for the classification, construction, operation, maintenance, and closure of solid waste management facilities and requirements for, and conditions on, solid waste disposal in this state, whether such solid waste is generated within this state or outside this state as long as such requirements and conditions are not based on the out-of-state origin of the waste and are consistent with applicable ~~provisions of~~ law. When classifying solid waste management facilities, the department shall consider the hydrogeology of the site for the facility, the types of wastes to be handled by the facility, and methods used to control the types of waste to be handled by the facility

and shall seek to minimize the adverse effects of solid waste management on the environment. Whenever the department adopts any rule stricter or more stringent than one that ~~which~~ has been set by the United States Environmental Protection Agency, the procedures set forth in s. 403.804(2) shall be followed. The department shall not, however, adopt hazardous waste rules for solid waste for which special studies were required prior to October 1, 1988, under s. 8002 of the Resource Conservation and Recovery Act, 42 U.S.C. s. 6982, as amended, until the studies are completed by the United States Environmental Protection Agency and the information is available to the department for consideration in adopting its own rule.

(10) ~~(16)~~ Issue or modify permits on such conditions as are necessary to effect the intent and purposes of this act, and may deny or revoke permits.

~~(17) Conduct research, using the State University System, solid waste professionals from local governments, private enterprise, and other organizations, on alternative, economically feasible, cost effective, and environmentally safe solid waste management and landfill closure methods which protect the health, safety, and welfare of the public and the environment and which may assist in developing markets and provide economic benefits to local governments, the state, and its citizens, and solicit public participation during the research process. The department shall incorporate such cost-effective landfill closure methods in the appropriate department rule as alternative closure requirements.~~

(11) ~~(18)~~ Develop and implement or contract for services to

develop information on recovered materials markets and strategies for market development and expansion for use of these materials. Additionally, the department shall maintain a directory of recycling businesses operating in the state and shall serve as a coordinator to match recovered materials with markets. Such directory shall be made available to the public and to local governments to assist with their solid waste management activities.

~~(19) Authorize variances from solid waste closure rules adopted pursuant to this part, provided such variances are applied for and approved in accordance with s. 403.201 and will not result in significant threats to human health or the environment.~~

(12) ~~(20)~~ Establish accounts and deposit to the Solid Waste Management Trust Fund and control and administer moneys it may withdraw from the fund.

(13) ~~(21)~~ Manage a program of grants, using funds from the Solid Waste Management Trust Fund and funds provided by the Legislature for solid waste management, for programs for recycling, composting, litter control, and special waste management and for programs that ~~which~~ provide for the safe and proper management of solid waste.

(14) ~~(22)~~ Budget and receive appropriated funds and accept, receive, and administer grants or other funds or gifts from public or private agencies, including the state and the Federal Government, for the purpose of carrying out ~~the provisions of~~ this act.

(15) ~~(23)~~ Delegate its powers, enter into contracts, or

take such other actions as may be necessary to implement this act.

(16) ~~(24)~~ Receive and administer funds appropriated for county hazardous waste management assessments.

(17) ~~(25)~~ Provide technical assistance to local governments and regional agencies to ensure consistency between county hazardous waste management assessments; coordinate the development of such assessments with the assistance of the appropriate regional planning councils; and review and make recommendations to the Legislature relative to the sufficiency of the assessments to meet state hazardous waste management needs.

(18) ~~(26)~~ Increase public education and public awareness of solid and hazardous waste issues by developing and promoting statewide programs of litter control, recycling, volume reduction, and proper methods of solid waste and hazardous waste management.

(19) ~~(27)~~ Assist the hazardous waste storage, treatment, or disposal industry by providing to the industry any data produced on the types and quantities of hazardous waste generated.

(20) ~~(28)~~ Institute a hazardous waste emergency response program which would include emergency telecommunication capabilities and coordination with appropriate agencies.

(21) ~~(29)~~ Adopt ~~Promulgate~~ rules necessary to accept delegation of the hazardous waste management program from the Environmental Protection Agency under the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616.

(22) ~~(30)~~ Adopt rules, if necessary, to address the

incineration and disposal of biomedical waste and the management of biological waste within the state, whether such waste is generated within this state or outside this state, as long as such requirements and conditions are not based on the out-of-state origin of the waste and are consistent with applicable provisions of law.

Section 8. Section 403.7043, Florida Statutes, is amended to read:

403.7043 Compost standards and applications.--

(1) In order to protect the state's land and water resources, compost produced, utilized, or disposed of by the composting process at solid waste management facilities in the state must meet criteria established by the department.

(2) The department shall ~~Within 6 months after October 1, 1988, the department shall initiate rulemaking to~~ establish and maintain rules addressing standards for the production of compost ~~and shall complete and promulgate those rules within 12 months after initiating the process of rulemaking~~, including rules establishing:

(a) Requirements necessary to produce hygienically safe compost products for varying applications.

(b) A classification scheme for compost based on~~:~~ the types of waste composted, ~~including at least one type containing only yard trash;~~ the maturity of the compost, ~~including at least three degrees of decomposition for fresh, semimature, and mature;~~ and the levels of organic and inorganic constituents in the compost. This scheme shall address:

1. Methods for measurement of the compost maturity.

2. Particle sizes.

3. Moisture content.

4. Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the department establishes, and the analytical methods to determine those levels.

~~(3) Within 6 months after October 1, 1988, the department shall initiate rulemaking to prescribe the allowable uses and application rates of compost and shall complete and promulgate those rules within 12 months after initiating the process of rulemaking, based on the following criteria:~~

~~(a) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.~~

~~(b) The allowable uses of compost based on maturity and type of compost.~~

~~(4) If compost is produced which does not meet the criteria prescribed by the department for agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by the department, unless a different application is specifically permitted by the department.~~

~~(5) The provisions of s. 403.706 shall not prohibit any county or municipality which has in place a memorandum of understanding or other written agreement as of October 1, 1988, from proceeding with plans to build a compost facility.~~

Section 9. Subsections (1), (2), and (3) of section 403.7045, Florida Statutes, are amended to read:

403.7045 Application of act and integration with other

acts.--

(1) The following wastes or activities shall not be regulated pursuant to this act:

(a) Byproduct material, source material, and special nuclear material, the generation, transportation, disposal, storage, or treatment of which is regulated under chapter 404 or ~~under~~ the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat. 923, as amended;

(b) Suspended solids and dissolved materials in domestic sewage effluent or irrigation return flows or other discharges which are point sources subject to permits pursuant to ~~provisions of~~ this chapter or ~~pursuant to~~ s. 402 of the Clean Water Act, Pub. L. No. 95-217;

(c) Emissions to the air from a stationary installation or source regulated under ~~provisions of~~ this chapter or ~~under~~ the Clean Air Act, Pub. L. No. 95-95;

(d) Drilling fluids, produced waters, and other wastes associated with the exploration for, or development and production of, crude oil or natural gas which are regulated under chapter 377; or

(e) Recovered materials or recovered materials processing facilities ~~shall not be regulated pursuant to this act~~, except as provided in s. 403.7046, if:

1. A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within 1 year.

2. The recovered materials handled by the facility or the products or byproducts of operations that process recovered materials are not discharged, deposited, injected, dumped,

spilled, leaked, or placed into or upon any land or water by the owner or operator of such facility so that such recovered materials, products or byproducts, or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria is caused.

3. The recovered materials handled by the facility are not hazardous wastes as defined under s. 403.703, and rules promulgated pursuant thereto.

4. The facility is registered as required in s. 403.7046.

(f) Industrial byproducts, if:

1. A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.

2. The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.

3. The industrial byproducts are not hazardous wastes as defined under s. 403.703 and rules adopted under this section.

(2) Except as provided in s. 403.704(9) ~~s. 403.704(15)~~, the following wastes shall not be regulated as a hazardous waste pursuant to this act, except when determined by the United States Environmental Protection Agency to be a hazardous waste:

(a) Ashes and scrubber sludges generated from the burning of boiler fuel for generation of electricity or steam.

(b) Agricultural and silvicultural byproduct material and agricultural and silvicultural process waste from normal farming or processing.

(c) Discarded material generated by the mining and beneficiation and chemical or thermal processing of phosphate rock, and precipitates resulting from neutralization of phosphate chemical plant process and nonprocess waters.

(3) The following wastes or activities shall be regulated pursuant to this act in the following manner:

(a) Dredged material that is generated as part of a project permitted under part IV of chapter 373 or chapter 161, or that is authorized to be removed from sovereign submerged lands under chapter 253, ~~Dredge spoil or fill material~~ shall be managed in accordance with the conditions of that permit or authorization unless the dredged material is regulated as hazardous waste pursuant to this part ~~disposed of pursuant to a dredge and fill permit, but whenever hazardous components are disposed of within the dredge or fill material, the dredge and fill permits shall specify the specific hazardous wastes contained and the concentration of each such waste~~. If the dredged material contains hazardous substances, the department may further ~~then~~ limit or restrict the disposal, sale, or use of the dredged ~~dredge and fill~~ material and may specify such other conditions relative to this material as are reasonably necessary to protect the public from the potential hazards. However, this paragraph does not require the routine testing of dredge

material for hazardous substances unless there is a reasonable expectation that such substances will be present.

(b) Hazardous wastes that ~~which~~ are contained in artificial recharge waters or other waters intentionally introduced into any underground formation and that ~~which~~ are permitted pursuant to s. 373.106 shall also be handled in compliance with the requirements and standards for disposal, storage, and treatment of hazardous waste under this act.

(c) Solid waste or hazardous waste facilities that ~~which~~ are operated as a part of the normal operation of a power generating facility and which are licensed by certification pursuant to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, shall undergo such certification subject to the substantive provisions of this act.

(d) Biomedical waste and biological waste shall be disposed of only as authorized by the department. However, any person who unknowingly disposes into a sanitary landfill or waste-to-energy facility any such waste that ~~which~~ has not been properly segregated or separated from other solid wastes by the generating facility is not guilty of a violation under this act. ~~Nothing in~~ This paragraph does not ~~shall be construed to~~ prohibit the department from seeking injunctive relief pursuant to s. 403.131 to prohibit the unauthorized disposal of biomedical waste or biological waste.

Section 10. Paragraph (f) of subsection (2) of section 403.705, Florida Statutes, is amended to read:

403.705 State solid waste management program.--

(2) The state solid waste management program shall

include, at a minimum:

(f) Planning guidelines and technical assistance to counties and municipalities to develop and implement programs for alternative disposal or processing or recycling of the solid wastes prohibited from disposal in landfills under s. 403.708(12) ~~s. 403.708(13)~~ and for special wastes.

Section 11. Subsection (2) of section 403.7061, Florida Statutes, is amended to read:

403.7061 Requirements for review of new waste-to-energy facility capacity by the Department of Environmental Protection.--

(2) Notwithstanding any other provisions of state law, the department shall not issue a construction permit or certification to build a waste-to-energy facility or expand an existing waste-to-energy facility unless the facility meets the requirements set forth in subsection (3). Any construction permit issued by the department between January 1, 1993, and May 12, 1993, which does not address these new requirements is ~~shall be~~ invalid. These new requirements do not apply to the issuance of permits or permit modifications to retrofit existing facilities with new or improved pollution control equipment to comply with state or federal law. The department may ~~shall~~ initiate rulemaking to incorporate the criteria in subsection (3) into its permit review process.

Section 12. Section 403.707, Florida Statutes, is amended to read:

403.707 Permits.--

(1) A ~~No~~ solid waste management facility may not be

operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the department. The department may by rule exempt specified types of facilities from the requirement for a permit under this part if it determines that construction or operation of the facility is not expected to create any significant threat to the environment or public health. For purposes of this part, and only when specified by department rule, a permit may include registrations as well as other forms of licenses as defined in s. 120.52. Solid waste construction permits issued under this section may include any permit conditions necessary to achieve compliance with the recycling requirements of this act. The department shall pursue reasonable timeframes for closure and construction requirements, considering pending federal requirements and implementation costs to the permittee. The department shall adopt a rule establishing performance standards for construction and closure of solid waste management facilities. The standards shall allow flexibility in design and consideration for site-specific characteristics.

(2) Except as provided in s. 403.722(6), a ~~no~~ permit under this section is not required for the following, if ~~provided that~~ the activity does ~~shall~~ not create a public nuisance or any condition adversely affecting the environment or public health and does ~~shall~~ not violate other state or local laws, ordinances, rules, regulations, or orders:

(a) Disposal by persons of solid waste resulting from their own activities on their own property, if ~~provided~~ such waste is ~~either~~ ordinary household waste from their residential

property or is rocks, soils, trees, tree remains, and other vegetative matter that ~~which~~ normally result from land development operations. Disposal of materials that ~~which~~ could create a public nuisance or adversely affect the environment or public health, such as~~:~~ white goods; automotive materials, such as batteries and tires; petroleum products; pesticides; solvents; or hazardous substances, is not covered under this exemption.

(b) Storage in containers by persons of solid waste resulting from their own activities on their property, leased or rented property, or property subject to a homeowners or maintenance association for which the person contributes association assessments, if the solid waste in such containers is collected at least once a week.

(c) Disposal by persons of solid waste resulting from their own activities on their property, if ~~provided~~ the environmental effects of such disposal on groundwater and surface waters are:

1. Addressed or authorized by a site certification order issued under part II or a permit issued by the department under ~~pursuant to~~ this chapter or rules adopted pursuant to this chapter ~~thereto~~; or

2. Addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the department.

(d) Disposal by persons of solid waste resulting from their own activities on their own property, if ~~provided that~~ such disposal occurred prior to October 1, 1988.

(e) Disposal of solid waste resulting from normal farming operations as defined by department rule. Polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning if a~~, provided that no~~ public nuisance or any condition adversely affecting the environment or the public health is not created by the open burning ~~thereby~~ and ~~that~~ state or federal ambient air quality standards are not violated.

(f) The use of clean debris as fill material in any area. However, this paragraph does not exempt any person from obtaining any other required permits, and ~~nor~~ does not ~~it~~ affect a person's responsibility to dispose of clean debris appropriately if it is not to be used as fill material.

(g) Compost operations that produce less than 50 cubic yards of compost per year when the compost produced is used on the property where the compost operation is located.

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities.

(4) When application for a construction permit for a Class I ~~or Class II~~ solid waste disposal facility ~~area~~ is made, it is the duty of the department to provide a copy of the application, within 7 days after filing, to the water management district having jurisdiction where the area is to be located. The water management district may prepare an advisory report as to the

impact on water resources. This report must ~~shall~~ contain the district's recommendations as to the disposition of the application and shall be submitted to the department no later than 30 days prior to the deadline for final agency action by the department. However, the failure of the department or the water management district to comply with the provisions of this subsection shall not be the basis for the denial, revocation, or remand of any permit or order issued by the department.

(5) The department may not issue a construction permit pursuant to this part for a new solid waste landfill within 3,000 feet of Class I surface waters.

(6) The department may issue a construction permit pursuant to this part only to a solid waste management facility that provides the conditions necessary to control the safe movement of wastes or waste constituents into surface or ground waters or the atmosphere and that will be operated, maintained, and closed by qualified and properly trained personnel. Such facility must if necessary:

(a) Use natural or artificial barriers that which are capable of controlling lateral or vertical movement of wastes or waste constituents into surface or ground waters.

(b) Have a foundation or base that is capable of providing support for structures and waste deposits and capable of preventing foundation or base failure due to settlement, compression, or uplift.

(c) Provide for the most economically feasible, cost-effective, and environmentally safe control of leachate, gas, stormwater, and disease vectors and prevent the endangerment of

public health and the environment.

Open fires, air-curtain incinerators, or trench burning may not be used as a means of disposal at a solid waste management facility, unless permitted by the department under s. 403.087.

(7) Prior to application for a construction permit, an applicant shall designate to the department temporary backup disposal areas or processes for the resource recovery facility. Failure to designate temporary backup disposal areas or processes shall result in a denial of the construction permit.

(8) The department may refuse to issue a permit to an applicant who by past conduct in this state has repeatedly violated pertinent statutes, rules, or orders or permit terms or conditions relating to any solid waste management facility and who is deemed to be irresponsible as defined by department rule. For the purposes of this subsection, an applicant includes the owner or operator of the facility, or if the owner or operator is a business entity, a parent of a subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than 50 percent of the stock of the corporation.

~~(9) Before or on the same day of filing with the department of an application for any construction permit for the incineration of biomedical waste which the department may require by rule, the applicant shall notify each city and county within 1 mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published in~~

~~a newspaper of general circulation in the county in which the facility is located or is proposed to be located. Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county. The notice shall contain:~~

~~(a) The name of the applicant and a brief description of the facility and its location.~~

~~(b) The location of the application file and when it is available for public inspection.~~

~~The notice shall be prepared by the applicant and shall comply with the following format:~~

~~Notice of Application~~

~~The Department of Environmental Protection announces receipt of an application for a permit from (name of applicant) to (brief description of project). This proposed project will be located at (location) in (county) (city).~~

~~This application is being processed and is available for public~~

~~inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).~~

~~(10) A permit, which the department may require by rule, for the incineration of biomedical waste, may not be transferred by the permittee to any other entity, except in conformity with the requirements of this subsection.~~

~~(a) Within 30 days after the sale or legal transfer of a permitted facility, the permittee shall file with the department an application for transfer of the permits on such form as the department shall establish by rule. The form must be completed with the notarized signatures of both the transferring permittee and the proposed permittee.~~

~~(b) The department shall approve the transfer of a permit unless it determines that the proposed permittee has not provided reasonable assurances that the proposed permittee has the administrative, technical, and financial capability to properly satisfy the requirements and conditions of the permit, as determined by department rule. The determination shall be limited solely to the ability of the proposed permittee to comply with the conditions of the existing permit, and it shall not concern the adequacy of the permit conditions. If the department proposes to deny the transfer, it shall provide both the transferring permittee and the proposed permittee a written objection to such transfer together with notice of a right to request a proceeding on such determination under chapter 120.~~

~~(c) Within 90 days after receiving a properly completed application for transfer of a permit, the department shall issue~~

~~a final determination. The department may toll the time for making a determination on the transfer by notifying both the transferring permittee and the proposed permittee that additional information is required to adequately review the transfer request. Such notification shall be provided within 30 days after receipt of an application for transfer of the permit, completed pursuant to paragraph (a). If the department fails to take action to approve or deny the transfer within 90 days after receipt of the completed application or within 90 days after receipt of the last item of timely requested additional information, the transfer shall be deemed approved.~~

~~(d) The transferring permittee is encouraged to apply for a permit transfer well in advance of the sale or legal transfer of a permitted facility. However, the transfer of the permit shall not be effective prior to the sale or legal transfer of the facility.~~

~~(e) Until the transfer of the permit is approved by the department, the transferring permittee and any other person constructing, operating, or maintaining the permitted facility shall be liable for compliance with the terms of the permit. Nothing in this section shall relieve the transferring permittee of liability for corrective actions that may be required as a result of any violations occurring prior to the legal transfer of the permit.~~

~~(11) The department shall review all permit applications for any designated Class I solid waste disposal facility. As used in this subsection, the term "designated Class I solid waste disposal facility" means any facility that is, as of May~~

~~12, 1993, a solid waste disposal facility classified as an active Class I landfill by the department, that is located in whole or in part within 1,000 feet of the boundary of any municipality, but that is not located within any county with an approved charter or consolidated municipal government, is not located within any municipality, and is not operated by a municipality. The department shall not permit vertical expansion or horizontal expansion of any designated Class I solid waste disposal facility unless the application for such permit was filed before January 1, 1993, and no solid waste management facility may be operated which is a vertical expansion or horizontal expansion of a designated Class I solid waste disposal facility. As used in this subsection, the term "vertical expansion" means any activity that will result in an increase in the height of a designated Class I solid waste disposal facility above 100 feet National Geodetic Vertical Datum, except solely for closure, and the term "horizontal expansion" means any activity that will result in an increase in the ground area covered by a designated Class I solid waste disposal facility, or if within 1 mile of a designated Class I solid waste disposal facility, any new or expanded operation of any solid waste disposal facility or area, or of incineration of solid waste, or of storage of solid waste for more than 1 year, or of composting of solid waste other than yard trash.~~

(9)~~(12)~~ The department shall establish a separate category for solid waste management facilities that ~~which~~ accept only construction and demolition debris for disposal or recycling. The department shall establish a reasonable schedule for

existing facilities to comply with this section to avoid undue hardship to such facilities. However, a permitted solid waste disposal unit that ~~which~~ receives a significant amount of waste prior to the compliance deadline established in this schedule shall not be required to be retrofitted with liners or leachate control systems. ~~Facilities accepting materials defined in s. 403.703(17)(b) must implement a groundwater monitoring system adequate to detect contaminants that may reasonably be expected to result from such disposal prior to the acceptance of those materials.~~

(a) The department shall establish reasonable construction, operation, monitoring, recordkeeping, financial assurance, and closure requirements for such facilities. The department shall take into account the nature of the waste accepted at various facilities when establishing these requirements, and may impose less stringent requirements, including a system of general permits or registration requirements, for facilities that accept only a segregated waste stream which is expected to pose a minimal risk to the environment and public health, such as clean debris. The Legislature recognizes that incidental amounts of other types of solid waste are commonly generated at construction or demolition projects. In any enforcement action taken pursuant to this section, the department shall consider the difficulty of removing these incidental amounts from the waste stream.

(b) The department shall not require liners and leachate collection systems at individual facilities unless it demonstrates, based upon the types of waste received, the

methods for controlling types of waste disposed of, the proximity of groundwater and surface water, and the results of the hydrogeological and geotechnical investigations, that the facility is reasonably expected to result in violations of groundwater standards and criteria otherwise.

(c) The owner or operator shall provide financial assurance for closing of the facility in accordance with the requirements of s. 403.7125. The financial assurance shall cover the cost of closing the facility and 5 years of long-term care after closing, unless the department determines, based upon hydrogeologic conditions, the types of wastes received, or the groundwater monitoring results, that a different long-term care period is appropriate. However, unless the owner or operator of the facility is a local government, the escrow account described in s. 403.7125(2) ~~s. 403.7125(3)~~ may not be used as a financial assurance mechanism.

(d) The department shall establish training requirements for operators of facilities, and shall work with the State University System or other providers to assure that adequate training courses are available. The department shall also assist the Florida Home Builders Association in establishing a component of its continuing education program to address proper handling of construction and demolition debris, including best management practices for reducing contamination of the construction and demolition debris waste stream.

(e) The issuance of a permit under this subsection does not obviate the need to comply with all applicable zoning and land use regulations.

(f) A permit is not required under this section for the disposal of construction and demolition debris on the property where it is generated, but such property must be covered, graded, and vegetated as necessary when disposal is complete.

(g) It is the policy of the Legislature to encourage facilities to recycle. The department shall establish criteria and guidelines that encourage recycling where practical and provide for the use of recycled materials in a manner that protects the public health and the environment. Facilities are authorized to recycle, provided such activities do not conflict with such criteria and guidelines.

(h) The department shall ensure that the requirements of this section are applied and interpreted consistently throughout the state. In accordance with s. 20.255, the Division of Waste Management shall direct the district offices and bureaus on matters relating to the interpretation and applicability of this section.

(i) The department shall provide notice of receipt of a permit application for the initial construction of a construction and demolition debris disposal facility to the local governments having jurisdiction where the facility is to be located.

(j) The Legislature recognizes that recycling, waste reduction, and resource recovery are important aspects of an integrated solid waste management program and as such are necessary to protect the public health and the environment. If necessary to promote such an integrated program, the county may determine, after providing notice and an opportunity for a

hearing prior to April 30, 2008 ~~December 31, 1996~~, that some or all of the ~~wood~~ material described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~ shall be excluded from the definition of "construction and demolition debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the jurisdiction of such county. The county may make such a determination only if it finds that, prior to June 1, 2007 ~~1996~~, the county has established an adequate method for the use or recycling of such wood material at an existing or proposed solid waste management facility that is permitted or authorized by the department on June 1, 2007 ~~1996~~. The county is ~~shall~~ not ~~be~~ required to hold a hearing if the county represents that it previously has held a hearing for such purpose, or ~~nor shall the county be required to hold a hearing~~ if the county represents that it previously has held a public meeting or hearing that authorized such method for the use or recycling of trash or other nonputrescible waste materials and ~~if the county further represents~~ that such materials include those materials described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~. The county shall provide written notice of its determination to the department by no later than April 30, 2008 ~~December 31, 1996~~; thereafter, the ~~wood~~ materials described in s. 403.703(6) ~~s. 403.703(17)(b)~~ shall be excluded from the definition of "construction and demolition debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the jurisdiction of such county. The county may withdraw or revoke its determination at any time by providing written notice to the department.

(k) Brazilian pepper and other invasive exotic plant species as designated by the department resulting from

eradication projects may be processed at permitted construction and demolition debris recycling facilities or disposed of at permitted construction and demolition debris disposal facilities or Class III facilities. The department may adopt rules to implement this paragraph.

(10) ~~(13)~~ If the department and a local government independently require financial assurance for the closure of a privately owned solid waste management facility, the department and that local government shall enter into an interagency agreement that will allow the owner or operator to provide a single financial mechanism to cover the costs of closure and any required long-term care. The financial mechanism may provide for the department and local government to be cobeneficiaries or copayees, but shall not impose duplicative financial requirements on the owner or operator. These closure costs must include at least the minimum required by department rules and must also include any additional costs required by local ordinance or regulation.

(11) ~~(14)~~ Before or on the same day of filing with the department of an application for a permit to construct or substantially modify a solid waste management facility, the applicant shall notify the local government having jurisdiction over the facility of the filing of the application. The applicant also shall publish notice of the filing of the application in a newspaper of general circulation in the area where the facility will be located. Notice shall be given and published in accordance with applicable department rules. The department shall not issue the requested permit until the

applicant has provided the department with proof that the notices required by this subsection have been given. Issuance of a permit does not relieve an applicant from compliance with local zoning or land use ordinances, or with any other law, rules, or ordinances.

(12) ~~(15)~~ Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.

(13) ~~(16)~~ A ~~No~~ facility shall not be considered a solid waste disposal facility~~,~~ solely by virtue of the fact that it uses processed yard trash or clean wood or paper waste as a fuel source~~, shall be considered to be a solid waste disposal facility~~.

(14)(a) A permit to operate a solid waste management facility may not be transferred by the permittee to any other entity without the consent of the department. If the permitted facility is sold or transferred, or if control of the facility is transferred, the permittee must submit to the department an application for transfer of permit no later than 30 days after the transfer of ownership or control. The department shall approve the transfer of a permit unless it determines that the proposed new permittee has not provided reasonable assurance that the conditions of the permit will be met. A permit may not be transferred until any proof of financial assurance required by department rule is provided by the proposed new permittee. If the existing permittee is under a continuing obligation to perform corrective actions as a result of a department

enforcement action or consent order, the permit may not be transferred until the proposed new permittee agrees in writing to accept responsibility for performing such corrective actions.

(b) Until the transfer is approved by the department, the existing permittee is liable for compliance with the permit, including the financial assurance requirements. When the transfer has been approved, the department shall return to the transferring permittee any means of proof of financial assurance which the permittee provided to the department and the permittee is released from obligations to comply with the transferred permit.

(c) An application for the transfer of a permit must clearly state in bold letters that the permit may not be transferred without proof of compliance with financial assurance requirements. Until the permit is transferred, the new owner or operator may not operate the facility without the express consent of the permittee.

(d) The department may adopt rules to administer this subsection, including procedural rules and the permit-transfer form.

Section 13. Section 403.7071, Florida Statutes, is created to read:

403.7071 Management of storm-generated debris.--Solid waste generated as a result of a storm event that is the subject of an emergency order issued by the department may be managed as follows:

(1) Recycling and reuse of storm-generated vegetative debris is encouraged to the greatest extent practicable. Such

recycling and reuse must be conducted in accordance with applicable department rules and may include, but is not limited to, chipping and grinding of the vegetative debris to be beneficially used as a ground cover or soil amendment, compost, or as a combustible fuel for any applicable commercial or industrial application.

(2) The department may issue field authorizations for staging areas in those counties affected by a storm event. Such staging areas may be used for the temporary storage and management of storm-generated debris, including the chipping, grinding, or burning of vegetative debris. Field authorizations may include specific conditions for the operation and closure of the staging area and must specify the date that closure is required. To the greatest extent possible, staging areas may not be located in wetlands or other surface waters. The area that is used or affected by a staging area must be fully restored upon cessation of the use of the area.

(3) Storm-generated vegetative debris managed at a staging area may be disposed of in a permitted lined or unlined landfill, a permitted land clearing debris facility, a permitted or certified waste-to-energy facility, or a permitted construction and demolition debris disposal facility. Vegetative debris may also be managed at a permitted waste processing facility or a registered yard-trash processing facility.

(4) Construction and demolition debris that is mixed with other storm-generated debris need not be segregated from other solid waste before disposal in a lined landfill. Construction and demolition debris that is source separated or is separated

from other hurricane-generated debris at an authorized staging area, or at another area permitted or specifically authorized by the department, may be managed at a permitted construction and demolition debris disposal facility, a Class III landfill, or a recycling facility upon approval by the department of the methods and operational practices used to inspect the waste during segregation.

(5) Unsalvageable refrigerators and freezers containing solid waste, such as rotting food, which may create a sanitary nuisance may be disposed of in a permitted lined landfill; however, chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable.

(6) Local governments or their agents may conduct the burning of storm-generated yard trash, other storm-generated vegetative debris, or untreated wood from construction and demolition debris in air-curtain incinerators without prior notice to the department. Within 10 days after commencing such burning, the local government shall notify the department in writing describing the general nature of the materials burned; the location and method of burning; and the name, address, and telephone number of the representative of the local government to contact concerning the work. The operator of the air-curtain incinerator is subject to any requirement of the Division of Forestry or of any other agency concerning authorization to conduct open burning. Any person conducting open burning of vegetative debris is also subject to such requirements.

Section 14. Section 403.708, Florida Statutes, is amended to read:

403.708 Prohibition; penalty.--

(1) A ~~No~~ person may not ~~shall~~:

(a) Place or deposit any solid waste in or on the land or waters located within the state except in a manner approved by the department and consistent with applicable approved programs of counties or municipalities. However, ~~nothing in~~ this act does not ~~shall be construed to~~ prohibit the disposal of solid waste without a permit as provided in s. 403.707(2).

(b) Burn solid waste except in a manner prescribed by the department and consistent with applicable approved programs of counties or municipalities.

(c) Construct, alter, modify, or operate a solid waste management facility or site without first having obtained from the department any permit required by s. 403.707.

(2) A ~~No~~ beverage may not ~~shall~~ be sold or offered for sale within the state in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab. As used in this subsection, the term

~~(3) For purposes of subsections (2), (9), and (10):~~

~~(a) "Degradable," with respect to any material, means that such material, after being discarded, is capable of decomposing to components other than heavy metals or other toxic substances, after exposure to bacteria, light, or outdoor elements.~~

(a) ~~(b)~~ "Beverage" means soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drinks; soft drinks, whether or not carbonated; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or a mixed spirit drink.

(b) ~~(c)~~ "Beverage container" means an airtight container that ~~which~~ at the time of sale contains 1 gallon or less of a beverage, or the metric equivalent of 1 gallon or less, and that ~~which~~ is composed of metal, plastic, or glass or a combination thereof.

(3) ~~(4)~~ The Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may impose a fine of not more than $100 on any person currently licensed pursuant to s. 561.14 for each violation of ~~the provisions of~~ subsection (2). If the violation is of a continuing nature, each day during which such violation occurs constitutes ~~shall constitute~~ a separate ~~and distinct~~ offense and is ~~shall be~~ subject to a separate fine.

(4) ~~(5)~~ The Department of Agriculture and Consumer Services may impose a fine of not more than $100 against ~~on~~ any person not currently licensed pursuant to s. 561.14 for each violation of the provisions of subsection (2). If the violation is of a continuing nature, each day during which such violation occurs constitutes ~~shall constitute~~ a separate ~~and distinct~~ offense and is ~~shall be~~ subject to a separate fine.

(5) ~~(6)~~ Fifty percent of each fine collected pursuant to subsections (3) ~~(4)~~ and (4) ~~(5)~~ shall be deposited into the Solid Waste Management Trust Fund. The balance of fines collected pursuant to subsection (3) ~~(4)~~ shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund for the use of the division for inspection and enforcement of ~~the provisions of~~ this section. The balance of fines collected pursuant to subsection (4) ~~(5)~~ shall be deposited into the General

Inspection Trust Fund for the use of the Department of Agriculture and Consumer Services for inspection and enforcement of ~~the provisions of~~ this section.

(6)~~(7)~~ The Division of Alcoholic Beverages and Tobacco and the Department of Agriculture and Consumer Services shall coordinate their responsibilities under ~~the provisions of~~ this section to ensure that inspections and enforcement are accomplished in an efficient, cost-effective manner.

(7)~~(8)~~ A person may not distribute, sell, or expose for sale in this state any plastic bottle or rigid container intended for single use unless such container has a molded label indicating the plastic resin used to produce the plastic container. The label must appear on or near the bottom of the plastic container product and be clearly visible. This label must consist of a number placed inside a triangle and letters placed below the triangle. The triangle must be equilateral and must be formed by three arrows, and, in the middle of each arrow, there must be a rounded bend that forms one apex of the triangle. The pointer, or arrowhead, of each arrow must be at the midpoint of a side of the triangle, and a short gap must separate each pointer from the base of the adjacent arrow. The three curved arrows that form the triangle must depict a clockwise path around the code number. Plastic bottles of less than 16 ounces, rigid plastic containers of less than 8 ounces, and plastic casings on lead-acid storage batteries are not required to be labeled under this subsection ~~section~~. The numbers and letters must be as follows:

(a) For polyethylene terephthalate, the letters "PETE" and

the number 1.

(b) For high-density polyethylene, the letters "HDPE" and the number 2.

(c) For vinyl, the letter "V" and the number 3.

(d) For low-density polyethylene, the letters "LDPE" and the number 4.

(e) For polypropylene, the letters "PP" and the number 5.

(f) For polystyrene, the letters "PS" and the number 6.

(g) For any other, the letters "OTHER" and the number 7.

(8) ~~(9)~~ A ~~No~~ person may not ~~shall~~ distribute, sell, or expose for sale in this state any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons ~~(CFC)~~. Producers of containers or packing material manufactured with chlorofluorocarbons ~~(CFC)~~ are urged to introduce alternative packaging materials that ~~which~~ are environmentally compatible.

(9) ~~(10)~~ The packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance adopted after March 1, 1974, other than as expressly provided in this act.

(10) ~~(11)~~ Violations of this part or rules, regulations, permits, or orders issued thereunder by the department and violations of approved local programs of counties or municipalities or rules, regulations, or orders issued thereunder are ~~shall be~~ punishable by a civil penalty as provided in s. 403.141.

(11) ~~(12)~~ The department or any county or municipality may also seek to enjoin the violation of, or enforce compliance

with, this part or any program adopted hereunder as provided in s. 403.131.

(12) ~~(13)~~ A ~~In accordance with the following schedule, no~~ person who knows or ~~who~~ should know of the nature of the following types of ~~such~~ solid waste may not ~~shall~~ dispose of such solid waste in landfills:

(a) Lead-acid batteries~~, after January 1, 1989~~. Lead-acid batteries also may ~~shall~~ not be disposed of in any waste-to-energy facility ~~after January 1, 1989~~. To encourage proper collection and recycling, all persons who sell lead-acid batteries at retail shall accept used lead-acid batteries as trade-ins for new lead-acid batteries.

(b) Used oil~~, after October 1, 1988~~.

(c) Yard trash~~, after January 1, 1992, except~~ in lined ~~unlined~~ landfills classified by department rule as Class I landfills. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where ~~the area provides and maintains~~ separate yard trash composting facilities are provided and maintained. The department recognizes that incidental amounts of yard trash may be disposed of in Class I ~~lined~~ landfills. In any enforcement action taken pursuant to this paragraph, the department shall consider the difficulty of removing incidental amounts of yard trash from a mixed solid waste stream.

(d) White goods~~, after January 1, 1990~~.

~~Prior to the effective dates specified in paragraphs (a)-(d), the department shall identify and assist in developing~~

~~alternative disposal, processing, or recycling options for the solid wastes identified in paragraphs (a)-(d).~~

Section 15. Section 403.709, Florida Statutes, is amended to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.--There is created the Solid Waste Management Trust Fund, to be administered by the department.

(1) From the annual revenues deposited in the trust fund, unless otherwise specified in the General Appropriations Act:

(a) ~~(1)~~ Up to 40 percent shall be used for funding solid waste activities of the department and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs.

(b) ~~(2)~~ Up to 4.5 percent shall be used for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management and other organizations that ~~which~~ can reasonably demonstrate the capability to carry out such projects.

(c) ~~(3)~~ Up to 11 percent shall be used for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control. This distribution shall be annually transferred to the General Inspection Trust Fund in the Department of Agriculture and Consumer Services to be used for mosquito control, especially control of West Nile Virus.

(d) ~~(4)~~ Up to 4.5 percent shall be used for funding to the

Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level ~~coordinated by Keep Florida Beautiful, Inc~~.

(e)~~(5)~~ A minimum of 40 percent shall be used for funding a competitive and innovative grant program pursuant to s. 403.7095 for activities relating to recycling and waste reduction ~~reducing the volume of municipal solid waste~~, including waste tires requiring final disposal.

(2)~~(6)~~ The department shall recover to the use of the fund from the site owner or the person responsible for the accumulation of tires at the site, jointly and severally, all sums expended from the fund pursuant to this section to manage tires at an illegal waste tire site, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. If a court determines that the owner is unable or unwilling to comply with the rules adopted pursuant to this section or s. 403.717, the court may authorize the department to take possession and control of the waste tire site in order to protect the health, safety, and welfare of the community and the environment.

(3)~~(7)~~ The department may impose a lien on the real property on which the waste tire site is located and the waste tires equal to the estimated cost to bring the tire site into compliance, including attorney's fees and court costs. Any owner whose property has such a lien imposed may release her or his property from any lien claimed under this subsection by filing with the clerk of the circuit court a cash or surety bond,

payable to the department in the amount of the estimated cost of bringing the tire site into compliance with department rules, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less. A lien provided by this subsection may not continue for a period longer than 4 years after the abatement action is completed, unless within that period an action to enforce the lien is commenced in a court of competent jurisdiction. The department may take action to enforce the lien in the same manner used for construction liens under part I of chapter 713.

(4) ~~(8)~~ This section does not limit the use of other remedies available to the department.

Section 16. Subsections (1), (2), and (5) of section 403.7095, Florida Statutes, are amended to read:

403.7095 Solid waste management grant program.--

(1) The department shall develop a competitive and innovative grant program for counties, municipalities, special districts, and nonprofit organizations that have legal responsibility for the provision of solid waste management services. For purposes of this program, "innovative" means that the process, technology, or activity for which funding is sought has not previously been implemented within the jurisdiction of the applicant. The applicant must ~~that~~:

(a) Demonstrate technologies or processes ~~that are not in common use in Florida,~~ that represent a novel application of an existing technology or process to recycle or reduce waste, or that overcome obstacles to recycling or ~~and~~ waste reduction in new or innovative ways;

(b) Demonstrate innovative processes to collect and recycle or reduce materials targeted by the department and the recycling industry; or

(c) Demonstrate effective solutions to solving solid waste problems resulting from waste tires, particularly in the areas of enforcement and abatement of illegal tire dumping and activities to promote market development of waste tire products.

Because the Legislature recognizes that input from the recycling industry is essential to the success of this grant program, the department shall cooperate with private sector entities to develop a process and define specific criteria for allowing their participation with grant recipients.

(2) The department shall evaluate and prioritize the annual grant proposals and present the annual prioritized list of projects to be funded to the Governor and the Legislature as part of its annual budget request submitted pursuant to chapter 216~~, beginning with fiscal year 2003-2004~~. Potential grant recipients are encouraged to demonstrate local support for grant proposals by the commitment of cash or in-kind matching funds.

(5) From the funds made available pursuant to s. 403.709(1)(e) ~~s. 403.709(5)~~ for the grant program created by this section, the following distributions shall be made:

(a) Up to 15 percent for the program described in subsection (1);

(b) Up to 35 percent for the program described in subsection (3); and

(c) Up to 50 percent for the program described in

subsection (4).

Section 17. Section 403.7125, Florida Statutes, is amended to read:

403.7125 Financial assurance for closure ~~Landfill management escrow account~~.--

~~(1) As used in this section:~~

~~(a) "Landfill" means any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707 that receives solid waste for disposal in or upon land other than a land spreading site, injection well, or a surface impoundment.~~

~~(b) "Closure" means the ceasing operation of a landfill and securing such landfill so that it does not pose a significant threat to public health or the environment and includes long term monitoring and maintenance of a landfill.~~

~~(c) "Owner or operator" means, in addition to the usual meanings of the term, any owner of record of any interest in land whereon a landfill is or has been located and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of a landfill.~~

(1)~~(2)~~ Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law. As used in this section, the term "owner or operator" means any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.

(2)~~(3)~~ The owner or operator of a landfill owned or

operated by a local or state government or the Federal Government shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on their own property, as described in s. 403.707(2), is exempt from ~~the provisions of~~ this section.

(a) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet state and federal landfill closure requirements.

(b) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the department an annual audit of the account. The audit shall be conducted by an independent certified public accountant. Failure to collect or report such revenue, except as allowed in subsection (3) ~~(4)~~, is a noncriminal violation punishable by a fine of not more than $5,000 for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for proper and complete closure, as determined by the department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund or the appropriate solid waste fund of the local government of jurisdiction.

(c) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with state and federal landfill closure requirements. Such application or pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security therefor.

(d) The provisions of s. 212.055 which ~~that~~ relate to raising of revenues for landfill closure or long-term maintenance do not relieve a landfill owner or operator from the obligations of this section.

(e) The owner or operator of any landfill that established an escrow account in accordance with this section and the conditions of its permit prior to January 1, 2007, may continue to use that escrow account to provide financial assurance for closure of that landfill, even if that landfill is not owned or operated by a local or state government or the Federal Government.

(3) ~~(4)~~ An owner or operator of a landfill owned or operated by a local or state government or by the Federal Government may provide financial assurance to ~~establish proof of financial responsibility with~~ the department in lieu of the requirements of subsection (2) ~~(3)~~. An owner or operator of any other landfill, or any other solid waste management facility designated by department rule, shall provide financial assurance to the department for the closure of the facility. Such financial assurance ~~proof~~ may include surety bonds, certificates

of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with applicable ~~landfill~~ closure requirements. The owner or operator shall estimate such costs to the satisfaction of the department.

(4) ~~(5)~~ This section does not repeal, limit, or abrogate any other law authorizing local governments to fix, levy, or charge rates, fees, or charges for the purpose of complying with state and federal landfill closure requirements.

(5) ~~(6)~~ The department shall adopt rules to implement this section.

Section 18. Subsections (1) and (3) of section 403.716, Florida Statutes, are amended to read:

403.716 Training of operators of solid waste management and other facilities.--

(1) The department shall establish qualifications for, and encourage the development of training programs for, operators of landfills, coordinators of local recycling programs, ~~operators of waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities,~~ and operators of other solid waste management facilities.

(3) A person may not perform the duties of an operator of a landfill without first completing~~, or perform the duties of an operator of a waste-to-energy facility, biomedical waste incinerator, or mobile soil thermal treatment unit or facility, unless she or he has completed~~ an operator training course approved by the department or qualifying ~~she or he has qualified~~ as an interim operator in compliance with requirements

established by the department by rule. An owner of a landfill~~, waste-to-energy facility, biomedical waste incinerator, or mobile soil thermal treatment unit or facility~~ may not employ any person to perform the duties of an operator unless such person has completed an approved landfill~~, waste to energy facility, biomedical waste incinerator, or mobile soil thermal treatment unit or facility~~ operator training course~~, as appropriate,~~ or ~~has~~ qualified as an interim operator in compliance with requirements established by the department by rule. The department may establish by rule operator training requirements for other solid waste management facilities and facility operators.

Section 19. Section 403.717, Florida Statutes, is amended to read:

403.717 Waste tire and lead-acid battery requirements.--

(1) For purposes of this section and ss. 403.718 and 403.7185:

(a) "Department" means the Department of Environmental Protection.

(b) "Indoor" means within a structure that excludes rain and public access and would control air flows in the event of a fire.

(c) "Lead-acid battery" means a lead-acid battery designed for use in motor vehicles, vessels, and aircraft, and includes such batteries when sold new as a component part of a motor vehicle, vessel, or aircraft, but not when sold to recycle components.

(d)~~(b)~~ "Motor vehicle" means an automobile, motorcycle,

truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated in this state, used to transport persons or property and propelled by power other than muscular power.~~, but~~ The term does not include traction engines, road rollers, ~~such~~ vehicles that ~~as~~ run only upon a track, bicycles, mopeds, or farm tractors and trailers.

(e) "Processed tire" means a tire that has been treated mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal.

(f)~~(e)~~ "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle.

(g)~~(d)~~ "Waste tire" means a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. The term ~~"Waste tire"~~ includes, but is not limited to, used tires and processed tires. The term does not include solid rubber tires and tires that are inseparable from the rim.

(h)~~(e)~~ "Waste tire collection center" means a site where waste tires are collected from the public prior to being offered for recycling and where fewer than 1,500 tires are kept on the site on any given day.

(i)~~(f)~~ "Waste tire processing facility" means a site where equipment is used to treat waste tires mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal ~~recapture reusable byproducts from waste tires or to cut, burn, or otherwise alter waste tires so that they are no longer whole~~. The term includes mobile waste tire processing equipment.

(j) ~~(g)~~ "Waste tire site" means a site at which 1,500 or more waste tires are accumulated.

~~(h) "Lead-acid battery" means those lead-acid batteries designed for use in motor vehicles, vessels, and aircraft, and includes such batteries when sold new as a component part of a motor vehicle, vessel, or aircraft, but not when sold to recycle components.~~

~~(i) "Indoor" means within a structure which excludes rain and public access and would control air flows in the event of a fire.~~

~~(j) "Processed tire" means a tire that has been treated mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal.~~

(k) "Used tire" means a waste tire which has a minimum tread depth of 3/32 inch or greater and is suitable for use on a motor vehicle.

(2) The owner or operator of any waste tire site shall provide the department with information concerning the site's location, size, and the approximate number of waste tires that are accumulated at the site and shall initiate steps to comply with subsection (3).

(3)(a) A person may not maintain a waste tire site unless such site is:

1. An integral part of the person's permitted waste tire processing facility; or

2. Used for the storage of waste tires prior to processing and is located at a permitted solid waste management facility.

(b) It is unlawful for any person to dispose of waste tires or processed tires in the state except at a permitted solid waste management facility. Collection or storage of waste tires at a permitted waste tire processing facility or waste tire collection center prior to processing or use does not constitute disposal, provided that the collection and storage complies with rules established by the department.

(c) Whole waste tires may not be deposited in a landfill as a method of ultimate disposal.

(d) A person may not contract with a waste tire collector for the transportation, disposal, or processing of waste tires unless the collector is registered with the department or exempt from requirements provided under this section. Any person who contracts with a waste tire collector for the transportation of more than 25 waste tires per month from a single business location must maintain records for that location and make them available for review by the department or by law enforcement officers, which records must contain the date when the tires were transported, the quantity of tires, the registration number of the collector, and the name of the driver.

(4) The department shall adopt rules to administer ~~carry out the provisions of~~ this section and s. 403.718. Such rules ~~shall~~:

(a) Must provide for the administration or revocation of waste tire processing facility permits, including mobile processor permits;

(b) Must provide for the administration or revocation of waste tire collector registrations, the fee ~~fees~~ for which may

not exceed $50 per vehicle registered annually;

(c) Must provide for the administration or revocation of waste tire collection center permits, the fee for which may not exceed $250 annually;

(d) Must set standards, including financial assurance standards, for waste tire processing facilities and associated waste tire sites, waste tire collection centers, waste tire collectors, and for the storage of waste tires and processed tires, including storage indoors;

(e) ~~The department~~ May ~~by rule~~ exempt not-for-hire waste tire collectors and processing facilities from financial assurance requirements;

(f) Must authorize the final disposal of waste tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal; and

(g) Must allow waste tire material that ~~which~~ has been cut into sufficiently small parts to be used as daily cover material for a landfill.

~~(5) A permit is not required for tire storage at:~~

~~(a) A tire retreading business where fewer than 1,500 waste tires are kept on the business premises;~~

~~(b) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,500 of these tires are kept on the business premises; or~~

~~(c) A retail tire selling business which is serving as a waste tire collection center if fewer than 1,500 waste tires are kept on the business premises.~~

(5) ~~(6)~~ (a) The department shall encourage the voluntary establishment of waste tire collection centers at retail tire-selling businesses, waste tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of waste tires.

(b) The department may ~~is authorized to~~ establish an incentives program ~~for individuals~~ to encourage individuals ~~them~~ to return their waste tires to a waste tire collection center. The incentives ~~used by the department~~ may involve the use of discount or prize coupons, prize drawings, promotional giveaways, or other activities the department determines will promote collection, reuse, volume reduction, and proper disposal of waste tires.

(c) The department may contract with a promotion company to administer the incentives program.

Section 20. Section 403.7221, Florida Statutes, is transferred, renumbered as section 403.70715, Florida Statutes, and amended to read:

403.70715 ~~403.7221~~ Research, development, and demonstration permits.--

(1) The department may issue a research, development, and demonstration permit to the owner or operator of any solid waste management facility or hazardous waste management facility who proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards have not been promulgated. Permits shall:

(a) Provide for construction and operation of the facility for not longer than 3 years ~~1 year~~, renewable no more than 3

times.

(b) Provide for the receipt and treatment by the facility of only those types and quantities of solid waste which the department deems necessary for purposes of determining the performance capabilities of the technology or process and the effects of such technology or process on human health and the environment.

(c) Include requirements the department deems necessary which may include monitoring, operation, testing, financial responsibility, closure, and remedial action.

(2) The department may apply the criteria set forth in this section in establishing the conditions of each permit without separate establishment of rules implementing such criteria.

(3) For the purpose of expediting review and issuance of permits under this section, the department may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements, except that there shall be no modification or waiver of regulations regarding financial responsibility or of procedures established regarding public participation.

(4) The department may order an immediate termination of all operations at the facility at any time upon a determination that termination is necessary to protect human health and the environment.

Section 21. Subsections (1) through (9) of section 403.722, Florida Statutes, are amended to read:

403.722 Permits; hazardous waste disposal, storage, and

treatment facilities.--

(1) Each person who intends to or is required to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility shall obtain a construction permit, operation permit, postclosure permit, clean closure plan approval, or corrective action permit from the department prior to constructing, modifying, operating, or closing the facility. By rule, the department may provide for the issuance of a single permit instead of any two or more hazardous waste facility permits.

(2) Any owner or operator of a hazardous waste facility in operation on the effective date of the department rule listing and identifying hazardous wastes shall file an application for a temporary operation permit within 6 months after the effective date of such rule. The department, upon receipt of a properly completed application, shall identify any department rules that ~~which~~ are being violated by the facility and ~~shall~~ establish a compliance schedule. However, if the department determines that an imminent hazard exists, the department may take any necessary action pursuant to s. 403.726 to abate the hazard. The department shall issue a temporary operation permit to such facility within the time constraints of s. 120.60 upon submission of a properly completed application that ~~which~~ is in conformance with this subsection. Temporary operation permits for such facilities shall be issued for up to 3 years only. Upon termination of the temporary operation permit and upon proper application by the facility owner or operator, the department shall issue an operation permit for such existing facilities if

the applicant has corrected all of the deficiencies identified in the temporary operation permit and is in compliance with all other rules adopted pursuant to this act.

(3) ~~Permit~~ Applicants shall provide any information that ~~which~~ will enable the department to determine that the proposed construction, modification, operation, ~~or~~ closure, or corrective action will comply with this act and any applicable rules. In no instance shall any person construct, modify, operate, or close a facility or perform corrective actions at a facility in contravention of the standards, requirements, or criteria for a hazardous waste facility. Authorizations ~~Permits~~ issued under this section may include any permit conditions necessary to achieve compliance with applicable hazardous waste rules and necessary to protect human health and the environment.

(4) The department may require, in an ~~a permit~~ application, submission of information concerning matters specified in s. 403.721(6) as well as information respecting:

(a) Estimates of the composition, quantity, and concentration of any hazardous waste identified or listed under this act or combinations of any such waste and any other solid waste, proposed to be disposed of, treated, transported, or stored and the time, frequency, or rate at which such waste is proposed to be disposed of, treated, transported, or stored; and

(b) The site to which such hazardous waste or the products of treatment of such hazardous waste will be transported and at which it will be disposed of, treated, or stored.

(5) An authorization ~~A permit~~ issued pursuant to this section is not a vested right. The department may revoke or

modify any such authorization ~~permit~~.

(a) Authorizations ~~Permits~~ may be revoked for failure of the holder to comply with ~~the provisions of~~ this act, the terms of the authorization ~~permit~~, the standards, requirements, or criteria adopted pursuant to this act, or an order of the department; for refusal by the holder to allow lawful inspection; for submission by the holder of false or inaccurate information in the permit application; or if necessary to protect the public health or the environment.

(b) Authorizations ~~Permits~~ may be modified, upon request of the holder ~~permittee~~, if such modification is not in violation of this act or department rules or if the department finds the modification necessary to enable the facility to remain in compliance with this act and department rules.

(c) An owner or operator of a hazardous waste facility in existence on the effective date of a department rule changing an exemption or listing and identifying the hazardous wastes that ~~which~~ require that facility to be permitted who notifies the department pursuant to s. 403.72, and who has applied for a permit pursuant to subsection (2), may continue to operate until ~~be~~ issued a temporary operation permit. If such owner or operator intends to or is required to discontinue operation, the temporary operation permit must include final closure conditions.

(6) A hazardous waste facility permit issued pursuant to this section shall satisfy the permit requirements of s. 403.707(1). The permit exemptions provided in s. 403.707(2) do ~~shall~~ not apply to hazardous waste.

(7) The department may establish ~~permit~~ application procedures for hazardous waste facilities, which procedures may vary based on differences in amounts, types, and concentrations of hazardous waste and on differences in the size and location of facilities and which procedures may take into account permitting procedures of other laws not in conflict with this act.

(8) For authorizations ~~permits~~ required by this section, the department may require that a fee be paid and may establish, by rule, a fee schedule based on the degree of hazard and the amount and type of hazardous waste disposed of, stored, or treated at the facility.

(9) It shall not be a requirement for the issuance of ~~such~~ a hazardous waste authorization ~~permit~~ that the facility complies with an adopted local government comprehensive plan, local land use ordinances, zoning ordinances or regulations, or other local ordinances. However, the issuance of such an authorization ~~a permit issued~~ by the department does ~~shall~~ not override any ~~adopted~~ local plan, ordinance, or regulation ~~government comprehensive plans, local land use ordinances, zoning ordinances or regulations, or other local ordinances~~.

Section 22. Subsection (2) of section 403.7226, Florida Statutes, is amended to read:

403.7226 Technical assistance by the department.--The department shall:

(2) Identify short-term needs and long-term needs for hazardous waste management for the state on the basis of the information gathered through the local hazardous waste

management assessments and other information from state and federal regulatory agencies and sources. The state needs assessment must be ongoing and must be updated when new data concerning waste generation and waste management technologies become available. ~~The department shall annually send a copy of this assessment to the Governor and to the Legislature.~~

Section 23. Subsection (3) of section 403.724, Florida Statutes, is amended to read:

403.724 Financial responsibility.--

(3) The amount of financial responsibility required shall be approved by the department upon each issuance, renewal, or modification of a hazardous waste facility authorization ~~permit~~. Such factors as inflation rates and changes in operation may be considered when approving financial responsibility for the duration of the authorization ~~permit~~. The Office of Insurance Regulation of the Department of Financial Services ~~Commission~~ shall be available to assist the department in making this determination. In approving or modifying the amount of financial responsibility, the department shall consider:

(a) The amount and type of hazardous waste involved;

(b) The probable damage to human health and the environment;

(c) The danger and probable damage to private and public property near the facility;

(d) The probable time that the hazardous waste and facility involved will endanger the public health, safety, and welfare or the environment; and

(e) The probable costs of properly closing the facility

and performing corrective action.

Section 24. Section 403.7255, Florida Statutes, is amended to read:

403.7255 Placement of signs ~~Department to adopt rules~~.--

(1) ~~The department shall adopt rules which establish requirements and procedures for the placement of~~ Signs must be placed by the owner or operator at ~~sites which may have been contaminated by hazardous wastes. Sites shall include~~ any site in the state which ~~that~~ is listed or proposed for listing on the Superfund Site List of the United States Environmental Protection Agency or any site identified by the department as a ~~suspected or confirmed contaminated~~ site contaminated by hazardous waste where there is ~~may be~~ a risk of exposure to the public. ~~The requirements of~~ This section does ~~shall~~ not apply to sites reported under ss. 376.3071 and 376.3072. The department shall establish requirements and procedures for the placement of signs, and may do so in rules, permits, orders, or other authorizations. The authorization ~~rules~~ shall establish the appropriate size for such signs, which size shall be no smaller than 2 feet by 2 feet, and shall provide in clearly legible print appropriate warning language for the waste or other materials at the site and a telephone number that ~~which~~ may be called for further information.

(2) Violations of this act are punishable as provided in s. 403.161(4).

(3) The provisions of this act are independent of and cumulative to any other requirements and remedies in this chapter or chapter 376, or any rules promulgated thereunder.

Section 25. Subsection (5) of section 403.726, Florida Statutes, is amended to read:

403.726 Abatement of imminent hazard caused by hazardous substance.--

(5) The department may issue a permit or order requiring prompt abatement of an imminent hazard.

Section 26. Section 403.7265, Florida Statutes, is amended to read:

403.7265 Local hazardous waste collection program.--

(1) The Legislature recognizes the need for local governments to establish local hazardous waste management programs and local collection centers throughout the state. Local hazardous waste management programs are to educate and assist small businesses and households in properly managing the hazardous waste they generate. Local collection centers are to serve a purpose similar to the collection locations used in the amnesty days program described in s. 403.7264. Such collection centers are to be operated to provide a service to homeowners, farmers, and conditionally exempt small quantity generators to encourage proper hazardous waste management. Local collection centers will allow local governments the opportunity to provide a location for collection and temporary storage of small quantities of hazardous waste. A private hazardous waste management company should be responsible for collecting the waste within 90 days for transfer to a permitted recycling, disposal, or treatment facility. In time, local collection centers are to become privately operated businesses in order to reduce the burden of hazardous waste collection on local

government.

~~(2) The department shall develop a statewide local hazardous waste management plan which will ensure comprehensive collection and proper management of hazardous waste from small quantity generators and household hazardous waste in Florida. The plan shall address, at a minimum, a network of local collection centers, transfer stations, and expanded hazardous waste collection route services. The plan shall assess the need for additional compliance verification inspections, enforcement, and penalties. The plan shall include a strategy, timetable, and budget for implementation.~~

(2) ~~(3)~~ For the purposes of this section, the phrase:

(a) "Collection center" means a secured site approved by the department to be used as a base for a hazardous waste collection facility.

(b) "Regional collection center" means a facility permitted by the department for the storage of hazardous wastes.

(3) ~~(4)~~ The department shall establish a grant program for local governments that ~~which~~ desire to provide a local or regional hazardous waste collection center. Grants shall be authorized to cover collection center costs associated with capital outlay for preparing a facility or site to safely serve as a collection center and to cover costs of administration, public awareness, and local amnesty days programs. The total cost for administration and public awareness may ~~shall~~ not exceed 10 percent of the grant award. Grants shall be available on a competitive basis to local governments which:

(a) Comply with ~~the provisions of~~ ss. 403.7225 and

403.7264;

(b) Design a collection center which is approved by the department; and

(c) Provide up to 33 percent of the capital outlay money needed for the facility as matching money.

(4) ~~(5)~~ The maximum amount of a grant for any local government participating in the development of a collection center is ~~shall be~~ $100,000. If a regional collection facility is designed, each participating county is ~~shall be~~ eligible for up to $100,000. The department may ~~is authorized to~~ use up to 1 percent of the funds appropriated for the local hazardous waste collection center grant program for administrative costs and public education relating to proper hazardous waste management.

(5) ~~(6)~~ The department shall establish a cooperative collection center arrangement grant program enabling a local hazardous waste collection center grantee to receive a financial incentive for hosting an amnesty days program in a neighboring county that is currently unable to establish a permanent collection center, but desires a local hazardous waste collection. The grant may reimburse up to 75 percent of the neighboring county's amnesty days. Grants shall be available, on a competitive basis, to local governments that ~~which~~:

(a) Have established operational hazardous waste collection centers and are willing to assume a host role, similar to that of the state in the amnesty days program described in s. 403.7264, in organizing a local hazardous waste collection in the neighboring county.

(b) Enter into, and jointly submit, an interlocal

agreement outlining department-established duties for both the host local government and neighboring county.

(6) ~~(7)~~ The maximum amount for the cooperative collection center arrangement grant is $35,000, with a maximum amnesty days reimbursement of $25,000, and a limit of $10,000 for the host local government. The host local government may receive up to $10,000 per cooperative collection center arrangement in addition to its maximum local hazardous waste collection center grant.

(7) ~~(8)~~ The department may ~~has the authority to~~ establish an additional local project grant program enabling a local hazardous waste collection center grantee to receive funding for unique projects that improve the collection and lower the incidence of improper management of conditionally exempt or household hazardous waste. Eligible local governments may receive up to $50,000 in grant funds for these unique and innovative projects, provided they match 25 percent of the grant amount. If the department finds that the project has statewide applicability and immediate benefits to other local hazardous waste collection programs in the state, matching funds are not required. This grant will not count toward the $100,000 maximum grant amount for development of a collection center.

(8) ~~(9)~~ The department may ~~has the authority to~~ use grant funds authorized under this section to assist local governments in carrying out the responsibilities and programs specified in ss. 403.7225, 403.7226, 403.7234, 403.7236, and 403.7238.

Section 27. Subsection (2) of section 171.205, Florida Statutes, is amended to read:

171.205 Consent requirements for annexation of land under this part.--Notwithstanding part I, an interlocal service boundary agreement may provide a process for annexation consistent with this section or with part I.

(2) If the area to be annexed includes a privately owned solid waste disposal facility as defined in s. 403.703(32) ~~(11)~~ which receives municipal solid waste collected within the jurisdiction of multiple local governments, the annexing municipality must set forth in its plan the effects that the annexation of the solid waste disposal facility will have on the other local governments. The plan must also indicate that the owner of the affected solid waste disposal facility has been contacted in writing concerning the annexation, that an agreement between the annexing municipality and the solid waste disposal facility to govern the operations of the solid waste disposal facility if the annexation occurs has been approved, and that the owner of the solid waste disposal facility does not object to the proposed annexation.

Section 28. Subsection (69) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.--The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(69) HAZARDOUS MATERIAL.--Any substance or material which has been determined by the secretary of the United States Department of Transportation to be capable of imposing an unreasonable risk to health, safety, and property. This term

includes hazardous waste as defined in s. 403.703(13) ~~(21)~~.

Section 29. Paragraph (f) of subsection (2) of section 377.709, Florida Statutes, is amended to read:

377.709 Funding by electric utilities of local governmental solid waste facilities that generate electricity.--

(2) DEFINITIONS.--As used in this section, the term:

(f) "Solid waste facility" means a facility owned or operated by, or on behalf of, a local government for the purpose of disposing of solid waste, as that term is defined in s. 403.703(31) ~~(13)~~, by any process that produces heat and incorporates, as a part of the facility, the means of converting heat to electrical energy in amounts greater than actually required for the operation of the facility.

Section 30. Subsection (1) of section 487.048, Florida Statutes, is amended to read:

487.048 Dealer's license; records.--

(1) Each person holding or offering for sale, selling, or distributing restricted-use pesticides shall obtain a dealer's license from the department. Application for the license shall be made on a form prescribed by the department. The license must be obtained before entering into business or transferring ownership of a business. The department may require examination or other proof of competency of individuals to whom licenses are issued or of individuals employed by persons to whom licenses are issued. Demonstration of continued competency may be required for license renewal, as set by rule. The license shall be renewed annually as provided by rule. An annual license fee not exceeding $250 shall be established by rule. However, a user

of a restricted-use pesticide may distribute unopened containers of a properly labeled pesticide to another user who is legally entitled to use that restricted-use pesticide without obtaining a pesticide dealer's license. The exclusive purpose of distribution of the restricted-use pesticide is to keep it from becoming a hazardous waste as defined in s. 403.703(13)~~(21)~~.

Section 31. Sections 403.7075, 403.756, 403.78, 403.781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, and 403.7893, and 403.7895, Florida Statutes, are repealed.

Section 32. This act shall take effect July 1, 2007.

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HB 7123

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7123 PCB ENRC 07-01 Energy
SPONSOR(S): Environment & Natural Resources Council, Mayfield and Allen
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 996, SB 438, SB 2666, HB 313

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council	14 Y, 0 N	Collins, Wiggins Whittier, Grabb	Hamby
1) Policy & Budget Council		Davila	Hansen
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7123 bill addresses several of the *100 Innovative Ideas for Florida's Future* addressed in Chapter VI – A Cleaner, Safer, Healthier Florida. Specifically, the following initiatives are included:

- ✓ Property Tax Exemption for Renewable Energy Source Device
- ✓ Sales Tax Exemption for Biofuel
- ✓ Energy-Efficient Motor Vehicle Sales Tax Refund Program
- ✓ Renewable Energy Technologies Investment Tax Credit
- ✓ Florida Renewable Energy Production Credit
- ✓ "Green Buildings" – Energy Conservation and Sustainable Building Act
- ✓ Guaranteed Energy Performance Savings Contracting
- ✓ Energy Efficiency and Conservation Month and Energy-Efficient Products Sales Tax Holiday
- ✓ Solar Energy System Incentives Program
- ✓ Renewable Energy Technologies Grants Program and Farm-to-Fuel Grants Program
- ✓ Greenhouse Gas Inventories
- ✓ Power Plant Siting Act and Transmission Line Siting Act
- ✓ Farm-to-Fuel Advisory Council
- ✓ Biofuel Retail Sales Incentive Program and Florida Biofuel Production Incentive Program
- ✓ Florida Building Commission/Energy Codes
- ✓ Biodiesel Fuel for State-Owned Vehicles
- ✓ Biodiesel Fuel for School District Transportation
- ✓ Florida Energy, Aerospace, and Technology (F.E.A.T.) Fund
- ✓ Research and Demonstration Cellulosic Ethanol Plant
- ✓ Renewable Portfolio Standards

The bill appropriates a total of $85.6 million for the following activities: Research and Demonstration Cellulosic Ethanol Plant, Renewable Energy Technologies Grants Program, Solar Energy System Incentives program, Farm-to-Fuel Grants Program, Energy Efficient Motor Vehicle Sales Tax Refund Program, workgroup to develop a model residential energy efficient ordinance and to review the cost-effectiveness of energy efficiency measures in the construction of certain buildings, and the development and implementation of a public awareness campaign that promotes energy efficiency and the benefits of building green.

The bill also provides for a two-week Energy-Efficient Products Sales Tax Holiday and a $1 million expansion for the next three years for the current sales tax exemption for renewable energy. The fiscal impact on state government for fiscal year 2007-2008 of these two provisions is $9.9 million.

The bill has a negative fiscal impact on local governments. Also, the bill places a mandate on cities and counties, and requires the approval of two-thirds of the membership of each house of the Legislature.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill:

- ✓ Establishes standards for diesel fuel purchases for use by state-owned diesel vehicles and equipment to include biodiesel purchase requirements and standards for the use of biodiesel fuels by school district transportation services.
- ✓ Requires a report of the investment activities in the Florida Energy, Aerospace, and Technology Fund, a report by the Florida Energy Commission on renewable portfolio standards, and a report by the Public Service Commission on the Florida Energy Efficiency and Conservation Act.
- ✓ Makes specific departmental rule-making authorizations to implement the bill. Please see *Rule-Making Authority* under the Comments section of this analysis.
- ✓ Requires energy efficient building standards for state, county, municipal, and public community colleges.
- ✓ Directs the Department of Environmental Protection to develop greenhouse gas inventories.
- ✓ Creates a Farm-to-Fuel Grants Program to encourage the development of bioenergy projects in the private and public sectors.

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.
- ✓ Contains tax incentives for the distribution and sales of biodiesel and ethanol fuels, investment in renewable energy technologies, and the production of renewable energy.
- ✓ Authorizes a two-week sales tax holiday for energy efficient appliances.

Promote Personal Responsibility/Empower Families – The bill contains tax incentives to promote the sale of energy-efficient products, solar energy systems, vehicles, and the use of renewable energy source devices.

Maintain Public Security - The bill provides incentives for the production and use of alternative fuels and renewable energy, research and development of renewable energy technologies, the use of energy-efficient products and the use of renewable energy devices, which may lessen the state's dependence on imported fossil fuels.

B. EFFECT OF PROPOSED CHANGES:

100 Innovative Ideas for Florida's Future[1]

The Environment & Natural Resources Council was charged with oversight responsibilities of most of Chapter VI of the *100 Innovative Ideas for Florida's Future* -- A Cleaner, Safer, Healthier Florida. The Ideas cover the following issues:

#70 – Florida should implement a voluntary statewide incentive program for energy efficiency.

[1] Rubio, Marco, *100 Innovative Ideas for Florida's Future,* A Plan of Action, Regnery Publishing, Inc., www.100ideas.org.

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#71 – Florida should create an Energy Efficiency Fund to offer loans to public schools, public hospitals, cities, counties, special districts, and public care institutions.

#72 – Florida should provide tax incentives to encourage homeowners and businesses to purchase energy-efficient heating, ventilation, air-conditioning, lighting, solar products, advanced metering of energy usage, windows, insulation, zone heating products, and weatherization.

#73 – Florida will work to build energy efficient buildings that meet environmental standards and save taxpayers money.

#75 – Florida should strive to lead the nation in fostering the development and use of alternative energy sources and ethanol production.

#76 – Florida should offer additional incentives for clean alternative-fueled vehicles and hybrid passenger vehicles.

BACKGROUND INFORMATION

With recent increases in the price of gas and other energy costs, Florida's citizens are keenly aware of the nation's energy problem. Florida's economy and quality of life depend on a secure, adequate and reliable supply of energy. As the fourth most populous state, Florida ranks third nationally in total energy consumption. With more than 17 million citizens and nearly 1,000 new residents arriving daily, Florida is one of the fastest growing states in the nation. As Florida's population continues to grow, so too does its demand for energy. Florida's need for electrical generation is predicted to grow by approximately 30 percent over the next ten years, while the demand for gasoline is expected to grow from the current level of more than 28 million gallons per day to 32.3 million gallons per day during the next decade.[2]

Since the last review of Florida's energy policy in 2000, several unpredictable events have heightened concern over energy reliability, security, and supply. The 2003 blackout in the northeast, along with devastating back-to-back hurricane seasons in 2004 and 2005, demonstrated the impact power outages and fuel interruptions have on the nation's economic welfare.[3]

Producing less than one percent of the energy it consumes and limited by its geography, Florida is more susceptible to interruptions in energy supply than any other state. Unlike other states that rely on petroleum pipelines for fuel delivery, more than 98 percent of Florida's transportation fuel arrives by sea. The state's reliance on imported petroleum products, in addition to its anticipated growth in consumption, underscores its vulnerability to fluctuations in the market and interruptions in fuel production, supply and delivery.[4]

To generate electricity, Florida primarily relies on natural gas, coal and oil imports. Together, fossil fuels represent 86 percent of Florida's total generating capacity. Less than 10 percent of its generating capacity is derived from cleaner nuclear and renewable fuels. In fact, no new nuclear plants have entered service in Florida since 1983. Current forecasts indicate that new generation capacity will be 80 percent natural gas-fired and 19 percent coal-fired. Meeting

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[2] *Florida's Energy Plan*, January 17, 2006, Department of Environmental Protection, page 7.
[3] Id.
[4] Id.

these projections could prove expensive at today's prices and lead to an over-reliance on one fuel type, affecting the reliability of electric utility generation supply in Florida. While expansions for natural gas capacity are needed and already underway, improving generation fuel diversity would enhance reliability over the long-term. Too great a reliance on a single fuel source leaves Floridians subject to the risks of price volatility and supply interruption.[5]

Alternative Energy Sources

Beyond increasing domestic production of traditional fossil fuel energy sources, fostering the development of alternative energy sources is a policy option available to both the state and federal governments. Long-term concerns over the limited supply of fossil fuels and more immediate concerns over the instability of the supply and prices of such fuels have combined with environmental concerns to prompt some leaders to consider alternative sources of energy.

Unlike fossil fuels, certain types of energy are nearly inexhaustible and do not directly produce harmful emissions. Such fuels are considered renewable because they are replaced rapidly by a natural process such as the sun or the wind. Although most renewable energy comes from short-term solar-energy storage such as rainfall, it can also be accumulated over a period of months, as in straw or hay, or through many years as in trees or wood. A fundamental advantage of renewable energy sources is that they do not permanently deplete resources. Fossil fuels are renewable, but only on a very long time-scale, and are consumed at a higher rate than it takes to replenish them.

Section 377.803, F.S., defines renewable energy technology as any technology that generates or utilizes a renewable energy resource, defined to include electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

Alternative Fuel Production

Ethanol

The main biofuels available in the United States today are ethanol and biodiesel. In the United States, ethanol is largely a corn-based fuel ranging from E10, a 10 percent gasoline additive (used to reduce vehicle emissions that works without engine modifications), to E85 that contains just 15 percent gasoline and 85 percent ethanol (used to power flexible fuel vehicles that can run on any kind of fuel). While the United States uses corn to produce ethanol, Brazil, using sugar cane, is the world's largest ethanol producer -- contributing nearly 40 percent of the global supply -- and boasts the world's largest ethanol market. The industry is self-sustaining, no longer in need of tax subsidies. Cellulosic ethanol is a variation that uses cornhusks and other crop wastes as feedstock (or the raw materials needed to produce biofuels).[6]

Biodiesel

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[5] Id.

[6] http://www.ncsl.org/legis/pubs/SLmag/2006/06SLJun06_BioFuels.htm

Biodiesel is a clean-burning alternative fuel made primarily from soybeans. It can also be made from other materials such as vegetable oils, animal fats and spent cooking oils. The pure form of biodiesel is commonly referred to as B100. The most common blend for biodiesel, B20, is 20 percent biodiesel and 80 percent petroleum diesel.[7] According to the U.S. Environmental Protection Agency, biodiesel is less toxic than table salt and more biodegradable than sugar. It has none of the toxic or environmental hazards of fossil diesel fuel. Biodiesel operates in conventional combustion-ignition engines, from light to heavy-duty, just like petroleum-based diesel. No engine modifications are required, and biodiesel maintains the payload capacity and range of diesel.[8]

In 2004, alternative fuels accounted for 1.2 percent (2,111 thousand gasoline-equivalent gallons) of the total market for transportation fuels (177,562 thousand gasoline-equivalent gallons). Although a relatively small percentage of the total transportation fuel market, biofuels consumption has increased rapidly in recent years. In 1994, biofuels consumption stood at 846 thousand gasoline-equivalent gallons or 0.6 percent of the transportation (140,719 thousand gasoline-equivalent gallons) fuels market. Increased production of biofuels as well as increases in the number of fueling stations which provide biobased fuels are due to federal and state incentives that encourage the use of alternative fuel or flex-fuel cars as well as increased public education and awareness.[9]

Biofuel Initiatives

As a June 2006 article in the NCSL *State Legislatures Magazine* declared:[10]

> The allure of biofuels in the United States is a result of policies aimed at reducing the country's dependence on imported oil, while at the same time reducing emissions of air pollutants. Both the federal government, through the Energy Policy Act of 2005, and the states, through a multitude of tax incentives and fuel mandates, are driving the increased production and use of biofuels across the country.

State Initiatives – Incentives vs. Mandates

In addition to federal initiatives promoting the production and use of biofuels, numerous states also have enacted policies to promote their development. Two options are available to promote biofuels production: incentives and mandates. States have experimented with both options. Some states have initially tried incentives, only to switch to fuel mandates as a more effective method to support in-state production of ethanol or biodiesel. Washington State is the second state, after Minnesota, to adopt a biofuels mandate. Washington requires that by 2008 two percent of all diesel fuel sold in the state be biodiesel and 2 percent of all gasoline be ethanol. Once the state's agriculture community determines that the state can provide the biomass feedstock, that requirement jumps to 5 percent. In addition to the legislative mandate, an executive order requires all state fleets to use 20 percent biofuels by 2009.[11]

Some states appear to have been successful with tax incentives to encourage production of biofuels. Oklahoma offers a tax credit of 20 cents per gallon for biodiesel production facilities.

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[7] http://www.ncsl.org/legis/pubs/SLmag/2006/06SLJun06_BioFuels.htm
[8] http://www.biomass.govtools.us/news/DisplayRecentArticle.asp?idarticle=227.
[9] http://www.biomass.govtools.us/news/DisplayRecentArticle.asp?idarticle=227.
[10] http://www.ncsl.org/legis/pubs/SLmag/2006/06SLJun06_BioFuels.htm.
[11] http://www.ncsl.org/legis/pubs/SLmag/2006/06SLJun06_BioFuels.htm.

Producers get credit for a facility production rate of 25 million gallons annually, or 125 million gallons over the five-year lifespan of the 2005 incentive.[12]

Barriers to Alternative Energy Sources

To be a viable alternative energy source, a biofuel should provide a net energy gain, have environmental benefits, be economically competitive, and be producible in large quantities without reducing food supplies.

The exact amount of energy required to grow crops varies widely, since a number of modern farming methods can significantly reduce the amount of energy that must be used. It also is difficult to account for all energy inputs to biofuels. Opponents of corn ethanol production in the U.S. often quote the work of David Pimentel and Tadeusz Patzek. Both have been critical of ethanol and other biofuels. Their studies contend that ethanol, and biofuels in general, are "energy negative," meaning they take more energy to produce than is contained in the final product. However, this does not appear to be the consensus opinion among scientists. A report by the U.S. Department Agriculture compared the methodologies used by a number of researchers on this subject and found that the majority of researchers think the energy balance for ethanol is positive. In fact, a large number of recent studies, including an article in the journal Science offer the consensus opinion that fuels like ethanol are energy positive. According to information from the American Council for Ethanol, "ethanol has a 125 percent positive energy balance, compared to 85 percent for gasoline."[13]

Using these criteria listed above – net energy gain, environmental benefits, and economic competitiveness -- a recent study published in the Proceedings of the National Academy of Sciences evaluated ethanol from corn grain and biodiesel from soybeans. The study found that ethanol yields 25% more energy than the energy invested in its production, whereas biodiesel yields 93% more. Compared with ethanol, biodiesel releases just 1.0%, 8.3%, and 13% of the agricultural nitrogen, phosphorus, and pesticide pollutants, respectively, per net energy gain. Relative to the fossil fuels they displace, greenhouse gas emissions are reduced 12% by the production and combustion of ethanol and 41% by biodiesel. Biodiesel also releases less air pollutants per net energy gain than ethanol. These advantages of biodiesel over ethanol come from lower agricultural inputs and more efficient conversion of feedstocks to fuel. The study concluded that neither biofuel can replace much petroleum without impacting food supplies. Even dedicating all U.S. corn and soybean production to biofuels would meet only 12% of gasoline demand and 6% of diesel demand. In addition, until recent increases in petroleum prices, high production costs made biofuels unprofitable without subsidies. The study concludes that biodiesel provides sufficient environmental advantages to merit subsidy, and finds that transportation biofuels such as synfuel hydrocarbons or cellulosic ethanol, if produced from low-input biomass grown on agriculturally marginal land or from waste biomass, could provide much greater supplies and environmental benefits than food-based biofuels.[14]

Earlier studies have also examined whether manufacturing ethanol takes more nonrenewable energy than the resulting fuel provides and the environmental impacts of ethanol. According to a study published in Science, the impact of a switch from gasoline to ethanol has an ambiguous effect on greenhouse gas emissions, with the reported values ranging from a 20% increase to a decrease of 32%. These values have their bases in the same system

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[12] Id.

[13] http://www.biomass.govtools.us/news/DisplayRecentArticle.asp?idarticle=227.

[14] Hill, Jason, Nelson, Erik, Tilman, David, Polasky, Stephen, and Tiffany, Douglas (2006) *PNAS 103,* 11206-11210.

boundaries, but some of them rely on data of dubious quality. The study estimates that corn ethanol reduces petroleum use by about 95% on an energetic basis and reduces green house gas emissions only moderately, by about 13%. The study notes that given adequate policy incentives, the performance of corn ethanol in terms of green house gas emissions can likely be improved. However, the study concludes that current data suggest that only cellulosic ethanol offers large reductions in green house gas emissions.[15]

Potential impacts on the nation's food supply may pose a barrier to significant increases in the production of biofuels. For instance, earlier this year, the U.S. Department of Agriculture projected that 20 percent of the corn crop that will go on the market this September will go into ethanol. U.S. corn exports are expected to rise to 2 billion bushels in 2006-07, while ethanol production is estimated to use 2.15 billion bushels. Using farm products for energy could change the availability of food supplies, and in the future, instability of energy prices could be translated into instability in food prices." However, in the United States, the federal government is paying farmers not to grow crops on 35 million acres in order to prop up the value of corn. According to the U.S. Department of Agriculture, much of that land could come back into production to meet the demand for both food and fuels.[16]

In addition to energy efficiency and environmental and food supply concerns, barriers to increased production and use of biofuels include the lack of infrastructure to produce and distribute biofuels, the cost of converting engines to use some types of biofuels, and the costs of converting biomass into biofuels. Most biofuel production is in the Midwest, far away from urban centers and existing transportation fuels pipelines. Institutional, technical, and logistical issues with utilizing the existing petroleum infrastructure must be overcome.[17]

One of the secrets to Brazil's successful ethanol market is the country's automobile industry. In 2003, Brazilian automakers began producing "flex-fuel" cars capable of running on ethanol, gasoline or a mix of the two. More than 70 percent of the cars sold in Brazil, reaching 1.1 million in 2006, have flex fuel engines. According to recent published reports, American automakers are pledging to double by 2010 the number of vehicles they make that are capable of running on either gasoline or corn-based ethanol. Ford, General Motors and DaimlerChrysler will make 1 million of the dual-fuel cars and trucks this year. "Our hope is that with this commitment, fuel providers will have even more incentive to produce ethanol and other biofuels and install pumps to distribute them," executives of the automakers said recently in a joint letter to members of Congress. The automakers have been under pressure from some lawmakers to increase production of dual-fuel vehicles to bolster the future market for ethanol. Sen. Tom Harkin, D-La., is co-sponsoring legislation that would require all new cars and trucks to be dual-fuel capable within 10 years. But E85 is hard to find even for motorists who want to use it. Only 700 of the 170,000 gas stations nationwide have E85 pumps.[18]

The recent development of cheaper, more efficient enzymes has made it practical to break down cellulose into sugars that can be fermented into ethanol. This development may open a significant new market for agricultural resources now considered wastes (such as wheat straw and corn stover), as well as perennial grasses. The crop most studied for this purpose in the United States is switchgrass, a native perennial prairie grass. The environmental benefits of

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[15] Farrell, Alexander E., Plevin, Richard J., Turner, Brian T., Jones, Andrew D., O'Hare, Michael, Kammen, Daniel M., "Ethanol Can Contribute to Energy and Environmental Goals", *Science,* 311, 506-508.

[16] http://www.ncsl.org/legis/pubs/SLmag/2006/06SLJun06_BioFuels.htm.

[17] http://www.biomass.govtools.us/news/DisplayRecent Article.asp?idarticle=227.

[18] Brasher, Philip, "Automakers vow to raise dual-fuel car production," *DesMoines Register,* June 29, 2006.

cellulose conversion are quite dramatic. For example, a conventional engine operating on cellulosic ethanol produces fewer net global warming emissions than a fuel cell that uses hydrogen derived from natural gas.[19]

The conversion of cellulose will increase the amount of ethanol that can be produced from grain and cane because more of the plant will be used. It also makes possible the use of nonfood crops for industrial applications. Studies by Battelle Memorial Institute and Oak Ridge National Laboratory have found that 50 billion gallons of cellulosic ethanol could be produced from available land without a significant disturbance to the agricultural economy. Due to the fact that ethanol has less energy content per gallon than gasoline, this is equivalent to about one quarter of current U.S. gasoline consumption of 140 billion gallons a year.[20]

Looking to the future, the environmental implications of ethanol production are likely to grow more important, and there is a need for more analysis to inform policy decisions. In addition, future analysis of fuel ethanol should more carefully evaluate ethanol production from cellulosic feedstocks because cellulosic ethanol production is undergoing major technological development and the cultivation of cellulosic feedstocks is not as far advanced as corn agriculture, suggesting more potential for improvement. Such advances may enable biomass energy to contribute a sizeable fraction of the nation's transportation energy, as some studies have suggested.[21]

The Federal Energy Policy Act of 2005

The Federal Energy Policy Act of 2005 (Act) was the first effort of the United States government to address U.S. energy policy since the Energy Policy Act of 1992. The Act was intended to establish a comprehensive, long-range energy policy. It provided incentives for traditional energy production as well as newer, more efficient energy technologies, and conservation. The Act has hundreds of provisions. Major items addressing alternative energy include:

- ✓ Provides a tax credit of up to $3,400 for owners of hybrid vehicles;
- ✓ Authorizes loan guarantees for "innovative technologies" that avoid greenhouse gases, which might include advanced nuclear reactor designs as well as clean coal and renewable energy;
- ✓ Increases the amount of biofuel (usually ethanol) that must be mixed with gasoline sold in the United States to triple the current requirement (7.5 billion gallons by 2012);
- ✓ Authorizes subsidies for wind energy, and other alternative energy producers;
- ✓ Adds ocean energy sources including wave power and tidal power for the first time as separately identified renewable technologies;
- ✓ Authorizes $50 million annually over the life of the Act for a biomass grant program;
- ✓ Contains several provisions aimed at making geothermal energy more competitive with fossil fuels in generating electricity;
- ✓ Requires the Department of Energy to study and report on existing natural energy resources including wind, solar, waves, and tides;
- ✓ Provides tax credits to individuals for residential solar energy systems;

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[19] http://www.ncsl.org/legis/pubs/SLmag/2006/06SLJun06_BioFuels.htm.
[20] Id.
[21] Farrell, Alexander E., Plevin, Richard J., Turner, Brian T., Jones, Andrew D., O'Hare, Michael, Kammen, Daniel M., "Ethanol Can Contribute to Energy and Environmental Goals", *Science,* 311, 506-508.

- ✓ Provides tax credits for residential fuel cell systems; and
- ✓ Provides tax credits for fuel cell and microturbines used in a business.

As part of the Federal Energy Policy Act of 2005, Congress authorized loan guarantees and capital assistance for the construction of commercial biofuels facilities using advanced production technology as well as increases in spending on research and development. All together, Congress provided the authority to spend over half a billion dollars a year on biofuel development. Congress appropriated $90 million for research on biofuels, including research into enzymes and yeast that can break down materials including wood chips and "switch grass" for the purpose of manufacturing ethanol. For the next fiscal year, President Bush requested $150 million for such research.[22]

During the 2006-2007 fiscal year, the Federal government provided for the following:

- ✓ A partial federal excise tax exemption of 51 cents per gallon for ethanol blended into gasoline (petroleum blenders – not corn farmers – receive this tax credit);
- ✓ An excise tax credit for biodiesel and biodiesel blends of a penny per percentage point of biodiesel blended with petroleum diesel for "agri-biodiesel," such as that made from soybean oil, and a half-penny per percentage for biodiesel made from other sources, like recycled cooking oil;
- ✓ A 30 percent tax credit, enacted in the Energy Policy Act of 2005, for the cost of installing clean-fuel vehicle refueling property. Clean fuels include biodiesel blends of 20 percent or more renewable oils, as well as ethanol and hydrogen.

The Federal Energy Policy Act included a 30 percent federal tax credit to fueling stations that add E85 or similar fuels to their offerings. It also established the first-ever renewable fuels standard in federal law. The Act required that at least 4 billion gallons of ethanol and biodiesel be used in 2006 increasing annually to at least 7.5 billion gallons in 2012-- with an annual increase of approximately 700 million gallons per year.[23]

Attempting to build on the 2005 federal energy legislation, farm leaders allied with the Energy Future Coalition endorsed a new initiative, know as "25 by '25." A bipartisan group of lawmakers, industry leaders, including three Detroit automakers, farm groups, governors, county officials, and environmentalists launched the effort to have the nation obtain 25 percent of its total energy from renewable sources by 2025.[24] This proposal goes well beyond the goals of the 2005 energy legislation. Achieving the goal will require that agriculture provide a portion of the 25 percent of the total energy consumed in the United States by 2025 while continuing to produce abundant, safe and affordable food and fiber. The goal of securing one-fourth of the nation's total energy from renewable sources such as wind, solar, biomass, and biogas by 2025 was introduced in June 2006 as a concurrent resolution in both houses of Congress.

2005 Florida Executive Energy Initiative

On November 10, 2005, Governor Jeb Bush issued Executive Order #05-241 directing the Department of Environmental Protection (DEP) to develop a comprehensive energy plan. On December 14, 2005, the Secretary of DEP hosted the Florida Energy Forum where various

[22] http://wsjclassroom.com/archive/06apr/econ1_ethanol.htm
[23] http://www.ncsl.org/legis/pubs/SLmag/2006/06SLJun06_BioFuels.htm
[24] The Florida Commissioner of Agriculture has initiated a "25X'25" proposal with similar objectives as stated above.

parties were able to provide input in developing the plan. As required by the Executive Order, DEP issued the Florida Energy Plan on January 17, 2005.

The energy plan contained recommendations that spanned several areas. The recommendations included, but were not limited to:

- ✓ Streamlining and expediting the siting and permitting of generation resources by revising the provisions of the Florida Electrical Power Plant Siting Act.
- ✓ Streamlining and expediting the siting and permitting of electrical transmission and distribution resources by revising the provisions of the Transmission Line Siting Act.
- ✓ Incorporating the siting of substations into the Transmission Line Siting Act.
- ✓ Promoting fuel diversity, fuel supply reliability and energy security.
- ✓ Facilitating additional fuel delivery mechanisms in Florida for power generation.
- ✓ Establishing an energy commission to provide policy advice and counsel to the Governor, Speaker of the House of Representatives, and President of the Senate.
- ✓ Expediting state performance contracting with energy service companies.
- ✓ Promoting awareness of energy conservation and alternative energy technologies.
- ✓ Providing grant funding for research and demonstration projects associated with the development and implementation of renewable energy systems.
- ✓ Expanding solar, hydrogen, biomass, wind, ocean current and other emerging technologies.
- ✓ Identifying alternative energy production and distribution industries as Qualified Target Industries.
- ✓ Providing consumer rebates for purchases of energy efficient ENERGY STAR™ appliances.
- ✓ Providing sales and corporate tax incentives for the manufacture, purchase, and use of fuel cells for supplemental and backup power.
- ✓ Facilitating additional and diverse petroleum supply and distribution mechanisms into and within Florida.
- ✓ Encouraging fueling stations to cooperatively adopt a system modeled after the Florida WARN System to facilitate the relocation and use of generators to reestablish service.
- ✓ Providing grant funding for applied research and demonstration projects associated with the development and implementation of alternative fuel vehicles and other emerging technologies.
- ✓ Providing sales and corporate income tax credits for hydrogen vehicles and fueling infrastructure.
- ✓ Providing corporate, sales, and income tax incentives to improve production, develop distribution infrastructure, and increase availability of clean fuels, including biodiesel and ethanol.

2006 Legislative Energy Initiative
(CS/CS/CS/SB 888, chapter 2006-230, Laws of Florida)

During the 2006 Legislative Session, the Legislature enacted and the Governor signed CS/CS/CS/SB 888 into law (chapter 2006-230, L.O.F). The following provides a description of several of the changes and an update of the implementation of the provisions:

Update of the Florida Energy Commission

The bill created a nine-member Florida Energy Commission (FEC) appointed by the President of the Senate and Speaker of the House of Representatives to develop recommendations for legislation to establish a state energy policy based on specified principles. The commission is located within the Office of Legislative Services. Each member must be an expert in one or more specified fields and must disclose specified financial or employment interests. The commission is required to file an annual report by December 31 of each year, beginning in 2007. This report will document its progress, and make the first of an ongoing series of recommendations designed to help guide the Florida Legislature in choosing best practices and options for Florida's energy future. The first report must:

- ✓ Identify incentives for alternative energy research, development, or deployment projects;
- ✓ Set forth policy recommendations for conservation of all forms of energy;
- ✓ Recommend consensus-based public-involvement processes that evaluate greenhouse gas emissions in this state and make recommendations regarding related economic, energy, and environmental benefits;
- ✓ Include recommended steps and a schedule for the development of a comprehensive state climate action plan with greenhouse gas reduction through a public-involvement process, including transportation and land use; power generation; residential, commercial, and industrial activities; waste management; agriculture and forestry; emissions-reporting systems; and public education; and
- ✓ Set forth a plan of action, together with a timetable, for addressing additional issues.

The FEC's immediate focus is on renewable energy sources, conservation, and climate change, but a long-term goal is to examine all aspects of the many energy options available to Floridians.

Leadership by Example Report

The bill required the DEP to provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by November 1, 2006, a report detailing the state's leadership by example in energy conservation and energy efficiency. The report was submitted to the Legislature on November 21, 2006, and includes a description of state programs designed to achieve energy conservation and energy efficiency at state-owned facilities, such as the guaranteed energy performance savings contracting and the inclusion of alternative fuel vehicles in state fleets. The report describes the costs of implementation, details of the programs, and current and projected energy and cost savings. The report also sets forth recommendations on a rebate program for purchases of energy-efficient appliances.

Sales Tax Exemption

Included in the legislation is a renewable energy technology sales tax exemption. This program uses tax incentives to further stimulate development of hydrogen technology and biofuels in the state. A sales tax exemption is created for sale or use of hydrogen energy technologies, including fueling stations and vehicles, capped at $2 million; hydrogen fuel cells, capped at $1 million total, and $12,000 per fuel cell; and biofuels, including biodiesel and ethanol, capped at $1 million, from June 30, 2006, through July 1, 2010. Program requirements are addressed by the legislation. DEP administers the program in conjunction with the Department of Revenue (DOR).

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Fiscal Impact of CS/CS/CS/SB 888

The Revenue Estimating Conference estimated that the provisions of the bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, would result in a negative fiscal impact of $11.0 million to state government and $1.2 million to local governments in FY 2006-07. The bill appropriated $61,379 to the Department of Revenue to administer the sales tax holiday. For the Renewable Energy Grants Program, the bill appropriated $15 million ($8.6 million from General Revenue and $6.4 million from the Grants and Donations Trust Fund) with $5 million contingent upon coordination between the DEP and the Department of Agriculture and Consumer Services (DACS). The bill appropriated $2.5 million from General Revenue to fund the solar incentives program. The fiscal impact for the renewable energy production credit is limited to $5 million per year.

PRESENT SITUATION

Property Tax Exemption for Renewable Energy Source Device (Section 1)

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.

The Florida Solar Energy Industries Association (Association) reports that the current options are cumbersome and that property owners who are adding solar energy systems are having their property taxes raised for those improvements. The Association notes that by allowing the exemption to expire, "[h]omeowners who have installed solar energy systems on their property have the unforeseen dilemma of a property tax liability that diminishes the savings generated by these systems" and "discourages buyers who are wiling to make such an investment in a clean energy future."

Sales Tax Exemption for Biofuel (Section 2)

CS/CS/CS/SB 888 provides a sales tax exemption for materials used in the manufacturing, blending, fueling and distribution of biodiesel and ethanol fuels. There is a cap of $1 million per fiscal year for the next three years.

Energy-Efficient Motor Vehicle Sales Tax Refund Program (Section 3)

Section 212.08(7)(ccc), F.S., provides for a refund of sales taxes on hydrogen-powered motor vehicles. Currently, the statutes do not provide for any other type of refund of sales taxes paid on alternative motor vehicles.

Renewable Energy Technologies Investment Tax Credit (Section 4)

CS/CS/CS/SB created s. 220.192, F.S., which established a corporate income tax credit program for any investments associated with hydrogen vehicles and hydrogen vehicle fueling stations; commercial stationary fuel cells; and biofuels, including biodiesel and ethanol; including construction, installation, and equipping the technologies in the state. The program runs from July 1, 2006 through June 30, 2010. The bill provided the following:

- ✓ The credit for stationary fuel cells, hydrogen vehicles and hydrogen vehicle fueling stations will be for 75% of the capital, operational, maintenance, research and development costs;
- ✓ The cap for hydrogen vehicles and hydrogen vehicle fueling stations is $3 million per fiscal year;
- ✓ The cap for the corporate tax credit on stationary fuel cells is $1.5 million per fiscal year; and
- ✓ The cap for an investment in the production and distribution of biodiesel and fuel ethanol is $6.5 million per fiscal year.

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

Florida Renewable Energy Production Credit (Section 5)

CS/CS/CS/SB 888 created the Florida Renewable Energy Production Credit 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.

"Green Buildings" – Energy Conservation and Sustainable Buildings Act (Sections 6-10 and 35)

The Leadership in Energy and Environmental Design (LEEDs) program was developed by the United States Green Building Council (USGBC).[25] The LEEDs program is intended to reduce energy consumption, reduce energy costs, provide for sustainable development, create water savings, and improve indoor environment quality. The LEEDs 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 LEEDs conservation goals. Buildings that meet the minimum LEEDs 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.[26]

A number of other programs to promote the creation of green buildings have also been developed. These programs include the Florida Green Building Coalition and the Green Building Initiative's Green Globes program.[27] Similar to the USGBC LEEDs program, the Florida Green Building Coalition, and the Green Globes programs use a checklist to rate buildings on their efficiency levels.[28] Also, much like the USGBC LEEDs program, Florida Green Building Coalition evaluates buildings in a variety of categories.[29] These categories include energy, water, lot choice/site, health, materials, disaster mitigation, and other general measures.[30] The Green Globes rating system focuses more on the energy use of the buildings that it evaluates.[31]

Currently, there are very few, if any, government buildings in Florida that meet LEEDs standards.[32] Three state agency buildings that are in development are expected be the first LEEDs certified buildings in the state.[33] 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.[34]

Another conservation program in Florida is the Guaranteed Energy Performance Savings Contract Act (GEPSCA).[35] Many cities, counties, school districts, and colleges are constructing or upgrading their facilities to meet energy efficiency standards through the Guaranteed Energy Performance Savings Contracting Program. These contracts are meant to encourage Florida public entities to finance facility energy conservation measures with the energy cost savings received by those measures. If the energy savings received do not cover the cost of the energy conservation measures, the contractor must cover the cost of any

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[25] United States Green Building Council, http://www.usgbc.org/
[26] Id.
[27] The Green Building Initiative, www.thegbi.com, and The Florida Green Building Coalition, www.floridagreenbuilding.org.
[28] Id.
[29] The Florida Green Building Coalition, www.floridagreenbuilding.org.
[30] The Florida Green Building Coalition, www.floridagreenbuilding.org. Also see "Sarasota County, Planning & Development Services: Florida Green Home Standard Checklist."
[31] The Green Building Initiative, www.thegbi.com.
[32] Conversation with Clint Sibille, Deputy Director, Division of Facilities Management and Building Construction, Department of Management Services, February 27, 2007. But also see http://www.fundinggreenbuildings.com/documents/OnlineMapBrochure.pdf.
[33] Id.
[34] Resolutions No. 2005-648 and 2006-174 of the Board of County Commissioners of Sarasota County, Florida.
[35] Section 489.145, F.S.

shortfalls in payment. As a result, the energy conservation measures encourage the upgrade of public facilities without requiring increased investment from taxpayers.[36]

Guaranteed Energy Performance Savings Contracting (Sections 11 and 29)

Idea #71 of the "100 Ideas" was originally meant for the creation of a loan fund to encourage energy efficiency in public buildings while also cutting utility costs.[37] Research indicated that the objectives of the Idea were already in place and being implemented by local governments, school districts, the Department of Management Services (DMS), and the Department of Financial Services (DFS) through the Guaranteed Energy Performance Savings Contract Act (GEPSCA).[38]

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 energy conservation measures must produce a utility savings sufficient to 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 twenty years in length. If the utility savings are not sufficient to cover each individual financing payment, the ESCO must pay for the shortfall. Further, 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.[39]

The GEPSCA program was first created in 1994 as s. 489.145, Florida Statutes. However, in the original form, the GEPSCA did not clearly allow state agencies to finance Guaranteed Energy Performance Contracts through third party financing.[40] 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 Contracts.[41]

The GEPSCA was amended a second time in 2003 to encourage the CFO, with assistance from the DMS, to create a model GEPSCA contract.[42] A model contract was produced recently thereafter.

Currently, while a number of other public entities, especially local governments, have entered into GEPSCA contracts, only a few state agencies have used a GEPSCA contract since the act's creation in 1994.[43] When the contracts are submitted, the CFO frequently has concerns about the financing and the substance of these contracts.[44] These concerns include: financing where loan payments increase over the life of the contract; contracts where the full

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[36] Id.
[37] Marco Rubio, 100 Innovative Ideas for Florida's Future, Regnery Publishing, Inc. pg. 108 (2006).
[38] Section 485.145 F.S.
[39] Id.
[40] 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.
[41] Id.
[42] Id.
[43] Conversation with Mike Crowley, Financial Administrator, Department of Financial Services, March 27, 2007.
[44] Conversation with Clint Sibille, et al. of DMS and Doug Darling, et al. of DFS, February 27, 2007.

costs of the improvement are not included in the guarantee; deviations from the model contract; and improvements that do not have an obvious cost savings or are unrelated to reducing energy consumption. Further, 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[45] programs because these programs only allow for ten years of project financing instead of the twenty years authorized for GEPSCA contracts. Finally, ESCOs are not commonly using the GEPSCA Model Contract that has been developed. Because of these concerns, the CFO is reluctant to approve many of these contracts and state agencies are not making significant use of the GEPSCA.[46]

"Energy Efficiency and Conservation Month" (Section 12)

Present law does not recognize a specific time of the year to promote energy efficiency and conservation of the state's resources.

Solar Energy System Incentives Program (Sections 13 and 15)

In 2006, the Legislature created a solar energy system rebate program in the DEP to provide financial incentives for the purchase and installation of solar energy systems. Specifically, from July 1, 2006, through June 30, 2010, any state resident who purchases and installs a new solar energy system of 2 kilowatts or larger for a solar photovoltaic system; a solar energy system that provides at least 50 percent of a building's hot water consumption for a solar thermal system; or a solar thermal pool heater is eligible for a rebate on a portion of the purchase price of that system. Applications for rebates must be made within 90 days of the purchase.

The total amount of the rebates is limited each year by the total appropriation for that fiscal year. The 2006 Legislature appropriated $2.5 million to fund the program. If funds are insufficient in a given year, rebate requests may be processed, and take priority, during the following fiscal year.

The program provides the following incentives:

- ✓ A rebate of $4 a watt is provided for the purchase and installation of a solar photovoltaic system of 2 kilowatts or larger on a home or business. The rebate is capped at $20,000 for a residence and $100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization.

- ✓ A rebate of $500 is provided for the purchase and installation of a solar thermal water heater per residence. Businesses, publicly owned or operated facilities, or facilities owned or operated by private, not-for-profit organizations that have a commercial-sized system are to be paid $15 per 1000 Btus produced, as verified through an approved metering device. The maximum allowable rebate is $5,000.

- ✓ A rebate of $100 is provided for the purchase and installation of a solar thermal pool heater.

Renewable Energy Technologies Grants Program and

[45] Sections 287.063 and 287.064, F.S.
[46] Conversation with Clint Sibille, et al. of DMS and Doug Darling, et al. of DFS, February 27, 2007.

Farm-to-Fuel Grants Program - Bioenergy Grants Program (Sections 14 and 31)

CS/CS/CS/SB 888 (Chapter 2006-230, Laws of Florida), created the Renewable Energy Technologies Grants Program within the DEP to provide matching grants for demonstration, commercialization, research, and development projects relating to renewable technologies. The bill defined renewable energy to include electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power. As a part of this program, the DEP was required to work with the DACS to coordinate grants for bioenergy projects.

Implementation of the Grant Programs

The Florida Legislature appropriated $15 million for renewable energy technologies grants to stimulate capital investment in the state and promote and enhance the statewide utilization of renewable energy technologies, including ethanol and bioenergy. The Florida Energy Office (FEO) received 183 unique proposals, seeking nearly $215 million and providing over $505 million in cost share.

Grant proposals were evaluated by the state based on a number of different criteria, including cost share percentage, economic development potential, energy efficiency and how the project fosters public awareness of renewable energy technologies. Grants were awarded at a maximum of $2.5 million per project, and eligible applicants included Florida municipalities and county governments, established for-profit companies licensed to do business in Florida, universities and colleges in the state, utilities located and operating within Florida, not-for-profit organizations and state agencies.

On February 22, 2007, the funding was awarded to eight organizations with at least $5 million to support bioenergy projects and $10 million for projects that generate or utilize other renewable energy resources, including hydrogen, biomass and solar energy.

The Renewable Energy Technologies Grant Program recipients for 2007 are as follows:

- ✓ **Citrus Energy LLC**, "Fuel Ethanol Production from Citrus Waste Biomass" ($2.5 million): Based in Clewiston, the company will construct a four-million-gallon-per-year ethanol bio-refinery to use citrus waste to produce ethanol. This project will transform citrus waste, an abundant agricultural residual, into a clean, affordable and locally-produced biofuel.

- ✓ **Alico Inc.**, "Commercial Ethanol Production from Biomass" ($2.5 million): The project will use biomass products to co-produce ethanol and electricity at a savings for consumers. The facility will produce ethanol for blending with gasoline at less than one-third of the current national average retail cost of gasoline, and can deliver "green" electricity at a cost of five to eight cents per kilowatt hour.

- ✓ **Losonoco Inc.**, "Losonoco Mulberry Ethanol" ($2.5 million): Losonoco Inc. will purchase, refurbish, and operate a shuttered fuel ethanol production facility in the City of Mulberry in Polk County. Through the incorporation of technology improvements and best operating practices developed over the past decade, Losonoco intends to refurbish

and reopen the facility as a 12-million-gallon-per-year plant, virtually doubling its original capacity.

- ✓ **University of Florida,** "Renewable Energy Fuels in a Micro-Grid Power Module" ($2,464,703): The grant will be used to construct a small-scale demonstration plant using the University's patented POWER technology, including operation on a variety of liquid and gaseous biofuels. The system allows ultra-clean, efficient operation on a wide variety of biomass fuels, hydrogen or conventional fuels, and this project will be installed at the University of Florida Energy Research Park, connected to the grid by Progress Energy, and operated to determine its performance using biofuels.

- ✓ **Florida Solar Energy Research and Education Foundation**, "Getting Down to Business: Transforming Florida's Solar Marketplace" ($1,921,575): The statewide initiative is designed to increase the use of solar technologies as well as strengthen and stabilize the solar-energy industry in Florida. By demonstrating the use of appropriate solar technologies in the commercial sector, this project will increase awareness and participation for Florida's solar rebate program.

- ✓ **Kore Consulting Group**, "Sky Renewable Energy with Optimal Supply-and-Demand-Side Integration Demonstration" ($1,802,567): The project will study and develop strategies to successfully integrate renewable and sustainable energy technologies with the quality-of-life and environmental goals of the community. Located in Calhoun County, the project will minimize energy requirements and maximize renewable energy use to support the community while maintaining the comforts and quality of life expected by its residents.

- ✓ **Florida International University**, "Assessment and Development of Pretreatment for Sugarcane Bagasse to Commercialize Cellulosic Ethanol Technology" ($990,532): The university project will determine the technical feasibility of using Florida sugarcane waste as a feedstock for a large-scale ethanol industry in the state. The university will try to identify a cost-effective pretreatment process to make sugarcane waste a viable feedstock for ethanol production.

- ✓ **Florida Biomass Energy Consortium**, "Using High Efficiency Biomass Gasification for Industrial Drying" ($320,623): The proposal is to build and operate an integrated biomass gasification system to replace natural-gas use with biogas for an industrial user. This project will define and establish both the technical and economic viability of using Florida's biomass resources for industrial drying processes that currently use natural gas as the energy source.

Greenhouse Gas Inventories (Section 16)

The Department of Environmental Protection (DEP) does not monitor or maintain an inventory of greenhouse gases emitted to and removed from the atmosphere.

Power Plant Siting Act (Sections 17-22)

The Power Plant Siting Act (PPSA) is a centralized, coordinated licensing process encompassing the permitting, land use and zoning, and proprietary interests of all state, regional, and local agencies in the jurisdiction of which and electric power plant is proposed for

location. The PPSA provides for a single certification (license) for those electric power plants, as defined by the PPSA, which are steam or solar powered, 75 megawatts or greater, and were constructed after October 1, 1973. The provisions apply to nuclear power in addition to coal, gas and waste-to-energy facilities, although regulation of nuclear radiation is preempted by the federal government. Directly-associated facilities may be certified in conjunction with the plant, including transmission lines necessary to connect the plant to the electric grid. The provisions also address procedures for incorporation of previously permitted plants into a certification, for additions of supplemental units at previously certified plants, and modifications to certified facilities.

Transmission Line Siting Act (Sections 23-28)

The Transmission Line Siting Act (TLSA) is a centralized, coordinated licensing process encompassing permitting, land use and zoning, and proprietary interests of all state, regional, and local agencies in the jurisdiction of which a transmission line is proposed for location. The TLSA provides for a single certification (license) for transmission lines subject to the TLSA. Transmission lines subject to the TLSA are those which are 230 kilovolts or greater, 15 miles or more in length and cross a county line. Intermediary substations may also be certified as part of the project.

In CS/CS/CS/ SB 888, the Power Plant Siting Act and the Transmission Line Siting Act were significantly rewritten. This is the first year the new procedures have been implemented and some unforeseen glitches have materialized.

Farm-to-Fuel Advisory Council (Section 30)

Chapter 2006-289, Laws of Florida, authorizes the development of a "farm-to-fuel" initiative in the DACS to "enhance the market for and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass and to enhance the value of agricultural products or expand agribusiness in the state."[47] The Commissioner of Agriculture has the authority to establish an advisory council to provide advice and counsel on any issue within the agency's jurisdiction.

Biofuel Retail Sales Incentive Program and Florida Biofuel Production Incentive Program (Sections 32 and 33)

Section 220.192, F.S., provides an investment tax credit for the production and distribution of ethanol and biodiesel. However, the law is silent as to an incentive for the production of the alternative fuel produced from Florida-grown products. Similarly, there is no incentive provided for retail sale of alternative fuels.

Florida Building Commission/Energy Codes (34)

The Florida Building Commission (FBC or Commission), which is located within the Department of Community Affairs (DCA), consists of 23 members, appointed by the Governor and subject to confirmation by the Senate. The Commission must review the state building code and make recommendations to the Legislature regarding sections of law that should be revised and repealed. The Commission updates the code every three years.

[47] s. 570.954, F.S.

The Legislature in 1998 authorized the development of an organized, unified, simple-to-use, state building code, to be called the Florida Building Code. The code consists of a single set of documents that apply to all elements of construction and demolition of buildings in Florida. The Florida Building Code is to be applied consistently through all cities and counties. It was the intent of the Legislature that the Florida Building Code be an adaptable document that can incorporate, when needed, new technology.

Section 553.72, F.S., provides the following:

> The Florida Building Code shall establish minimum standards primarily for public health and lifesafety, and secondarily for protection of property as appropriate. It is the intent of the Legislature that local governments shall have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public health, safety, and welfare pursuant to chapters 125 and 166. It is the intent of the Legislature that the Florida Building Code be adopted, modified, updated, interpreted, and maintained by the Florida Building Commission in accordance with ss. 120.536(1) and 120.54 and enforced by authorized state and local government enforcement agencies.

The Florida Building Code includes the Florida Energy Efficiency Code for Building Construction. All new buildings and renovations and additions to existing buildings must meet the minimum energy efficiency standards set by the code. When building a commercial building or a residence, builders have options called compliance methods that can be utilized to meet code requirements. The compliance methods consist of a performance method or a prescriptive method.

The *performance method* establishes an energy baseline for the entire building and allows designers flexibility in how to meet the baseline. Each building component must either meet or exceed the code requirements or baseline. Commercial buildings are defined in the code by building type and occupancy use and would have a different baseline but have comparable energy efficiency requirements.

Using the *prescriptive method*, a building must meet or exceed all requirements for one of several prepackaged lists of minimum construction requirements. The prescriptive method's prepackaged lists set the criteria for:

- ✓ Glass type, wall insulation, ceiling insulation, type of doors;
- ✓ Minimum efficient levels for heating and cooling systems;
- ✓ Water heating systems efficiency; and
- ✓ Location of the duct systems.

The building compliance code states that the prepackaged lists limit builders to construct residences to those specifications and do not allow substitutions or variations that are less energy efficient than the established levels and standards listed for each component. Due to the flexibility it provides, most builders choose the performance option. According to the Commission, the efficiency rating of most building components can be tailored to individual buildings and both compliance options result in the same overall energy efficiency for buildings.

According to the FBC, The International Energy Conservation Code and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1 and 90.2 are the

national model codes and standards for energy conservation in buildings. Federal law requires all states' energy codes to be at least as stringent as these national models. Since its establishment by law in 1980, the energy building code has been required to be cost effective to the consumer.

The cost effectiveness was the complete basis of the code that was last evaluated in 1985. Since that time, changes to minimum performance of individual building components, such as, air-conditioner efficiencies and insulation levels for walls and ceilings, have been enhanced based on levels established by the national model codes and standards (and federal standards for appliances covered by federal law). Additionally, the costs of certain energy efficient technologies that were available in 1985 are significantly less today. Not only can improvements be made at less cost, upgraded features are more readily available.

The counties that have provided local builders with incentives for green building have, in many cases, used the Florida Green Building Coalition's (FGBC or Coalition) ratings as their green building guideline. The Coalition defines a green home as an energy-efficient home that incorporates multiple environmental, ecological and sustainability features that materially enhance the built environment. As stated on their website, the Coalition is a nonprofit Florida corporation dedicated to improving the built environment. Its mission is "to provide a statewide green building program with environmental and economic benefits."[48] According to the Coalition, when constructing a green building, some of the following criteria need to be considered:

- ✓ Energy Efficiency (Building and Appliances),
- ✓ Water conservation,
- ✓ Soil erosion,
- ✓ Moisture control,
- ✓ Landscaping,
- ✓ Using low emitting VOCs (volatile organic compound) materials,
- ✓ Disaster mitigation, and
- ✓ Reduction in waste material (less impact on the landfills), etc.

Incentives that some counties are already utilizing to encourage green building include:

- ✓ Setting up a system that fast tracks all green building projects;
- ✓ Reducing green building projects fees by 50%; or
- ✓ Offering a 50% refund once the green building is completed.

Public Awareness Campaigns

The FBC administers the Florida Building Energy Code and maintains a staff that responds to questions related to the Energy Code. The Energy Office within the DEP "coordinates all federal energy programs delegated to the state, including energy supply, demand, conservation and allocation."[49] The Energy Office also administers Florida's solar rebate program. The Florida Home Builders Association conducts trade shows throughout the state and offers continuing education courses to builders on the latest building energy options.

[48] http://www.floridagreenbuilding.org/
[49] http://www.dep.state.fl.us/mainpage/program/energy.htm

The DCA contracts with the Florida Solar Energy Center (FSEC) to maintain a website to provide information to the public, to conduct research, and to perform educational outreach. FSEC, specifically, does research in building science, photovoltaics, solar thermal, hydrogen and alternative fuels, fuel cells, and other advanced energy technologies. The FSEC conducts educational activities in professional/continuing education and K-12 programs. Additionally, FSEC produces curriculum and classroom activities that adhere to the Florida Sunshine State Educational Standards for math and science. The FSEC hosts events like the Junior Solar Sprint and Science Bowl for middle and high school students.[50]

Another public awareness forum for energy efficiency is the Florida Energy Gauge Program that DCA contracts with FSEC to administer. The Florida Building Energy-Efficiency Rating Act of 1993 requires the DCA to provide a voluntary statewide energy-efficiency rating system for buildings that is called the Building Energy-Efficiency Rating System (BERS). The residential portion of that program is called the Florida Energy Gauge Program. The FSEC provides the training for the certified raters and generates the brochures advertising the Florida Energy Gauge System. The brochures are required to be distributed to all prospective homebuyers or prospective purchasers of property with a building suitable for occupancy.

Potential homebuyers or homeowners can request an Energy Gauge rating of their home. The Energy Gauge Program has a scale that compares homes to similarly sized residences in that area and provides an energy efficiency rating. It provides a detailed breakdown on the energy costs of the following products in the home:

- ✓ Air-conditioning
- ✓ Space heating
- ✓ Water heating
- ✓ Refrigerator
- ✓ Clothes dryer
- ✓ Cooking cost
- ✓ Lighting
- ✓ Pool pumping
- ✓ Other miscellaneous equipment.[51]

The Energy Gauge Rating also provides a national Home Energy Rating System score that can qualify the homebuyer/owner for a number of special mortgage programs that offer lower interest rates and lower closing costs.[52] According to the FSEC, since most homebuyers receive the brochure at the closing of the purchase of their home, the brochures are not utilized and few Energy Gauge Ratings are conducted. The Energy Gauge readings that are done are mainly requested for new construction.

The U.S. Department of Energy (DOE) administers energy programs and conducts research. Some of DOE's public outreach programs include strategies that help consumers make their homes and businesses more energy efficient. Additionally, DOE provides grants and energy education opportunities for citizens in all stages of life. The DOE and the U.S. Environmental Protection Agency (EPA) sponsors the ENERGY STAR voluntary labeling program. This label helps businesses and consumers identify highly efficient products, homes, and buildings that save energy and money, while protecting the environment.

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[50] http://www.fsec.ucf.edu/en
[51] Florida Energy Gauge Program brochure.
[52] Id.

Energy-Efficient Products Sales Tax Holiday (Section 36)

In 2006, the Legislature approved an energy efficient appliance sales tax holiday and designated October 5-11, 2006, as "Energy Efficient Week." Specified new energy efficient appliance purchases of $1,500 or less were exempt from the state sales tax during the week. The exemption, however, did not cover the first $1,500 of the purchase price, only those items priced at $1,500 or less. For example, if the item was priced at $1,600, no amount was tax exempt.

The exemption applied to the following items:

- ✓ Dishwashers
- ✓ Clothes washers
- ✓ Air conditioners
- ✓ Ceiling fans
- ✓ Incandescent[53] or fluorescent light bulbs
- ✓ Dehumidifiers
- ✓ Programmable thermostats
- ✓ Refrigerators

CS/CS/CS/SB 888 specified that in order for the above items to be eligible for the sales tax exemption, they must be designated by the EPA or by the DOE as meeting or exceeding the requirements set up by the Energy Star Program of either agency. The items listed in the bill were selected based on their amount of energy consumption or were predicted to be "high ticket items." There are many items that are rated energy efficient by the Energy Star Program that were not included in the bill due to fiscal constraints.

The bill also restricted the exemptions to noncommercial use only and prohibited purchases made using a business or company check, or credit or debit card. Further, the bill stipulated that any construction company, building contractor, or commercial business or entity purchasing or attempting to purchase products under the exemption was utilizing an unfair method of competition and provided penalties for violation of the law.

Florida Energy, Aerospace, and Technology (F.E.A.T.) Fund (Section 39)

Currently, there is no comprehensive fund to encourage expanded collaboration between the public and private sectors and to incentivize increased public/private joint ventures in the areas of energy research, alternative fuel production, space exploration, and technological advances in the energy and aerospace industries.

Research and Demonstration Cellulosic Ethanol Plant (Section 40)

The Florida Center for Renewable Chemicals and Fuels (FCRCF) established in 2001 at the University of Florida currently has a commercialization partnership with a company in Osaka, Japan through Celunol Corporation in Massachusetts. This facility began operation in January 2007 and is expected to produce 1,000,000 gallons of ethanol per year from wood waste.

[53] Subsequent to adoption of the 2006 legislation, it was determined that incandescent light bulbs did not meet Energy Star standards.

According to Dr. Lonnie Ingram, Director of the FCRCF, the university has already started the process of "building a world-class academic program through its Center of Excellence in which millions have been designated for BioEthanol and there are current and pending grants to attract world-class faculty to conduct research which will allow Florida to lead the nation in the production of renewable fuel." The university has a patent on "enzymes which can be used to convert cellulosic biomass into ethanol" and is seeking state funding to construct a "facility to serve as a demonstration plant and test bed for process improvements."

Renewable Portfolio Standards (Section 41)

The 2006 Legislature provided legislative intent to promote the development of renewable energy and authorized the Public Service Commission (PSC) to adopt goals for increasing the use of existing, expanded, and new Florida renewable energy resources. The PSC is authorized to change the goals and may review and reestablish the goals at least once every five years. As of this date, the PSC has not adopted the goals, however, it has been indicated that workshops are scheduled for this summer and staff is in a "fact-finding" mode.

Evaluation of Conservation Plans by the Public Service Commission (Section 42)

The Florida Energy Efficiency and Conservation Act (FEECA), which was enacted in 1980, places emphasis on reducing the growth rates of weather-sensitive peak demand, reducing and controlling the growth rates of electricity consumption, and reducing the consumption of expensive resources such as petroleum fuels. The Florida Public Service Commission has adopted rules requiring those electric utilities which are subject to FEECA to implement cost-effective demand–side management (DSM) programs.[54] It also requires electric and gas utilities to offer efficiency programs to customers to help utilities reduce the demand for energy. The Florida Public Service Commission annually reviews each utility's energy efficiency programs.

EFFECT OF PROPOSED CHANGES

Property Tax Exemption for Renewable Energy Source Device (Section 1)

The bill removes the expiration date of the property tax exemption for real property on which a renewable energy source device[55] 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 property assessments for those 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.

Sales Tax Exemption for Biofuel (Section 2)

The bill revises the definition of "ethanol" and increases the cap on the sales tax exemption for materials used in the distribution of biodiesel and ethanol fuels from $1 million to $2 million. It

[54] Florida Public Service Commission Report, February 2006.
[55] Section 196.012(14), F.S., specifies equipment which, when installed in connection with a dwelling, collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits.

specifies eligible items as 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 a tax refund.

Energy-Efficient Motor Vehicle Sales Tax Refund Program (Section 3)

The bill creates the Energy Efficient Motor Vehicle Sales Tax Refund Program, which provides for a sales tax refund of up to $15,000 of the purchase price of a new alternative motor vehicle that is certified by the Internal Revenue Service as one of the following:

- ✓ New qualified hybrid motor vehicle;
- ✓ New qualified alternative fuel motor vehicle;
- ✓ New qualified fuel cell motor vehicle; or
- ✓ New advanced lean-burn technology motor vehicle.

The application for refund must be filed with the DOR within 90 days of the purchase and must contain specified information, in addition to a sworn statement that the information provided is accurate and that the requirements of the section have been met.

The total amount of the rebates is limited each year by the total appropriation for that fiscal year. If funds are insufficient in a given year, refund requests may be processed, and take priority, during the following fiscal year. Refunds may not be claimed under both this section and s. 212.08(7)(ccc), F.S., which provides for the refund of sales taxes on hydrogen-powered motor vehicles. The program terminates on July 1, 2010.

Renewable Energy Technologies Investment Tax Credit (Section 4)

The bill amends the renewable energy technologies investment tax credit by authorizing tax credits to be passed through to underlying partners, members, and owners, or to any taxpayer 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.

Florida Renewable Energy Production Credit (Section 5)

The bill expands the tax credit so that it may be earned both for electricity "sold" and electricity "used" by the producer. The bill also allows taxpayers using the alternative minimum tax process to be able to utilize the credit.

"Green Buildings" – Energy Conservation and Sustainable Buildings Act (Sections 6-10 and 35)

This bill produces the following changes:

- ✓ Requires that all county, municipal, and public community college buildings be constructed in accordance with the USGBC LEEDs program, the Green Building Initiative's Green Globes program, or any other nationally-recognized, green building system that is approved by DMS. This requirement would only apply to buildings whose architectural plans are started after July 1, 2008;
- ✓ Declares that the construction of energy efficient and sustainable buildings is an important government interest;

- ✓ Revises the short title and intent of ss. 255.251 - 255.255, F.S., so that those statutes focus on both energy conservation and sustainable buildings;
- ✓ Requires that all state government buildings be constructed in accordance with the USGBC LEEDs program, the Green Building Initiative's Green Globes program, or any other nationally-recognized, green building system that is approved by DMS;
- ✓ Provides that all Florida state agencies use GEPSCA contracts to improve their facilities by requiring all state agencies to provide the DMS with a list of buildings in their inventory that would be suitable targets for GEPSCA contracts and are over 5,000 square feet in area. These lists must be submitted to DMS by December 31, 2007;
- ✓ Requires that DMS consult with each agency and create a schedule to prioritize agency buildings for GEPSCA contracts by March 1, 2007. The schedule will also create deadlines for the agencies to implement the GEPSCA contracts; and
- ✓ Defines "sustainable building rating."

Guaranteed Energy Performance Savings Contracting (Sections 11 and 29)

This bill changes the substance of the GEPSCA contracts as well as their financing as follows:

- ✓ Clarifies the language so that there is greater flexibility for facility improvements that produce an energy related cost savings or minimize energy consumption;
- ✓ Removes training programs from the definition of "energy conservation measures;"
- ✓ Gives the Chief Financial Officer (CFO) more authority to review GEPSCA contracts for costs that are not fully guaranteed under proposed contracts;
- ✓ Requires that DMS assist the office of the CFO with technical content of contracts; and
- ✓ Gives the CFO and DMS greater authority to revise the current GEPSCA Model Contract.

Changes to the financing of the GEPSCA program include:

- ✓ Amends s. 287.064, F.S., to allow 20 year financing for GEPSCA contracts under the state's line of credit;
- ✓ Requires that the ESCO must replace or extend the life of energy conservation equipment throughout the life of the contract. This is required in both s. 489.145 and s. 287.064(10), F.S.;
- ✓ Requires that all GEPSCA financing payments under a contract are equal throughout the life of the financing;
- ✓ Limits the use of cost avoidance in GEPSCA financing to only "allowable cost avoidance" so that financing payments are made entirely through recurring funds that are appropriated to the agency prior to the contract;
- ✓ Requires that contract proposals submitted for state agencies include supporting information, documentation of recurring funds, and approval by the agency head,
- ✓ Allows the CFO greater rights and privileges than other third party financiers; and
- ✓ Gives the CFO authority to require that state agencies use the most favorable financing available.

"Energy Efficiency and Conservation Month" (Section 12)

In an effort to promote efficiency and conservation of the state's resources, the bill designates the Month of October as "Energy Efficiency and Conservation Month."

Solar Energy System Incentives Program (Sections 13 and 15)

The bill adds a stipulation that to qualify for a solar energy system rebate, an applicant must apply for a rebate reservation at least 10 days before the date that the solar equipment is installed. It allows homebuilders and developers to file a single application for project sites that contain more than 25 homes; however, rebate reservations for project sites with fewer than 25 homes must be filed on separate applications.

The bill provides that at least 60 percent of the funds appropriated for the rebate program be earmarked for homeowners installing solar equipment in new or renovated homes.

The bill amends language regarding the rebate for the purchase and installation of a solar thermal water heater. Businesses, publicly owned or operated facilities, or facilities owned or operated by private, not-for-profit organizations that have a commercial-sized system are to be paid $15 per 1,000 Btus produced. Current language requires verification of the production of Btus through an approved metering device; however such devices have proved to be cost-prohibitive. At the request of the DEP and the Public Service Commission (PSC), the requirement that the Btu production be verified through an approved metering device is removed.

Renewable Energy Technologies Grants Program and
Farm-to-Fuel Grants Program - Bioenergy Grants Program (Sections 14 and 31)

The Renewable Energy Technologies Grants Program, under the Department of Environmental Protection, was modified and the "bioenergy projects for renewable energy technology" provisions were transferred to and renamed as the Farm-to-Fuel Grants Program under the Department of Agriculture and Consumer Services. This program is established to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to bioenergy projects. The bill identifies the entities eligible to apply for and receive the matching grants and the factors for consideration in awarding the grants. The department is required to consult with and solicit input from the DEP. In determining the economic feasibility of bioenergy grant applications, the DACS is required to consult with the Office of Tourism, Trade, and Economic Development and is required to coordinate and actively consult with renewable energy technology experts in determining the technical feasibility of grant applications.

Greenhouse Gas Inventories (Section 16)

The DEP is required to develop greenhouse gas inventories that account for annual greenhouse gases emitted to and removed from the atmosphere and forecast gases emitted and removed for all major greenhouse gases. The DEP must establish, by rule, timeframes for planning, collecting and analyzing the data and must:

- ✓ Establish what greenhouse gases need to be included in the inventory;
- ✓ Define major emitters;
- ✓ Establish which emitters must report emissions;
- ✓ Establish what methodologies shall be used to estimate gases emitted and removed from those not required to report; and
- ✓ Establish a system to collect data and continually monitor major green house gas emitters.

Power Plant Siting Act (Sections 17-22)

In implementing the provisions of CS/CS/CS SB 888, the DEP identified the following "glitches" to the Power Plant Siting Act:

- ✓ After an application for the construction of a power plant has been approved, the DEP issues a certification. Any procedural events that occur after the certification are described as postcertification. The bill adds the label of postcertification amendments and postcertification review to its appropriate section. A postcertification amendment means a minor change to the application after the certification. A postcertification review is a review to insure compliance with the conditions of certification. This language removes confusion between a post certification review and a post certification amendment which are two separate activities.

- ✓ The bill explains that DEP would issue a "determination" on the post certification amendment, rather than an "approval". The existing language presumes that the post certification amendment would be approved instead of allowing DEP to make a determination.

- ✓ The bill relocates a section on the completeness of information for local governments to make a land use consistency determination into the section on land use consistency. The land use consistency section deals with applicants and application completeness. The language was mistakenly located in the land use and certification hearings and parties section of law. The bill deletes that language from its previous section (s. 403.508, F.S.).

- ✓ The revised language explains that "If an applicant applies to the local government for necessary local land use or zoning approval, the local government shall issue a revised determination within 30 days following the conclusion of..."[56] any proceeding held by the local government to consider the application for land use or zoning approval. Present law prefaces the word proceeding, with, "that" instead of the proposed word "any". Since a "that" proceeding does not exist in statute, the technical change needs to be made. Further, the added language of "held by the local government to consider the application for land use or zoning approval," further clarifies the proceeding.

- ✓ If a party wishes to dispute the local government's determination of application completion, the statute states that the party would file a petition with the department within 21 days of the notice of the ruling. Any petitions on land use consistency determinations should be filed with the Administrative Law Judge (ALJ) rather than DEP. A case has been opened by the Division of Administrative Hearings and an ALJ has already been assigned. The bill's revised language requires the ALJ that receives a petition on land use consistency determinations to schedule a hearing date within 5 days. Additionally, the bill deletes a redundant provision on the ALJ's issuance of the recommended order which is in s. 403.508, F.S.

- ✓ The statute implies that DEP should issue the final order concerning property rights. The Siting Board which consists of the Governor and Cabinet, issues a final order. They have the authority to order the issuance of such property rights. DEP does not have

[56] s. 403.50665(3), F.S.

that authority. According to DEP, the language 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 for clarification, adds the label, "For certifications issued by the board," in s. 403.509 (5), F.S., under the "Final disposition of application section."

- ✓ The Power Plant Siting Act (PPSA) requires that local governments provide notice to all parties of the intent to hold informational public meetings. The bill adds changes to the date of issuance of notice from 5 days to 15 days. The bill adds under public notice, s. 403.5115, F.S., the specification of, "for all applications", and "if applicable" clarifying that notice must be given for all applications. It deletes the language that only references the notice of the supplemental application and the notice of an existing site certification. This may not capture all applicable "notices".

- ✓ The bill adds s. 403.5115 (5), F.S., requiring local governments that plan on conducting an informational public meeting to publish notice of the meeting in a newspaper of general circulation within the county or counties in which the proposed electrical power plant will be located 7 days prior to the meeting. This will allow the DEP and other entities enough time to make travel plans to attend.

- ✓ DEP mails out public notifications to persons who have requested to be on the department's mailing list. These citizens have requested to receive copies, for example, of notices outlined in the PPSA for, among other things: land use hearings, filing of applications, and siting board hearings. Some constituents have interpreted the language to mean that by signing up to be notified for one case they will be sent notices on all future cases. The bill clarifies that notices will be provided to persons who have requested to be placed on the list for each case not for all cases in the future.

Transmission Line Siting Act (Sections 23-28)

In implementing the provisions of CS/CS/CS SB 888, the DEP identified the following "glitches" to the Transmission Line Siting Act:

- ✓ Present law states that "Within 30 days after the distribution of an application the affected agencies shall file a statement with the department containing the recommendations of each agency concerning the completeness of the application for certification."[57] The bill clarifies that agency completeness statements are due 30 days after the application is filed, rather than after it is distributed. The bill clarifies the deadline for the issuance of the determination of completeness by DEP to be 37 days after the filing of the application rather than 7 days after the filing of agency completeness statements. There is no change in the actual date in the process, however, according to the DEP, "it is possible agencies could file completeness statements on different days, thus this could lead to some confusion, so it is best to hinge the date on the date of filing."

- ✓ The bill matches the PPSA language which states that the DEP would issue a "determination" on the post certification amendment, rather than an "approval". The

[57] s. 403.5252(1)(a), F.S.

existing language presumes that the post certification amendment would be approved instead of allowing DEP to make a determination.

- ✓ The statute provides a deadline for the parties to provide comments on the completeness of alternate corridors within 10 days of the filing by the applicant. This will allow DEP enough time to gather information and comments from all parties into its alternate corridor completeness determination.

- ✓ The bill makes technical changes to the section on the process for cancellation of the certification hearing. The earliest date a motion could be filed to cancel the hearing would be 29 days prior to the hearing rather than the 25 days, which is in present law. Twenty-nine (29) days is chosen because 30 days prior to the hearing is the deadline for intervention. The bill also clarifies that if all parties agree and there is no need for a certification hearing then it must be stipulated that there are no disputed issues of law.

- ✓ The bill adds the deadline for the publication of public notice of the cancellation of the certification hearing to 3 days prior to the hearing. This matches the requirement of publication by the applicant. It matches the time frames for the PPSA and enables DEP to have the time to publish such notice under the new lengthier Florida Administrative Weekly publication requirements.

- ✓ The bill changes the deadline for notification of the intent to conduct an informational public meeting from 5 days to 15 days. This matches the change made to the PPSA, and provides for greater notice to the public of meetings.

- ✓ The proposed language in the TLSA also matches a change made to the PPSA, and provides for greater notice to the public on informational meetings.

Farm-to-Fuel Advisory Council (Section 30)

The bill establishes a 15-member Farm-to-Fuel Advisory Council within the Department of Agriculture and Consumer Services to provide advice and counsel to the commissioner concerning the production of renewable energy in the state.

Biofuel Retail Sales Incentive Program (Section 32)

The bill establishes the Biofuel Retail Sales Incentive Program under the Department of Agriculture and Consumer Services for the purpose of encouraging the retail sale of biofuels in this state and replacing petroleum consumption in the state by a certain percentage over a specified period. Subject to specific appropriation, the bill provides incentive payments to qualified retail dealers for increases in the amount of biofuels offered for sale. The biofuel incentive may be claimed for biofuel sold on or after January 1, 2008.

Florida Biofuel Production Incentive Program (Section 33)

The Florida Biofuel Production Incentive Program is established under the Department of Agriculture and Consumer Services to encourage the development and expansion of facilities that produce biofuels in this state from crops, agricultural waste and residues, and other

biomass produced in Florida. Subject to an appropriation, the bill provides incentive payments to a producer based on Florida biofuel production. The production incentive may be earned on or after January 1, 2008.

Florida Building Commission/Energy Codes (Section 34)

The bill directs the Florida Building Commission, in collaboration with key building and local county/city stakeholders, to develop a model residential energy efficiency ordinance. The model ordinance must include incentives to encourage local builders to incorporate these new standards. The commission must report back to the Legislature by March 1, 2008.

Additionally, the Florida Building Commission is directed to analyze the cost-effectiveness of the present energy efficiency standards. Energy costs have started escalating in the past few years so reviewing the code's efficiency investment may be necessary. The Florida Building Commission expects that there may be more efficiencies to be gained by reevaluating Florida's codes and comparing the codes with the national model requirements. The commission must provide a report to the Legislature by March 1, 2008.

The bill requires the Florida Building Commission, in consultation with various stakeholders, to develop and implement a public awareness campaign that promotes energy efficiency and the benefits of building green. The campaign is required to update a current website to include information on green building practices. It is also required to educate citizens on how to implement energy efficient and cost saving strategies when building a home or updating an existing one. The legislation also specifies that various energy efficient products be promoted through existing trade shows. Although there are public awareness programs in place through the DACS, the U.S. Department of Energy, the Florida Home Builders Association, the Energy Office within the DEP, and the Florida Solar Energy Center, this language couples energy efficiency and the benefits of building green. The intent is to make the public aware of how to build green and how energy efficiency strategies can save energy and money. The public awareness campaign goes into effect January 1, 2008.

Energy-Efficient Products Sales Tax Holiday (Section 36)

The bill reauthorizes the energy-efficient sales tax holiday for 2007 and increases the length of the holiday from 7 to 14 days, beginning October 1st and ending October 14th. The bill removes the restrictions on the commercial sector so that developers, contractors, and other commercial entities may also take advantage of the sales tax exemptions. Further, the bill allows for the exemption to apply to the *first* $1,500 of the sales price of an Energy Star appliance rather than *up to* $1,500 of the sales price; therefore, if the item is priced at $1,600, only the last $100 is taxable. The 2006 exemption applied to the following items:

- ✓ Dishwashers
- ✓ Clothes washers
- ✓ Air conditioners
- ✓ Ceiling fans
- ✓ Fluorescent light bulbs
- ✓ Dehumidifiers
- ✓ Programmable thermostats
- ✓ Refrigerators

The legislation adds "ventilating fans" to the list of products available for the sales tax exemption.

Biodiesel Fuel for State-Owned Vehicles (Section 37)

The bill establishes minimum standards for diesel fuel purchases for use by state-owned diesel vehicles and equipment to include biodiesel purchase requirements. Subject to availability of biodiesel, the bill provides the following minimum standards for fuel purchasing: 5 percent by July 1, 2008; 10 percent by January 1, 2009, and 20 percent by January 1, 2010. The DMS is required to administer, implement, and enforce the provisions of this section. On or before March 1, 2008, the DMS is required to report to the legislature the extent of biodiesel use in the state fleet.

Biodiesel Fuel for School District Transportation (Section 38)

Subject to availability, by January 1, 2008, the bill requires a minimum of 20 percent of total diesel fuel purchases for use by school districts to be biodiesel. The bill prohibits this requirement to apply to contracts entered into with another government entity or private entity for transportation services prior to July 1, 2007.

Florida Energy, Aerospace, and Technology (F.E.A.T.) Fund (Section 39)

Subject to appropriation, the bill creates the Florida Energy, Aerospace, and Technology (F.E.A.T.) Fund in the Executive Office of the Governor to encourage a state partnership with the federal government and the private sector to identify business and investment opportunities and target performance goals for those investments in the following areas:

- ✓ Alternative energy development and production infrastructure;
- ✓ Bio-fuel, wind power, and solar energy technology development and applications;
- ✓ Ethanol production and systems for conversion and use of ethanol fuels;
- ✓ Cryogenics and hydrogen-based technology applications, storage, and conversion systems;
- ✓ Hybrid engine power systems conversion technologies and production facilities;
- ✓ Aerospace industry expansion or development opportunities;
- ✓ Aerospace facility modifications and upgrades;
- ✓ Build outs;
- ✓ New spaceport, range and ground support infrastructure;
- ✓ New aerospace facilities and laboratories;
- ✓ New simulation, communications, and command and control systems; and
- ✓ Other aerospace manufacturing and maintenance support infrastructure.

A complete and detailed report is to be provided to the Governor, President of the Senate, and Speaker of the House with the following components:

- ✓ An accounting of all state funds committed and invested by the fund;
- ✓ A qualitative and quantitative assessment of each fund investment against the investment performance goals established for investment, as well as an assessment of overall fund performance against investment objectives established for the fund overall; and
- ✓ An evaluation of all activities of the fund and recommendations for change.

Research and Demonstration Cellulosic Ethanol Plant (Section 40)

The University of Florida is authorized to construct a multifaceted research and demonstration cellulosic ethanol plant designed to conduct research and to demonstrate and advance the commercialization of cellulose-to-ethanol technology, including technology licensed by the University of Florida. The facility shall include a permanent research and development laboratory operated as a satellite facility of the Institute of Food and Agricultural Sciences (IFAS). Ownership of all patents, copyrights, trademarks, licenses, and rights or interests shall be vested in the state.

Renewable Portfolio Standards (41)

In conjunction with the PSC and the DACS, the bill requires the Florida Energy Commission to conduct a study to recommend an appropriate renewable portfolio standard for the state. The commission shall hold public hearings and submit a report to the Legislature no later than January 1, 2008.

Evaluation of Conservation Plans by the Public Service Commission (Section 42)

The bill requires the PSC to provide a detailed description of the methods used to evaluate the conservation goals, plans, and programs of utilities subject to the Florida Energy Efficiency and Conservation Act. The PSC also is required to compare methods and policies employed in other states to ensure that utilities in this state acquire all energy efficiency resources that cost less than new electric power generation. This review must be submitted to the President of the Senate and the Speaker of the House of Representatives by February 28, 2008.

C. SECTION DIRECTORY:

Section 1. Amends s. 196.175, F.S, revising provisions for the renewable energy source exemption and excluding the assessed value of certain real property for determination of such exemption.

Section 2. Amends s. 212.08, F.S., revising the definition of "ethanol"; increasing the cap on the sales tax exemption for materials used in the distribution of biodiesel and ethanol fuels; specifying eligible items as limited to one refund; and requiring a purchaser who receives a refund to notify a subsequent purchaser of such refund.

Section 3. Creates s. 212.086, F.S.,
providing financial incentives for the purchase of an alternative motor vehicle; providing that any person who purchases an alternative motor vehicle from a sales tax dealer is eligible for a refund of the sales tax paid on the lesser of $15,000 or the sales price as provided; requiring the alternative motor vehicle to be certified under the Internal Revenue Code of 1986, as amended, as a new qualified hybrid motor vehicle, new qualified fuel cell motor vehicle, or new advanced lean-burn technology motor vehicle; requiring that an application for refund be filed with the Department of Revenue; providing that the total dollar amount of refunds is limited to the total amount of appropriations in any fiscal year; authorizing a request for a refund to be held for payment in the following fiscal year under certain circumstances; requiring the department to adopt rules; and providing for future repeal of the program in 2010.

Rvised

Section 4. Amends s. 220.192, F.S., providing a definition of "corporation"; providing for the transferability of renewable energy technologies investment tax credit; requiring the Department of Revenue to promulgate a form and issue certificates; and requiring the Department of Revenue to adopt rules to implement and administer the provisions allowing for a pass through of tax credits.

Section 5. Amends s. 220.193, F.S., providing a definition of "sale or sold" and providing that a taxpayer's use of certain credits does not prohibit the use of other authorized credits.

Sections 6-10. Amend ss. 255.251, 255.252, 255.253, 255.254, and 255.255, F.S., revising the short title; revising criteria for energy conservation and sustainability for state-owned buildings; requiring buildings constructed and financed by the state to meet a rating system as approved by the department; requiring state agencies to identify state-owned buildings that are suitable for guaranteed energy performance savings contracts; providing requirements and procedures thereof; requiring the Department of Management Services to evaluate identified facilities and develop an energy efficiency project schedule; providing criteria for such schedule; and requiring the department to adopt rules and procedures for energy conservation guidelines.

Section 11. Amends s. 287.064, F.S., extending the period of time allowed for the repayment of funds for certain purchases relating to energy conservation measures.

Section 12. Amends s. 377.802, F.S., providing for the annual designation of "Energy Efficiency and Conservation Month."

Section 13. Amends s. 377.803, F.S., deleting the definition of "approved metering equipment."

Section 14. Amends s. 377.804, F.S., deleting provisions relating to bioenergy projects under the Renewable Energy Technologies Grants Program.

Section 15. Amends s. 377.806, F.S., revising rebate eligibility and application requirements for solar thermal systems; requiring applicants to apply for rebate reservations; authorizing homebuilders and developers to file a single application form for multiple project sites; providing for distribution of rebate funds; and revising rulemaking authority.

Section 16. Amends s. 403.0874, F.S., requiring the Department of Environmental Protection to develop greenhouse gas inventories.

Sections 17-22. Amend ss. 403.50663, 403.50665, 403.508, 403.509, 403.5113, and 403.5115, F.S., revising the requirements for notice of certain informational public meetings by local governments and regional planning councils relating to power plant siting; authorizing local governments to determine incompleteness of information on certain siting applications as inconsistent with land use plans and zoning ordinances; revising provisions for the filing of certain petitions relating to land use; revising provisions for land use certification hearings relating to power plant siting; revising provisions for the final disposition of power plant siting applications; revising provisions relating to power plant siting postcertification amendments and review; and revising provisions for the public notice of activities relating to power plant siting.

Rvised

Sections 23-28. Amend ss. 403.5252, 403.527, 403.5271, 403.5317, and 403.5363, F.S., revising the timeframes for agencies and the Department of Environmental Protection to provide statements relating to the completeness of applications for power plant siting certification; revising the timeframe for the administrative law judge to cancel power plant siting certification hearings and relinquish jurisdiction to the Department of Environmental Protection upon request by the applicant or the department; revising provisions relating to the completeness of applications for alternate corridors; revising the requirements for local governments and regional planning councils to notice certain informational public meetings; revising provisions for power plant siting postcertification activities; revising provisions for public notices of power plant siting certification hearings; requiring local governments and regional planning councils to publish notice of certain informational meetings; and providing requirements for such publication.

Section 29. Amends s. 489.145, F.S., revising provisions relating to guaranteed energy performance savings contracting to include energy consumption and energy-related operational savings; revising provisions for the financing of guaranteed energy performance savings contracts; requiring that consolidated financing of deferred payment commodity contracts be secured by certain funds; and requiring the Chief Financial Officer to review proposed contracts.

Section 30. Creates s. 570.956, F.S., establishing a 15-member Farm-to-Fuel Advisory Council within the Department of Agriculture and Consumer Services to provide advice and counsel to the commissioner concerning the production of renewable energy in the state.

Section 31. Creates s. 570.957, F.S., establishing the Farm-to-Fuel Grants Program within the Department of Agriculture and Consumer Services; specifying the use of grants for certain bioenergy projects; providing eligibility requirements; and requiring the department to consult with the Department of Environmental Protection, the Office of Tourism, Trade, and Economic Development, and certain experts when evaluating applications.

Section 32. Creates s. 570.958, F.S., establishing the Biofuel Retail Sales Incentive Program; establishing goals for replacing petroleum consumption; and providing incentive payments to qualified retail dealers for increases in the amount of biofuels offered for sale.

Section 33. Creates s. 570.959, F.S., establishing the Florida Biofuel Production Incentive Program; providing incentive payments to producers of certain biofuels; and authorizing the Department of Agriculture and Consumer Services to adopt rules.

Section 34. Directs the Florida Building Commission to convene a workgroup to develop a model residential energy efficiency ordinance; requires the commission to consult with specified entities to review the cost-effectiveness of energy-efficiency measures in the construction of residential, commercial, and government buildings; requires the commission to consult with specified entities to develop and implement a public awareness campaign; and requires reports to the Legislature.

Section 35. Requires all newly constructed county, municipal, and public community college buildings to meet an energy efficiency rating system and provides applicability to all such buildings whose architectural plans are started after July 1, 2008.

Rvised

Section 36. Designates October 1st – October 14th, 2007, as the "Energy-Efficient Products Sales Tax Holiday" during which certain energy-efficient products are exempt from sales taxes. Provides the definition of "energy-efficient product."

Section 37. Establishes standards for diesel fuel purchases for use by state-owned diesel vehicles and equipment to include biodiesel purchase requirements.

Section 38. Establishes standards for the use of biodiesel fuels by school district transportation services.

Section 39. Provides legislative intent relating to the leverage of state funds to encourage a partnership with the federal government and the private sector for certain energy-related research and production and aerospace industry expansion and development opportunities.

Section 40. Provides for the construction and operation of a multifaceted research and demonstration cellulosic ethanol plant designed to conduct research and to demonstrate and advance the commercialization of cellulose-to-ethanol technology, including technology licensed by the University of Florida. The bill provides for ownership of all patents, copyrights, trademarks, licenses, and rights or interests to be vested in the state.

Section 41. Requires the Florida Energy Commission to conduct a study to recommend an appropriate renewable portfolio standard for the state and requires a report to the Legislature.

Section 42. Requires the Public Service Commission (PSC), by February 28, 2008, to provide to the President of the Senate and the Speaker of the House of Representatives a detailed description of the methods used to evaluate the conservation goals and programs of utilities subject to the Florida Energy Efficiency and Conservation Act (FEECA).

Section 43. Appropriates $65,763 to the Department of Revenue to administer the Energy-Efficient Products Sales Tax Holiday.

Section 44. Appropriates $20,000,000 to the University of Florida to establish the research and demonstration cellulosic ethanol plant.

Section 45. Appropriates $10,000,000 to the Department of Environmental Protection for the Renewable Energy Technologies Grants Program.

Section 46. Appropriates $2,500,000 to the Department of Environmental Protection to fund the Solar Energy System Incentives Program.

Section 47. Appropriates $40,000,000 to the Department of Agriculture and Consumer Services to fund the Farm-to-Fuel Grants Program.

Section 48. Appropriates $12,600,000 to the Department of Revenue for the purpose of paying sales tax refunds under the Energy-Efficient Motor Vehicle Sales Tax Refund Program.

Section 49. Appropriates $100,000 to the Department of Community Affairs to convene a workgroup to develop a model residential energy efficient ordinance and to review the cost-effectiveness of energy efficiency measures in the construction of certain buildings.

Rvised

Section 50. Appropriates $334,237 to the Department of Community Affairs to develop and implement a public awareness campaign that promotes energy efficiency and the benefits of building green.

Section 51. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill increases the sales tax exemption cap for materials used in the distribution of biodiesel and ethanol fuels from $1 to $2 million for each fiscal year through July 1, 2010.

	2007-08	2008-09	2009-10
General Revenue	($0.9m)	($0.9m)	($0.9m)

The Revenue Estimating Conference has estimated that the provisions of this bill will have the following negative fiscal impact on state government:

Energy-Efficient Products Sales Tax Holiday

	2007-08
General Revenue	($8.9 m)
State Trust	(Insignificant)
Total	($8.9.0m)

2. Expenditures:

Recurring:

None.

Non-Recurring:

Energy-Efficient Products Sales Tax Holiday

$65,763 is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering the Energy-Efficient Products Sales Tax Holiday.

Energy-Efficient Motor Vehicle Sales Tax Refund

$12,600,000 is appropriated from the General Revenue Fund to the Administrative Trust Fund of the Department of Revenue for the Energy-Efficient Motor Vehicle Sales Tax Refund.

Renewable Energy Technologies Grants Programs

$10,000,000 is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding the Renewable Energy Technologies Grants Program.

Solar Energy System Incentives Program

$2,500,000 is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding the Solar Energy System Incentives Program.

Farm-to-Fuel Grants Program

$40,000,000 is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the purpose of funding the Farm-to-Fuel Grants Program.

Model Residential Energy Efficient Ordinance

$100,000 is appropriated from the General Revenue Fund to the Department of Community Affairs for the purposes of convening a workgroup to develop a model residential energy efficient ordinance and to review the cost-effectiveness of energy efficiency measures in the construction of certain buildings.

Public Awareness Campaign

$334,237 is appropriated from the General Revenue Fund to the Department of Community Affairs for the purposes of developing and implementing a public awareness campaign that promotes energy efficiency and the benefits of building green.

Research and Demonstration Cellulosic Ethanol Plant

$20,000,000 in nonrecurring funds is appropriated from the General Revenue Fund to the University of Florida, Institute of Food and Agricultural Sciences, for the purpose of establishing the research and demonstration cellulosic ethanol plant.

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:

Property Tax Exemption for Renewable Energy Source Device

Total Local Impact	2007-08	2008-09
	($6.9)	($6.9)

NOTE: This estimate assumes current millage rate.

Energy-Efficient Products Sales Tax Holiday

	2007-08
Revenue Sharing	($0.3 m)
Local Gov't. Half Cent	($0.9 m)
Local Option	($0.8 m)
Total Local Impact	($2.0 m)

2. Expenditures:

According to the League of Cities, the bill will increase the initial cost of constructing local government and state buildings by approximately 1-2% for the LEEDs "certified" rating or the Green Globes "one globe" rating and 7-12% for the LEEDs "silver" rating or the Green Globes "two globes" rating.

This bill provides that by January 1, 2008, a minimum of 20 percent of total diesel fuel purchases for use by school districts must be biodiesel, subject to availability. As a result of this provision, district

schools could potentially incur in additional annual costs of $452,000 for fiscal year 2007-2008, and $603,000 for subsequent fiscal years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax exemptions and tax credits included in this bill will reduce the private sector's tax burden.

Persons that purchase the solar energy items covered by this bill will benefit by receiving a rebate and persons purchasing alternative fuel vehicles under this bill will receive a sales tax refund.

Manufacturers and retailers of appliances meeting Energy Star Program ratings should experience an increase in sales during the Energy-Efficient Products Sales Tax Holiday, and manufacturers and retailers of alternative motor vehicles should see an increase in sales, as well. Similarly, manufacturers, retailers, and installers of solar systems also may experience an economic boost from those utilizing the solar rebate program.

D. FISCAL COMMENTS:

None.

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 Department of Revenue is authorized to adopt rules regarding the:

- ✓ Energy-Efficient Products Sales Tax Holiday;
- ✓ Solar rebate reservations and rebate payments;
- ✓ Energy-Efficient Motor Vehicle Sales Tax Refund Program; and
- ✓ Transfer and Pass through of Renewable Energy Technologies Investment Tax Credits by corporations.

The Department of Agriculture and Consumer Services is authorized to adopt rules for the:

- ✓ Florida Biofuel Production Incentive Program;
- ✓ Biofuel Retail Sales Incentive Program; and
- ✓ Farm-to-Fuel Grants Program.

The Department of Management Services is authorized to adopt rules regarding the:

- ✓ Guaranteed Energy Performance Savings Contracting Program; and
- ✓ Energy Conservation and Sustainable Buildings Act.

The Department of Financial Services is authorized to adopt rules to implement the Guaranteed Energy Performance Savings Contracting Program.

Rvised

The Department of Environmental Protection is authorized to adopt rules regarding the development of Greenhouse Gas Inventories.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to energy; amending s. 196.175, F.S.; revising provisions for the renewable energy source exemption; excluding the assessed value of certain real property for determination of such exemption; amending s. 212.08, F.S.; revising the definition of "ethanol"; increasing the cap on the sales tax exemption for materials used in the distribution of biodiesel and ethanol fuels; specifying eligible items as limited to one refund; requiring a purchaser who receives a refund to notify a subsequent purchaser of such refund; creating s. 212.086, F.S.; establishing the Energy-Efficient Motor Vehicle Sales Tax Refund Program; providing a sales tax refund for the purchase of an alternative motor vehicle; providing eligibility requirements; providing a limitation; providing for payment of a refund in a subsequent fiscal year under certain circumstances; requiring the department to adopt rules; providing an exclusion; providing for future repeal of the program; amending s. 220.192, F.S., relating to the renewable energy technologies investment tax credit; providing a definition; providing for the transferability of such tax credit; providing requirements and procedures therefor; providing rulemaking requirements and authority; amending s. 220.193, F.S.; providing a definition; providing that a taxpayer's use of certain credits does not prohibit the use of other authorized credits; amending s. 255.251, F.S.; revising a short title; amending s. 255.252, F.S.;

revising criteria for energy conservation and sustainability for state-owned buildings; requiring buildings constructed and financed by the state to meet certain environmental standards subject to approval by the Department of Management Services; requiring state agencies to identify state-owned buildings that are suitable for guaranteed energy performance savings contracts; providing requirements and procedures therefor; requiring the Department of Management Services to evaluate identified facilities and develop an energy efficiency project schedule; providing criteria for such schedule; amending s. 255.253, F.S.; providing definitions; amending s. 255.254, F.S.; requiring certain state-owned buildings to meet sustainable building ratings; amending s. 255.255, F.S.; requiring the department to adopt rules and procedures for energy conservation performance guidelines based on sustainable building ratings; amending s. 287.064, F.S.; extending the period of time allowed for the repayment of funds for certain purchases relating to energy conservation measures; requiring guaranteed energy performance savings contractors to provide for the replacement or the extension of the useful life of the equipment during the term of a contract; amending s. 377.802, F.S.; providing for the annual designation of "Energy Efficiency and Conservation Month"; amending s. 377.803, F.S.; revising definitions; amending s. 377.804, F.S.; deleting provisions relating to bioenergy projects under the

Renewable Energy Technologies Grants Program; amending s. 377.806, F.S.; revising rebate eligibility and application requirements for solar thermal systems; requiring applicants to apply for rebate reservations or separately for rebate payments; authorizing homebuilders and developers to file a single application form for multiple project sites; providing for the distribution of rebate funds; revising rulemaking authority; creating s. 403.0874, F.S.; providing a definition; directing the Department of Environmental Protection to develop greenhouse gas inventories; providing requirements for such inventories; authorizing the department to require emission reports; requiring the department to adopt rules; amending s. 403.50663, F.S.; revising the requirements for notice of certain informational public meetings by local governments and regional planning councils relating to power plant siting; amending s. 403.50665, F.S.; authorizing local governments to determine incompleteness of information on certain siting applications as inconsistent with land use plans and zoning ordinances; revising provisions for the filing of certain petitions relating to land use; amending s. 403.508, F.S.; revising provisions for land use certification hearings relating to power plant siting; amending s. 403.509, F.S.; revising provisions for the final disposition of power plant siting applications; amending s. 403.5113, F.S.; revising provisions relating to power plant siting postcertification amendments and review; amending s.

403.5115, F.S.; revising provisions for public notice of activities relating to power plant siting; specifying requirements for such notice; amending s. 403.5252, F.S.; revising the timeframes for agencies and the Department of Environmental Protection to provide statements relating to the completeness of applications for power plant siting certification; amending s. 403.527, F.S.; revising the timeframe for the administrative law judge to cancel power plant siting certification hearings and relinquish jurisdiction to the Department of Environmental Protection upon request by the applicant or the department; amending s. 403.5271, F.S.; revising provisions relating to the completeness of applications for alternate corridors; amending s. 403.5272, F.S.; revising the requirements for local governments and regional planning councils to notice certain informational public meetings; amending s. 403.5317, F.S.; revising provisions for power plant siting postcertification activities; amending s. 403.5363, F.S.; revising provisions for public notices of power plant siting certification hearings; requiring local governments and regional planning councils to publish notice of certain informational meetings; providing requirements for such publication; amending s. 489.145, F.S.; revising provisions relating to guaranteed energy performance savings contracting to include energy consumption and energy-related operational savings; revising provisions for the financing of guaranteed energy performance savings contracts; revising criteria for proposed contracts;

revising program administration and contract review provisions; requiring that consolidated financing of deferred payment commodity contracts be secured by certain funds; requiring the Chief Financial Officer to review proposed guaranteed energy performance savings contracts; creating s. 570.956, F.S.; establishing the Farm-to-Fuel Advisory Council within the Department of Agriculture and Consumer Services; providing membership requirements; providing for council duties; creating s. 570.957, F.S.; establishing the Farm-to-Fuel Grants Program within the Department of Agriculture and Consumer Services; providing definitions; specifying the use of renewable energy grants for projects relating to bioenergy; providing eligibility requirements; authorizing the department to adopt rules; providing criteria for grant award consideration; requiring the department to consult with the Department of Environmental Protection, the Office of Tourism, Trade, and Economic Development, and certain experts when evaluating applications; creating s. 570.958, F.S.; establishing the Biofuel Retail Sales Incentive Program; establishing goals for replacing petroleum consumption; providing definitions; providing incentive payments to qualified retail dealers for increases in the amount of biofuels offered for sale; providing requirements and procedures therefor; creating s. 570.959, F.S.; establishing the Florida Biofuel Production Incentive Program; providing definitions; providing incentive payments to producers of certain biofuels; providing

requirements and procedures therefor; authorizing the Department of Agriculture and Consumer Services to adopt rules; directing the Florida Building Commission to convene a workgroup to develop a model residential energy efficiency ordinance; requiring the commission to consult with specified entities to review the cost-effectiveness of energy efficiency measures in the construction of residential, commercial, and government buildings; requiring the commission to consult with specified entities to develop and implement a public awareness campaign; requiring the commission to provide reports to the Legislature; requiring all county, municipal, and public community college buildings to meet certain energy efficiency standards for construction; providing applicability; specifying a period during which the sale of energy-efficient products is exempt from certain tax; providing a limitation; providing a definition; authorizing the Department of Revenue to adopt rules; establishing standards for diesel fuel purchases for use by state-owned diesel vehicles and equipment to include biodiesel purchase requirements; establishing standards for the use of biodiesel fuels by school district transportation services; providing legislative intent relating to the leverage of state funds for certain research and production; creating the Florida Energy, Aerospace, and Technology (F.E.A.T.) Fund; providing requirements and procedures therefor; providing for the construction and operation of a research and demonstration

cellulosic ethanol plant; providing requirements and procedures therefor; requiring the Florida Energy Commission to conduct a study and recommend a renewable portfolio standard; providing requirements and procedures therefor; requiring the Public Service Commission to submit a report to the Legislature on methods used to evaluate the conservation goals, plans, and programs of utilities subject to the Florida Energy Efficiency and Conservation Act; providing appropriations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 196.175, Florida Statutes, is amended to read:

196.175 Renewable energy source exemption.--

(1) Improved real property upon which a renewable energy source device is installed and operated shall be entitled to an exemption in the amount of ~~not greater than the lesser of:~~

~~(a) The assessed value of such real property less any other exemptions applicable under this chapter;~~

~~(b)~~ the original cost of the device, including the installation cost thereof, but excluding the cost of replacing previously existing property removed or improved in the course of such installation~~; or~~

~~(c) Eight percent of the assessed value of such property immediately following installation~~.

(2) The exempt amount authorized under subsection (1) shall apply in full if the device was installed and operative throughout the 12-month period preceding January 1 of the year of application for this exemption. If the device was operative for a portion of that period, the exempt amount authorized under this section shall be reduced proportionally.

(3) It shall be the responsibility of the applicant for an exemption pursuant to this section to demonstrate affirmatively to the satisfaction of the property appraiser that he or she meets the requirements for exemption under this section and that the original cost ~~pursuant to paragraph (1)(b)~~ and the period for which the device was operative, as indicated on the exemption application, are correct.

(4) No exemption authorized pursuant to this section shall be granted for a period of more than 10 years. No exemption shall be granted with respect to renewable energy source devices installed before July 1, 2007 ~~January 1, 1980, or after December 31, 1990~~.

Section 2. Paragraph (ccc) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any entity by this chapter do not inure to any transaction that is

otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ccc) Equipment, machinery, and other materials for renewable energy technologies.--

1. As used in this paragraph, the term:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means an ~~nominally~~ anhydrous denatured alcohol produced by the conversion of carbohydrates ~~fermentation~~

~~of plant sugars~~ meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen-rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

2. The sale or use of the following in the state is exempt from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in tax each state fiscal year for all taxpayers.

b. Commercial stationary hydrogen fuel cells, up to a limit of $1 million in tax each state fiscal year for all taxpayers.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-100), including fueling infrastructure, transportation, and storage, up to a limit of 2 ~~$1~~ million in tax each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided in this sub-subparagraph.

3. The Department of Environmental Protection shall provide to the department a list of items eligible for the exemption provided in this paragraph.

4.a. The exemption provided in this paragraph shall be available to a purchaser only through a refund of previously

paid taxes. Only one purchase of an eligible item is subject to refund. A purchaser who has received a refund on an eligible item must notify any subsequent purchaser of the item that the item is no longer eligible for a refund of tax paid. This notification must be provided to the purchaser on the sales invoice or other proof of purchase.

b. To be eligible to receive the exemption provided in this paragraph, a purchaser shall file an application with the Department of Environmental Protection. The application shall be developed by the Department of Environmental Protection, in consultation with the department, and shall require:

(I) The name and address of the person claiming the refund.

(II) A specific description of the purchase for which a refund is sought, including, when applicable, a serial number or other permanent identification number.

(III) The sales invoice or other proof of purchase showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

(IV) A sworn statement that the information provided is accurate and that the requirements of this paragraph have been met.

c. Within 30 days after receipt of an application, the Department of Environmental Protection shall review the application and shall notify the applicant of any deficiencies. Upon receipt of a completed application, the Department of Environmental Protection shall evaluate the application for

exemption and issue a written certification that the applicant is eligible for a refund or issue a written denial of such certification within 60 days after receipt of the application. The Department of Environmental Protection shall provide the department with a copy of each certification issued upon approval of an application.

d. Each certified applicant shall be responsible for forwarding a certified copy of the application and copies of all required documentation to the department within 6 months after certification by the Department of Environmental Protection.

e. The provisions of s. 212.095 do not apply to any refund application made pursuant to this paragraph. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval by the department.

f. The department may adopt all rules pursuant to ss. 120.536(1) and 120.54 to administer this paragraph, including rules establishing forms and procedures for claiming this exemption.

g. The Department of Environmental Protection shall be responsible for ensuring that the total amounts of the exemptions authorized do not exceed the limits as specified in subparagraph 2.

5. The Department of Environmental Protection shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

6. This paragraph expires July 1, 2010.

Section 3. Section 212.086, Florida Statutes, is created to read:

212.086 Energy-Efficient Motor Vehicle Sales Tax Refund Program.--

(1) The energy-efficient motor vehicle sales tax refund is established to provide financial incentives for the purchase of alternative motor vehicles as specified in this section.

(2) Any person who purchases an alternative motor vehicle is eligible for a refund of the tax imposed under this chapter. The tax that is eligible for a refund shall be computed on the lesser of $15,000 or the sales price as provided in s. 212.02.

(3) In order to qualify for the sales tax refund under this section, the alternative motor vehicle must be certified as a new qualified hybrid motor vehicle, a new qualified alternative fuel motor vehicle, a new qualified fuel cell motor vehicle, or a new advanced lean-burn technology motor vehicle by the Internal Revenue Service for the income tax credit for alternative motor vehicles under s. 30B of the Internal Revenue Code of 1986, as amended.

(4) Notwithstanding ss. 212.095 and 215.26, an application for a refund must be filed with the department within 90 days after purchase of the alternative motor vehicle and must contain the following:

(a) The name and address of the person claiming the refund.

(b) A specific description of the alternative motor vehicle for which a refund is sought, including the vehicle identification number.

(c) The sales invoice or other proof of purchase showing the amount of sales tax paid, the date of purchase, and the name

and address of the sales tax dealer from whom the alternative motor vehicle was purchased.

(d) A sworn statement that the information provided is accurate and that the requirements of this section have been met.

(5) The total dollar amount of all refunds issued by the department is limited to the total amount of appropriations in any fiscal year for the program. The department may approve refunds up to the amount appropriated for the refund program based on the date an application for a refund was filed pursuant to subsection (4). If the funds available are insufficient during the current fiscal year, any requests for a refund received during that fiscal year may be processed during the following fiscal year, subject to the appropriation, and have priority over new applications for a refund filed in the following fiscal year. The provisions of s. 213.255 shall not apply to requests for a refund that are held for payment in the following fiscal year.

(6) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section, including rules establishing forms and procedures for claiming the refund.

(7) A person who receives a refund under s. 212.08(7)(ccc) shall not be eligible for the refund provided in this section.

(8) This section expires July 1, 2010.

Section 4. Subsection (1) of section 220.192, Florida Statutes, is amended, subsection (6) is renumbered as subsection (7) and amended, subsection (7) is renumbered as subsection (8), and a new subsection (6) is added to that section, to read:

220.192 Renewable energy technologies investment tax credit.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in s. 212.08(7)(ccc).

(b) "Corporation" means all general partnerships, limited partnerships, limited liability companies, unincorporated businesses, and all other business entities in which a taxpayer owns an interest and which are taxed as partnerships or are disregarded as separate entities from the taxpayer for tax purposes.

(c) ~~(b)~~ "Eligible costs" means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of

constructing, installing, and equipping such technologies in the state.

3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6.5 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subparagraph.

(d) ~~(c)~~ "Ethanol" means ethanol as defined in s. 212.08(7)(ccc).

(e) ~~(d)~~ "Hydrogen fuel cell" means hydrogen fuel cell as defined in s. 212.08(7)(ccc).

(6) TRANSFERABILITY OF CREDIT.--

(a) Any corporation and any subsequent transferee allowed the tax credit may transfer the tax credit, in whole or in part, to any taxpayer by written agreement, without the requirement of transferring any ownership interest in the property generating the tax credit or any interest in the entity which owns the property. Transferees are entitled to apply the credits against the tax with the same effect as if the transferee had incurred the eligible costs.

(b) To perfect the transfer, the transferor shall provide a written transfer statement providing notice to the Department of Revenue of the assignor's intent to transfer the tax credits

to the assignee, the date the transfer is effective, the assignee's name, address, federal taxpayer identification number and tax period, and the amount of tax credits to be transferred. The Department of Revenue shall issue, upon receipt of a transfer statement conforming to the requirements of this section, a certificate to the assignee reflecting the tax credit amounts transferred, a copy of which shall be attached to each tax return by an assignee in which such tax credits are used.

(c) Tax credits derived by such entities treated as corporations pursuant to this section that are not transferred by such entities to other taxpayers pursuant to this subsection shall be passed through to the taxpayers designated as partners, members, or owners, respectively, in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of the federal energy tax credit with respect to the eligible costs.

(7) ~~(6)~~ RULES.--The Department of Revenue shall have the authority to adopt rules relating to:

(a) The forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(b) The implementation and administration of the provisions allowing a transfer of tax credits, including rules prescribing forms, reporting requirements, and the specific procedures, guidelines, and requirements necessary for a tax credit to be transferred.

(c) The implementation and administration of the provisions allowing a pass through of tax credits, including rules prescribing forms, reporting requirements, and the specific procedures, guidelines, and requirements necessary for a tax credit to be passed through to an owner, member, or partner.

(8) ~~(7)~~ PUBLICATION.--The Department of Environmental Protection shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 5. Paragraph (f) is added to subsection (2) and paragraph (j) is added to subsection (3) of section 220.193, Florida Statutes, to read:

220.193 Florida renewable energy production credit.--

(2) As used in this section, the term:

(f) "Sale" or "sold" includes the use of the electricity by the producer of the electricity when such use decreases the amount of electricity that would otherwise be purchased by the producer thereof.

(3) An annual credit against the tax imposed by this section shall be allowed to a taxpayer, based on the taxpayer's production and sale of electricity from a new or expanded Florida renewable energy facility. For a new facility, the credit shall be based on the taxpayer's sale of the facility's entire electrical production. For an expanded facility, the credit shall be based on the increases in the facility's electrical production that are achieved after May 1, 2006.

(j) A taxpayer's use of the credit granted pursuant to this section shall not reduce the amount of any credit

authorized by s. 220.186 that would otherwise be available to that taxpayer.

Section 6. Section 255.251, Florida Statutes, is amended to read:

255.251 Energy Conservation and Sustainable ~~in~~ Buildings Act; short title.--This act shall be cited as the "Florida Energy Conservation and Sustainable ~~in~~ Buildings Act ~~of 1974~~."

Section 7. Section 255.252, Florida Statutes, is amended to read:

255.252 Findings and intent.--

(1) Operating and maintenance expenditures associated with energy equipment and with energy consumed in state-financed and leased buildings represent a significant cost over the life of a building. Energy conserved by appropriate building design not only reduces the demand for energy but also reduces costs for building operation. ~~For example, commercial buildings are estimated to use from 20 to 80 percent more energy than would be required if energy conserving designs were used.~~ The size, design, orientation, and operability of windows, the ratio of ventilating air to air heated or cooled, the level of lighting consonant with space-use requirements, the handling of occupancy loads, and the ability to zone off areas not requiring equivalent levels of heating or cooling are but a few of the considerations necessary to conserving energy.

(2) Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards ~~underway by the General Services Administration, the National Institute of Standards and Technology, and others to~~

~~detail the considerations and practices for energy conservation in buildings~~. Most important is that energy-efficient designs provide energy savings over the life of the building structure. ~~Conversely, energy inefficient designs cause excess and wasteful energy use and high costs over that life.~~ With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned ~~state~~ buildings.

(3) In order that such energy-efficiency and sustainable materials considerations become a function of building design, and also a model for future application in the private sector, it shall be the policy of the state that buildings constructed and financed by the state be designed and constructed to meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, Green Building Initiative's Green Globes rating system, or a nationally recognized, high-performance green building rating system as approved by the department ~~in a manner which will minimize the consumption of energy used in the operation and maintenance of such buildings~~. It is further the policy of the state, when economically feasible, to retrofit existing state-owned buildings in a manner that ~~which~~ will minimize the consumption of energy used in the operation and maintenance of such buildings.

(4) In addition to designing and constructing new buildings to be energy efficient ~~energy efficient~~, it shall be the policy of the state to operate, maintain, and renovate

existing state-owned ~~state~~ facilities, or provide for their renovation, in a manner that ~~which~~ will minimize energy consumption and maximize their sustainability as well as ensure that facilities leased by the state are operated so as to minimize energy use. Agencies are encouraged to consider shared savings financing of such energy projects, using contracts that ~~which~~ split the resulting savings for a specified period of time between the agency and the private firm or cogeneration contracts which otherwise permit the state to lower its energy costs. Such energy contracts may be funded from the operating budget.

(5) Each state agency must identify and compile a list of all state-owned buildings within its inventory that would be suitable for a guaranteed energy performance savings contract pursuant to s. 489.145. Such list shall be submitted to the Department of Management Services by December 31, 2007, and shall include all facilities over 5,000 square feet in area and for which the agency is responsible for paying the expenses of utilities and other operating expenses as they relate to energy use. In consultation with each department secretary or director, by March 1, 2008, the Department of Management Services shall evaluate each agency's facilities suitable for energy conservation projects and shall develop an energy efficiency project schedule based on factors such as project magnitude, efficiency and effectiveness of energy conservation measures to be implemented, and other factors that may prove to be advantageous to pursue. Such schedule shall provide the deadline

for guaranteed energy performance savings contract improvements to be made to the state-owned buildings.

Section 8. Subsections (6) and (7) are added to section 255.253, Florida Statutes, to read:

255.253 Definitions; ss. 255.251-255.258.--

(6) "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 of toxic materials and waste in its design, construction, landscaping, and operation.

(7) "Sustainable building rating" means a rating established by the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, Green Building Initiative's Green Globes rating system, or a nationally recognized, high-performance green building rating system as approved by the department.

Section 9. Section 255.254, Florida Statutes, is amended to read:

255.254 No facility constructed ~~or leased~~ without life-cycle costs.--

(1) No state agency shall ~~lease,~~ construct~~,~~ or have constructed, within limits prescribed herein, a facility without having secured from the department an ~~a proper~~ evaluation of life-cycle costs based on sustainable building ratings~~, as computed by an architect or engineer~~. Furthermore, construction shall proceed only upon disclosing, for the facility chosen, the life-cycle costs as determined in s. 255.255, its sustainable

building rating, and the capitalization of the initial construction costs of the building. The life-cycle costs shall be a primary consideration in the selection of a building design in addition to its sustainable building rating. ~~Such analysis shall be required only for construction of buildings with an area of 5,000 square feet or greater.~~ For leased buildings 5,000 square feet or greater ~~areas of 20,000 square feet or greater~~ within a given building boundary, an energy performance analysis ~~a life cycle analysis~~ shall be performed, and a lease shall only be made where there is a showing that the energy ~~life-cycle~~ costs incurred by the state are minimal compared to available like facilities.

(2) On and after January 1, 1979, no state agency shall initiate construction or have construction initiated, prior to approval thereof by the department, on a facility or self-contained unit of any facility, the design and construction of which incorporates or contemplates the use of an energy system other than a solar energy system when the life-cycle costs analysis prepared by the department has determined that a solar energy system is the most cost-efficient energy system for the facility or unit.

(3) After September 30, 1985, when any state agency must replace or supplement major items of energy-consuming equipment in existing state-owned ~~or leased~~ facilities or any self-contained unit of any facility with other major items of energy-consuming equipment, the selection of such items shall be made on the basis of a life-cycle cost analysis of alternatives in

accordance with rules promulgated by the department under s. 255.255.

Section 10. Subsection (1) of section 255.255, Florida Statutes, is amended to read:

255.255 Life-cycle costs.--

(1) The department shall promulgate rules and procedures, including energy conservation performance guidelines based on sustainable building ratings, for conducting a life-cycle cost analysis of alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in existing state-owned or leased facilities and for developing energy performance indices to evaluate the efficiency of energy utilization for competing designs in the construction of state-financed and leased facilities.

Section 11. Subsection (10) of section 287.064, Florida Statutes, is amended to read:

287.064 Consolidated financing of deferred-payment purchases.--

(10) Costs incurred pursuant to a guaranteed energy performance savings contract, including the cost of energy conservation measures, each as defined in s. 489.145, may be financed pursuant to a master equipment financing agreement; however, the costs of training, operation, and maintenance may not be financed. The period of time for repayment of the funds drawn pursuant to the master equipment financing agreement under this subsection may exceed 5 years but may not exceed 20 ~~10~~ years for energy conservation measures pursuant to s. 489.145, excluding the costs of training, operation, and maintenance. The

guaranteed energy performance savings contractor shall provide for the replacement or the extension of the useful life of the equipment during the term of the contract.

Section 12. Section 377.802, Florida Statutes, is amended to read:

377.802 Purposes ~~Purpose~~.--

(1) This act is intended to provide matching grants to stimulate capital investment in the state and to enhance the market for and promote the statewide utilization of renewable energy technologies. The targeted grants program is designed to advance the already growing establishment of renewable energy technologies in the state and encourage the use of other incentives such as tax exemptions and regulatory certainty to attract additional renewable energy technology producers, developers, and users to the state.

(2) This act is ~~also~~ intended to provide incentives for the purchase of energy-efficient appliances and rebates for solar energy equipment installations for residential and commercial buildings. In order to promote energy efficiency and conservation of the state's resources, the month of October shall annually be designated "Energy Efficiency and Conservation Month."

Section 13. Subsection (2) of section 377.803, Florida Statutes, is amended, and subsections (3) through (10) of that section are redesignated as subsections (2) through (9), respectively, to read:

377.803 Definitions.--As used in ss. 377.801-377.806, the term:

~~(2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission~~.

Section 14. Subsection (6) of section 377.804, Florida Statutes, is amended to read:

377.804 Renewable Energy Technologies Grants Program.--

~~(6) The department shall coordinate and actively consult with the Department of Agriculture and Consumer Services during the review and approval process of grants relating to bioenergy projects for renewable energy technology, and the departments shall jointly determine the grant awards to these bioenergy projects. No grant funding shall be awarded to any bioenergy project without such joint approval. Factors for consideration in awarding grants may include, but are not limited to, the degree to which:~~

~~(a) The project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for bioenergy.~~

~~(b) The project produces bioenergy from Florida-grown crops or biomass.~~

~~(c) The project demonstrates efficient use of energy and material resources.~~

~~(d) The project fosters overall understanding and appreciation of bioenergy technologies.~~

~~(e) Matching funds and in-kind contributions from an applicant are available.~~

~~(f) The project duration and the timeline for expenditures are acceptable.~~

~~(g) The project has a reasonable assurance of enhancing the value of agricultural products or will expand agribusiness in the state.~~

~~(h) Preliminary market and feasibility research has been conducted by the applicant or others and shows there is a reasonable assurance of a potential market.~~

Section 15. Subsections (3), (5), (6), and (7) of section 377.806, Florida Statutes, are amended to read:

377.806 Solar Energy System Incentives Program.--

(3) SOLAR THERMAL SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar thermal system qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--Authorized rebates for installation of solar thermal systems shall be as follows:

1. Five hundred dollars for a residence.

2. Fifteen dollars per 1,000 Btu up to a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings. ~~Btu must be verified by approved metering equipment.~~

(5) APPLICATION.--To qualify for a rebate, an applicant must:

(a) Apply for a rebate reservation at least 10 days before the date of installation of any solar equipment. Homebuilders or developers may file a single application form for project sites containing more than 25 homes. For project sites containing fewer than 25 homes, the homebuilder or developer must file a separate rebate reservation application for each home; and

(b) Submit a separate application for a rebate payment within 90 days after the installation of any solar equipment. ~~Application for a rebate must be made within 90 days after the purchase of the solar energy equipment.~~

(6) REBATE AVAILABILITY.--The department shall determine and publish on a regular basis the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued by the department is subject to the total amount of appropriations in any fiscal year for this program. If funds are insufficient during the current fiscal year, any requests for rebates received during that fiscal year may be processed during the following fiscal year. Requests for rebates received in a fiscal year that are processed during the following fiscal year shall be given priority over requests for rebates received during the following fiscal year. At least 60 percent of rebate funds appropriated under this program shall be distributed to homeowners installing solar equipment in new or renovated homes.

(7) RULES.--The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to develop ~~rebate~~ applications for rebate reservations and rebate payments and administer the issuance of rebates.

Section 16. Section 403.0874, Florida Statutes, is created

to read:

403.0874 Greenhouse gas inventories.--

(1) "Greenhouse gases" means gases that trap heat in the atmosphere. The principal greenhouse gases are: carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), and fluorinated gases (such as hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride).

(2) The department shall develop greenhouse gas inventories that account for annual greenhouse gases emitted to and removed from the atmosphere, and forecast gases emitted and removed, for all major greenhouse gases, for time periods determined sufficient by the department to provide for adequate analysis and planning.

(3) By rule, the department shall define which greenhouse gases are to be included in each inventory, the criteria for defining major emitters, which emitters must report emissions, and what methodologies shall be used to estimate gases emitted and removed from those not required to report.

(4) The department is authorized to require all major emitters of defined greenhouse gases to report emissions according to methodologies and reporting systems approved by the department and established by rule, which may include the use of quality-assured data from continuous emissions monitoring systems.

Section 17. Subsection (3) of section 403.50663, Florida Statutes, is amended to read:

403.50663 Informational public meetings.--

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 15 ~~5~~ days prior to the meeting and to the general public, in accordance with the provisions of s. 403.5115(5).

Section 18. Subsections (2), (3), and (4) of section 403.50665, Florida Statutes, are amended to read:

403.50665 Land use consistency.--

(2) Within 45 days after the filing of the application, each local government shall file a determination with the department, the applicant, the administrative law judge, and all parties on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed, based on the information provided in the application. The local government may issue its determination up to 35 days later if the local government has requested additional information on land use and zoning consistency as part of the local government's statement on completeness of the application submitted pursuant to s. 403.5066(1)(a). Incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances. Notice of the consistency determination shall be published in accordance with the requirements of s. 403.5115.

(3) If the local government issues a determination that the proposed electrical power plant is not consistent or in compliance with local land use plans and zoning ordinances, the

applicant may apply to the local government for the necessary local approval to address the inconsistencies in the local government's determination. If the applicant makes such an application to the local government, the time schedules under this act shall be tolled until the local government issues its revised determination on land use and zoning or the applicant otherwise withdraws its application to the local government. If the applicant applies to the local government for necessary local land use or zoning approval, the local government shall issue a revised determination within 30 days following the conclusion of any ~~that local~~ proceeding held by the local government to consider the application for land use or zoning approval, and the time schedules and notice requirements under this act shall apply to such revised determination.

(4) If any substantially affected person wishes to dispute the local government's determination, he or she shall file a petition with the designated administrative law judge ~~department~~ within 21 days after the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) shall apply.

Section 19. Paragraph (a) of subsection (1) and paragraph (a) of subsection (2) of section 403.508, Florida Statutes, are amended to read:

403.508 Land use and certification hearings, parties, participants.--

(1)(a) Within 5 days after the filing of ~~If~~ a petition for a hearing on land use ~~has been filed~~ pursuant to s. 403.50665, the designated administrative law judge shall schedule ~~conduct~~ a

land use hearing to be conducted in the county of the proposed site or directly associated facility, as applicable, as expeditiously as possible, but not later than 30 days after the department's receipt of the petition. The place of such hearing shall be as close as possible to the proposed site or directly associated facility. If a petition is filed, the hearing shall be held regardless of the status of the completeness of the application. ~~However, incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances under s. 403.50665.~~

(2)(a) A certification hearing shall be held by the designated administrative law judge no later than 265 days after the application is filed with the department. The certification hearing shall be held at a location in proximity to the proposed site. ~~At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 days after the filing of the hearing transcript.~~

Section 20. Subsection (5) of section 403.509, Florida Statutes, is amended to read:

403.509 Final disposition of application.--

(5) For certifications issued by the board in regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the connection thereto, or

the crossing thereof, for the electrical power plant and directly associated facilities and to direct any such agency to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification. For certifications issued by the department in regard to the properties and works of any agency which is a party to the proceeding, any stipulation filed pursuant to s. 403.508(6)(a) must include a stipulation regarding any issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant and directly associated facilities. Any agency stipulating to the use, connection to, or crossing of its property must agree to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

Section 21. Section 403.5113, Florida Statutes, is amended to read:

403.5113 Postcertification amendments and review.--

(1) POSTCERTIFICATION AMENDMENTS.--

(a) If, subsequent to certification by the board, a licensee proposes any material change to the application and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of the request for the amendment, the department shall determine whether the proposed

change to the application requires a modification of the conditions of certification.

(b) ~~(2)~~ If the department concludes that the change would not require a modification of the conditions of certification, the department shall provide written notification of the determination on ~~approval of~~ the proposed amendment to the licensee, all agencies, and all other parties.

(c) ~~(3)~~ If the department concludes that the change would require a modification of the conditions of certification, the department shall provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516.

(2) ~~(4)~~ POSTCERTIFICATION REVIEW.--Postcertification submittals filed by the licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification and must be reviewed by the agencies on an expedited and priority basis because each facility certified under this act is a critical infrastructure facility. In no event shall a postcertification review be completed in more than 90 days after complete information is submitted to the reviewing agencies.

Section 22. Section 403.5115, Florida Statutes, is amended to read:

403.5115 Public notice.--

(1) The following notices are to be published by the applicant for all applications:

(a) Notice of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the

filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) Notice of filing of the application, which shall include a description of the proceedings required by this act, within 21 days after the date of the application filing. Such notice shall give notice of the provisions of s. 403.511(1) and (2).

(c) If applicable, notice of the land use determination made pursuant to s. 403.50665(1) within 21 days after the determination is filed.

(d) If applicable, notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 days before the hearing.

(e) Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party, which shall be published as specified in subsection (2), at least 65 days before the date set for the certification hearing.

(f) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days before the date of the originally scheduled certification hearing.

(g) Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification. The newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be published no later than 30 days before the hearing.

~~(h) Notice of a supplemental application, which shall be published as specified in paragraph (b) and subsection (2).~~

~~(i) Notice of existing site certification pursuant to s. 403.5175. Notices shall be published as specified in paragraph (b) and subsection (2).~~

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed electrical power plant will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper. These notices shall include a map generally depicting the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120 and provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose for each case for which an application has been received by the department:

(a) Notice of the filing of the notice of intent within 15 days after receipt of the notice.

(b) Notice of the filing of the application, no later than 21 days after the application filing.

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 21 days after the determination is filed.

(d) Notice of the land use hearing before the administrative law judge, if applicable, no later than 15 days before the hearing.

(e) Notice of the land use hearing before the board, if applicable.

(f) Notice of the certification hearing at least 45 days before the date set for the certification hearing.

(g) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days prior to the date of the originally scheduled certification hearing.

(h) Notice of the hearing before the board, if applicable.

(i) Notice of stipulations, proposed agency action, or petitions for modification.

(5) A local government or regional planning council that proposes to conduct an informational public meeting pursuant to s. 403.50663 must publish notice of the meeting in a newspaper of general circulation within the county or counties in which the proposed electrical power plant will be located no later than 7 days prior to the meeting. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

Section 23. Subsection (1) of section 403.5252, Florida Statutes, is amended to read:

403.5252 Determination of completeness.--

(1)(a) Within 30 days after the filing ~~distribution~~ of an application, the affected agencies shall file a statement with the department containing the recommendations of each agency concerning the completeness of the application for certification.

(b) Within 37 ~~7~~ days after the filing ~~receipt~~ of the application ~~completeness statements of each agency~~, the department shall file a statement with the Division of Administrative Hearings, with the applicant, and with all parties declaring its position with regard to the completeness of the application. The statement of the department shall be based upon its consultation with the affected agencies.

Section 24. Paragraph (a) of subsection (6) of section 403.527, Florida Statutes, is amended to read:

403.527 Certification hearing, parties, participants.--

(6)(a) No later than 29 ~~25~~ days before the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of material fact or law to be raised at the certification hearing.

Section 25. Paragraph (e) of subsection (1) of section 403.5271, Florida Statutes, is amended to read:

403.5271 Alternate corridors.--

(1) No later than 45 days before the originally scheduled certification hearing, any party may propose alternate transmission line corridor routes for consideration under the provisions of this act.

(e)1. Reviewing agencies shall advise the department of any issues concerning completeness no later than 15 days after the submittal of the data required by paragraph (d). Within 22 days after receipt of the data, the department shall issue a determination of completeness.

2. If the department determines that the data required by paragraph (d) is not complete, the party proposing the alternate corridor must file such additional data to correct the incompleteness. This additional data must be submitted within 14 days after the determination by the department.

3. Reviewing agencies may advise the department of any issues concerning completeness of the additional data within 10

days after the filing by the party proposing the alternate corridor. If the department, within 14 days after receiving the additional data, determines that the data remains incomplete, the incompleteness of the data is deemed a withdrawal of the proposed alternate corridor. The department may make its determination based on recommendations made by other affected agencies.

Section 26. Subsection (3) of section 403.5272, Florida Statutes, is amended to read:

403.5272 Informational public meetings.--

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting, with notice sent to all parties listed in s. 403.527(2)(a), not less than 15 ~~5~~ days before the meeting, to the general public, in accordance with the provisions of s. 403.5363(4).

Section 27. Paragraph (b) of subsection (1) of section 403.5317, Florida Statutes, is amended to read:

403.5317 Postcertification activities.--

(1)

(b) If the department concludes that the change would not require a modification of the conditions of certification, the department shall notify, in writing, the licensee, all agencies, and all parties of the determination on ~~approval~~ of the amendment.

Section 28. Paragraph (c) of subsection (3) of section 403.5363, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

403.5363 Public notices; requirements.--

(3) The department shall arrange for the publication of the following notices in the manner specified by chapter 120:

(c) The notice of the cancellation of a certification hearing, if applicable. The notice must be published not later than 3 ~~7~~ days before the date of the originally scheduled certification hearing.

(4) A local government or regional planning council that proposes to conduct an informational public meeting pursuant to s. 403.5272 must publish notice of the meeting in a newspaper of general circulation within the county or counties in which the proposed electrical transmission line will be located no later than 7 days prior to the meeting. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

Section 29. Section 489.145, Florida Statutes, is amended to read:

489.145 Guaranteed energy performance savings contracting.--

(1) SHORT TITLE.--This section may be cited as the "Guaranteed Energy Performance Savings Contracting Act."

(2) LEGISLATIVE FINDINGS.--The Legislature finds that investment in energy conservation measures in agency facilities

can reduce the amount of energy consumed and produce immediate and long-term savings. It is the policy of this state to encourage agencies to invest in energy conservation measures ~~that reduce energy consumption, produce a cost savings for the agency, and improve the quality of indoor air in public facilities and to operate, maintain, and, when economically feasible, build or renovate existing agency facilities in such a manner as~~ to minimize energy consumption and maximize energy savings. It is further the policy of this state to encourage agencies to reinvest any energy savings resulting from energy conservation measures in additional energy conservation efforts.

(3) DEFINITIONS.--As used in this section, the term:

(a) "Agency" means the state, a municipality, or a political subdivision.

(b) "Energy conservation measure" means a ~~training program,~~ facility alteration~~,~~ or an equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or energy-related operating costs and includes, but is not limited to:

1. Insulation of the facility structure and systems within the facility.

2. 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.

3. Automatic energy control systems.

4. Heating, ventilating, or air-conditioning system modifications or replacements.

5. 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.

6. Energy recovery systems.

7. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities.

8. Energy conservation measures that reduce Btu, kW, or kWh consumed or provide long-term operating cost reductions ~~or significantly reduce Btu consumed~~.

9. Renewable energy systems, such as solar, biomass, or wind systems.

10. Devices that reduce water consumption or sewer charges.

11. Storage systems, such as fuel cells and thermal storage.

12. Generating technologies, such as microturbines.

13. Any other repair, replacement, or upgrade of existing equipment.

(c) "Energy cost savings" means a measured reduction in the cost of fuel, energy consumption, and stipulated operation and maintenance created from the implementation of one or more energy conservation measures when compared with an established baseline for the previous cost of fuel, energy consumption, and stipulated operation and maintenance.

(d) "Guaranteed energy performance savings contract" means a contract for the evaluation, recommendation, and implementation of energy conservation measures or energy-related operational saving measures, which, at a minimum, shall include:

1. The design and installation of equipment to implement one or more of such measures and, if applicable, operation and maintenance of such measures.

2. The amount of any actual annual savings that meet or exceed total annual contract payments made by the agency for the contract and may include allowable cost avoidance. As used in this section, allowable cost avoidance calculations include, but are not limited to, avoided provable budgeted costs contained in a capital replacement plan and current undepreciated value of replaced equipment subtracted from the replacement cost of the new equipment.

3. The finance charges incurred by the agency over the life of the contract.

(e) "Guaranteed energy performance savings contractor" means a person or business that is licensed under chapter 471, chapter 481, or this chapter, and is experienced in the analysis, design, implementation, or installation of energy conservation measures through energy performance contracts.

(4) PROCEDURES.--

(a) An agency may enter into a guaranteed energy performance savings contract with a guaranteed energy performance savings contractor to significantly reduce energy consumption or energy-related operating costs of an agency facility through one or more energy conservation measures.

(b) Before design and installation of energy conservation measures, the agency must obtain from a guaranteed energy performance savings contractor a report that summarizes the costs associated with the energy conservation measures or energy-related operational cost saving measures and provides an estimate of the amount of the ~~energy~~ cost savings. The agency and the guaranteed energy performance savings contractor may enter into a separate agreement to pay for costs associated with the preparation and delivery of the report; however, payment to the contractor shall be contingent upon the report's projection of energy or operational cost savings being equal to or greater than the total projected costs of the design and installation of the report's energy conservation measures.

(c) The agency may enter into a guaranteed energy performance savings contract with a guaranteed energy performance savings contractor if the agency finds that the amount the agency would spend on the energy conservation or energy-related cost saving measures will not likely exceed the amount of the energy or energy-related cost savings for up to 20 years from the date of installation, based on the life cycle cost calculations provided in s. 255.255, if the recommendations in the report were followed and if the qualified provider or providers give a written guarantee that the energy or energy-related cost savings will meet or exceed the costs of the system. The contract may provide for installment payments for a period not to exceed 20 years.

(d) A guaranteed energy performance savings contractor must be selected in compliance with s. 287.055; except that if

fewer than three firms are qualified to perform the required services, the requirement for agency selection of three firms, as provided in s. 287.055(4)(b), and the bid requirements of s. 287.057 do not apply.

(e) Before entering into a guaranteed energy performance savings contract, an agency must provide published notice of the meeting in which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose.

(f) A guaranteed energy performance savings contract may provide for financing, including tax exempt financing, by a third party. The contract for third party financing may be separate from the energy performance contract. A separate contract for third party financing pursuant to this paragraph must include a provision that the third party financier must not be granted rights or privileges that exceed the rights and privileges available to the guaranteed energy performance savings contractor.

(g) Financing for guaranteed energy performance savings contracts may be provided under the authority of s. 287.064.

(h) The Office of the Chief Financial Officer shall review proposals to ensure that the most effective financing is being used.

(i) ~~(g)~~ In determining the amount the agency will finance to acquire the energy conservation measures, the agency may reduce such amount by the application of any grant moneys, rebates, or capital funding available to the agency for the purpose of buying down the cost of the guaranteed energy

performance savings contract. However, in calculating the life cycle cost as required in paragraph (c), the agency shall not apply any grants, rebates, or capital funding.

(5) CONTRACT PROVISIONS.--

(a) A guaranteed energy performance savings contract must include a written guarantee that may include, but is not limited to the form of, a letter of credit, insurance policy, or corporate guarantee by the guaranteed energy performance savings contractor that annual energy cost savings will meet or exceed the amortized cost of energy conservation measures.

(b) The guaranteed energy performance savings contract must provide that all payments, except obligations on termination of the contract before its expiration, may be made over time, but not to exceed 20 years from the date of complete installation and acceptance by the agency, and that the annual savings are guaranteed to the extent necessary to make annual payments to satisfy the guaranteed energy performance savings contract.

(c) The guaranteed energy performance savings contract must require that the guaranteed energy performance savings contractor to whom the contract is awarded provide a 100-percent public construction bond to the agency for its faithful performance, as required by s. 255.05.

(d) The guaranteed energy performance savings contract may contain a provision allocating to the parties to the contract any annual energy cost savings that exceed the amount of the energy cost savings guaranteed in the contract.

(e) The guaranteed energy performance savings contract shall require the guaranteed energy performance savings contractor to provide to the agency an annual reconciliation of the guaranteed energy or energy-related cost savings. If the reconciliation reveals a shortfall in annual energy or energy-related cost savings, the guaranteed energy performance savings contractor is liable for such shortfall. If the reconciliation reveals an excess in annual ~~energy~~ cost savings, the excess savings may be allocated under paragraph (d) but may not be used to cover potential energy cost savings shortages in subsequent contract years.

(f) The guaranteed energy performance savings contract must provide for payments of not less than one-twentieth of the price to be paid within 2 years from the date of the complete installation and acceptance by the agency using straight-line amortization for the term of the loan, and the remaining costs to be paid at least quarterly, not to exceed a 20-year term, based on life cycle cost calculations.

(g) The guaranteed energy performance savings contract may extend beyond the fiscal year in which it becomes effective; however, the term of any contract expires at the end of each fiscal year and may be automatically renewed annually for up to 20 years, subject to the agency making sufficient annual appropriations based upon continued realized energy savings.

(h) The guaranteed energy performance savings contract must stipulate that it does not constitute a debt, liability, or obligation of the state.

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The Department of Management Services, with the assistance of the Office of the Chief Financial Officer, shall ~~may~~, within available resources, provide technical content assistance to state agencies contracting for energy conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy performance contracting by state agencies. The Office of the Chief Financial Officer, with the assistance of the Department of Management Services, shall ~~may, within available resources,~~ develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy performance savings contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the Office of the Chief Financial Officer for review and approval. A proposed contract or lease shall include:

(a) Supporting information required by s. 216.023(4)(a)9.

(b) Documentation supporting recurring funds requirements in ss. 287.063(5) and 287.064(11).

(c) Approval by the agency head or his or her designee.

(7) FUNDING SUPPORT.--For purposes of consolidated financing of deferred payment commodity contracts under this section by a state agency, any such contract must be supported from available recurring funds appropriated to the agency in an appropriation category, other than the expense appropriation category as defined in chapter 216, that the Chief Financial Officer has determined is appropriate or that the Legislature

has designated for payment of the obligation incurred under this section.

Section 30. Section 570.956, Florida Statutes, is created to read:

570.956 Farm-to-Fuel Advisory Council.--

(1) The Farm-to-Fuel Advisory Council is created within the department to provide advice and counsel to the commissioner concerning the production of renewable energy in this state. The advisory council shall consist of 15 members, 14 of whom shall be appointed by the commissioner and one of whom shall be appointed the Governor for 4-year terms or until a successor is duly qualified and appointed. Members shall include:

(a) One citizen-at-large member who shall represent the views of the public toward renewable energy.

(b) Six members each of whom is a producer or grower actively engaged in the agricultural area of one of the following industries:

1. Sugarcane.

2. Citrus.

3. Field crops.

4. Dairy.

5. Livestock or poultry.

6. Forestry.

(c) One member who represents the petroleum industry or who is actively engaged in the trade of petroleum products.

(d) One member who represents public utilities or the electric power industry.

(e) Two members who represent colleges and universities in this state and who are engaged in research involving alternative fuels or renewable energy.

(f) One member who represents the environmental community or an environmental organization.

(g) One member who represents the ethanol industry or who has expertise in the production of ethanol.

(h) One member who represents the biodiesel industry or who has expertise in the production of biodiesel.

(i) One member appointed by the Governor.

(2) The council is an advisory committee the operation of which is governed by s. 570.0705.

Section 31. Section 570.957, Florida Statutes, is created to read:

570.957 Farm-to-Fuel Grants Program.--

(1) As used in this section, the term:

(a) "Bioenergy" means useful, renewable energy produced from organic matter through the conversion of the complex carbohydrates in organic matter to energy. Organic matter may either be used directly as a fuel, processed into liquids and gases, or be a residue of processing and conversion.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.

(d) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of

the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

(2) The Farm-to-Fuel Grants Program is established within the Department of Agriculture and Consumer Services to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to bioenergy projects.

(a) Matching grants for bioenergy demonstration, commercialization, research, and development projects may be made to any of the following:

1. Municipalities and county governments.

2. Established for-profit companies licensed to do business in the state.

3. Universities and colleges in the state.

4. Utilities located and operating within the state.

5. Not-for-profit organizations.

6. Other qualified persons, as determined by the Department of Agriculture and Consumer Services.

(b) The Department of Agriculture and Consumer Services may adopt rules to provide for allocation of grant funds by project type, application requirements, ranking of applications, and awarding of grants under this program.

(c) Factors for consideration in awarding grants may include, but are not limited to, the degree to which:

1. The project produces bioenergy from Florida-grown crops or biomass.

2. The project demonstrates efficient use of energy and material resources.

3. Matching funds and in-kind contributions from an applicant are available.

4. The project has a reasonable assurance of enhancing the value of agricultural products or will expand agribusiness in the state.

5. Preliminary market and feasibility research has been conducted by the applicant or others and shows there is a reasonable assurance of a potential market.

6. The project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for bioenergy.

(d) In evaluating and awarding grants under this section, the Department of Agriculture and Consumer Services shall consult with and solicit input from the Department of Environmental Protection.

(e) In determining the technical feasibility of grant applications, the Department of Agriculture and Consumer Services shall coordinate and actively consult with persons having expertise in renewable energy technologies.

(f) In determining the economic feasibility of bioenergy grant applications, the Department of Agriculture and Consumer Services shall consult with the Office of Tourism, Trade, and Economic Development.

Section 32. Section 570.958, Florida Statutes, is created to read:

570.958 Biofuel Retail Sales Incentive Program.--

(1) The purpose of this section is to encourage the retail sale of biofuels in this state and replace petroleum consumption in the state by the following percentages over the specified periods:

(a) Three percent from January 1, 2008, through December 31, 2008.

(b) Five percent from January 1, 2009, through December 31, 2009.

(c) Seven percent from January 1, 2010, through December 31, 2010.

(d) Ten percent from January 1, 2011, through December 31, 2011.

(2) As used in this section:

(a) "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blended with petroleum products as adopted by the department.

(b) "Biodiesel blended fuel" means a fuel mixture containing 10 percent or more biodiesel with the balance comprised of diesel fuel and meeting the specifications for biodiesel blends as adopted by the department.

(c) "Biofuel" means E85 fuel ethanol, E10 motor fuel, biodiesel, and biodiesel blended fuel.

(d) "E85 fuel ethanol" means ethanol blended with gasoline and formulated with a nominal percentage of 85 percent ethanol

by volume and meeting the applicable fuel quality specifications as adopted by the department.

(e) "E10 motor fuel" means a motor fuel blend consisting of nominal percentages of 90 percent gasoline by volume and 10 percent ethanol by volume and meeting the fuel quality specifications for gasoline as adopted by the department.

(f) "Ethanol or fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates and meeting the specifications for fuel ethanol as adopted by the department.

(g) "Fuel dispenser" means a pump, meter, or similar device used to measure and deliver motor fuel or diesel fuel on a retail basis.

(h) "Retail dealer" means any person who is engaged in the business of selling fuel at retail at posted retail prices.

(i) "Retail motor fuel site" means a geographic location in this state where a retail dealer sells or offers for sale motor fuel, diesel fuel, or biofuel to the general public.

(3)(a) Subject to specific appropriation, a retail dealer who sells biofuel through fuel dispensers at retail motor fuel sites is entitled to an incentive payment which shall be computed as follows:

1. An incentive of 1 cent for each gallon of E10 motor fuel sold through a fuel dispenser.

2. An incentive of 3 cents for each gallon of E85 fuel ethanol sold through a fuel dispenser.

3. An incentive of 1 cent for each gallon of biodiesel blended fuel sold through a fuel dispenser.

4. An incentive of 3 cents for each gallon of biodiesel sold through a fuel dispenser.

(b) The incentive may be claimed for biofuel sold on or after January 1, 2008. Beginning in 2009, each applicant claiming an incentive under this section must first apply to the department by February 1 of each year for an allocation of the available incentive for the preceding calendar year. The department shall develop an application form. The application form shall, at a minimum, require a sworn affidavit from each retail dealer certifying the following information:

1. The name and principal address of the retail dealer.

2. The address of the retail dealer's retail motor fuel sites from which it sold biofuels during the preceding calendar year.

3. The total gallons of E10 ethanol sold through fuel dispensers.

4. The total gallons of E85 ethanol sold through fuel dispensers.

5. The total gallons of biodiesel blended fuel sold through fuel dispensers.

6. The total gallons of biodiesel sold through fuel dispensers.

7. Any other information deemed necessary by the department to adequately ensure that the incentive allowed under this section shall be made only to qualified Florida retail dealers.

(c) The department shall determine the amount of the incentive allowed under this section.

(4) If the amount of incentives applied for each year exceeds the amount appropriated, the department shall pay to each applicant a prorated amount based on each applicant's gallonage of qualified biofuel sold and dispensed that is eligible for the incentive under this section.

(5) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and administer this section, including rules prescribing forms, the documentation needed to substantiate a claim for the incentive, and the specific procedures and guidelines for claiming the incentive.

Section 33. Section 570.959, Florida Statutes, is created to read:

570.959 Florida Biofuel Production Incentive Program.--

(1) The purpose of this section is to encourage the development and expansion of facilities that produce biofuels in this state from crops, agricultural waste and residues, and other biomass produced in Florida by providing economic incentives to do so.

(2) As used in this section, the term:

(a) "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blended with petroleum products as adopted by the department.

(b) "Biofuel" means ethanol or biodiesel.

(c) "Ethanol" or "fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates and meeting the specifications for fuel ethanol adopted by the

department.

(d) "Florida biofuel production" means production of biofuel in the state from crops, agricultural waste and residues, and other biomass produced in Florida.

(3) In order to be eligible for the incentive provided in this section, a producer must have registered and have met the requirements contained in chapter 206.

(4) An incentive, subject to appropriation, shall be paid to a producer based on Florida biofuel production as follows:

(a) The incentive shall be 5 cents for each gallon of unblended Florida biofuel produced, exclusive of denaturant, during a given calendar year and sold to an unrelated blender of biofuel.

(b) The incentive may be earned for production on or after January 1, 2008. Beginning in 2009, each producer claiming an incentive under this section must first apply to the department by February 1 of each year for an allocation of available incentives. The department shall develop an application form that shall, at a minimum, require a sworn affidavit from each producer certifying the production that forms the basis of the application and certifying that all information contained in the application is true and correct.

(c) The department shall determine whether or not such production is eligible for the incentive under this section.

(d) If the amount of incentives applied for each year exceeds the amount appropriated, the department shall pay to each applicant a prorated amount based on the percentage of biofuel produced that is eligible for the incentive under this

section.

(5) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and administer this section, including rules prescribing forms, the documentation needed to substantiate a claim for the incentive, and the specific procedures and guidelines for claiming the incentive.

Section 34. (1) The Florida Building Commission shall convene a workgroup comprised of representatives from the Florida Energy Commission, the Department of Community Affairs, the Building Officials Association of Florida, the Florida Energy Office, the Florida Home Builders Association, the Association of Counties, the League of Cities, and other stakeholders to develop a model residential energy efficiency ordinance that provides incentives to meet energy efficiency standards. The commission must report back to the Legislature with a developed ordinance by March 1, 2008.

(2) The Florida Building Commission shall, in consultation with the Florida Energy Commission, the Building Officials Association of Florida, the Florida Energy Office, the Florida Home Builders Association, the Association of Counties, the League of Cities, and other stakeholders, review the Florida Energy Code for Building Construction. Specifically, the commission shall revisit the analysis of cost-effectiveness that serves as the basis for energy efficiency levels for residential buildings, identify cost-effective means to improve energy efficiency in commercial buildings, and compare the code to the International Energy Conservation Code and the American Society of Heating Air-Conditioning and Refrigeration Engineers

Standards 90.1 and 90.2. The commission shall provide a report with a standard to the Legislature by March 1, 2008, that may be adopted for the construction of all new residential, commercial, and government buildings.

(3) The Florida Building Commission, in consultation with the Florida Solar Energy Center, the Florida Energy Commission, the Department of Environmental Protection's Energy Office, the United States Department of Energy, and the Florida Home Builders Association, shall develop and implement a public awareness campaign that promotes energy efficiency and the benefits of building green by January 1, 2008. The campaign shall include enhancement of an existing web site from which all citizens can obtain information pertaining to green building practices, calculate anticipated savings from use of those options, as well as learn about energy efficiency strategies that may be used in their existing home or when building a home. The campaign shall focus on the benefits of promoting energy efficiency to the purchasers of new homes, the various green building ratings available, and the promotion of various energy-efficient products through existing trade shows. The campaign shall also include strategies for utilizing print advertising, press releases, and television advertising to promote voluntary utilization of green building practices.

Section 35. (1) The Legislature declares that there is an important state interest in promoting the construction of energy-efficient and sustainable buildings. Government leadership in promoting these standards is vital to demonstrate

the state's commitment to energy conservation, saving taxpayers money, and raising public awareness of energy-rating systems.

(2) All county, municipal, and public community college buildings shall be constructed to meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, Green Building Initiative's Green Globes rating system, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services. This section shall apply to all county, municipal, and public community college buildings whose architectural plans are started after July 1, 2008.

Section 36. The tax levied under chapter 212, Florida Statutes, may not be collected on the first $1,500 of the selling price of a new energy-efficient product during the period from 12:01 a.m., October 1, 2007, through midnight, October 14, 2007. Such period shall be designated as the "Energy-Efficient Products Sales Tax Holiday." As used in this section, the term "energy-efficient product" means a dishwasher, clothes washer, air conditioner, ceiling fan, ventilating fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency or by the United States Department of Energy as meeting or exceeding the requirements under the Energy Star Program of either agency. The Department of Revenue may adopt rules under ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 37. State fleet biodiesel usage.--

(1) By July 1, 2008, a minimum of 5 percent, by January 1, 2009, a minimum of 10 percent, and by January 1, 2010, a minimum of 20 percent of total diesel fuel purchases for use by state-owned diesel vehicles and equipment shall be biodiesel, subject to availability.

(2) The Department of Management Services shall provide for the proper administration, implementation, and enforcement of this section.

(3) The Department of Management Services shall report to the Legislature on or before March 1, 2008, and annually thereafter, the extent of biodiesel use in the state fleet. The report shall contain the number of gallons purchased since July 1, 2007, the average price of biodiesel, and a description of fleet performance.

Section 38. School district biodiesel usage.--

(1) By January 1, 2008, a minimum of 20 percent of total diesel fuel purchases for use by school districts shall be biodiesel, subject to availability.

(2) If a school district contracts with another government entity or private entity to provide transportation services for any of its pupils, the biodiesel blend fuel requirement established pursuant to subsection (1) shall be part of that contract. However, this requirement shall apply only to contracts entered into on or after July 1, 2007.

Section 39. (1) The Legislature recognizes the need for expanded collaboration between the public and private sectors and increased public-private joint ventures in the areas of energy research, alternative fuel production, space exploration,

and technological advances in the energy and aerospace industries.

(2) Subject to appropriation, there is created within the Executive Office of the Governor the Florida Energy, Aerospace, and Technology (F.E.A.T.) Fund, a program to encourage a state partnership with the Federal Government and the private sector, to identify business and investment opportunities, and to target performance goals for those investments in the areas of alternative energy development and production infrastructure; biofuel, wind power, and solar energy technology development and applications; ethanol production and systems for conversion and use of ethanol fuels; cryogenics and hydrogen-based technology applications, storage, and conversion systems; hybrid engine power systems conversion technologies and production facilities; aerospace industry expansion or development opportunities; aerospace facility modifications and upgrades; build outs; new spaceport, range, and ground support infrastructure; new aerospace facilities and laboratories; new simulation, communications, and command and control systems; and other aerospace manufacturing and maintenance support infrastructure.

(3) A complete and detailed report shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives, setting forth all of the following:

(a) An accounting of all state funds committed and invested by the fund.

(b) A qualitative and quantitative assessment of each fund investment against the investment performance goals established

for investment, as well as an assessment of overall fund performance against investment objectives established for the fund.

(c) An evaluation of all activities of the fund and recommendations for change.

Section 40. Research and demonstration cellulosic ethanol plant.--

(1) There shall be constructed a multifaceted research and demonstration cellulosic ethanol plant designed to conduct research and to demonstrate and advance the commercialization of cellulose-to-ethanol technology, including technology licensed from the University of Florida, and to facilitate further research and testing of multiple cellulosic feedstocks in the state.

(2) The University of Florida shall act as the owner and proprietor of the facility, which shall include a permanent research and development laboratory operated as a satellite facility of the Institute of Food and Agricultural Sciences at the University of Florida. This facility shall be used to convert the initially treated material to the final ethanol product.

(3) The facility shall be located near an industrial site with infrastructure already developed to avoid or reduce significant capital costs for waste treatment and roads, shall be served by a range of suppliers and transportation companies, and shall be in good proximity to gasoline and ethanol blending facilities on either coast of the state. The industrial site shall have the capacity to provide steam and electric power,

waste treatment, and a steady stream of feedstocks, including, but not limited to, bagasse, woody biomass, and cane field residues, to allow a commercial scale plant to operate year around.

(4) The facility shall be located near preexisting onsite technical support staff and other resources for electrical, mechanical, and instrumentation services. In addition, the facility shall have access to preexisting onsite laboratory facilities and scientific personnel and shall include the critical aspects of connecting to existing facilities and meeting construction codes and permit requirements.

(5) There shall be a scientific and technical advisory panel to advise on the technology to be applied.

(6) Ownership of all patents, copyrights, trademarks, licenses, and rights or interests shall vest in the state. The university, pursuant to s. 1004.23, Florida Statutes, shall have full right of use and full right to retain derived revenues.

(7) The Senior Vice President for the Institute of Food and Agricultural Sciences at the University of Florida shall ensure that applicable, nonproprietary research results and technologies from the plant authorized under this initiative are adapted, made available, and disseminated through its respective services, as appropriate.

(8) Within 2 years after enactment of this act, the Senior Vice President for the Institute of Food and Agricultural Sciences at the University of Florida shall submit to the President of the Senate and the Speaker of the House of

Representatives a report on the activities conducted under this section.

Section 41. (1) The Florida Energy Commission shall conduct a study in conjunction with the Florida Public Service Commission and the Department of Agriculture and Consumer Services to recommend an appropriate renewable portfolio standard for the state.

(2) The study shall include current and future availability of renewable fuels, incentives to attract large scale renewable energy development, proposed changes to current regulatory and market practices to encourage renewable energy development, the impact on utility costs and rates, environmental benefits of a renewable portfolio standard, and economic development associated with renewable energy in the state.

(3) The Florida Energy Commission shall hold public hearings on these and other related issues and submit a report containing specific recommendations to the President of the Senate and the Speaker of the House of Representatives by January 1, 2008.

Section 42. The Florida Public Service Commission shall submit to the President of the Senate and the Speaker of the House of Representatives by February 28, 2008, a report that provides a detailed description of the methods used to evaluate the conservation goals, plans, and programs of utilities subject to the Florida Energy Efficiency and Conservation Act. The commission shall compare methods and policies employed in other states that could be implemented to ensure that utilities in

this state acquire all energy efficiency resources that cost less than new electric power generation. As used in the section, the term "energy efficiency resources" means a reduction in kilowatt hours used by the existing and emerging fleet of buildings and equipment in this state that is achieved by providing incentives to producers, distributors, sellers, or consumers that promote the development of and investment in energy-efficient technologies.

Section 43. For the 2007-2008 fiscal year, the sum of $65,763 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering the Energy-Efficient Products Sales Tax Holiday.

Section 44. For the 2007-2008 fiscal year, the sum of $20 million in nonrecurring funds is appropriated from the General Revenue Fund to the University of Florida, Institute of Food and Agricultural Sciences, for the purpose of establishing a research and demonstration cellulosic ethanol plant.

Section 45. For the 2007-2008 fiscal year, the sum of $10 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding the Renewable Energy Technologies Grants Program authorized in s. 377.804, Florida Statutes.

Section 46. For the 2007-2008 fiscal year, the sum of $2.5 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding the Solar Energy System Incentives Program authorized in s. 377.806, Florida Statutes.

Section 47. For the 2007-2008 fiscal year, the sum of $40 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the purpose of funding the Farm-to-Fuel Grants Program authorized in s. 570.957, Florida Statutes.

Section 48. For the 2007-2008 fiscal year, the sum of $12.6 million in nonrecurring funds is appropriated from the General Revenue Fund to the Administrative Trust Fund of the Department of Revenue for the purpose of funding the Energy-Efficient Motor Vehicle Sales Tax Refund Program authorized in s. 212.086, Florida Statutes.

Section 49. For the 2007-2008 fiscal year, the sum of $100,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Community Affairs for the purposes of convening a workgroup to develop a model residential energy efficiency ordinance and to review the cost-effectiveness of energy efficiency measures in the construction of certain buildings.

Section 50. For the 2007-2008 fiscal year, the sum of $334,237 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Community Affairs for the purposes of developing and implementing a public awareness campaign that promotes energy efficiency and the benefits of building green.

Section 51. This act shall take effect July 1, 2007.

Rvised HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7123**

1

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Amendment

Remove line(s) 504 through 670 and insert:

Section 6. Section 255.251, Florida Statutes, is amended to read:

255.251 Energy Conservation and Sustainable ~~in~~ Buildings Act; short title.--This act shall be cited as the "Florida Energy Conservation and Sustainable ~~in~~ Buildings Act ~~of 1974~~."

Section 7. Section 255.252, Florida Statutes, is amended to read:

255.252 Findings and intent.--

(1) Operating and maintenance expenditures associated with energy equipment and with energy consumed in state-financed and leased buildings represent a significant cost over the life of a building. Energy conserved by appropriate building design not only reduces the demand for energy but also reduces costs for building operation. ~~For example, commercial buildings are estimated to use from 20 to 80 percent more energy than would be required if energy-conserving designs were used.~~ The size,

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design, orientation, and operability of windows, the ratio of ventilating air to air heated or cooled, the level of lighting consonant with space-use requirements, the handling of occupancy loads, and the ability to zone off areas not requiring equivalent levels of heating or cooling are but a few of the considerations necessary to conserving energy.

(2) Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards ~~underway by the General Services Administration, the National Institute of Standards and Technology, and others to detail the considerations and practices for energy conservation in buildings~~. Most important is that energy-efficient designs provide energy savings over the life of the building structure. ~~Conversely, energy-inefficient designs cause excess and wasteful energy use and high costs over that life.~~ With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned ~~state~~ buildings.

(3) In order that such energy-efficiency and sustainable materials considerations become a function of building design, and also a model for future application in the private sector, it shall be the policy of the state that buildings constructed and financed by the state be designed and constructed to meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, Green Building Initiative's Green Globes rating system, or a nationally recognized, high-performance green building rating system as approved by the department ~~in a manner which will minimize the consumption of energy used in the operation and~~

~~maintenance of such buildings~~. It is further the policy of the state, when economically feasible, to retrofit existing state-owned buildings in a manner that ~~which~~ will minimize the consumption of energy used in the operation and maintenance of such buildings.

(4) In addition to designing and constructing new buildings to be energy efficient ~~energy-efficient~~, it shall be the policy of the state to operate, maintain, and renovate existing state-owned ~~state~~ facilities, or provide for their renovation, in a manner that ~~which~~ will minimize energy consumption and maximize their sustainability as well as ensure that facilities leased by the state are operated so as to minimize energy use. Agencies are encouraged to consider shared savings financing of such energy projects, using contracts that ~~which~~ split the resulting savings for a specified period of time between the agency and the private firm or cogeneration contracts which otherwise permit the state to lower its energy costs. Such energy contracts may be funded from the operating budget.

(5) Each state agency must identify and compile a list of all state-owned buildings within its inventory that it determines are suitable for a guaranteed energy performance savings contract pursuant to s. 489.145. Such list shall be submitted to the Department of Management Services by December 31, 2007, and shall include any criteria used to determine suitability. The list of suitable buildings shall be developed from the list of state-owned facilities over 5,000 square feet in area and for which the agency is responsible for paying the expenses of utilities and other operating expenses as they relate to energy use. In consultation with each department

secretary or director, by March 1, 2008, the Department of Management Services shall evaluate each agency's facilities suitable for energy conservation projects and shall develop an energy efficiency project schedule based on factors such as project magnitude, efficiency and effectiveness of energy conservation measures to be implemented, and other factors that may prove to be advantageous to pursue. Such schedule shall provide the deadline for guaranteed energy performance savings contract improvements to be made to the state-owned buildings.

Section 8. Subsections (6) and (7) are added to section 255.253, Florida Statutes, to read:

255.253 Definitions; ss. 255.251-255.258.--

(6) "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 of toxic materials and waste in its design, construction, landscaping, and operation.

(7) "Sustainable building rating" means a rating established by the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, Green Building Initiative's Green Globes rating system, or a nationally recognized, high-performance green building rating system as approved by the department.

Section 9. Section 255.254, Florida Statutes, is amended to read:

255.254 No facility constructed ~~or leased~~ without life-cycle costs.--

(1) No state agency shall ~~lease,~~ construct~~,~~ or have constructed, within limits prescribed herein, a facility without

having secured from the department an ~~a proper~~ evaluation of life-cycle costs based on sustainable building ratings~~, as computed by an architect or engineer~~. Furthermore, construction shall proceed only upon disclosing, for the facility chosen, the life-cycle costs as determined in s. 255.255, its sustainable building rating goal, and the capitalization of the initial construction costs of the building. The life-cycle costs shall be a primary consideration in the selection of a building design in addition to its sustainable building rating goal. ~~Such analysis shall be required only for construction of buildings with an area of 5,000 square feet or greater.~~ For leased buildings 5,000 square feet or greater ~~areas of 20,000 square feet or greater~~ within a given building boundary, an energy performance analysis ~~a life-cycle analysis~~ shall be performed, and a lease shall only be made where there is a showing that the energy ~~life-cycle~~ costs incurred by the state are minimal compared to available like facilities.

(2) On and after January 1, 1979, no state agency shall initiate construction or have construction initiated, prior to approval thereof by the department, on a facility or self-contained unit of any facility, the design and construction of which incorporates or contemplates the use of an energy system other than a solar energy system when the life-cycle costs analysis prepared by the department has determined that a solar energy system is the most cost-efficient energy system for the facility or unit.

(3) After September 30, 1985, when any state agency must replace or supplement major items of energy-consuming equipment in existing state-owned ~~or leased~~ facilities or any self-contained unit of any facility with other major items of energy-

consuming equipment, the selection of such items shall be made on the basis of a life-cycle cost analysis of alternatives in accordance with rules promulgated by the department under s. 255.255.

Section 10. Subsection (1) of section 255.255, Florida Statutes, is amended to read:

255.255 Life-cycle costs.--

(1) The department shall promulgate rules and procedures, including energy conservation performance guidelines based on sustainable building ratings, for conducting a life-cycle cost analysis of alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in existing state-owned or leased facilities and for developing energy performance indices to evaluate the efficiency of energy utilization for competing designs in the construction of state-financed and leased facilities.

Section 11. Subsections (10) and (11) of section 287.064, Florida Statutes, are amended to read:

287.064 Consolidated financing of deferred-payment purchases.--

(10) Costs incurred pursuant to a guaranteed energy performance savings contract, including the cost of energy conservation measures, each as defined in s. 489.145, may be financed pursuant to a master equipment financing agreement; however, the costs of training, operation, and maintenance may not be financed. The period of time for repayment of the funds drawn pursuant to the master equipment financing agreement under this subsection may exceed 5 years but may not exceed 20 ~~10~~ years for energy conservation measures pursuant to s. 489.145, excluding the costs of training, operation, and maintenance. The

guaranteed energy performance savings contractor shall provide for the replacement or the extension of the useful life of the equipment during the term of the contract.

(11) For purposes of consolidated financing of deferred payment commodity contracts under this section by a state agency, the annualized amount of any such contract must be supported from available recurring funds appropriated to the agency in an appropriation category, ~~other than the expense appropriation category~~ as defined in chapter 216, that the Chief Financial Officer has determined is appropriate or that the Legislature has designated for payment of the obligation incurred under this section.

Rvised HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7123**

(2)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative Hukill offered the following:

Amendment (with title amendment)

Remove line(s) 731 through 733 and insert:

Section 15. Subsections (2), (3), (5), (6), and (7) of section 377.806, Florida Statutes, are amended to read:

377.806 Solar Energy System Incentives Program.--

(2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.--

(c) Rules.-- The Florida Public Service Commission shall adopt rules necessary to implement the provisions of this subsection, including amending current interconnection standards for solar energy systems up to 100 kilowatts and providing for net metering of solar energy systems up to 100 kilowatts as defined in this section and in accordance with current Institute of Electrical and Electronics Engineers, Inc., standards for solar energy systems.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 58 and insert:

377.806, F.S.; requiring the Florida Public Service Commission to adopt rules; revising rebate eligibility and application

Rvised E AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7123**

(3)

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Amendment (with title amendments)

Remove line(s) 731 through 777 and insert:

Section 15. Subsections (2), (3), (7), and (8) of section 377.806, Florida Statutes, are amended, and a new subsection (6) is added to such section to read:

(2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.--

(c) Application.--To be eligible to receive a rebate, applicants must file with the department a pre-application form demonstrating that the planned system will meet applicable requirements of this section. The department shall review the pre-application to determine if it complies with the requirements of this section, shall notify the applicant within 30 days of receipt of the pre-application that the pre-application has been received and meets such requirements, and shall reserve funding for the pre-application for up to 90 days following the date of issuance of notification to the applicant. Within 90 days of the purchase of the solar photovoltaic system,

the applicant must submit to the department a separate application for a rebate payment.

(3) SOLAR THERMAL SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar thermal system qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--Authorized rebates for installation of solar thermal systems shall be as follows:

1. Five hundred dollars for a residence.

2. Fifteen dollars per 1,000 Btu up to a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings. ~~Btu must be verified by approved metering equipment.~~

(6) LIMITS.--Rebates are limited to one per type of system per resident, per state fiscal year.

(7) ~~(6)~~ REBATE AVAILABILITY.--The department shall determine and publish on a regular basis the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued by the department is subject to the total amount of appropriations in any fiscal year for this program. If funds are insufficient during the current fiscal year, any requests for rebates received during that fiscal year may be processed during the following fiscal year. Requests for rebates received in a fiscal year that are processed during the following fiscal year shall be given priority over requests for rebates received during the following fiscal year.

(8) ~~(7)~~ RULES.--The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to develop ~~rebate~~ applications for rebate reservations and rebate payments and administer the issuance of rebates.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 59 through 63 and insert:
requirements for solar photovoltaic systems; requiring applicants to apply for rebate reservations and for rebate payments; limiting rebates to one per type of system, per resident, per fiscal year; providing for the distribution of rebate

Rvised HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7123**

(4)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Amendment

Remove line(s) 1130 through 1360 and insert:

Section 29. Section 489.145, Florida Statutes, is amended to read:

489.145 Guaranteed energy performance savings contracting.--

(1) SHORT TITLE.--This section may be cited as the "Guaranteed Energy Performance Savings Contracting Act."

(2) LEGISLATIVE FINDINGS.--The Legislature finds that investment in energy conservation measures in agency facilities can reduce the amount of energy consumed and produce immediate and long-term savings. It is the policy of this state to encourage agencies to invest in energy conservation measures ~~that reduce energy consumption, produce a cost savings for the agency, and improve the quality of indoor air in public facilities and to operate, maintain, and, when economically feasible, build or renovate existing agency facilities in such a manner as~~ to minimize energy consumption and maximize energy

savings. It is further the policy of this state to encourage agencies to reinvest any energy savings resulting from energy conservation measures in additional energy conservation efforts.

(3) DEFINITIONS.--As used in this section, the term:

(a) "Agency" means the state, a municipality, or a political subdivision.

(b) "Energy conservation measure" means a ~~training program,~~ facility alteration~~,~~ or an equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or energy-related operating costs and includes, but is not limited to:

1. Insulation of the facility structure and systems within the facility.

2. 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.

3. Automatic energy control systems.

4. Heating, ventilating, or air-conditioning system modifications or replacements.

5. 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.

6. Energy recovery systems.

7. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities.

8. Energy conservation measures that reduce Btu, kW, or kWh consumed or provide long-term operating cost reductions ~~or significantly reduce Btu consumed~~.

9. Renewable energy systems, such as solar, biomass, or wind systems.

10. Devices that reduce water consumption or sewer charges.

11. Storage systems, such as fuel cells and thermal storage.

12. Generating technologies, such as microturbines.

13. Any other repair, replacement, or upgrade of existing equipment.

(c) "Energy cost savings" means a measured reduction in the cost of fuel, energy consumption, and stipulated operation and maintenance created from the implementation of one or more energy conservation measures when compared with an established baseline for the previous cost of fuel, energy consumption, and stipulated operation and maintenance.

(d) "Guaranteed energy performance savings contract" means a contract for the evaluation, recommendation, and implementation of energy conservation measures or energy-related operational saving measures, which, at a minimum, shall include:

1. The design and installation of equipment to implement one or more of such measures and, if applicable, operation and maintenance of such measures.

2. The amount of any actual annual savings that meet or exceed total annual contract payments made by the agency for the contract and may include allowable cost avoidance. As used in this section, allowable cost avoidance calculations include, but are not limited to, avoided provable budgeted costs contained in

a capital replacement plan less the current undepreciated value of replaced equipment and the replacement cost of the new equipment.

3. The finance charges incurred by the agency over the life of the contract.

(e) "Guaranteed energy performance savings contractor" means a person or business that is licensed under chapter 471, chapter 481, or this chapter, and is experienced in the analysis, design, implementation, or installation of energy conservation measures through energy performance contracts.

(4) PROCEDURES.--

(a) An agency may enter into a guaranteed energy performance savings contract with a guaranteed energy performance savings contractor to ~~significantly~~ reduce energy consumption or energy-related operating costs of an agency facility through one or more energy conservation measures.

(b) Before design and installation of energy conservation measures, the agency must obtain from a guaranteed energy performance savings contractor a report that summarizes the costs associated with the energy conservation measures or energy-related operational cost saving measures and provides an estimate of the amount of the ~~energy~~ cost savings. The agency and the guaranteed energy performance savings contractor may enter into a separate agreement to pay for costs associated with the preparation and delivery of the report; however, payment to the contractor shall be contingent upon the report's projection of energy or operational cost savings being equal to or greater than the total projected costs of the design and installation of the report's energy conservation measures.

(c) The agency may enter into a guaranteed energy performance savings contract with a guaranteed energy performance savings contractor if the agency finds that the amount the agency would spend on the energy conservation or energy-related cost saving measures will not likely exceed the amount of the energy or energy-related cost savings for up to 20 years from the date of installation, based on the life cycle cost calculations provided in s. 255.255, if the recommendations in the report were followed and if the qualified provider or providers give a written guarantee that the energy or energy-related cost savings will meet or exceed the costs of the system. However, actual computed cost savings must meet or exceed the estimated cost savings provided in program approval. Baseline adjustments used in calculations must be specified in the contract. The contract may provide for installment payments for a period not to exceed 20 years.

(d) A guaranteed energy performance savings contractor must be selected in compliance with s. 287.055; except that if fewer than three firms are qualified to perform the required services, the requirement for agency selection of three firms, as provided in s. 287.055(4)(b), and the bid requirements of s. 287.057 do not apply.

(e) Before entering into a guaranteed energy performance savings contract, an agency must provide published notice of the meeting in which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose.

(f) A guaranteed energy performance savings contract may provide for financing, including tax exempt financing, by a third party. The contract for third party financing may be

separate from the energy performance contract. A separate contract for third party financing pursuant to this paragraph must include a provision that the third party financier must not be granted rights or privileges that exceed the rights and privileges available to the guaranteed energy performance savings contractor.

(g) Financing for guaranteed energy performance savings contracts may be provided under the authority of s. 287.064.

(h) The Office of the Chief Financial Officer shall review proposals to ensure that the most effective financing is being used.

(i) ~~(g)~~ In determining the amount the agency will finance to acquire the energy conservation measures, the agency may reduce such amount by the application of any grant moneys, rebates, or capital funding available to the agency for the purpose of buying down the cost of the guaranteed energy performance savings contract. However, in calculating the life cycle cost as required in paragraph (c), the agency shall not apply any grants, rebates, or capital funding.

(5) CONTRACT PROVISIONS.--

(a) A guaranteed energy performance savings contract must include a written guarantee that may include, but is not limited to the form of, a letter of credit, insurance policy, or corporate guarantee by the guaranteed energy performance savings contractor that annual energy cost savings will meet or exceed the amortized cost of energy conservation measures.

(b) The guaranteed energy performance savings contract must provide that all payments, except obligations on termination of the contract before its expiration, may be made over time, but not to exceed 20 years from the date of complete

installation and acceptance by the agency, and that the annual savings are guaranteed to the extent necessary to make annual payments to satisfy the guaranteed energy performance savings contract.

(c) The guaranteed energy performance savings contract must require that the guaranteed energy performance savings contractor to whom the contract is awarded provide a 100-percent public construction bond to the agency for its faithful performance, as required by s. 255.05.

(d) The guaranteed energy performance savings contract may contain a provision allocating to the parties to the contract any annual energy cost savings that exceed the amount of the energy cost savings guaranteed in the contract.

(e) The guaranteed energy performance savings contract shall require the guaranteed energy performance savings contractor to provide to the agency an annual reconciliation of the guaranteed energy or energy-related cost savings. If the reconciliation reveals a shortfall in annual energy or energy-related cost savings, the guaranteed energy performance savings contractor is liable for such shortfall. If the reconciliation reveals an excess in annual ~~energy~~ cost savings, the excess savings may be allocated under paragraph (d) but may not be used to cover potential energy cost savings shortages in subsequent contract years.

(f) The guaranteed energy performance savings contract must provide for payments of not less than one-twentieth of the price to be paid within 2 years from the date of the complete installation and acceptance by the agency using straight-line amortization for the term of the loan, and the remaining costs

to be paid at least quarterly, not to exceed a 20-year term, based on life cycle cost calculations.

(g) The guaranteed energy performance savings contract may extend beyond the fiscal year in which it becomes effective; however, the term of any contract expires at the end of each fiscal year and may be automatically renewed annually for up to 20 years, subject to the agency making sufficient annual appropriations based upon continued realized energy savings.

(h) The guaranteed energy performance savings contract must stipulate that it does not constitute a debt, liability, or obligation of the state.

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The Department of Management Services, with the assistance of the Office of the Chief Financial Officer, shall ~~may~~, within available resources, provide technical content assistance to state agencies contracting for energy conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy performance contracting by state agencies. The Office of the Chief Financial Officer, with the assistance of the Department of Management Services, shall ~~may, within available resources,~~ develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy performance savings contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the Office of the Chief Financial Officer for review and approval. A proposed contract or lease shall include:

(a) Supporting information required by s. 216.023(4)(a)9.

(b) Documentation supporting recurring funds requirements in ss. 287.063(5) and 287.064(11).

(c) Approval by the agency head or his or her designee.

(d) An agency measurement and verification plan to monitor costs savings.

(7) FUNDING SUPPORT.--For purposes of consolidated financing of deferred payment commodity contracts under this section by a state agency, the annualized amount of any such contract must be supported from available recurring funds appropriated to the agency in an appropriation category, as defined in chapter 216, that the Chief Financial Officer has determined is appropriate or that the Legislature has designated for payment of the obligation incurred under this section.

The Office of the Chief Financial Officer may not approve any contract submitted under this section which does not meet the requirements of this section.

Rvised

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7123**

5

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Amendment

Between line(s) 1454 and 1455 insert:

7. The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology.

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Rvised HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7123**

(6)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Amendment

Remove line(s) 1482 through 1551 and insert:

(2) As used in this section:

(a) "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blended with petroleum products as adopted by the department.

(b) "Biofuel" means E85 fuel ethanol, E10 motor fuel, biodiesel, and diesel blended fuel.

(c) "Diesel blended fuel" means a fuel mixture containing 10 percent or more biodiesel or renewable diesel fuel with the balance comprised of diesel fuel and meeting the specifications for diesel blends as adopted by the department.

(d) "E85 fuel ethanol" means ethanol blended with gasoline and formulated with a nominal percentage of 85 percent ethanol by volume and meeting the applicable fuel quality specifications as adopted by the department.

(e) "E10 motor fuel" means a motor fuel blend consisting of nominal percentages of 90 percent gasoline by volume and 10 percent ethanol by volume and meeting the fuel quality specifications for gasoline as adopted by the department.

(f) "Ethanol or fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates and meeting the specifications for fuel ethanol as adopted by the department.

(g) "Fuel dispenser" means a pump, meter, or similar device used to measure and deliver motor fuel or diesel fuel on a retail basis.

(h) "Retail dealer" means any person who is engaged in the business of selling fuel at retail at posted retail prices.

(i) "Renewable diesel fuel" means a fuel which meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency the Clean Air Act, is not a mono-alkyl ester, is intended for use in engines that are designed to run on conventional, petroleum derived diesel fuel, is derived from nonpetroleum renewable resources including, but not limited to, vegetable oils, animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater, and meets the specifications for of diesel fuel as adopted by the department.

(j) "Retail motor fuel site" means a geographic location in this state where a retail dealer sells or offers for sale motor fuel, diesel fuel, or biofuel to the general public.

(3)(a) Subject to specific appropriation, a retail dealer who sells biofuel through fuel dispensers at retail motor fuel

sites is entitled to an incentive payment which shall be computed as follows:

1. An incentive of 1 cent for each gallon of E10 motor fuel sold through a fuel dispenser.

2. An incentive of 5 cents for each gallon of E85 fuel ethanol sold through a fuel dispenser.

3. An incentive of 1 cent for each gallon of diesel blended fuel sold through a fuel dispenser.

4. An incentive of 3 cents for each gallon of biodiesel sold through a fuel dispenser.

(b) The incentive may be claimed for biofuel sold on or after January 1, 2008. Beginning in 2009, each applicant claiming an incentive under this section must first apply to the department by February 1 of each year for an allocation of the available incentive for the preceding calendar year. The department shall develop an application form. The application form shall, at a minimum, require a sworn affidavit from each retail dealer certifying the following information:

1. The name and principal address of the retail dealer.

2. The address of the retail dealer's retail motor fuel sites from which it sold biofuels during the preceding calendar year.

3. The total gallons of E10 ethanol sold through fuel dispensers.

4. The total gallons of E85 ethanol sold through fuel dispensers.

5. The total gallons of diesel blended fuel sold through fuel dispensers.

6. The total gallons of biodiesel sold through fuel dispensers.

7. Any other information deemed necessary by the department to adequately ensure that the incentive allowed under this section shall be made only to qualified Florida retail dealers.

(c) The department shall determine the amount of the incentive allowed under this section.

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Amendment No. (for drafter's use only)

Bill No. **HB 7123**

(7)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Amendment (with title amendment)

Remove line(s) 1689 through 1713 and insert:

Section 37. State fleet biodiesel usage.--

(1) By July 1, 2008, a minimum of 5 percent, by January 1, 2009, a minimum of 10 percent, and by January 1, 2010, a minimum of 20 percent of total diesel fuel purchases for use by state-owned diesel vehicles and equipment shall be biodiesel fuel (B20), subject to availability.

(2) By July 1, 2008, a minimum of 5 percent, by January 1, 2009, a minimum of 10 percent, and by January 1, 2010, a minimum of 20 percent of total fuel purchases for use by state-owned flex-fuel vehicles shall be ethanol, subject to availability.

(3) The Department of Management Services shall provide for the proper administration, implementation, and enforcement of this section.

(4) The Department of Management Services shall report to the President of the Senate and the Speaker of the House of Representatives on or before March 1, 2008, and annually

thereafter, the extent of biodiesel and ethanol use in the state fleet. The report shall contain the number of gallons purchased since July 1, 2007, the average price of biodiesel and ethanol, and a description of fleet performance.

Section 38. School district biodiesel usage.--

(1) By January 1, 2008, a minimum of 20 percent of total diesel fuel purchases for use by school districts shall be biodiesel fuel (B20), subject to availability.

(2) If a school district contracts with another government entity or private entity to provide transportation services for any of its pupils, the biodiesel blend fuel requirement established pursuant to subsection (1) shall be part of that contract. However, this requirement shall apply only to contracts entered into on or after July 1, 2007.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 161 and insert:

biodiesel purchase requirements; requiring the use of ethanol fuel in state-owned flex-fuel vehicles; establishing standards

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

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COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & budget Council

Representative(s) Allen offered the following:

Amendment (with title amendments)

Between line(s) 1820 and 1821 insert:

Section 42. (1) The Florida Energy Commission shall conduct a study in conjunction with the Florida Energy Office, the Department of Agriculture and Consumer Services, and the Public Service Commission to recommend the establishment of an energy efficiency and solar energy initiative.

(2) The study shall include recommendations for the administration, design, implementation, and on-going measurement and evaluation of programs that promote energy efficiency and conservation activities and market transformation efforts for solar energy technologies through a public benefits fund. The study shall include incentives for investment in energy efficiency and customer-sited solar energy systems, suggest changes to current regulatory and market practice to encourage solar energy and energy efficiency investment in residential and commercial applications, including standards for net metering and interconnection.

(3) The Florida Energy Commission will hold public hearings on these issues and submit a report containing specific recommendations to the President of the Senate and the Speaker of the House of Representatives by January 1, 2008.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 173 and insert:

therefor; requiring the Florida Energy Commission to conduct a study to recommend the establishment of an energy efficiency and solar energy initiative, including standards for net metering; requiring a report; requiring the Public Service Commission to

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Amendment No. (for drafter's use only)

Bill No. **HB 7123**

(9)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Amendment (with title amendment)

Between line(s) 1836 and 1837 insert:

Section 43. (1) The Florida Department of Agriculture and Consumer Services shall conduct a study in conjunction with the Florida Department of Environmental Protection and Enterprise Florida, Inc., to recommend an appropriate Florida Loan Guarantee Program for cellulosic ethanol facilities developed in the state.

(2) The Florida Department of Agriculture and Consumer Services shall submit a report containing specific recommendations to the President of the Senate and the Speaker of the House of Representatives no later than January 1, 2008.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 177 and insert:

Conservation Act; requiring the Florida Department of Agriculture and Consumer Services to conduct a study regarding

an appropriate Florida Loan Guarantee Program for cellulosic ethanol facilities; providing appropriations; providing an

Rvised HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7123**

(10)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative Allen offered the following:

Amendment (with title amendment)

Between line(s) 1836 and 1837 insert:

Section 43. The Department of Community Affairs shall convene a workgroup comprised of representatives of the Florida Building Commission, the Florida Energy Commission, the Florida Energy Office, consumers, and affected industries to identify and review new or updated energy conservation standards for products that consume electricity including, but not limited to residential pool pumps, pool heaters, spas, and commercial and residential appliances. The workgroup shall identify efficiency improvements that could be anticipated by implementation of new standards and the anticipated costs of implementing and enforcing the standards; and shall further consider methods and processes for the regular review of new standards and implementation, if warranted. The department shall report to the President of the Senate and Speaker of the House of Representatives on findings of the workgroup together with any

recommended statutory changes required to implement those findings no later than March 1, 2008.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 177 and insert:
Conservation Act; directing the Department of Community Affairs to convene a workgroup to identify and review new or updated energy conservation standards for specified products; requiring the department to identify efficiency improvements that could be anticipated by implementation of new standards and the anticipated cost of implementing and enforcing the standards; requiring a report by March 1, 2008; providing appropriations; providing an

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7123**

(11)

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Amendment

Between line(s) 1879 and 1880 insert:

Section 51. In order to implement Section 3 of this bill, there is hereby appropriated $200,000 from the General Revenue Fund to the Department of Revenue.

Section 52. In order to implement Section 7 of this bill, there is hereby appropriated $120,000 from the General Revenue Fund and one position to the Department of Management Services.

Section 53. In order to implement Section 29 of this bill, there is hereby appropriated $68,000 from the General Revenue Fund and one position to the Department of Financial Services.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7123**

(12)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill:

Representative(s) Allen offered the following:

Amendment (with title amendment)

Remove line(s) 336-387 and insert:

212.086 Energy-Efficient Motor Vehicle Sales Tax Holiday.--

(1) The energy-efficient motor vehicle sales tax holiday is established to provide financial incentives for the purchase of alternative motor vehicles as specified in this section.

(2) The sales amount below $10,000 on an alternative motor vehicle sold during the period from 12:01 a.m., October 1, through 11:59 p.m., October 31, in any year shall not be subject to the taxes levied pursuant to this chapter.

(3) For the purposes of this section, "alternative motor vehicle" means a motor vehicle that is certified by the Internal Revenue Service for the income tax credit for alternative motor vehicles under s. 30B of the Internal Revenue Code of 1986, as amended as a new qualified hybrid motor vehicle, a new qualified alternative fuel motor vehicle, a new qualified fuel cell motor vehicle, or a new advanced lean-burn technology motor vehicle.

(4) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section, including rules establishing forms and procedures for administering the exemption.

(5) This section expires July 1, 2010.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 13-19 and insert:

Vehicle Sales Tax Exemption Program; providing a sales tax exemption for the purchase of an alternative motor vehicle; specifying a time period; providing a limitation; providing eligibility requirements; requiring the department to adopt rules; providing for future repeal of the program;

Rvised

HB 7143

Rvised

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7143 PCB GEAC 07-25 Leasing of Private Property by State Agencies
SPONSOR(S): Government Efficiency & Accountability Council and Homan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	12 Y, 0 N	Strickland	Cooper
1) Policy & Budget Council		Leznoff	Hansen
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

By creating a definition of the term competitive solicitation to include invitations to negotiate, and using the term in sections 255.249 and 255.25, F.S., this bill provides for state agency use of invitations to negotiate when soliciting for leased space in privately owned buildings. An invitation to negotiate may be used only if an invitation to bid or request for proposal will not result in the best value to the state.

The bill also:

- Provides definitions for the following terms: best leasing value; responsible lessor; responsive bid, responsive proposal, and responsive reply; and responsive lessor.
- Amends and makes permanent four provisions relating to the leasing of space by state agencies that are set to expire July 1, 2007.
- Authorizes the Department of Management Services (DMS) and state agencies to contract for real estate consulting or tenant brokerage under specified circumstances.
- Requires annual submittal of a master leasing report by DMS to the Office of the Governor and Legislature setting forth the required information to be included.
- Requires DMS to create and implement a strategic leasing plan.

HB 7143 further requires state agencies to do the following:

- Annually provide a report to DMS setting forth specified information as it relates to the agencies current situation and leasing needs.
- Consult with the DMS regarding opportunities for consolidation, use of state-owned space, build-to-suit space, and potential acquisitions.
- Obtain prior approval from DMS for amendments to agency leases.

This bill includes an appropriation of $330,620 recurring and $23,630 nonrecurring funds from the Supervision Trust Fund in DMS. It also authorizes five FTEs and 272,500 of associated salary rate.

The bill takes effect July 1, 2007.

Rvised

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

According to the Department of Management Services (DMS),[1] the state leases a total of 8.4 million square feet in private sector leases with an annual rent of $140 million. Of that total, 7.3 million square feet requires competitive solicitation;[2] the annual rent for the competitively solicited leases is $119 million.[3] The total amount of leased space in the private sector is 95 percent office space and 5 percent warehouse-type space.

Leasing Provisions in Chapter 255, F.S.

Pursuant to s. 255.25(2)(a), F.S., no state agency may lease a building or any part thereof unless prior approval of the lease conditions and of the need therefore is first obtained from the DMS. Any approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department subject to final approval by the head of the DMS and s. 255.2502, F.S.

The approval of DMS, except for technical sufficiency, need not be obtained for the lease of less than 5,000 square feet of space within a privately owned building, provided the agency head or the agency head's designated representative has certified that all criteria for leasing have been fully complied with,[4] and has determined such lease to be in the best interest of the state.[5] Such a lease, which is for a term extending beyond the end of a fiscal year, is subject to the provisions of ss. 216.311, 255.2502, and 255.2503, F.S.[6]

DMS has the authority to approve leases of greater than 5,000 square feet that cover more than one fiscal year by operation of s. 255.25(3)(a), F.S.[7] Section 255.449(4)(b), F.S., requires DMS to promulgate rules providing procedures for soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings.

While DMS is responsible for prior approval of lease terms for leases over 5,000 square feet, the lease is executed between the landlord and the agency. For leases less than 5,000 square feet, approval by DMS is not necessary, except for technical sufficiency, so long as the agency head or their designee has certified compliance with applicable leasing criteria and has determined the lease is in the best interest of the state. Leases under 5,000 square feet need not be competitively bid. The terms "bids" and "proposals" are used throughout the leasing provisions of ch. 255, F.S.; the term "invitation to negotiate" does not appear in the chapter.

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[1] 2006 Annual Report

[2] Section 255.25(3)(a), F.S., requires that leases for 5,000 square feet or more may be entered only upon "advertisement for and receipt of competitive bids and award to the lowest and best bidder."

[3] The "master leases" in Tallahassee (Koger, Winewood, Northwood and Ft. Know) constitute $23.1 million annually in rent.

[4] Pursuant to s. 255.249(4)(k), F.S.

[5] Section 255.25(2)(b)

[6] Relating, respectively, to statutory provisions concerning unauthorized contracts in excess of appropriations, contingency statements in contracts which require annual appropriations, and certain prohibited provisions in contracts for the leasing of buildings.

[7] which provides that except as provided in s. 255.25(10), F.S., for emergency space needs, no state agency shall enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive bids an award to the lowest and best bidder, subject to the provisions of ss. 216.311, 255.2501, 255.2502, and 255.2503, F.S., if such lease is, in the judgment of the department, in the best interests of the state. Section 255.25(3)(a), F.S., does not apply to buildings or facilities of any size leased for the purpose of providing care and living space for persons.

Rulemaking

Chapter 60H-1 of the Florida Administrative Code contains DMS-promulgated rules relating to leases for real property; statutory authority for these rules is provided in ch. 255, F.S. In 2004, DMS added a definition to Rule 60H 1.001(13), F.A.C., that a "competitive solicitation" means an invitation to bid (ITB), a request for proposal (RFP), or an invitation to negotiate (ITN). The Joint Administrative Procedures Committee (JAPC) sent DMS an Objection Report on March 17, 2005, noting that the rule is an invalid exercise of delegated legislative authority, because it enlarges the specific provisions of s. 255.25(3)(a), F.S. JAPC deferred consideration of the rule during the 2005 legislative session when DMS suggested it would seek legislative authority for conducting lease procurements using ITNs. Though legislation was introduced during the 2004 legislative session specifically authorizing DMS to use ITNs in the leasing of space, that legislation failed to pass. During the 2005 and 2006 legislative sessions, the Legislature did not enact legislation giving agencies or DMS the authority to utilize ITNs in leasing. Pursuant to JAPC Rule 7.2, the DMS rule amendment must be placed on a future JAPC meeting agenda for a committee vote on the proposed objection. If the committee objects to the amended rule and DMS does not modify, amend, withdraw, or repeal the rule change, JAPC must file with the Department of State a notice of its objection, and the Department of State must publish in the Florida Administrative Code a reference to JAPC's objection.[8]

Invitation to Negotiate as Procurement Method

Chapter 287, F.S., governs the procurement of personal property and services. The invitation to bid (ITB) and request for proposals (RFP) have long been statutorily authorized options for executive agency procurement of commodities and contractual services. The ITN had been utilized by agencies since the '90s, pursuant to DMS rule that lacked specific authority,[9] but was only authorized during the 2001 legislative session.[10]

In procuring commodities or contractual services, an agency may utilize an ITN when it determines in writing that negotiation[11] is necessary for the state to achieve the best value.[12] After ranking the replies received in response to the ITN, the agency must select, based on the rankings, one or more vendors with which to commence negotiations. The potential vendors respond to the ITN with a competitive sealed reply. The contract must be awarded to the responsible and responsive vendor that the agency determines will provide the best value to the state.[13] Training materials from DMS suggest that ITNs offer the greatest flexibility of the three procurement methods, but are also the most complex and the most time consuming.[14]

According to DMS, for leasing procurements, the main advantage in using an ITN over an ITB or RFP is flexibility, and the maximization of competition, which are important when dealing with a unique and specialized item like real estate. Specifically, DMS believes that using an ITB or RFP would not allow for adequate flexibility to achieve best value to the state in transactions involving multiple vendors, and evaluations of tenant improvement dollars compared with rental rate.

Effect of Proposed Change:

The bill provides the following definitions relevant to authorizing DMS to utilize ITNs:

- Best leasing value means the highest overall value to the state based on objective factors that include, but are not limited to, rental rate, renewal rate, operational and maintenance costs, tenant-

[8] Section 120.545(9), F.S.
[9] See Rule 60A-1.018, F.A.C., repealed January 2, 2000
[10] Section 4, ch. 2001-278, L.O.F.
[11] Sections 287.012(17) and 287.057(3), F.S.
[12] "Best value" means, ".... The highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship." Section 287.012(4), F.S.
[13] Section 287.057(3), F.S.
[14] *Procurement Methods*, a PowerPoint presentation revised 9/6/05, located on 10/11/06 at http://dms.myflorida.com/business_operations/state_purchasing/florida_s_public_purchasing_training_and_certfication/presentations_and_materials.

improvement allowance, location, lease term, condition of facility, landlord responsibility, amenities and parking.

- Competitive solicitation means an invitation to bid, a request for proposals, or an invitation to negotiate.

The bill also requires DMS to develop and implement a strategic leasing plan to forecast space needs for all state agencies and identify cost reduction opportunities through consolidation, relocation, reconfiguration, capital investment, and the building or acquisition of state-owned space.

In addition to the information currently required to be published and submitted annually to the Executive Office of the Governor and the Legislature, the bill requires DMS to include the following in a Master Leasing Report and further requires it to include the annually updated 5-year-plan required under current statutory law:

- Financial impacts to the pool rental rate due to the sale, removal acquisition, or construction of pool facilities.
- Changes in occupancy rate, maintenance costs, and efficiency costs of leases in the state portfolio.
- Changes to occupancy costs in leased space by market and changes to space consumption by agency and market.
- An analysis of portfolio supply and demand.
- A cost-benefit analysis of acquisition, build, and consolidated opportunities, recommendations for strategic consolidation, and strategic recommendations for disposition, acquisition, and building.

The bill requires each agency to annually submit a report to DMS providing all the information regarding agency programs that affect the need for or use of space by that agency; the reviews of lease expiration schedules for each geographic area; the active and planned full-time equivalent data; the business case analyses related to consolidation plans by an agency; and the current occupancy and relocation costs.

The bill requires DMS to adopt rules for a standardized format for the submission of the annual state agency report to DMS, which must be submitted by each agency. The bill further requires the form to be certified by the agency head or the agency head's designated representative and submitted to DMS setting forth all conditions and requirements which must be met before executing the lease.

Under the bill, each agency must consult with DMS regarding opportunities for consolidation, use of state-owned space, build-to-suit space, and potential acquisitions. Additionally, the bill authorizes amendments to leases only with the approval of DMS.

The bill provides criteria for the utilization of invitations to bid, competitive sealed proposals, and competitive sealed replies as a means of competitive procurement for privately leased space. The bill provides the following requirements when utilizing these methods:

- The bid, invitation, or request must be made available simultaneously to all lessors and must include a detailed description of the space sought, the time and date for the receipt of bids or proposals and of the public opening; and all contractual terms and conditions applicable to the procurement.
- If the agency contemplates renewal of the contract, this must be included in the bid, request, or invitation.
- The reply must include the price for each year for which the contract may be renewed.

The bill specifically provides that when utilizing an invitation to bid, an agency must make its determination based upon criteria set forth in the invitation. Furthermore, the bill provides that contract must promptly provide written notice to the responsive lessor that submits the lowest responsive bid and the bid must be determined, in writing, to meet the requirements and criteria set forth in the invitation to bid.

When utilizing a competitive sealed proposal, the agency must determine in writing that the use of an invitation is not in the best interest of the state and that the leased space shall be procured by competitive

sealed proposals, under the bill. The relative importance of price and other evaluation criteria must also be indicated in the request for proposal. In evaluating the proposals, the total cost for each year as submitted by the lessor must be considered by the agency. The agency must keep in its records the documentation supporting the basis on which the award is made.

When utilizing competitive sealed replies[15] the bill requires the agency to determine in writing that the use of an invitation to bid or a request for proposals will not result in the best value to the state. The reasons why negotiation may be necessary in order for the state to achieve the best leasing value must also be set forth in writing by the agency head or his designee prior to the advertisement of an invitation to negotiate. The bill further provides that cost savings related to the agency procurement process alone are not sufficient to justify the use of an invitation to negotiate. The replies must be evaluated ranked as they relate to the criteria set forth in the invitation to negotiate and must make their selection of one or more of the lessors with which to commence negotiations based on the ranking. After negotiations have commenced, the agency must award the contract to the responsible and responsive lessor that the agency determines will provide the best leasing value to the state. The bill requires a short, plain statement that explains the basis for the selection to be included in the contract file. In determining best interests of the state, the bill requires DMS to consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities.

The bill authorizes DMS to procure a term contract for real estate consulting and brokerage services with up to three tenant brokers to serve the north, central, and south areas of the state. The awarded brokers must maintain an office or presence in the market served. Preferences must be given to brokers that are licensed in Florida and that have 3 or more years experienced in the market served. DMS must provide training for the tenant brokers concerning the rules governing the procurement of leases. The bill further provides that the tenant brokers should participate in developing the strategic leasing plan.

A state agency may use the services of a tenant broker to assist with a competitive solicitation at the sole discretion of the agency head or his or her designee, under the bill, provided that the agency consults with DMS and the broker is under a term contract with the state to offer such services. Specifically, DMS must properly procure the contract pursuant to the additional requirements set forth above and the state agency must submit the following information to DMS: the number of leases that adhere to the goal of the workspace – management initiative of 180 square feet per FTE; the quality of space leased and the adequacy of tenant-improvement funds; the timeliness of lease procurement, measured from the date of the agency's request to the finalization of the lease; whether cost-benefit analyses were performed before execution of the lease in order to ensure that the lease is in the best interest of the state; and the lease costs compared to market rates for similar types and classifications of space according to the official classifications of the Building Owners and Managers Association.

The bill prohibits an agency from entering into a lease with any landlord to which the tenant broker is providing brokerage services for that transaction. The bill further provides that the new requirements proposed by this legislation relating to the procurement of state term contracts will become effective after October 1, 2007.

The bill also provides that real estate consultants and tenant brokers shall be compensated by the state agency and the payment is subject to appropriation by the Legislature. The real estate consultant or tenant broker is prohibited, under the bill from receiving compensation from a lessor for services that are rendered under the term contract. The terms for compensation of the real estate consultant or tenant broker shall be specified in the term contract and may not be modified by the agency. The bill also requires DMS to conduct periodic customer-satisfaction surveys.

The bill amends and makes permanent the following four provisions relating to the leasing of space by state agencies that are set to expire July 1, 2007:

- The requirement that DMS annually publish a master leasing report concerning agency leases.
- The requirement that lease terms include certain specified clauses.

[15] A competitive sealed reply is a response to an ITN.

Rvised

- The requirement that DMS may not approve agency amendment of standard lease terms unless a comprehensive financial analysis demonstrates that the amendment is in the state's long-term best interest.
- The requirement that DMS annually update its plan for implementing stated legislative policy of using state-owned buildings before leasing privately owned buildings.

C. SECTION DIRECTORY:

Section 1. Amends s. 255.248, F.S., relating to definitions to be utilized in ss. 255.249, F.S., and 255.25, F.S.

Section 2. Amends s. 255.249, F.S., relating to the responsibilities of the Department of Management Services.

Section 3. Amends s. 255.25, F.S., relating to the approval required prior to construction or lease of buildings.

Section 4. Creates an appropriation in the amount of $330,620 in recurring funds and the sum of $23,630 in nonrecurring funds from the Supervision Trust Fund of the Department of Management Services.

Section 5. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The required lease clause allowing an agency to terminate a lease to occupy a state-owned building could affect the rental rates offered by landlords. A landlord, concerned the state could break a lease, may require higher rental rates to compensate for the uncertainty. The amount of difference is difficult to determine prospectively.

D. FISCAL COMMENTS:

An appropriation in the amount of $330,620 in recurring funds and $23,630 in nonrecurring funds are appropriated from the Supervision Trust Fund in the Department of Management Services to fund five full-time equivalent positions.

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Agencies could potentially incur higher lease rates relating to the clause allowing agency termination of leases to occupy state-owned buildings. Those costs are indeterminate.

Increased expenditures may result from utilizing a tenant broker on the front end, however, it is expected that the utilization of brokers should result in cost savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. It does not reduce the percentage of a state tax shared with counties or municipalities. The bill also does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DMS to adopt rules for a standardized format for the submission of the annual state agency report to DMS that is required by the bill to be submitted by each state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 28, 2007, the Government Efficiency & Accountability Council adopted three amendments which did the following:

- Corrected an error in the title.
- Provided that an agency may use the services of a tenant broker to assist with a competitive solicitation at the sole discretion of an agency head.
- Provided that the new requirements relating to the procurement of state term contracts for real estate consulting and brokerage services will become effective after October 1, 2007.
- Clarified that when procurement is sought by the use of an invitation to bid, a contract must be awarded by written notice to the responsive lessor that submits the lowest responsive bid.

A bill to be entitled

An act relating to the leasing of private property by state agencies; amending s. 255.248, F.S.; providing definitions; amending s. 255.249, F.S.; requiring the Department of Management Services to develop and implement a strategic leasing plan; requiring the department to annually publish a master leasing report containing certain information; removing the expiration of provisions requiring that the department annually report to the Governor and the Legislature certain information concerning leases that are due to expire and amendments and supplements to and waivers of the terms and conditions of lease agreements; requiring each agency to annually provide specified information to the department; requiring that the department adopt certain rules; removing the expiration of provisions requiring that certain specified clauses be included in the terms and conditions of a lease; authorizing the department to contract for real estate consulting or tenant brokerage services for specified purposes; exempting certain funds from certain charges; amending s. 255.25, F.S.; requiring each agency to consult with the department regarding specified leasing opportunities; requiring the agency to initiate a competitive solicitation or lease renewal under certain circumstances; requiring prior approval by the department for amendments to current leases; removing the expiration of provisions requiring that the department approve the terms of a lease by a state agency; requiring an analysis

if the department approves an amendment or supplement to or waiver of a term or condition of a lease agreement; prohibiting a state agency from entering into certain leases of space in a privately owned building; providing exceptions; providing requirements for the use of invitations to bid, requests for proposals, and invitations to negotiate; providing criteria for awarding contracts; providing criteria for protesting an agency decision or intended decision pertaining to a competitive solicitation for leased space; providing criteria for the department to use when determining the state's best interest and when approving leases of 5,000 square feet or more; authorizing state agencies to use the services of a tenant broker under specified circumstances; authorizing the department to procure a state term contract for real estate consulting and brokerage services; removing the expiration of provisions providing legislative intent with respect to the use of state-owned buildings; requiring that the department create a plan for fully using such buildings before leasing private buildings; requiring an annual report to the Legislature and the Governor; providing appropriations and authorizing positions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 255.248, Florida Statutes, is amended to read:

255.248 Definitions; ss. 255.249 and 255.25.--As ~~The following definitions shall apply when~~ used in ss. 255.249 and 255.25, the term:

(1) "Best leasing value" means the highest overall value to the state based on objective factors that include, but are not limited to, the rental rate, the renewal rate, operational and maintenance costs, any tenant-improvement allowance, location, the lease term, the condition of the facility, landlord responsibility, amenities, and parking.

(2) "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate.

(3) "Department" means the Department of Management Services.

(4) "Privately owned building" means any building not owned by a governmental agency.

(5) "Responsible lessor" means a lessor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will ensure good faith performance.

(6) "Responsive bid," "responsive proposal," or "responsive reply" means a bid, proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation.

(7) "Responsive lessor" means a lessor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

(8) ~~(1) The term~~ "State-owned office building" means any building title to which is vested in the state and which is used

by one or more executive agencies predominantly for administrative direction and support functions. This term excludes:

(a) District or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed.

(b) All educational facilities and institutions under the supervision of the Department of Education.

(c) All custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state.

(d) Buildings or spaces used for legislative activities.

(e) Buildings purchased or constructed from agricultural or citrus trust funds.

~~(2) The term "privately owned building" shall mean any building not owned by a governmental agency.~~

Section 2. Subsections (1), (3), (4), and (5) of section 255.249, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

255.249 Department of Management Services; responsibility; department rules.--

(1) The department ~~of Management Services~~ shall have responsibility and authority for the custodial and preventive maintenance, repair, and allocation of space of all buildings in the Florida Facilities Pool and the grounds located adjacent thereto.

(3)(a) The department shall, to the extent feasible, coordinate the vacation of privately owned leased space with the

expiration of the lease on that space and, when a lease is terminated before expiration of its base term, will make a reasonable effort to place another state agency in the space vacated. Any state agency may lease the space in any building that was subject to a lease terminated by a state agency for a period of time equal to the remainder of the base term without the requirement of competitive bidding.

(b) The department shall develop and implement a strategic leasing plan. The strategic leasing plan shall forecast agency space needs for all state agencies and identify opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the building or acquisition of state-owned space.

(c) ~~(b)~~ Beginning fiscal year 2008-2009, the department shall annually publish a master leasing report ~~that lists, by agency, all leases that are due to expire within 24 months. The annual report must include the following information for each lease: location; size of leased space; current cost per leased square foot; lease expiration date; and a determination of whether sufficient state owned office space will be available at the expiration of the lease to house affected employees. The report must also include a list of amendments and supplements to and waivers of terms and conditions in lease agreements that have been approved pursuant to s. 255.25(2)(a) during the previous 12 months and an associated comprehensive analysis, including financial implications, showing that any amendment, supplement, or waiver is in the state's long term best interest~~. The department shall furnish the master leasing ~~this~~ report to

the Executive Office of the Governor and the Legislature by September 15 of each year, which provides the following information:

1. A list, by agency and by geographic market, of all leases that are due to expire within 24 months.

2. Details of each lease, including the location, size, cost per leased square foot, and lease-expiration date and a determination of whether sufficient state-owned office space will be available at the expiration of the lease to accommodate affected employees.

3. A list of amendments and supplements to and waivers of terms and conditions in lease agreements that have been approved pursuant to s. 255.25(2)(a) during the previous 12 months and an associated comprehensive analysis, including financial implications, showing that any amendment, supplement, or waiver is in the state's long-term best interest.

4. Financial impacts to the pool rental rate due to sale, removal, acquisition, or construction of pool facilities.

5. Changes in occupancy rate, maintenance costs, and efficiency costs of leases in the state portfolio; changes to occupancy costs in leased space by market; and changes to space consumption by agency and by market.

6. An analysis of portfolio supply and demand.

7. Cost-benefit analyses of acquisition, build and consolidation opportunities, recommendations for strategic consolidation, and strategic recommendations for disposition, acquisition, and build.

(d) On or before June 30 of each year, each state agency shall provide to the department all information regarding agency programs affecting the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, business case analyses related to consolidation plans by an agency, and current occupancy and relocation costs, inclusive of furnishings, fixtures and equipment, data, and communications. ~~This paragraph expires July 1, 2007.~~

(4) The department shall adopt ~~promulgate~~ rules pursuant to chapter 120 providing:

(a) Methods for accomplishing the duties outlined in subsection (1).

(b) Procedures for soliciting and accepting competitive solicitations ~~proposals~~ for leased space of 5,000 square feet or more in privately owned buildings, for evaluating the proposals received, for exemption from competitive solicitations ~~bidding~~ requirements of any lease the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), and for the securing of at least three documented quotes for a lease that is not required to be competitively solicited ~~bid~~.

(c) A standard method for determining square footage or any other measurement used as the basis for lease payments or other charges.

(d) Methods of allocating space in both state-owned office buildings and privately owned buildings leased by the state based on use, personnel, and office equipment.

(e)1. Acceptable terms and conditions for inclusion in lease agreements.

2. Such terms and conditions shall include, at a minimum, the following clauses, which may not be amended, supplemented, or waived:

a. As provided in s. 255.2502, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

b. "The Lessee shall have the right to terminate, without penalty, this lease in the event a State-owned building becomes available to the Lessee for occupancy ~~in the County of _____, Florida, during the term of said lease for the purposes for which this space is being leased~~ upon giving 6 months' advance written notice to the Lessor by Certified Mail, Return Receipt Requested."

~~This subparagraph expires July 1, 2007.~~

(f) Maximum rental rates, by geographic areas or by county, for leasing privately owned space.

(g) A standard method for the assessment of rent to state agencies and other authorized occupants of state-owned office space, notwithstanding the source of funds.

(h) For full disclosure of the names and the extent of interest of the owners holding a 4-percent or more interest in any privately owned property leased to the state or in the entity holding title to the property, for exemption from such disclosure of any beneficial interest which is represented by stock in any corporation registered with the Securities and

Exchange Commission or registered pursuant to chapter 517, which stock is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(i) For full disclosure of the names of all public officials, agents, or employees holding any interest in any privately owned property leased to the state or in the entity holding title to the property, and the nature and extent of their interest, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517, which stock is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(j) A method for reporting leases for nominal or no consideration.

(k) For a lease of less than 5,000 square feet, a method for certification by the agency head or the agency head's designated representative that all criteria for leasing have been fully complied with and for the filing of a copy of such lease and all supporting documents with the department for its review and approval as to technical sufficiency.

(l) A standardized format for state agency reporting of the information required by paragraph (3)(d).

(5) The department ~~of Management Services~~ shall prepare a form listing all conditions and requirements adopted pursuant to this chapter which must be met by any state agency leasing any

building or part thereof. Before executing any lease, this form shall be certified by the agency head or the agency head's designated representative and submitted to the department.

(6) The department may contract for real estate consulting or tenant brokerage services in order to carry out its duties relating to the strategic leasing plan. The contract shall be procured pursuant to s. 287.057. The vendor that is awarded the contract shall be compensated by the department, subject to the provisions of the contract, with such compensation being subject to appropriation by the Legislature. The real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered pursuant to the contract. Moneys paid to the real estate consultant or tenant broker are exempt from any charge imposed under s. 287.1345. Moneys paid by a lessor to the department under a facility-leasing arrangement are not subject to the charges imposed under s. 215.20.

Section 3. Subsections (1), (2), (3), (4), and (8) of section 255.25, Florida Statutes, are amended to read:

255.25 Approval required prior to construction or lease of buildings.--

(1)(a) A ~~No~~ state agency may not lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the department ~~of Management Services~~.

(b) During the term of existing leases, each agency shall consult with the department regarding opportunities for consolidation, use of state-owned space, build-to-suit space,

and potential acquisitions; shall monitor market conditions; and shall initiate a competitive solicitation or, if appropriate, lease-renewal negotiations for each lease held in the private sector to effect the best overall lease terms reasonably available to that agency. With prior approval of the department, amendments to leases may be permitted to modify any lease provisions or any other terms or conditions, except to the extent specifically prohibited by this chapter. The department ~~of Management Services~~ shall serve as a mediator in lease-renewal negotiations ~~lease renegotiations~~ if the agency and the lessor are unable to reach a compromise within 6 months after ~~of~~ renegotiation and if either the agency or lessor requests the ~~Department of Management Services'~~ intervention by the department.

(c) When specifically authorized by the Appropriations Act and in accordance with s. 255.2501, if applicable, the Department of Management Services may approve a lease-purchase, sale-leaseback, or tax-exempt leveraged lease contract or other financing technique for the acquisition, renovation, or construction of a state fixed capital outlay project when it is in the best interest of the state.

(2)(a) Except as provided in s. 255.2501, a ~~no~~ state agency may not lease a building or any part thereof unless prior approval of the lease conditions and of the need therefor is first obtained from the department ~~of Management Services~~. Any approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are

established by the department subject to final approval by the head of the department ~~of Management Services~~ and s. 255.2502.

(b) The approval of the department ~~of Management Services~~, except for technical sufficiency, need not be obtained for the lease of less than 5,000 square feet of space within a privately owned building, provided the agency head or the agency head's designated representative has certified compliance with applicable leasing criteria as may be provided pursuant to s. 255.249(4)(k) and has determined such lease to be in the best interest of the state. Such a lease which is for a term extending beyond the end of a fiscal year is subject to the provisions of ss. 216.311, 255.2502, and 255.2503.

(c) The department ~~of Management Services~~ shall adopt as a rule uniform leasing procedures for use by each state agency other than the Department of Transportation. Each state agency shall ensure that the leasing practices of that agency are in substantial compliance with the uniform leasing rules adopted under this section and ss. 255.249, 255.2502, and 255.2503.

(d) Notwithstanding paragraph (a) and except as provided in ss. 255.249 and 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease terms and conditions and of the need therefor is first obtained from the department ~~of Management Services~~. The department may not approve any term or condition in a lease agreement which has been amended, supplemented, or waived unless a comprehensive analysis, including financial implications, demonstrates that such amendment, supplement, or waiver is in the state's long-term best interest. Any approved lease may include an option to

purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department subject to final approval by the head of the department ~~of Management Services~~ and the provisions of s. 255.2502. ~~This paragraph expires July 1, 2007.~~

(3)(a) Except as provided in subsection (10), a ~~no~~ state agency may not ~~shall~~ enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations ~~bids and award to the lowest and best bidder~~.

1.a. An invitation to bid shall be made available simultaneously to all lessors and must include a detailed description of the space sought; the time and date for the receipt of bids and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining acceptability of the bid. If the agency contemplates renewal of the contract, that fact must be stated in the invitation to bid. The bid must include the price for each year for which the contract may be renewed. Evaluation of bids shall include consideration of the total cost for each year as submitted by the lessor. Criteria that were not set forth in invitation to bid may not be used in determining acceptability of the bid.

b. The contract shall be awarded with reasonable promptness by written notice to the responsible and responsive lessor that submits the lowest responsive bid. This bid must be determined in writing to meet the requirements and criteria set forth in the invitation to bid.

2.a. If an agency determines in writing that the use of an invitation to bid is not practicable, leased space shall be procured by competitive sealed proposals. A request for proposals shall be made available simultaneously to all lessors and must include a statement of the space sought; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria, which must include, but need not be limited to, price, to be used in determining acceptability of the proposal. The relative importance of price and other evaluation criteria shall be indicated. If the agency contemplates renewal of the contract, that fact must be stated in the request for proposals. The proposal must include the price for each year for which the contract may be renewed. Evaluation of proposals shall include consideration of the total cost for each year as submitted by the lessor.

b. The contract shall be awarded to the responsible and responsive lessor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the other criteria set forth in the request for proposals. The contract file must contain documentation supporting the basis on which the award is made.

3.a. If the agency determines in writing that the use of an invitation to bid or a request for proposals will not result in the best value to the state, the agency may procure leased space by competitive sealed replies. The agency's written determination must specify reasons that explain why negotiation may be necessary in order for the state to achieve the best

leasing value and must be approved in writing by the agency head or his or her designee prior to the advertisement of an invitation to negotiate. Cost savings related to the agency procurement process are not sufficient justification for using an invitation to negotiate. An invitation to negotiate shall be made available to all lessors simultaneously and must include a statement of the space sought; the time and date for the receipt of replies and of the public opening; and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If the agency contemplates renewal of the contract, that fact must be stated in the invitation to negotiate. The reply must include the price for each year for which the contract may be renewed.

b. The agency shall evaluate and rank responsive replies against all evaluation criteria set forth in the invitation to negotiate and shall select, based on the ranking, one or more lessors with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive lessor that the agency determines will provide the best leasing value to the state. The contract file must contain a short, plain statement that explains the basis for lessor selection and sets forth the lessor's deliverables and price pursuant to the contract and an explanation of how these deliverables and price provide the best leasing value to the state.

(b) The department ~~of Management Services~~ shall have the authority to approve a lease for 5,000 square feet or more of space that covers more than 1 fiscal year, subject to the

provisions of ss. 216.311, 255.2501, 255.2502, and 255.2503, if such lease is, in the judgment of the department, in the best interests of the state. In determining best interest, the department shall consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities. This paragraph does not apply to buildings or facilities of any size leased for the purpose of providing care and living space for persons.

(c) ~~(b)~~ The department ~~of Management Services~~ may approve extensions of an existing lease of 5,000 square feet or more of space if such extensions are determined to be in the best interests of the state, but in no case shall the total of such extensions exceed 11 months. If at the end of the 11th month an agency still needs that space, it shall be procured by competitive bid in accordance with s. 255.249(4)(b). However, an agency that determines that it is in its best interest to remain in the space it currently occupies may negotiate a replacement lease with the lessor if an independent comparative market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. A present-value analysis and the consumer price index shall be used in the calculation of lease costs. The term of the replacement lease may not exceed the base term of the expiring lease.

(d) ~~(c)~~ Any person who files an action protesting a decision or intended decision pertaining to a competitive solicitation ~~bid~~ for space to be leased by the agency pursuant

to s. 120.57(3)(b) shall post with the state agency at the time of filing the formal written protest a bond payable to the agency in an amount equal to 1 percent of the estimated total rental of the basic lease period or $5,000, whichever is greater, which bond shall be conditioned upon the payment of all costs which may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the agency prevails after completion of the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges that ~~which~~ shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him or her. If the person protesting the award prevails, the bond shall be returned to that person and he or she shall recover from the agency all costs and charges which shall be included in the final order of judgment, excluding attorney's fees.

(e) ~~(d)~~ The agency and the lessor, when entering into a lease for 5,000 or more square feet of a privately owned building, shall, before the effective date of the lease, agree upon and separately state the cost of tenant improvements which may qualify for reimbursement if the lease is terminated before the expiration of its base term. The department shall serve as mediator if the agency and the lessor are unable to agree. The amount agreed upon and stated shall, if appropriated, be amortized over the original base term of the lease on a straight-line basis.

(f) ~~(e)~~ The unamortized portion of tenant improvements, if appropriated, shall ~~will~~ be paid in equal monthly installments over the remaining term of the lease. If any portion of the original leased premises is occupied after termination but during the original term by a tenant that does not require material changes to the premises, the repayment of the cost of tenant improvements applicable to the occupied but unchanged portion shall be abated during occupancy. The portion of the repayment to be abated shall be based on the ratio of leased space to unleased space.

(g) Notwithstanding s. 287.056(1), a state agency may, at the sole discretion of the agency head or his or her designee, use the services of a tenant broker to assist with a competitive solicitation undertaken by the agency. In making its determination whether to use a tenant broker, a state agency shall consult with the department. After October 1, 2007, a state agency may not use the services of a tenant broker unless the tenant broker is under a term contract with the state which complies with paragraph (h). If a state agency uses the services of a tenant broker with respect to a transaction, the agency may not enter into a lease with any landlord to which the tenant broker is providing brokerage services for that transaction.

(h) The department may, pursuant to s. 287.042(2)(a), procure a term contract for real estate consulting and brokerage services. A state agency may not purchase services from the contract unless the contract has been procured under s. 287.057(1), (2), or (3) and contains the following provisions or requirements:

1. Awarded brokers must maintain an office or presence in the market served. In awarding the contract, preference must be given to brokers that are licensed in this state under chapter 475 and that have 3 or more years of experience in the market served. The contract may be made with up to three tenant brokers in order to serve the marketplace in the north, central, and south areas of the state.

2. Each contracted tenant broker shall work under the direction, supervision, and authority of the state agency, subject to the rules governing lease procurements.

3. The department shall provide training for the awarded tenant brokers concerning the rules governing the procurement of leases.

4. Tenant brokers should participate in developing the strategic leasing plan.

5. Tenant brokers must comply with all applicable provisions of s. 475.278.

6. Real estate consultants and tenant brokers shall be compensated by the state agency, subject to the provisions of the term contract, and such compensation is subject to appropriation by the Legislature. A real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered under the term contract. Moneys paid to a real estate consultant or tenant broker are exempt from any charge imposed under s. 287.1345. Moneys paid by a lessor to the state agency under a facility leasing arrangement are not subject to the charges imposed under s. 215.20. All terms relating to the compensation of the real

estate consultant or tenant broker shall be specified in the term contract and may not be supplemented or modified by the state agency using the contract.

(i) The department shall conduct periodic customer-satisfaction surveys.

(j) Each state agency shall report the following information to the department:

1. The number of leases that adhere to the goal of the workspace-management initiative of 180 square feet per FTE.

2. The quality of space leased and the adequacy of tenant-improvement funds.

3. The timeliness of lease procurement, measured from the date of the agency's request to the finalization of the lease.

4. Whether cost-benefit analyses were performed before execution of the lease in order to ensure that the lease is in the best interest of the state.

5. The lease costs compared to market rates for similar types and classifications of space according to the official classifications of the Building Owners and Managers Association.

(4)(a) The department ~~of Management Services~~ shall not authorize any state agency to enter into a lease agreement for space in a privately owned building when suitable space is available in a state-owned building located in the same geographic region, except upon presentation to the department of sufficient written justification, acceptable to the department, that a separate space is required in order to fulfill the statutory duties of the agency making such request. The term

"state-owned building" as used in this subsection means any state-owned facility regardless of use or control.

(b) State agencies shall cooperate with local governmental units by using suitable, existing publicly owned facilities, subject to the provisions of ss. 255.2501, 255.2502, and 255.2503. Agencies may utilize unexpended funds appropriated for lease payments to:

1. Pay their proportion of operating costs.

2. Renovate applicable spaces.

(c) Because the state has a substantial financial investment in state-owned buildings, it is legislative policy and intent that when state-owned buildings meet the needs of state agencies, agencies must fully use such buildings before leasing privately owned buildings. By September 15, 2006, the Department of Management Services shall create a 5-year plan for implementing this policy. The department shall update this plan annually, detailing proposed departmental actions to meet the plan's goals. The department shall furnish this plan to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor by September 15 of each year, as part of the master leasing report. ~~This paragraph expires July 1, 2007.~~

(8) An ~~No~~ agency may not ~~shall~~ enter into more than one lease for space in the same privately owned facility or complex within any 12-month period except upon competitive ~~the~~ solicitation ~~of competitive bids~~.

Section 4. For the 2007-2008 fiscal year, the sum of $330,620 in recurring funds and the sum of $23,630 in

nonrecurring funds are appropriated from the Supervision Trust Fund in the Department of Management Services. Five full-time equivalent positions with the associated salary rate of 272,500 are authorized for the purpose of providing strategic planning of leasing transactions for the state.

Section 5. This act shall take effect July 1, 2007.

Rvised

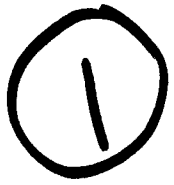
E AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7143**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____



Council/Committee hearing bill: Policy & Budget Council

Representative Attkisson offered the following:

Amendment (with title amendment)

Between lines 583 and 584, insert:

Section 4. In order to provide for an orderly transition and implementation of the leasing process and notwithstanding any provision of this act to the contrary, no contract between the Department of Management Services and any tenant broker entered into prior to January 1, 2007, shall be abrogated by the operation of this act. A tenant broker commencing any leasing transaction pursuant to the contract between the department and the tenant broker ending October 15, 2007, resulting in the execution of a lease subsequent to the effective date of this act shall be compensated under the terms of the contract.

========== T I T L E A M E N D M E N T ==========

Between lines 49 and 50, insert:

providing that no contract between the department and any tenant broker entered into prior to January 1, 2007, shall be abrogated

by the operation of this act; providing compensation for certain tenant brokers;

Rvised

PCB PBC 07-09

Rvised

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PBC 07-09 Assessment of Homestead
SPONSOR(S): Policy & Budget Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Policy & Budget Council		Diez-Arguelles	Hansen MPH
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This House Joint Resolution (HJR), if approved by the voters, will allow homeowners to transfer the accumulated benefit they have received from the Save Our Homes amendment to a new homestead established within one year of vacating the old homestead. This benefit is referred to as the "Save Our Homes differential" and is the difference between the homestead property's just value (i.e., fair market value) as determined by the Property Appraiser and the property's assessed value. The ability to transfer the Save Our Homes differential is commonly referred to as Save Our Homes "portability".

The HJR provides that when a homeowner establishes a new homestead within a year of selling, or transferring a homestead property, or within a year of vacating a prior homestead, the newly established homestead shall be assessed at less than just value, as provided by general law. The difference between the new homestead's just value and its assessed value may not exceed the amount of the differential that existed in the previous homestead. Also, the amount of the differential that can be transferred is limited to the amount necessary to reduce the assessed value of the new property to an amount equal to the assessed value of the old property. A homeowner who establishes a new homestead with an assessed value that is equal to or lower than the assessed value of the previous homestead will not be able to transfer any differential amount.

The Revenue Estimating Conference has not considered this issue this year.

Staff estimates that the provisions of this HJR will reduce statewide taxable value from levels that otherwise would have occurred over the next five years by the amounts shown in the following table. Assuming current millage rates, this reduction in taxable value would result in tax collections being reduced by the amounts shown below.

YEAR	TAXABLE VALUE REDUCTION	TAXES @ 18.46 mills
2009	$11.8 billion	$218.1 million
2010	$25.1 billion	$464.4 million
2011	$39.7 billion	$733.1 million
2012	$55.6 billion	$1,026.0 million
2013	$72.918 billion	$1, 346.0 million

If PCB PBC 07-10 is approved by the legislature, the HJR will be placed before the voters at a special election in November, 2007, and will take effect in January, 2008.

Rvised

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower taxes: The provisions of this HJR will allow homeowners to move to a new homestead and receive a lower assessment for property tax purposes than under current law, thereby reducing the amount of property taxes they would otherwise pay.

Empower families: A number of Floridians have stated that they cannot move to another home, because of the increase in taxes that will occur when they move. The provisions of this HJR will remove that impediment.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Save Our Homes

In 1992, Florida voters approved an amendment to s. 4, Art. VII of the State Constitution which is popularly known as the Save Our Homes amendment. Beginning with the 1994 tax roll, this amendment limited the annual increase in assessments of homestead property to the increase in the Consumer Price Index or 3 percent, whichever is lower. The Save Our Homes limitation first applied to the January 1, 1995 assessment.

After any change in ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year. Thereafter the property is subject to the Save Our Homes assessment limitation. New homestead property must be assessed at just value as of January 1 of the first year the property owner establishes homestead. Thereafter the property is subject to the Save Our Homes assessment limitation. Changes, additions, reductions, and improvements to homestead property are assessed as provided by general law, but after its initial assessment this property is subject to the Save Our Homes assessment limitation. If homestead status is terminated the property is assessed at just value.

Purpose of the Save Our Homes Amendment

In *Smith v. Welton*,[1] the First District Court of Appeal said:

> The purpose of the amendment is to encourage the preservation of homestead property in face of ever increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption, exemption from forced sale, and the inheritance and alienation of homestead.

Impact of Save Our Homes

In the twelve years since Save Our Homes first limited the assessment of homestead property, its impact on the assessed value of this property has far exceeded the original expectations of such impact. In 1997, the second year of assessment limitations, Save Our Homes reduced the statewide assessed value of homestead property by 3 percent. In 2006, Save Our Homes reduced homestead

[1] 710 So. 2d 135, 137 (Fla. App. 1998)

just value by more than 38 percent. The $405 billion reduction from Save Our Homes in 2006 equals approximately 25 percent of total taxable value.

Homestead Exemption

Subsection 6(a), Art. VII of the Florida Constitution provides that every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation up to the assessed value of five thousand dollars. Subsection 6(b) provides that only one exemption shall be allowed to any individual or family unit. Subsections 6(c) and (d) provide that under certain conditions the homestead exemption is $25,000, which is, in fact, the effective homestead exemption. Subsection (f) provides that, by local option, an additional homestead exemption of up to $50,000 is available to low-income seniors, and subsection (g) provides an ad valorem tax discount for homestead property owned by disabled veterans who were Florida residents at the time they entered military service.

In 2006 there were 4,368,937 homesteads in Florida, and the homestead exemption reduced the 2006 tax roll by $108.9 billion.

PROPOSED CHANGES

This HJR, if approved by the voters, would allow homeowners to transfer the accumulated benefit they have received from the Save Our Homes Amendment to a new homestead established within one year of vacating the old homestead. This benefit is referred to as the "Save Our Homes differential") and is the difference between the homestead property's just value as determined by the Property Appraiser and the property's assessed value. The ability to transfer the Save Our Homes differential is commonly referred to as Save Our Homes "portability".

The HJR provides that when a homeowner establishes a new homestead within a year of selling, or transferring a homestead property, or within a year of vacating a prior homestead, the newly established homestead shall be assessed at less than just value, as provided by general law. The difference between the new homestead's just value and its assessed value may not exceed the amount of the differential that existed in the previous homestead. Also, the amount of the differential that can be transferred is limited to the amount that will reduce the assessed value of the new property to an amount equal to the assessed value of the old property. A homeowner who establishes a new homestead with an assessed value that is equal to or lower than the assessed value of the previous homestead will not be able to transfer any differential amount.

Three examples using a home with a just value of $500,000 and $300,000 assessed value (a $200,000 Save Our Homes differential) follow:

(1) If the homeowner establishes a new homestead with a just value of $500,000, the just value of the new home will be reduced by $200,000 to establish an assessed value of $300,000.

(2) If the homeowner establishes a new homestead with a just value of $400,000, the assessed value of the new home will be $300,000. In this instance the homeowner could only used $100,000 of the differential.

(3) If the homeowner establishes a new homestead with a just value of $250,000, the assessed value of the new home will be $250,000. Because the assessed value of the new homestead is lower than the assessed value of the previous homestead, the homeowner could not use any of the differential.

C. SECTION DIRECTORY:

Not applicable to Joint Resolutions

Rvised

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has not considered this issue this year.

   The provision of the HJR will have the effect of reducing the statewide taxable value of property from levels that would otherwise have occurred, thereby reducing the amount of revenue that can be raised at a given millage rate. To the extent that a taxing authority is at its millage cap, the taxing authority's revenues will be lower than under current law.

   Staff estimates that the provisions of this HJR will reduce statewide taxable value over the next five years by the amounts shown in the following table. Assuming current millage rates, this reduction in taxable value would result in tax collections being reduced by the amounts shown below.

YEAR	TAXABLE VALUE REDUCTION	TAXES @ 18.46 mills
2009	$11.8 billion	$218.1 million
2010	$25.1 billion	$464.4 million
2011	$39.7 billion	$733.1 million
2012	$55.6 billion	$1,026.0 million
2013	$72.918 billion	$1, 346.0 million

   If future millage rates are reduced by other legislative action, the tax impacts shown above will be lower.

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners who move to another house which becomes their homestead will pay lower taxes in their new home than they otherwise would have.

D. FISCAL COMMENTS:

A number of Floridians have stated that they cannot move to another home, because of the increase in taxes that will occur when they move. This situation has been referred to as the "lock-in effect." The provisions of this HJR will remove that impediment.

Removing the lock-in effect will have a positive indeterminate impact on state revenues from real estate related transactions.

Rvised

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to Joint resolutions

2. Other:

In 2006, the Office of Economic and Demographic Research (EDR) contracted with Walter Hellerstein, W. Scott Wright and Charles C. Kearns of Sutherland Asbill & Brennan LLP for a legal analysis of the most commonly referenced legislative proposals regarding property taxes. The analysis focused primarily on the federal constitutional issues raised by proposed alternatives to the Save Our Homes that were filed during the 2006 legislative session.[2]

The analysis concludes that portability may provide opportunities for legal challenges based on federal constitutional grounds under the Commerce Clause, the "Interstate" Privileges and Immunities Clause, and the Right to Travel. The last paragraph of the portability analysis concludes as follows:

> "First, the scope of the favoritism for long-term over newly arrived residents is much broader under the portability provisions than under the existing Save Our Homes assessment limitation because the favored class includes a much broader class of long-term residents, namely, all long-term homestead owners including those who have acquired new homesteads through intrastate moves. Second, the magnitude of the favoritism for long-term over newly arrived residents is much greater under the portability provisions than under the existing Save Our Homes assessment limitation, because the aggregate amount of relative underassessment for long-term residents increases as they carry their preexisting assessment limitation benefit from homestead to homestead. As a consequence, newly arrived homestead owners will have relatively greater property tax burdens as compared to long-term homestead owners under portability than under the existing Save Our Homes assessment limitation. Third, the portability provisions by their very nature are more closely tied to the status of a *person* as a resident rather than to the status of the property as a homestead. In effect, long-term resident homestead owners are given personal rights to tax reduction that they may carry with them wherever they move in Florida whereas newly arrived residents have no such personal rights. In our judgment, all of these factors provide substantial grounds for distinguishing the portability provisions from the existing Save Our Homes assessment limitation on right to travel grounds, and they suggest why a right to travel challenge to the existing Save Our Homes assessment limitation would be considerably more difficult than a similar challenge to the portability provisions."

If portability is adopted and later held to be unconstitutional, the discrimination or burden it creates will have to be eliminated on a prospective basis and may have to be remedied through meaningful backward-looking relief on a retrospective basis. This relief could entail either a refund or any other remedy that cures the discrimination, e.g., taxing the previously favored class on a retroactive basis.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

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[2] The analysis is included as Appendix B to Florida's Property Tax Study Interim Report, Legislative Office of Economic and Demographic Research, February 15, 2007, and can be found at:
http://edr.state.fl.us/property%20tax%20study/Ad%20Valorem%20iterim%20report.pdf

Rvised

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII of the State Constitution to provide an additional circumstance for assessing homestead property at less than just value.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 4 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective

date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided herein.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8) When a person sells or transfers his or her homestead property within this state or ceases to maintain his or her permanent residence on that property and within one year establishes another property as his or her homestead, the newly established homestead property shall be initially assessed at less than just value, as provided by general law. The difference between the new homestead property's just value and its assessed value in the first year the homestead is established may not exceed the difference between the previous homestead's just value and its assessed value in the year of sale, and the assessed value of the new homestead must equal or exceed the assessed value of the previous homestead. Thereafter, the homestead shall be assessed as provided herein.

(d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(e) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or

reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 4

HOMESTEAD PROPERTY ASSESSMENTS.--Proposing an amendment to the State Constitution to provide for assessing at less than just value property purchased within one year after a sale or transfer of homestead property and established as new homestead property, limited by the difference between the new homestead property's just value and its assessed value in the first year the homestead is established not exceeding the difference between the previous homestead's just value and its assessed value in the year of sale and the new homestead property's assessed value equaling or exceeding the old homestead property's assessed value.

Rvised

PCB PBC 07-10

Rvised

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PBC 07-10 Special Election
SPONSOR(S): Policy & Budget Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Policy & Budget Council		Diez-Arguelles	Hansen
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Section 5 of Article XI of the Florida Constitution provides that proposed amendments to the constitution are to be submitted to the electors at a general election. However, pursuant to a law enacted by the affirmative vote of three-fourths of the membership of each house, the legislature may submit a proposed amendment to the voters at a special election held no sooner than ninety days after the proposed amendment is filed with the custodian of state records.

The bill provides for a special election to be held on the first Tuesday after the first Monday in November 2007 (November 6) to submit to the electors for approval or rejection HJR (PCB PBC 07-09).

PCB PBC 07-09 provides for the ability of homeowners to transfer their Save Our Homes benefit when they establish a new homestead, under certain circumstances.

The Department of State has estimated that the statewide cost of holding a special election is $23,112,598. The bill does not specify who will pay for the special election.

Rvised

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any House Principles

B. EFFECT OF PROPOSED CHANGES:

Section 5 of Article XI of the Florida Constitution provides that proposed amendments to the constitution are to be submitted to the electors at a general election. However, pursuant to a law enacted by the affirmative vote of three-fourths of the membership of each house, the legislature may submit a proposed amendment to the voters at a special election held no sooner than ninety days after the proposed amendment is filed with the custodian of state records.

The bill provides for a special election to be held on the first Tuesday after the first Monday in November 2007 to submit to the electors for approval or rejection HJR (PCB PBC 07-09).

PCB PBC 07-09 provides for the ability of homeowner's to transfer their Save Our Homes benefit to when they establish a new homestead, under certain circumstances.

C. SECTION DIRECTORY:

Section 1. Provides for the special election.

Section 2. Provides for publication of notice.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   See Fiscal Comments, below

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

Rvised

D. FISCAL COMMENTS:

The Department of State has estimated that the statewide cost of holding a special election is $23,112,598. The bill does not specify who will pay for the special election.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

If the counties are required to pay for a special election, the mandates provision appears to apply because the bill requires counties to spend funds: however, the bill is exempt from the mandates provision because it is an election law.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a special election; providing for a special election to be held on the first Tuesday after the first Monday in November 2007, pursuant to Section 5 of Article XI of the State Constitution, for the approval or rejection by the electors of this state of a joint resolution relating to homestead property assessments at less than just value; providing for publication of notice and for procedures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Pursuant to Section 5 of Article XI of the State Constitution, there shall be a special election on the first Tuesday after the first Monday in November 2007 at which there shall be submitted to the electors of this state for approval or rejection House Joint Resolution No. proposing an amendment to Section 4 of Article VII of the State Constitution to provide an additional circumstance for assessing homestead property at less than just value.

Section 2. Publication of notice shall be in accordance with Section 5 of Article XI of the State Constitution. The special election shall be held as other special elections are held.

Section 3. This act shall take effect upon becoming a law if passed by a vote of three-fourths of the membership of each house.

Rvised

Policy and Budget Council

April 20, 2007
1:00 p.m.
212 Knott Building

ADDENDUM "A"

(Amendments)

Marco Rubio
Speaker

Ray Sansom
Chair

Rvised

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. CS/HB 359

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget

Representative(s) Kriseman offered the following:

Amendment

On line 147 , after the (8), insert:

, 324.023

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h0359-Kriseman.doc

Rvised

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **CS/HB 359**

(2)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget

Representative(s) Kriseman offered the following:

Amendment (with directory and title amendments)

On line 23, after the word who, strike has been convicted of and insert:

, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contendere to

========== T I T L E A M E N D M E N T ==========

On line 5, after the word "of", insert:

, or who entered a plea of guilty or nolo contendere to, regardless of adjudication of guilt,

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Rvised HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **CS/HB 1197**

(1)

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget

Representative Nelson offered the following:

Amendment (with title amendment)

Between lines 293-294, insert:

Section 9. Section 576.092, F.S., is created to read:

576.092 Consumer Fertilizer Task Force.—

(1) The Legislature finds that:

(a) There is a need for better training and education regarding the proper use of consumer fertilizers.

(b) There should exist a mechanism to help local governments promote and encourage the proper use of fertilizers whereby eliminating or minimizing the potential for environmental impacts.

(c) Local government regulation of fertilizer uses for nonagricultural applications should be based on sound science, including water quality, agronomics, and horticulture.

(d) There is a need for education regarding the use of consumer fertilizers.

(e) There is a need for improved standards regarding non-agricultural fertilizer use and application.

(f) While the constituents in fertilizer are naturally occurring in the environment, the improper use of fertilizer can be one of many contributors to non-point source pollution; and

(g) Florida's local governments are potentially subject to regulatory enforcement action by state or federal entities as a result of non-point source pollution caused by stormwater runoff.

(2)(a) There is hereby created the Consumer Fertilizer Task Force within the Department of Agriculture and Consumer Services for the purposes of:

1. Assessing existing data and information regarding nutrient enrichment and surface waters due to fertilizer; assessing management strategies for reducing water quality impacts associated with fertilizer; and identifying additional research needs.

2. Developing statewide guidelines governing non-agricultural fertilizer use rates, formulations, and applications with attention to the geographic regions identified in Rule 5-E-1.003.

3. Taking public input and testimony concerning these issues in this section.

4. Recommending methods to ensure local ordinances are based on best available data and science, and to achieve uniformity among local government ordinances where possible, unless local ordinance variations are necessary to meet mandated state and federal water quality standards.

5. The task force shall develop model ordinances for municipalities and counties concerning the use of non-agricultural fertilizer.

(b)(1) The task force shall consist of thirteen members who are technically qualified by training, education or experience in water quality, horticultural, or agronomic science, and who shall be appointed as follows: three members appointed by the President of the Senate, one of whom shall be a representative from the Department of Environmental Protection, one of whom shall be a representative of the environmental community and one of whom shall be a member of the Florida Senate; three members appointed by the Speaker of the House of Representatives, one of whom shall be a representative from a water management district, one of whom shall be a representative of the University of Florida's Institute for Food and Agriculture Science and one of whom shall be a member of the Florida House of Representatives; five representatives appointed by the Commissioner of Agriculture, one of whom shall be a representative from the Department of Agriculture and Consumer Services, one of whom shall be a representative from the Office of Agricultural Water Policy, one of whom shall be a representative from the national fertilizer industry, one of whom shall be a representative from the Florida-based fertilizer industry, and one of whom shall be a registered landscape architect; one member appointed by the Florida League of Cities, Inc.; and one member appointed by the Florida Association of Counties.

(2) Members shall choose a chair and vice chair from the membership of the task force.

(3) Staffing for the task force shall be provided by the Department of Agriculture and Consumer Services.

(4) The task force shall review and evaluate the issues identified in paragraph (2)(a) and take public testimony. A report of the recommendations and findings of the task force,

including recommendations for statutory changes, if any, shall be submitted to the Speaker of the House of Representatives and the Senate President by January 15, 2008, and the task force shall be abolished upon the transmittal of the report.

(5) For the time period beginning May 1, 2007 through May 2, 2008, no municipality, county or other governmental subdivision shall promulgate any fertilizer rule, ordinance or regulation pending the completion and transmittal of the task force report; however, this moratorium does not apply if the rule, ordinance or regulation is promulgated in reaction to a mandated state or federal action for water quality compliance.

========== T I T L E A M E N D M E N T ==========

Remove line 33 and insert:

compound; creating s. 576.092, F.S.; creating the Consumer Fertilizer Task Force; providing legislative findings; providing for task force membership and appointment of a chair and vice chair; requiring the department to staff the task force; requiring a report to the Legislature by a time certain; providing for abolition of the task force; providing for a moratorium on rule-making, with some exceptions, during a time certain;

Rvised

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1381**

AA 1
12

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Policy & Budget

Representative(s) Richter offered the following:

Amendment to Amendment (01) by Representative Richter

Remove line(s) 18 and insert:

Property and Casualty Claims Professionals, or Certified Professional Claims Adjuster (CPCA) from ALL LINES Training, whose curriculum has

Rvised

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1381**

AA 1
2a

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Richter offered the following:

Amendment to Strike-all Amendment Amendmentdraft20980 by Representative Richter (with title amendment)

Between lines 140 and 141, insert:

Section 9. Section 626.9531, Florida Statutes, is amended to read:

626.9531 Identification of insurers, agents, and insurance contracts.--

(1) Advertising materials and other communications developed by insurers, or other risk bearing entities authorized under this code and approved by the office to do business in this state, regarding insurance products shall clearly indicate that the communication relates to insurance products. When soliciting or selling insurance products, agents shall clearly indicate to prospective insureds that they are acting as insurance agents with regard to insurance products and identified insurers, or other risk bearing entities authorized under this code and approved by the office to do business in this state.

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(2) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any licensed and appointed insurance agent for the insolvency of any risk-bearing entity when such entity has been duly authorized or approved by the office to do business in this state. However if the licensed and appointed agent was a controlling producer, as defined in 626.7491(2), of the risk bearing entity within 2 years preceding the insolvency, the agent is subject to penalty as provided in s. 626.7491(8).

(3) For the purposes of this section, the term "risk bearing entity" means a reciprocal insurer as defined in s. 629.021, commercial self-insurance fund as defined in s. 624.462, group self-insurance fund as defined in s. 624.4621, local government self-insurance fund as defined in s. 624.4622, self-insured public utility as defined in s. 624.46225, and independent educational institution self-insurance fund as defined in s. 624.4623. For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

========== T I T L E A M E N D M E N T ==========

Between lines 193 and 194, insert:

626.9531, F.S.; revising requirements for identification of insurers, agents, and insurance contracts; specifying absence of liability and prohibiting causes of action against certain agents for insolvency of certain entities under certain circumstances; providing definitions; amending s.

Rvised HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

SA 11a

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Allen offered the following:

Substitute Amendment for Amendment (11) by Representative Allen

Between line(s) 1879 and 1880 insert:

Section 51. In order to implement Section 7 of this bill, there is hereby appropriated $120,000 from the General Revenue Fund and one position to the Department of Management Services.

Section 52. In order to implement Section 29 of this bill, there is hereby appropriated $68,000 from the General Revenue Fund and one position to the Department of Financial Services.

Rvised

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 7123

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

SA 12a

Council/Committee hearing bill: Policy & Budget

Representative(s) Allen offered the following:

Substitute Amendment for Amendment (12) by Representative Allen (with title amendments)

Remove line(s) 336 through 387 and insert:

212.086 Energy-Efficient Motor Vehicle Sales Tax Holiday.-

(1) The energy-efficient motor vehicle sales tax holiday is established to provide financial incentives for the purchase of alternative motor vehicles as specified in this section.

(2) The sale or purchase of a new alternative motor vehicle during the period from 12:01 a.m., October 1, through 11:59 p.m., October 31, in any year is eligible for a partial exemption from the taxes imposed under this chapter. The partial exemption is limited to the first $10,000 of the sales price of the new alternative motor vehicle. This partial exemption does not apply to the lease or rental of a new alternative motor vehicle.

(3) To qualify for the exemption under this section, the new alternative motor vehicle must be certified as a qualified hybrid motor vehicle, qualified alternative fuel motor vehicle, qualified fuel cell motor vehicle, or advanced lean-burn

technology motor vehicle by the Internal Revenue Service for the income tax credit for alternative motor vehicles under s. 30B of the Internal Revenue Code of 1986, as amended.

(4) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section, and may establish guidelines as to the requisites for a dealer's documentation of such exempt sales.

(5) Any person who receives an exemption pursuant to s. 212.08(7)(ccc) may not be allowed an exemption provided in this section.

(6) This section expires July 1, 2010.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 13 through 19 and insert:

Vehicle Sales Tax Exemption Program; providing a sales tax exemption for the purchase of an alternative motor vehicle; specifying a time period; providing a limitation; providing eligibility requirements; requiring the department to adopt rules; providing for future repeal of the program;

Rvised

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. PCB PBC 07-09

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

1

Council/Committee hearing bill: Policy and Budget Council Representative(s) Domino offered the following:

Amendment Remove line(s) 65 and insert:

permanent residence on that property and within two years

Rvised

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **PCB PBC 07-09**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

2

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Saunders offered the following:

Amendment

Remove line(s) 27 and 28, and insert:

(c) All property ~~persons entitled to a homestead exemption under Section 6 of this Article~~ shall be ~~have their homestead~~ assessed at