



Energy & Utilities Subcommittee MEETING PACKET

**Tuesday, March 29, 2011
212 Knott Building
8:00 AM – 11:00 AM**

**Dean Cannon
Speaker**

**Clay Ford
Chair**



The Florida House of Representatives

Staff Affairs Committee

Energy & Utilities Subcommittee

Dean Cannon
Speaker

Clay Ford
Chair

AGENDA

March 29, 2011

8:00 a.m. – 11:00 a.m.

212 Knott Building (Webster Hall)

Opening Remarks by Chair Ford

Consideration of the following bill:

HB 1281 - Energy Conservation

Representative Rehwinkel Vasilinda

Consideration of the following Proposed Committee Bills:

PCB ENUS 11-01 -- Energy Incentives and Initiatives

PCB ENUS 11-02 -- Florida Public Service Commission (PSC)

Closing Remarks by Chair Ford

Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1281 Energy Conservation
SPONSOR(S): Rehwinkel Vasilinda
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Whittier <i>zyw</i>	Collins <i>Bo</i>
2) Community & Military Affairs Subcommittee			
3) Finance & Tax Committee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. There are eight different types of local discretionary sales surtaxes currently authorized in law. This bill amends s. 212.055(2)(d), F.S., which provides specifications for which the Local Government Infrastructure Surtax may be used by counties.

Pursuant to s. 212.055(2)(d), F.S., school districts, counties and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

The bill adds the following to the above list of authorized uses of the surtax proceeds:

- To provide financial assistance to owners of residential property who make energy efficiency improvements to, or purchase and install renewable energy devices in, the residential property.

The bill defines "energy efficiency improvement" as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Building modifications to increase the use of daylight;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

It defines "renewable energy devices" as equipment that, when "installed in connection with a dwelling unit or other structure, collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits" and enumerates those types of equipment.

The bill does not amend the percentage rate that local governments are authorized to levy for purposes of the Local Government Infrastructure Surtax. It does not have a negative fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Energy Efficiency and Conservation

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida on a state and local level. In Chapter 2008-227, L.O.F., the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In Chapter 2008-191, L.O.F., the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.

In 2010, the Legislature found that, "In order to make [renewable energy improvements or energy conservation and efficiency improvements] more affordable and assist property owners who wish to undertake such improvements...there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance."¹

Local Discretionary Sales Surtaxes

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions authorized pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S. Discretionary sales surtax must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.² The surtax applies to the first \$5,000 of any single taxable item when sold to the same purchaser at the same time.³

There are eight different types of local discretionary sales surtaxes currently authorized in law:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

¹ Section 163.08(1)(b), F.S.

² 2011 Florida Tax Handbook, p. 203.

³ Section 212.054(2)(b)1., F.S.

Local Government Infrastructure Surtax

Section 212.055(2)(a)1., F.S., provides that the Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the members of the county's governing body and approved by voters in a countywide referendum.⁴ If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.⁵

All counties are eligible to levy this surtax.⁶ During the 2011 calendar year, four counties will be levying at the 0.5 percent rate and 16 counties will be levying at the 1 percent rate.⁷

Specifically, the following counties will be levying this surtax during the 2011 calendar year:

County	Percentage
Charlotte	1%
Clay	1%
Duval	0.5%
Escambia	1%
Flagler	0.5%
Glades	1%
Highlands	1%
Hillsborough	0.5%
Indian River	1%
Lake	1%
Leon	1%
Martin	0.5%
Monroe	1%
Osceola	1%
Pasco	1%
Pinellas	1%
Putnam	1%
Sarasota	1%
Seminole	1%
Wakulla	1%

Source: 2011 Florida Tax Handbook, pp. 208-209.

The following chart estimates what these counties will collect for the current and upcoming fiscal year and provides historical collections for the Local Government Infrastructure Surtax:

Fiscal Year	Total Collections
2011-2012 estimate	\$655,565,230
2010-2011 estimate	\$612,677,785
2009-2010	\$593,680,024
2008-2009	\$629,887,765
2007-2008	\$658,207,195
2006-2007	\$685,978,662

Source: 2100 Florida Tax Handbook, p. 212.

⁴ In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue.

⁵ If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.

⁶ This surtax is one of several surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

⁷ 2011 Florida Tax Handbook, pp. 208-209.

Pursuant to s. 212.055(2)(d), F.S., school districts, counties and municipalities⁸ may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

For purposes of s. 212.055(2)(d), F.S., the term “infrastructure” means the following:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs.
- A fire department vehicle, an emergency medical service vehicle, a sheriff’s office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.
- Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008, F.S.
- Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government.⁹
- Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing.¹⁰

Any Local Government Infrastructure Surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the proceeds to be deposited in a trust fund for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentive related to economic development.¹¹ This intention must be on the ballot statement.

A county with a total population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern that imposed the surtax before July 1, 1992, may use the proceeds and accrued interest of the surtax for any public purpose if the county satisfies all of the following criteria:

- The debt service obligations for any year are met;
- The county’s comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S; and
- The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66, F.S., authorizing additional uses of the proceeds and accrued interest.¹²

⁸ Pursuant to s. 212.055(2)(d), F.S., proceeds of the surtax may also be expended within another county in the case of a negotiated joint county agreement.

⁹ Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

¹⁰ The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

¹¹ Section 212.055(2)(d)2., F.S.

¹² Section 212.055(2)(f)1., F.S.

Pursuant to s. 125.66(2)(a), F.S., a board of county commissioners at any regular or special meeting may enact or amend any ordinance, if notice of intent to consider the ordinance is given at least 10 days prior to the meeting by publication in a newspaper of general circulation in the county. A copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners.

The notice of proposed enactment must state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where the proposed ordinance(s) may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Effects of Proposed Changes

The bill amends s. 212.055(2)(d), F.S., which provides specifications for which the Local Government Infrastructure Surtax may be used.

As listed in the Current Situation Section, school districts, counties and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

The bill adds the following to the above list of authorized uses of the surtax proceeds:

- To provide financial assistance to owners of residential property who make energy efficiency improvements to, or purchase and install renewable energy devices in, the residential property.

It defines "energy efficiency improvement" as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Building modifications to increase the use of daylight;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

The bill also defines "renewable energy devices" as any of the following equipment that, when installed in connection with a dwelling unit or other structure, collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.
- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.

- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
- Windmills.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

A local government choosing to expend funds under this new provision would be required to amend its ordinance pursuant to s. 125.66, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.055, F.S., revising uses for local government discretionary sales surtaxes.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not amend the percentage rate that local governments are authorized to levy for purposes of local option sales taxes.

2. Expenditures:

None. The bill does not amend the percentage rate that local governments are authorized to levy for purposes of local option sales taxes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provision may result in more homeowners being able to make energy efficiency improvements to or to purchase and install renewable energy devices on their property, within counties that levy the Local Government Infrastructure Surtax.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although a local government choosing to expend funds under this new provision would be required to amend its ordinance pursuant to s. 125.66, F.S., it is unclear whether a referendum would be required for approval by a majority of the voters.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1281 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Energy & Utilities

2 Subcommittee

3 Representative(s) Rehwinkel Vasilinda offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (d) of subsection (2) of section 212.055,
8 Florida Statutes, is amended to read:

9 212.055 Discretionary sales surtaxes; legislative intent;
10 authorization and use of proceeds.—It is the legislative intent
11 that any authorization for imposition of a discretionary sales
12 surtax shall be published in the Florida Statutes as a
13 subsection of this section, irrespective of the duration of the
14 levy. Each enactment shall specify the types of counties
15 authorized to levy; the rate or rates which may be imposed; the
16 maximum length of time the surtax may be imposed, if any; the
17 procedure which must be followed to secure voter approval, if
18 required; the purpose for which the proceeds may be expended;
19 and such other requirements as the Legislature may provide.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1281 (2011)

Amendment No. 1

20 Taxable transactions and administrative procedures shall be as
21 provided in s. 212.054.

22 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

23 (d) The proceeds of the surtax authorized by this
24 subsection and any accrued interest shall be expended by the
25 school district, within the county and municipalities within the
26 county, or, in the case of a negotiated joint county agreement,
27 within another county, to finance, plan, and construct
28 infrastructure; to acquire land for public recreation,
29 conservation, or protection of natural resources; to provide
30 financial assistance in the form of loans, grants, or rebates to
31 residential property owners, with preference given to low-income
32 elders, Florida U.S. veterans, and the disabled, who make energy
33 efficiency improvements to their residential property, if a local
34 government ordinance authorizing such uses is approved by a
35 referendum; or to finance the closure of county-owned or
36 municipally owned solid waste landfills that have been closed or
37 are required to be closed by order of the Department of
38 Environmental Protection. Any use of the proceeds or interest
39 for purposes of landfill closure before July 1, 1993, is
40 ratified. The proceeds and any interest may not be used for the
41 operational expenses of infrastructure, except that a county
42 that has a population of fewer than 75,000 and that is required
43 to close a landfill may use the proceeds or interest for long-
44 term maintenance costs associated with landfill closure.
45 Counties, as defined in s. 125.011, and charter counties may, in
46 addition, use the proceeds or interest to retire or service
47 indebtedness incurred for bonds issued before July 1, 1987, for

Amendment No. 1

48 infrastructure purposes, and for bonds subsequently issued to
49 refund such bonds. Any use of the proceeds or interest for
50 purposes of retiring or servicing indebtedness incurred for
51 refunding bonds before July 1, 1999, is ratified.

52 1. For the purposes of this paragraph, the term
53 "infrastructure" means:

54 a. Any fixed capital expenditure or fixed capital outlay
55 associated with the construction, reconstruction, or improvement
56 of public facilities that have a life expectancy of 5 or more
57 years and any related land acquisition, land improvement,
58 design, and engineering costs.

59 b. A fire department vehicle, an emergency medical service
60 vehicle, a sheriff's office vehicle, a police department
61 vehicle, or any other vehicle, and the equipment necessary to
62 outfit the vehicle for its official use or equipment that has a
63 life expectancy of at least 5 years.

64 c. Any expenditure for the construction, lease, or
65 maintenance of, or provision of utilities or security for,
66 facilities, as defined in s. 29.008.

67 d. Any fixed capital expenditure or fixed capital outlay
68 associated with the improvement of private facilities that have
69 a life expectancy of 5 or more years and that the owner agrees
70 to make available for use on a temporary basis as needed by a
71 local government as a public emergency shelter or a staging area
72 for emergency response equipment during an emergency officially
73 declared by the state or by the local government under s.

74 252.38. Such improvements are limited to those necessary to
75 comply with current standards for public emergency evacuation

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1281 (2011)

Amendment No. 1

76 shelters. The owner must enter into a written contract with the
77 local government providing the improvement funding to make the
78 private facility available to the public for purposes of
79 emergency shelter at no cost to the local government for a
80 minimum of 10 years after completion of the improvement, with
81 the provision that the obligation will transfer to any
82 subsequent owner until the end of the minimum period.

83 e. Any land acquisition expenditure for a residential
84 housing project in which at least 30 percent of the units are
85 affordable to individuals or families whose total annual
86 household income does not exceed 120 percent of the area median
87 income adjusted for household size, if the land is owned by a
88 local government or by a special district that enters into a
89 written agreement with the local government to provide such
90 housing. The local government or special district may enter into
91 a ground lease with a public or private person or entity for
92 nominal or other consideration for the construction of the
93 residential housing project on land acquired pursuant to this
94 sub-subparagraph.

95 2. For the purposes of this paragraph, the term "energy
96 efficiency improvement" means any energy conservation and
97 efficiency measure that reduces consumption through conservation
98 or a more efficient use of electricity, natural gas, propane, or
99 other forms of energy on the property, including, but not
100 limited to, air sealing; installation of insulation;
101 installation of energy-efficient heating, cooling, or
102 ventilation systems; installation of solar panels; building
103 modifications to increase the use of daylight or shade;

Amendment No. 1

104 replacement of windows; installation of energy controls or
105 energy recovery systems; installation of electric vehicle
106 charging equipment; and installation of efficient lighting
107 equipment.

108 ~~3.2.~~ Notwithstanding any other provision of this
109 subsection, a local government infrastructure surtax imposed or
110 extended after July 1, 1998, may allocate up to 15 percent of
111 the surtax proceeds for deposit in a trust fund within the
112 county's accounts created for the purpose of funding economic
113 development projects having a general public purpose of
114 improving local economies, including the funding of operational
115 costs and incentives related to economic development. The ballot
116 statement must indicate the intention to make an allocation
117 under the authority of this subparagraph.

118 Section 2. This act shall take effect July 1, 2011.

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T I T L E A M E N D M E N T

Remove lines 5-7 and insert:
financial assistance in the form of loans, grants, and
rebates to residential property owners who make energy
efficiency improvements if a local government ordinance
authorizing such uses is approved by a referendum;
providing for preference for low-income elders, Florida
U.S. veterans, and the disabled; defining the term

HB 1281

2011

1 A bill to be entitled
 2 An act relating to energy conservation; amending s.
 3 212.055, F.S.; providing for a portion of the proceeds of
 4 the local government infrastructure surtax to be used for
 5 financial assistance to homeowners who make energy
 6 efficiency improvements or install renewable energy
 7 devices; defining the terms "renewable energy devices" and
 8 "energy efficiency improvement"; providing an effective
 9 date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (d) of subsection (2) of section
 14 212.055, Florida Statutes, is amended to read:

15 212.055 Discretionary sales surtaxes; legislative intent;
 16 authorization and use of proceeds.—It is the legislative intent
 17 that any authorization for imposition of a discretionary sales
 18 surtax shall be published in the Florida Statutes as a
 19 subsection of this section, irrespective of the duration of the
 20 levy. Each enactment shall specify the types of counties
 21 authorized to levy; the rate or rates which may be imposed; the
 22 maximum length of time the surtax may be imposed, if any; the
 23 procedure which must be followed to secure voter approval, if
 24 required; the purpose for which the proceeds may be expended;
 25 and such other requirements as the Legislature may provide.
 26 Taxable transactions and administrative procedures shall be as
 27 provided in s. 212.054.

28 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

29 (d) The proceeds of the surtax authorized by this
 30 subsection and any accrued interest shall be expended by the
 31 school district, within the county and municipalities within the
 32 county, or, in the case of a negotiated joint county agreement,
 33 within another county, to finance, plan, and construct
 34 infrastructure; to acquire land for public recreation,
 35 conservation, or protection of natural resources; to provide
 36 financial assistance to owners of residential property who make
 37 energy efficiency improvements to, or purchase and install
 38 renewable energy devices in, the residential property; or to
 39 finance the closure of county-owned or municipally owned solid
 40 waste landfills that have been closed or are required to be
 41 closed by order of the Department of Environmental Protection.
 42 Any use of the proceeds or interest for purposes of landfill
 43 closure before July 1, 1993, is ratified. The proceeds and any
 44 interest may not be used for the operational expenses of
 45 infrastructure, except that a county that has a population of
 46 fewer than 75,000 and that is required to close a landfill may
 47 use the proceeds or interest for long-term maintenance costs
 48 associated with landfill closure. Counties, as defined in s.
 49 125.011, and charter counties may, in addition, use the proceeds
 50 or interest to retire or service indebtedness incurred for bonds
 51 issued before July 1, 1987, for infrastructure purposes, and for
 52 bonds subsequently issued to refund such bonds. Any use of the
 53 proceeds or interest for purposes of retiring or servicing
 54 indebtedness incurred for refunding bonds before July 1, 1999,
 55 is ratified.

56 1. For the purposes of this paragraph, the term

57 | "infrastructure" means:

58 | a. Any fixed capital expenditure or fixed capital outlay

59 | associated with the construction, reconstruction, or improvement

60 | of public facilities that have a life expectancy of 5 or more

61 | years and any related land acquisition, land improvement,

62 | design, and engineering costs.

63 | b. A fire department vehicle, an emergency medical service

64 | vehicle, a sheriff's office vehicle, a police department

65 | vehicle, or any other vehicle, and the equipment necessary to

66 | outfit the vehicle for its official use or equipment that has a

67 | life expectancy of at least 5 years.

68 | c. Any expenditure for the construction, lease, or

69 | maintenance of, or provision of utilities or security for,

70 | facilities, as defined in s. 29.008.

71 | d. Any fixed capital expenditure or fixed capital outlay

72 | associated with the improvement of private facilities that have

73 | a life expectancy of 5 or more years and that the owner agrees

74 | to make available for use on a temporary basis as needed by a

75 | local government as a public emergency shelter or a staging area

76 | for emergency response equipment during an emergency officially

77 | declared by the state or by the local government under s.

78 | 252.38. Such improvements are limited to those necessary to

79 | comply with current standards for public emergency evacuation

80 | shelters. The owner must enter into a written contract with the

81 | local government providing the improvement funding to make the

82 | private facility available to the public for purposes of

83 | emergency shelter at no cost to the local government for a

84 | minimum of 10 years after completion of the improvement, with

85 the provision that the obligation will transfer to any
 86 subsequent owner until the end of the minimum period.

87 e. Any land acquisition expenditure for a residential
 88 housing project in which at least 30 percent of the units are
 89 affordable to individuals or families whose total annual
 90 household income does not exceed 120 percent of the area median
 91 income adjusted for household size, if the land is owned by a
 92 local government or by a special district that enters into a
 93 written agreement with the local government to provide such
 94 housing. The local government or special district may enter into
 95 a ground lease with a public or private person or entity for
 96 nominal or other consideration for the construction of the
 97 residential housing project on land acquired pursuant to this
 98 sub-subparagraph.

99 2. For the purposes of this paragraph, the term "renewable
 100 energy devices" means any of the following equipment that, when
 101 installed in connection with a dwelling unit or other structure,
 102 collects, transmits, stores, or uses solar energy, wind energy,
 103 or energy derived from geothermal deposits:

- 104 a. Solar energy collectors.
- 105 b. Storage tanks and other storage systems, excluding
 106 swimming pools used as storage tanks.
- 107 c. Rockbeds.
- 108 d. Thermostats and other control devices.
- 109 e. Heat exchange devices.
- 110 f. Pumps and fans.
- 111 g. Roof ponds.
- 112 h. Freestanding thermal containers.

113 i. Pipes, ducts, refrigerant handling systems, and other
 114 equipment used to interconnect such systems; however,
 115 conventional backup systems of any type are not included in this
 116 definition.

117 j. Windmills.

118 k. Wind-driven generators.

119 l. Power conditioning and storage devices that use wind
 120 energy to generate electricity or mechanical forms of energy.

121 m. Pipes and other equipment used to transmit hot
 122 geothermal water to a dwelling or structure from a geothermal
 123 deposit.

124 3. For the purposes of this paragraph, the term "energy
 125 efficiency improvement" means any energy conservation and
 126 efficiency improvement that reduces consumption through
 127 conservation or a more efficient use of electricity, natural
 128 gas, propane, or other forms of energy on the property,
 129 including, but not limited to, air sealing; installation of
 130 insulation; installation of energy-efficient heating, cooling,
 131 or ventilation systems; building modifications to increase the
 132 use of daylight; replacement of windows; installation of energy
 133 controls or energy recovery systems; installation of electric
 134 vehicle charging equipment; and installation of efficient
 135 lighting equipment.

136 4.2- Notwithstanding any other provision of this
 137 subsection, a local government infrastructure surtax imposed or
 138 extended after July 1, 1998, may allocate up to 15 percent of
 139 the surtax proceeds for deposit in a trust fund within the
 140 county's accounts created for the purpose of funding economic

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141 | development projects having a general public purpose of
142 | improving local economies, including the funding of operational
143 | costs and incentives related to economic development. The ballot
144 | statement must indicate the intention to make an allocation
145 | under the authority of this subparagraph.

146 | Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENUS 11-01 Energy Incentives and Initiatives

SPONSOR(S): Energy & Utilities Subcommittee

TIED BILLS: None. IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee		Keating Whittier	Collins

SUMMARY ANALYSIS

The bill revises existing statements of legislative intent with respect to Florida's energy policy and the development of renewable energy, encourages public utilities to produce or purchase renewable energy, and transfers the Florida Energy Office from the Executive Office of the Governor to the Department of Agriculture and Consumer Services. Specifically, the bill:

- Streamlines the existing statement of legislative intent with respect to Florida's energy policy by identifying and prioritizing the core goals of that policy;
- Consolidates existing statements of legislative intent with respect to development of renewable energy;
- Authorizes public utilities, subject to specified conditions, to recover the costs to produce or purchase renewable energy, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, on an annual basis, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2010;
- Exempts solar electrical generating facilities from the Florida Electrical Power Plant Siting Act;
- Abolishes the Florida Energy and Climate Commission;
- Provides for a Type Two Transfer of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Florida Energy and Climate Commission from the Executive Office of the Governor to the Department of Agriculture and Consumer Services; and
- Provides for a Type Two Transfer of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumer Services.

The bill does not have a significant impact on state or local governments. See Fiscal Analysis & Economic Impact Statement for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Energy Policy Goals

Present Situation

In 2005, the Legislature established the following statement of intent in s. 366.91, F.S., with respect to the development of renewable energy in Florida:

The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

In 2006, the Legislature established the following statement of intent in s. 366.92, F.S., with respect to the development of renewable energy in Florida:

It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.

In 2008, through HB 7135, the Legislature established the following statement of intent in s. 377.601, F.S., with respect to the development of energy policy in Florida:

The Legislature finds that the state's energy security can be increased by lessening dependence on foreign oil; that the impacts of global climate change can be reduced through the reduction of greenhouse gas emissions; and that the implementation of alternative energy technologies can be a source of new jobs and employment opportunities for many Floridians. The Legislature further finds that the state is positioned at the front line against potential impacts of global climate change. Human and economic costs of those impacts can be averted by global actions and, where necessary, adapted to by a concerted effort to make Florida's communities more resilient and less vulnerable to these impacts. In focusing the government's policy and efforts to benefit and protect our state, its citizens, and its resources, the Legislature believes that a single government entity with a specific focus on energy and climate change is both desirable and advantageous. Further, the Legislature finds that energy infrastructure provides the foundation for secure and reliable access to the energy supplies and services on which Florida depends. Therefore, there is significant value to Florida consumers that comes from investment in Florida's energy infrastructure that increases system reliability, enhances energy independence and diversification, stabilizes energy costs, and reduces greenhouse gas emissions.

Over the course of several meetings beginning in late 2009, the House Energy & Utilities Policy Committee reviewed these statements of intent and other indications of legislative goals and strategies related to energy policy throughout the Florida Statutes and took testimony from interested persons concerning what the core goals of Florida's energy policy should be. The main questions asked during those meetings and the review of the statutes were:

- “Does the Florida Legislature provide adequate guidance to state agencies, other governmental entities, and the private sector to develop and evaluate specific policies and programs necessary to achieve a comprehensive and cohesive energy policy for the state?” and
- “Has the Legislature set clear priorities as to what the state energy policy is or should be?”

The consensus answer to both questions appeared to be that the laws do not provide adequate, clear, and consistent guidance for developing and implementing a state energy policy.

Effect of Proposed Changes

The bill replaces the statement of intent in s. 377.601, F.S., concerning the state’s energy policy, with a more streamlined statement of intent. The proposed statement of intent provides:

The purpose of the state’s energy policy is to ensure an affordable, adequate, and reliable supply of energy for the state in a manner that promotes the health and welfare of the public, promotes sustainable economic growth, and minimizes and mitigates any adverse impacts. The Legislature intends that governance of the state’s energy policy be efficiently directed toward achieving this purpose.

While this statement of intent is set forth in broader terms, it appears to capture most, if not all, of the specific issues addressed in the existing intent language from s. 377.601, F.S. Further, the bill establishes in s. 377.601, F.S., a prioritized statement of goals to guide the implementation of this policy through effective, efficient, and reliable governance. In order of priority, these goals are:

- Ensuring an affordable energy supply.
- Ensuring adequate supply and capacity.
- Ensuring a secure and reliable energy supply.
- Minimizing energy cost volatility.
- Minimizing the negative impacts of energy production on the state’s environment, social fabric, and the public health and welfare.
- Maximizing economic synergies for the state associated with its energy policy.
- Reducing the net export of energy expenditures.

The bill creates s. 366.90, F.S., to consolidate the existing statements of intent in ss. 366.91 and 366.92, F.S., related to the development of renewable energy in Florida. The bill ties the consolidated statement of intent to the new statement of intent provided in s. 377.601, F.S. The consolidated statement of intent provides:

In furtherance of the energy policy goals established in s. 377.601, the Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state, for purposes of electricity production, through the mechanisms established in ss. 366.91 and 366.92. The Legislature further finds that renewable energy resources have the potential to help diversify fuel types to alleviate the state’s growing dependency on natural gas and other fossil fuels for the production of electricity, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make the state a leader in new and innovative technologies.

The consolidated statement of intent in the bill appears to capture most of the provisions of the existing intent language in ss. 366.91 and 366.92, F.S. The consolidated statement of intent in the bill does not include the provision from s. 366.92, F.S., that establishes intent to minimize the costs of power supply to electric utilities and their customers through development of renewable energy. However, the provisions of ss. 366.91 and 366.92, F.S., which are cross-referenced in the statement of intent and are addressed in detail below, include provisions that address cost.

Recovery of Discretionary Utility Costs to Produce and Purchase Renewable Energy

Present Situation

In 2008, the Legislature authorized public utilities to construct up to 110 MW of renewable energy demonstration projects that emit no greenhouse gases at the point of generation and to recover the costs of such projects.¹ As a result, Florida Power & Light Company (FPL) has constructed two solar photovoltaic projects (the DeSoto Next Generation Solar Energy Center and the Space Coast Next Generation Solar Energy Center, with a capacity of 25 MW and 10 MW respectively) and a hybrid solar thermal facility (the Martin Next Generation Solar Energy Center, capable of producing 75 MW) that is the nation's first and world's largest of its type. FPL has received approval from the PSC to recover the costs of these projects.

Absent specific authority to recover the costs of renewable energy projects, including construction and purchases, public utilities will likely not invest in such projects due to the costs and/or capacity benefits of such projects relative to traditional generation resources. In reviewing the need for proposed electrical power plants, the PSC must consider, among other things, whether the proposed plant is the most cost-effective alternative available and the need for electrical system reliability and integrity.² In most cases, a renewable energy facility will not be the most cost-effective alternative available, and in some instances the facility may not make a significant contribution to electrical system reliability and integrity as compared to other resources. Even for renewable energy projects that do not require a determination of need from the PSC, the utility will be permitted to recover investment in such projects only if the PSC finds that the funds were prudently invested.³

Effect of Proposed Changes

The bill authorizes public utilities to recover the costs to produce or purchase renewable energy, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, on an annual basis, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2010. The costs to be recovered must be computed using a method that, for purchases, reflects the actual annual revenue requirements contracted for payment for the purchase of renewable capacity and energy from a nonutility renewable generator or, for construction or conversion projects, reflects the revenue requirements using conventional regulatory accounting for a utility-owned renewable generator. A utility's eligible costs will be recovered from its ratepayers through the existing environmental cost recovery clause established in s. 366.8255, F.S.⁴

The bill establishes a limited time frame for utilities to commence projects for which cost recovery may be provided. On the front end, the bill limits cost recovery to new construction or conversion projects for which construction is commenced after July 1, 2011, and to purchases made after that date. On the back end, the bill allows public utilities to petition the PSC only through July 1, 2015, to request recovery of eligible costs over the useful life of a project to produce renewable energy or over the term of a contract to purchase renewable energy.

The bill provides that each utility has the sole discretion to determine the type and technology of the renewable energy resources it intends to use, provided that at least 20 percent of the total capacity for which the utility is permitted cost recovery in a calendar year must be from renewable energy resources other than solar energy. The bill includes provisions to address potential timing issues associated with the availability of these nonsolar, renewable resources. The bill also provides the utility sole discretion to determine whether to construct a facility itself, convert an existing fossil fuel facility, or contract for the purchase of renewable energy.

¹ Chapter 2008-227, L.O.F.

² Section 403.519, F.S. Pursuant to this section, the PSC must also consider the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

³ Section 366.06(1), F.S.

⁴ The bill excludes from the cost cap calculation the costs of renewable energy projects approved for recovery prior to the effective date of the bill.

The bill specifies the types of costs associated with each option that a utility may recover. The bill provides that costs shall be deemed prudent for purposes of cost recovery if the utility demonstrates to the PSC that the project is the most cost-effective alternative for the type of renewable energy resource selected by the utility and that the utility has used reasonable and customary industry practices in the design, procurement, and construction of the project.

The bill provides that at least 5 percent of the total costs of solar generation for which a provider is permitted recovery in any calendar year must be dedicated to the utility's demand-side renewable energy system incentive program approved by the commission pursuant to s. 366.82, F.S. In 2008, the Legislature amended s. 366.82, F.S., to require the PSC, among other things, to adopt appropriate goals for increasing the development of demand-side renewable energy systems. The PSC implemented this requirement by requiring investor-owned electric utilities to establish pilot programs to encourage solar water heating and solar PV technologies. The PSC capped expenditures for these programs at 10 percent of the average annual amount recovered by the utility through the Energy Conservation Cost Recovery clause (through which conservation and efficiency program costs are recovered) in the previous five years.⁵ The bill would supplement these pilot programs for utilities that choose to produce or purchase solar energy.

If a majority of the costs of the energy-producing components incorporated into a renewable energy project are from components manufactured in Florida, the utility is entitled to a rate of return on the project of not less than 50 basis points (.5%) above the utility's last authorized rate of return on equity approved by the PSC.

The bill provides that when a utility purchases renewable energy at a cost in excess of its full avoided cost, the seller must surrender to the utility all renewable attributes of the energy purchases (e.g., renewable energy credits). Further, the bill requires that no less than 75 percent of any revenues derived by the utility from renewable energy credits, carbon credits, or similar mechanisms, by virtue of production or purchases made under these provisions, shall be credited to ratepayers, except when such revenues are derived from credits received by virtue of utility purchases of renewable energy from unaffiliated, third-party generating facilities no larger than 2 megawatts in capacity.

The bill exempts renewable energy facilities constructed under these provisions from the requirement of obtaining a determination of need from the PSC. The bill also provides that the PSC is not required to submit a report for any such projects that would otherwise be required under the Florida Electrical Power Plant Siting Act.

The bill requires each utility to provide certain information concerning the production or purchase of renewable energy in its annual ten-year site plan submitted to the PSC.

Exemption of Solar from Siting Act Certification

Present Situation

The Florida Electrical Power Plant Siting Act (Siting Act), establishes a centrally coordinated process for the review of permit applications for electrical power plants.⁶ The Department of Environmental Protection administers the process, and several affected agencies provide input in the certification proceeding concerning matters within their respective jurisdictions. For purposes of certification under the Siting Act, current law defines "electrical power plant" as any steam or solar electrical generating facility, except for such facilities with a capacity of less than 75 megawatts.⁷

⁵ Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, and 080413-EG.

⁶ Section 403.502, F.S.

⁷ Section 403.503(14), F.S.

Effect of Proposed Changes

The bill amends the definition of “electrical power plant” for purposes of certification under the Siting Act by eliminating all solar electrical generating facilities from the definition. Thus, the bill removes the requirement that solar electrical generating facilities obtain certification under the Siting Act.

Currently, none of the solar electrical generating facilities in Florida have required certification under the Siting Act. As noted above, Florida Power & Light Company has constructed a 75 megawatt solar thermal facility to provide steam to power an existing turbine at a natural gas power plant on the same site, but this facility is exempt from the Siting Act. Other large solar “farm” facilities could be built with a capacity of 75 megawatts or greater. Such a project could impact a greater area of land than smaller capacity solar facilities exempted under the Siting Act. However, solar projects may not implicate as many matters within the jurisdiction of affected agencies as a fossil-fuel or nuclear plant may implicate, in particular environmental matters concerning emissions and water use.

Governance of State Energy Policy

Present Situation

History of the Florida Energy and Climate Commission / State Energy Office

In response to the energy crisis in the 1970s, the State Energy Office was established by the Legislature in 1975. Over the years, it has been housed in the Department of Administration, the Department of Community Affairs, the Department of Environmental Protection, and, most recently, the Executive Office of the Governor.

In 2006, the Legislature established the Florida Energy Commission, as an arm of the Legislature, to develop recommendations for legislation to establish a state energy policy. The recommendations of the commission were to be based on the guiding principles of reliability, efficiency, affordability, and diversity.⁸

During the 2007 Legislative Session, the issue of fragmentation of energy policy governance began to be raised. At that time, there were many public sector entities playing a role in developing, implementing, or coordinating some aspect of Florida’s energy policies: the Florida Energy Office within the Department of Environmental Protection, the Department of Community Affairs, the Florida Building Commission, the Department of Agriculture and Consumer Services, the Department of Management Services, the Department of Financial Services, the Public Service Commission, the Florida Energy Commission, and a host of colleges and universities.

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

Subsequent to the veto, in its 2007 report, the Florida Energy Commission noted,

What does need to occur is the deletion of redundancies and streamlining of the process to create a smooth flow of responsibilities with accountability across agencies or entities with a strong focus on effectiveness. The new commission would be the State’s premier energy policy formulating board, making recommendations to the Governor and the Legislature and implementing the programs statutorily assigned to it.⁹

⁸ Former s. 377.901(5), F.S.

⁹ 2007 Recommendations to the Florida Legislature Volume 1, Florida Energy Commission, 2007, p. 20.

In response to this recommendation and others, in 2008, the Legislature established the Florida Energy and Climate Commission (Commission or FECC) as the state entity for recommending, implementing, and coordinating Florida's energy policy and for coordinating all federal energy programs delegated to the state. The measure, in effect, merged the Department of Environmental Protection's Florida Energy Office with the Legislature's Florida Energy Commission and administratively placed the new entity within the Executive Office of the Governor.

The FECC is comprised of nine members: seven appointed by the Governor and one each by the Chief Financial Officer and the Commissioner of Agriculture, all subject to Senate confirmation. A member must be an expert in one or more of the following fields: energy, natural resource conservation, economics, engineering, finance, law, transportation and land use, consumer protection, state energy policy, or another field substantially related to the duties and functions of the Commission. By law, the Governor selects the chair of the Commission. These Commissioners are not salaried employees, but are reimbursed per diem for travel, if needed.

In 2009, the Senate failed to confirm the membership of the Commission, which resulted in a provision being placed in the Implementing 2009-2010 General Appropriations Act (SB 2602) extending the term of office of each Commissioner until the 2010 Regular Session. In 2010, the Senate confirmed the membership of the Commission.

The Commission is required to meet at least six times a year and may employ staff and counsel, as needed. As of March 2011, the Commission has met or convened via conference-call approximately 31 times since its inception.

Pursuant to ss. 377.6015(5), 377.701, and 377.703(2) and (3), F.S., the Commission is charged with a variety of responsibilities, such as administering various grant programs and specific financial incentive programs; developing a fair and equitable petroleum allocation plan for the state; performing or coordinating the functions of any federal energy programs delegated to the state and coordinating efforts to seek federal support for state energy activities; administering the Coastal Energy Impact Program; completing annual assessments of the efficacy of Florida's Energy and Climate Change Action Plan and providing recommendations to the Governor and the Legislature each year to improve the results; and developing, coordinating, and promoting a comprehensive research plan for state programs, consistent with state energy policy.

The Commission is required to serve as an advocate for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions. The director of the Florida Energy Systems Consortium is directed to consult with and report to the FECC.¹⁰ Further, the Commission is charged with helping Florida build an energy efficient economy through programs to encourage energy conservation and promote the use of alternative energy sources.

Effects of the American Recovery and Reinvestment Act of 2009 on the Commission

In 2009, the federal government, through the American Recovery and Reinvestment Act of 2009 (ARRA) provided stimulus monies to qualifying states for energy-related programs.¹¹ Under the ARRA, Florida received approximately \$176 million to be administered by the Florida Energy and Climate Commission over a three-year period (2009-2012). This allocation was a substantial increase to the Energy Office programs which, prior to ARRA, had a recent (2006-2008) average funding level of approximately \$20 million.¹² In order to offer grants, rebates, and loans to residents and businesses

¹⁰ In 2008, the Legislature created the Florida Energy Systems Consortium, pursuant to s. 1004.648, F.S., to promote collaboration among experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state.

¹¹ http://www.recovery.gov/About/Pages/The_Act.aspx

¹² *Governor's Energy Office & Florida Energy & Climate Commission Agency Summary*, p. 15. Document can be accessed from the following Commission website:

http://myfloridaclimate.com/climate_quick_links/florida_energy_climate_commission/the_commission/meetings_and_workshops/january_14_2011_conference_call

throughout Florida, the Commission initiated over 18 programs and received program approval from the U.S. Department of Energy and funding authorization from the Florida Legislature to distribute the stimulus dollars.

According to the Commission, the Governor's Energy Office is in various stages of administering the ARRA-funded grant programs, which include the following processes that must be completed for each of the approximately 172 new grant awards:

- Application review and validation;
- Award approval and notification;
- Grant/contract development;
- Grant/contract execution; and
- Grant/contract implementation.

In addition, there are approximately 18 sub-grants currently open and being managed from previous funding cycles.¹³

The Commission notes that the ARRA "also includes an unprecedented level of accountability and transparency reporting on both expenditures and results. These requirements have significantly increased the administrative workload for staff managing projects funded with ARRA grant dollars and have consumed significant management resources and time."¹⁴

With regard to the impact that the ARRA-funded programs through the Governor's Energy Office are having on the Executive Office of the Governor, the Commission has calculated that the number of financial transactions completed in a month for the Governor's Energy Office is approximately equal to the total amount of other financial transactions completed for the entire Executive Office of the Governor annually.¹⁵

In the *Governor's Energy Office and Florida Energy and Climate Commission Agency Summary*, which was released in January 2011, the Commission notes the following:

Prior to the American Recovery and Reinvestment Act of 2009 (ARRA), the focus and responsibilities of the Governor's Energy Office¹⁶ were primarily related to energy policy and legislation. With the recent allocation of over \$175 million in ARRA funding, the focus has changed and the primary role and function of the Energy Office is grant management.

Energy-Related Programs within the Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS or Department) has programs whose purpose is to address energy and environmental issues. The Department administers the statutory Farm-to-Fuel Initiative "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."¹⁷ It administers the Florida Renewable Fuel Standard, which requires that all gasoline sold in the state, with exceptions, contain a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume.¹⁸

¹³ Correspondence with Florida Energy and Climate Commission staff on March 10, 2011.

¹⁴ *Governor's Energy Office & Florida Energy & Climate Commission Agency Summary*, p. 15. Document can be accessed from the following Commission website:
http://myfloridaclimate.com/climate_quick_links/florida_energy_climate_commission/the_commission/meetings_and_workshops/january_14_2011_conference_call

¹⁵ *Id.*, p. 17.

¹⁶ The "Governor's Energy Office" refers to the office that houses the staff that supports the Commission.

¹⁷ Section 570.954, F.S.

¹⁸ Sections 526.201-526.207, F.S.

In 2006, the Legislature created the Farm-to-Fuel Grants Program within the DACS to provide matching grants for demonstration, commercialization, and research and development projects relating to bioenergy. In FY 07-08, the Legislature appropriated \$25 million for this program.

The Renewable Energy Technologies Grants Program (created in 2006 and originally administered by the Florida Energy Office within the Department of Environmental Protection), was expanded and renamed the Renewable Energy and Energy-Efficient Technologies Grants Program in 2008.¹⁹ The program provides matching grants for demonstration, commercialization, and research and development projects relating to renewable energy technologies and innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings. The provision stipulates that the FECC 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. A portion of appropriations for this program have exclusively been for bioenergy projects in FY 06-07 and FY 08-09.²⁰

In addition to the energy-related programs that the DACS currently administers, the Department also sponsors an annual Farm-to-Fuel Summit, in which “industry leaders in agriculture, energy, academia and government who want to make Florida a leader in the production of renewable energy” gather to share information and accelerate efforts to promote the production of renewable energy in the state.²¹

Low-Income Home Energy Assistance Program within the Department of Community Affairs

The Department of Community Affairs’ (DCA) Low-Income Home Energy Assistance Program (also known as LIHEAP) provides federal money directly to non-profit agencies and local governments so they can assist low-income families with home cooling and heating costs.²² Specifically, the DCA:

- Applies for funding from the Federal Government and distributes it to local agency providers;
- Monitors local agency providers to ensure that they administer the funding in compliance with state and federal laws and rules; and
- Provides technical assistance to local agency providers to help them comply with the requirements.²³

The DCA does not determine who qualifies for assistance.

Applicants must apply within the county they reside. Low-income families, for these purposes, are those whose total household income does not exceed the federal household income limits or are currently receiving the following assistance:

- Supplemental Security Income
- Food Stamps
- Applied for and are currently eligible for Community Services Block Grant.²⁴

Weatherization Assistance Program within the Department of Community Affairs

The Department of Community Affairs’ Weatherization Assistance Program (program) provides grants to non-profit agencies, local governments, community action agencies, and Indian tribes to provide specific program services for low-income families in Florida;²⁵ however, the total household income may not be more than 200 percent above the national poverty level. The mission of the program is to

¹⁹ The Renewable Energy and Energy-Efficient Technologies Grants Program is currently administered by the FECC.

²⁰ In \$15 million with at least \$5 million required to fund bioenergy projects in FY 06-07 and \$15 million (\$7 million for renewable energy and energy-efficient technology projects and \$8 million for bioenergy projects) in FY 08-09.

²¹ <http://www.florida-agriculture.com/news/06-17-10.htm>

²² <http://www.dca.state.fl.us/fhcd/liheap/index.cfm>

²³ <http://www.dca.state.fl.us/fhcd/liheap/index.cfm>

²⁴ <http://www.dca.state.fl.us/fhcd/liheap/LIHEAPInfo.cfm#appeal>

²⁵ Preference is given to elderly (60 years-plus) or physically disabled residents, families with children under 12, and households with repeated high utility bills (high energy burden).

reduce the monthly energy burden on low-income households by improving the energy efficiency of the home.

The program is funded annually by the U.S. Department of Energy and receives supplemental funding from the U.S. Department of Health and Human Services. As estimated by the U.S. Department of Energy, these services save the weatherization customers an average of \$358 annually and return an average of \$2.69 in energy and non-energy related benefits for every dollar invested.²⁶

Types of assistance that the program provides include the following:²⁷

- Address air infiltration with weather stripping, caulking, thresholds, minor repairs to walls, ceilings and floors, and window and door replacement;
- Install attic and floor insulation (floors in northern Florida counties only);
- Install attic ventilation;
- Apply solar reflective coating to manufactured homes;
- Install solar screens;
- Repair or replace inefficient heating and cooling units; and
- Repair or replace water heaters.²⁸

Effect of Proposed Changes

The bill abolishes the Florida Energy and Climate Commission (FECC) and transfers all of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the FECC from the Executive Office of the Governor to the Department of Agriculture and Consumer Services.

It further transfers all of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Low-Income Home Energy Assistance Program (also known as LIHEAP) and the Weatherization Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumer Services.

The bill repeals the following obsolete provisions:

- The Solar Energy System Incentives Program
- The sales and use tax exemption for equipment, machinery, and other materials used for renewable energy technologies
- The responsibility of consumer conciliatory conferences under DACS, if such conferences are required pursuant to federal law and the requirement that DACS prepare and update lists of sources for energy conservation products or services and of financial institutions offering energy conservation loans, if such lists are required pursuant to federal law.²⁹
- The requirement that the FECC perform a study of life-cycle greenhouse gas emissions associated with renewable fuels by December 31, 2010.

The bill makes conforming changes to applicable statutes and cross-references.

B. SECTION DIRECTORY:

Section 1. Amends s. 377.601, F.S., revising legislative intent.

Section 2. Creates s. 366.90, F.S., providing legislative findings.

²⁶ <http://www.dca.state.fl.us/fhcd/wap/index.cfm>

²⁷ The extent of services to be provided depends on available funding.

²⁸ *Id.*

²⁹ This unused provision was adopted in 1980 and last amended in 1991. There is no known federal law providing this mandate.

Section 3. Amends s. 366.92, F.S., revising Florida's renewable energy policy.

Section 4. Amends s. 403.503, F.S., amending definitions.

Section 5. Provides for a Type Two Transfer of the Florida Energy and Climate Commission from the Executive Office of the Governor to the Department of Agriculture and Consumers Services.

Section 6. Provides for a Type Two Transfer of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumers Services.

Section 7. Amends s. 377.6015, F.S., relating to the Florida Energy and Climate Commission.

Section 8. Amends s. 377.602, F.S., conforming definitions.

Section 9. Amends s. 377.603, F.S., conforming provisions regarding energy data collection, rule-making, and preparation of reports.

Section 10. Amends s. 377.604, F.S., conforming provisions regarding required reports of energy resources used as fuel.

Section 11. Amends s. 377.605, F.S., conforming provisions regarding use of existing information.

Section 12. Amends s. 377.606, F.S., conforming provisions regarding records.

Section 13. Reenacts 377.607, F.S., for purposes of incorporation of the provisions of the bill.

Section 14. Amends s. 377.608, F.S. conforming provisions regarding prosecution of cases by the state attorney.

Section 15. Amends s. 377.701, F.S., conforming provisions regarding petroleum allocation and conservation.

Section 16. Amends s. 377.703, F.S., conforming provisions regarding additional functions.

Section 17. Amends s. 377.801, F.S., correcting a reference.

Section 18. Amends s. 377.802, F.S., revising intent language.

Section 19. Amends s. 377.803, F.S., revising definitions.

Section 20. Amends s. 377.804, F.S., conforming provisions regarding the Renewable Energy and Energy-Efficient Technologies Grants Program.

Section 21. Repeals s. 377.806, F.S., relating to the Solar Energy System Incentives Program.

Section 22. Amends s. 377.807, F.S., conforming provisions regarding the Energy-Efficient Appliance Rebate Program.

Section 23. Amends s. 377.808, F.S., conforming provisions regarding the Florida Green Government Grants Act.

Section 24. Amends s. 377.809, F.S., conforming provisions regarding the Energy Economic Zone Pilot Program.

Section 25. Amends s. 409.508, F.S., reassigning administration of the Low-Income Home Energy Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumer Services.

Section 26. Amends s. 409.509, F.S., reassigning administration of the Weatherization Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumer Services.

Section 27. Reenacts s. 409.5091, F.S., relating to the Weatherization Assistance Program, for purposes of incorporation of the provisions of the bill.

Section 28. Reenacts s. 409.5092, F.S., relating to the Weatherization Assistance Program, for purposes of incorporation of the provisions of the bill.

Section 29. Reenacts s. 409.5093, F.S., relating to the Weatherization Assistance Program, for purposes of incorporation of the provisions of the bill.

Section 30. Repeals s. 212.08(7)(ccc), F.S., relating to the sales and use tax exemption for equipment, machinery, and other materials used for renewable energy technologies.

Section 31. Amends s. 213.053, F.S., conforming provisions regarding information-sharing with the Department of Revenue.

Section 32. Amends s. 220.192, F.S., conforming provisions regarding the Renewable Energy Technologies Investment Tax Credit Program.

Section 33. Amends s. 288.1089, F.S., conforming provisions regarding the Innovation Incentive Program.

Section 34. Amends s. 288.9607, F.S., conforming provisions regarding the federal Section 1705 Loan Guarantee Program.

Section 35. Amends s. 366.82, F.S., conforming provisions regarding the Florida Energy Efficiency and Conservation Act.

Section 36. Repeals s. 366.85, F.S., relating to the Division of Consumer Services within the Department of Agriculture and Consumer Services.

Section 37. Amends s. 366.92, F.S., conforming provisions regarding Florida's renewable energy policy.

Section 38. Amends s. 403.44, F.S., conforming provisions regarding the Florida Climate Protection Act.

Section 39. Amends s. 570.074, F.S., renaming an office within the Department of Agriculture and Consumer Services

Section 40. Repeals s. 526.207, F.S., relating to a study of life-cycle greenhouse gas emissions.

Section 41. Amends s. 570.954, F.S., revising the Farm-to-Fuel Initiative.

Section 42. Amends s. 1004.648, F.S., conforming provisions regarding the Florida Energy Systems Consortium.

Section 43. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Recovery of Discretionary Utility Costs to Produce and Purchase Renewable Energy

The bill authorizes public utilities to recover the costs to produce or purchase renewable energy, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, on an annual basis, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2010.

Based on 2010 revenue figures provided by the PSC, the bill would allow each public utility, on an annual basis, to recover up to the following amounts (2% of total 2010 retail revenues) to produce or purchase renewable energy above the utility's avoided cost:

Florida Power & Light Company	\$206,081,856
Progress Energy Florida	\$100,489,159
Tampa Electric Company	\$42,779,957
Gulf Power Company	\$27,510,405

According to the PSC, customer rate impacts would be between 0.2 and 0.3 cents per kilowatt-hour. The PSC provided the following table which estimates, for different customer classes based on different usage levels, the **maximum monthly rate impact for each utility if the utility were to reach the maximum of the 2 percent cost cap:**

Utility	Residential kW = N/A kWh = 1,200	Small Commercial kW = N/A kWh = 1,500	Medium Commercial kW = 75 kWh = 15,000	Large Commercial kW = 500 kWh = 150,00
FPL	\$2.42	\$3.00	\$30.00	\$300.00
Progress	\$3.32	\$4.20	\$42.00	\$420.00
Tampa Elec.	\$2.63	\$3.30	\$33.00	\$330.00
Gulf	\$2.95	\$3.75	\$37.50	\$375.00
Average	\$2.83 1.95% of bill	\$3.56 2.1% of bill	\$35.63 2.0% of bill	\$356.30 2.3% of bill

The actual rate impact will vary, up to the amounts presented above, based on whether a utility chooses to produce or purchase renewable energy pursuant to the provisions of the bill and, if so, the projects that the utility undertakes. It may be difficult for a utility to reach the maximum of the cost cap due to the scale of these projects.

If a utility chooses to pursue a project to construct a facility itself or to convert an existing fossil fuel facility, the associated rate impact will diminish over the life of such facilities to reflect the declining revenue requirements for such facilities, in accordance with conventional regulatory accounting.

The bill provides that at least 5 percent of the total costs of solar generation for which a provider is permitted recovery in any calendar year must be dedicated to the utility's demand-side renewable energy system incentive program approved by the commission pursuant to s. 366.82, F.S. These programs help fund customer-owned solar PV and solar thermal units. Thus, this provision may stimulate additional installation and sales of such units. The total amount dedicated to these programs through the bill depends entirely on whether a utility chooses to produce or purchase solar energy and, if so, the cost of the amount it produces or purchases. These costs would be recovered through the mechanism established by the bill, i.e., within the overall 2% cost cap.

The bill also provides an incentive to utilities, in the form of an increased rate of return on a renewable energy project, if a majority value of the energy-producing components incorporated into the project are manufactured in Florida. While this provision could increase the rate impact on the customers of a utility with a qualifying project, it may also encourage investment in manufacturing plants in the state.

D. FISCAL COMMENTS:

Governance of State Energy Policy

There are 15 fulltime equivalent employees (FTEs) and \$2,149,516 in the operating budget for FY 2011-2012 that will be transferred from the Florida Energy and Climate Commission within the Executive Office of the Governor to the Department of Agriculture and Consumer Services. The remainder of the program is funded through federal funds. As of March 28, 2011, there are \$95,161,474 of American Recovery and Reinvestment Act of 2009 funds for the Commission's Fixed Capital Outlay projects that will be transferred with the program.

The Public Services and Energy Initiatives budget entity, within the Department of Community Affairs, includes 18 FTEs and a total of \$1,890,254 in administrative funding. This budget entity is responsible for the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program. However, in addition to these two programs, this budget entity also is responsible for the Community Services Block Grant, which provides grants to local governments and not-for-profit entities to provide a variety of antipoverty services such as emergency health, food, housing, day care, transportation assistance; housing counseling; financial management assistance; nutrition programs including federal surplus food distribution, community gardening projects, food banks, job counseling, placement and training services, and homeless prevention programs. This bill does not propose to move the Community Services Block Grant to the Department of Agriculture and Consumer Services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill transfers applicable rule-making authority from the Florida Energy and Climate Commission and the Department of Community Affairs (for the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program) to the Department of Agriculture and Consumer Services.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB ENUS 11-01 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing PCB: Energy & Utilities
2 Subcommittee
3 Representative(s) Clemons offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 500-1888
7
8
9

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove lines 20-107 and insert:

13 ; providing an

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB ENUS 11-01 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing PCB: Energy & Utilities
2 Subcommittee

3 Representative(s) Clemons offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 500-1888 and insert:

7 Section 5. All of the powers, duties, functions, records,
8 personnel, and property; unexpended balances of appropriations,
9 allocations, and other funds; administrative authority;
10 administrative rules; pending issues; and existing contracts of
11 the Florida Energy and Climate Commission in the Executive
12 Office of the Governor, are transferred by a type two transfer,
13 pursuant to s. 20.06(2), Florida Statutes, to the Department of
14 Environmental Protection.

15 Section 6. All of the powers, duties, functions, records,
16 personnel, and property; unexpended balances of appropriations,
17 allocations, and other funds; administrative authority;
18 administrative rules; pending issues; and existing contracts of
19 the Low-Income Home Energy Assistance Program, authorized under

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20 s. 409.508, Florida Statutes, and the Weatherization Assistance
21 Program, authorized in ss. 409.509-409.5093, Florida Statutes,
22 in the Department of Community Affairs, are transferred by a
23 type two transfer, pursuant to s. 20.06(2), Florida Statutes, to
24 the Department of Environmental Protection.

25 Section 7. Section 377.6015, Florida Statutes, is amended
26 to read:

27 377.6015 Department of Environmental Protection; powers
28 and duties Florida Energy and Climate Commission.-

29 ~~(1) The Florida Energy and Climate Commission is created~~
30 ~~within the Executive Office of the Governor. The commission~~
31 ~~shall be comprised of nine members appointed by the Governor,~~
32 ~~the Commissioner of Agriculture, and the Chief Financial~~
33 ~~Officer.~~

34 ~~(a) The Governor shall appoint one member from three~~
35 ~~persons nominated by the Florida Public Service Commission~~
36 ~~Nominating Council, created in s. 350.031, to each of seven~~
37 ~~seats on the commission. The Commissioner of Agriculture shall~~
38 ~~appoint one member from three persons nominated by the council~~
39 ~~to one seat on the commission. The Chief Financial Officer shall~~
40 ~~appoint one member from three persons nominated by the council~~
41 ~~to one seat on the commission.~~

42 ~~1. The council shall submit the recommendations to the~~
43 ~~Governor, the Commissioner of Agriculture, and the Chief~~
44 ~~Financial Officer by September 1 of those years in which the~~
45 ~~terms are to begin the following October or within 60 days after~~
46 ~~a vacancy occurs for any reason other than the expiration of the~~
47 ~~term. The Governor, the Commissioner of Agriculture, and the~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB ENUS 11-01 (2011)

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48 ~~Chief Financial Officer may proffer names of persons to be~~
49 ~~considered for nomination by the council.~~

50 ~~2. The Governor, the Commissioner of Agriculture, and the~~
51 ~~Chief Financial Officer shall fill a vacancy occurring on the~~
52 ~~commission by appointment of one of the applicants nominated by~~
53 ~~the council only after a background investigation of such~~
54 ~~applicant has been conducted by the Department of Law~~
55 ~~Enforcement.~~

56 ~~3. Members shall be appointed to 3 year terms; however, in~~
57 ~~order to establish staggered terms, for the initial~~
58 ~~appointments, the Governor shall appoint four members to 3 year~~
59 ~~terms, two members to 2 year terms, and one member to a 1-year~~
60 ~~term, and the Commissioner of Agriculture and the Chief~~
61 ~~Financial Officer shall each appoint one member to a 3 year term~~
62 ~~and shall appoint a successor when that appointee's term expires~~
63 ~~in the same manner as the original appointment.~~

64 ~~4. The Governor shall select from the membership of the~~
65 ~~commission one person to serve as chair.~~

66 ~~5. A vacancy on the commission shall be filled for the~~
67 ~~unexpired portion of the term in the same manner as the original~~
68 ~~appointment.~~

69 ~~6. If the Governor, the Commissioner of Agriculture, or~~
70 ~~the Chief Financial Officer has not made an appointment within~~
71 ~~30 consecutive calendar days after the receipt of the~~
72 ~~recommendations, the council shall initiate, in accordance with~~
73 ~~this section, the nominating process within 30 days.~~

74 ~~7. Each appointment to the commission shall be subject to~~
75 ~~confirmation by the Senate during the next regular session after~~

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76 ~~the vacancy occurs. If the Senate refuses to confirm or fails to~~
77 ~~consider the appointment of the Governor, the Commissioner of~~
78 ~~Agriculture, or the Chief Financial Officer, the council shall~~
79 ~~initiate, in accordance with this section, the nominating~~
80 ~~process within 30 days.~~

81 ~~8. The Governor or the Governor's successor may recall an~~
82 ~~appointee.~~

83 ~~9. Notwithstanding subparagraph 7. and for the initial~~
84 ~~appointments to the commission only, each initial appointment to~~
85 ~~the commission is subject to confirmation by the Senate by the~~
86 ~~2010 Regular Session. If the Senate refuses to confirm or fails~~
87 ~~to consider an appointment made by the Governor, the~~
88 ~~Commissioner of Agriculture, or the Chief Financial Officer, the~~
89 ~~council shall initiate, in accordance with this section, the~~
90 ~~nominating process within 30 days after the Senate's refusal to~~
91 ~~confirm or failure to consider such appointment. This~~
92 ~~subparagraph expires July 1, 2010.~~

93 ~~(b) Members must meet the following qualifications and~~
94 ~~restrictions:~~

95 ~~1. A member must be an expert in one or more of the~~
96 ~~following fields: energy, natural resource conservation,~~
97 ~~economics, engineering, finance, law, transportation and land~~
98 ~~use, consumer protection, state energy policy, or another field~~
99 ~~substantially related to the duties and functions of the~~
100 ~~commission. The commission shall fairly represent the fields~~
101 ~~specified in this subparagraph.~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB ENUS 11-01 (2011)

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102 ~~2. Each member shall, at the time of appointment and at~~
103 ~~each commission meeting during his or her term of office,~~
104 ~~disclose:~~

105 ~~a. Whether he or she has any financial interest, other~~
106 ~~than ownership of shares in a mutual fund, in any business~~
107 ~~entity that, directly or indirectly, owns or controls, or is an~~
108 ~~affiliate or subsidiary of, any business entity that may be~~
109 ~~affected by the policy recommendations developed by the~~
110 ~~commission.~~

111 ~~b. Whether he or she is employed by or is engaged in any~~
112 ~~business activity with any business entity that, directly or~~
113 ~~indirectly, owns or controls, or is an affiliate or subsidiary~~
114 ~~of, any business entity that may be affected by the policy~~
115 ~~recommendations developed by the commission.~~

116 ~~(c) The chair may designate the following ex officio,~~
117 ~~nonvoting members to provide information and advice to the~~
118 ~~commission at the request of the chair:~~

119 ~~1. The chair of the Florida Public Service Commission, or~~
120 ~~his or her designee.~~

121 ~~2. The Public Counsel, or his or her designee.~~

122 ~~3. A representative of the Department of Agriculture and~~
123 ~~Consumer Services.~~

124 ~~4. A representative of the Department of Financial~~
125 ~~Services.~~

126 ~~5. A representative of the Department of Environmental~~
127 ~~Protection.~~

128 ~~6. A representative of the Department of Community~~
129 ~~Affairs.~~

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130 ~~7. A representative of the Board of Governors of the State~~
131 ~~University System.~~

132 ~~8. A representative of the Department of Transportation.~~

133 ~~(2) Members shall serve without compensation but are~~
134 ~~entitled to reimbursement for per diem and travel expenses as~~
135 ~~provided in s. 112.061.~~

136 ~~(3) Meetings of the commission may be held in various~~
137 ~~locations around the state and at the call of the chair;~~
138 ~~however, the commission must meet at least six times each year.~~

139 ~~(1)(4) The Department of Environmental Protection~~
140 ~~commission may:~~

141 (a) Employ staff and counsel as needed in the performance
142 of its duties.

143 (b) Prosecute and defend legal actions in its own name.

144 (c) Form advisory groups consisting of members of the
145 public to provide information on specific issues.

146 ~~(2)(5) The department commission shall:~~

147 (a) Administer the Florida Renewable Energy and Energy-
148 Efficient Technologies Grants Program pursuant to s. 377.804 to
149 assure a robust grant portfolio.

150 (b) Develop policy for requiring grantees to provide
151 royalty-sharing or licensing agreements with state government
152 for commercialized products developed under a state grant.

153 (c) Administer the Florida Green Government Grants Act
154 pursuant to s. 377.808 and set annual priorities for grants.

155 (d) Administer the information gathering and reporting
156 functions pursuant to ss. 377.601-377.608.

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157 (e) Administer petroleum planning and emergency
158 contingency planning pursuant to ss. 377.701, 377.703, and
159 377.704.

160 (f) Represent Florida in the Southern States Energy
161 Compact pursuant to ss. 377.71-377.712.

162 ~~(g) Complete the annual assessment of the efficacy of~~
163 ~~Florida's Energy and Climate Change Action Plan, upon completion~~
164 ~~by the Governor's Action Team on Energy and Climate Change~~
165 ~~pursuant to the Governor's Executive Order 2007-128, and provide~~
166 ~~specific recommendations to the Governor and the Legislature~~
167 ~~each year to improve results.~~

168 (g) ~~(h)~~ Administer the provisions of the Florida Energy and
169 Climate Protection Act pursuant to ss. 377.801-377.806.

170 (h) ~~(i)~~ Advocate for energy and climate change issues and
171 provide educational outreach and technical assistance in
172 cooperation with the state's academic institutions.

173 (i) ~~(j)~~ Be a party in the proceedings to adopt goals and
174 submit comments to the Public Service Commission pursuant to s.
175 366.82.

176 (j) ~~(k)~~ Adopt rules pursuant to chapter 120 in order to
177 implement all powers and duties described in this section.

178 Section 8. Subsection (1) and paragraphs (a) and (b) of
179 subsection (2) of section 377.602, Florida Statutes, are amended
180 to read:

181 377.602 Definitions.—As used in ss. 377.601-377.608:

182 (1) "Department" means the Department of Environmental
183 Protection ~~"Commission"~~ ~~means the Florida Energy and Climate~~
184 ~~Commission.~~

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185 (2) "Energy resources" includes, but shall not be limited
186 to:

187 (a) Energy converted from solar radiation, wind, hydraulic
188 potential, tidal movements, biomass, geothermal sources, and
189 other energy resources the department ~~commission~~ determines to
190 be important to the production or supply of energy.

191 (b) Propane, butane, motor gasoline, kerosene, home
192 heating oil, diesel fuel, other middle distillates, aviation
193 gasoline, kerosene-type jet fuel, naphtha-type jet fuel,
194 residual fuels, crude oil, and other petroleum products and
195 hydrocarbons as may be determined by the department ~~commission~~
196 to be of importance.

197 Section 9. Section 377.603, Florida Statutes, is amended
198 to read:

199 377.603 Energy data collection; powers and duties of the
200 department ~~commission~~.—

201 (1) The department ~~commission~~ may collect data on the
202 extraction, production, importation, exportation, refinement,
203 transportation, transmission, conversion, storage, sale, or
204 reserves of energy resources in this state in an efficient and
205 expeditious manner.

206 (2) The department ~~commission~~ may prepare periodic reports
207 of energy data it collects.

208 (3) The department ~~commission~~ may adopt and promulgate
209 such rules and regulations as are necessary to carry out the
210 provisions of ss. 377.601-377.608. Such rules shall be pursuant
211 to chapter 120.

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212 (4) The department ~~commission~~ shall maintain internal
213 validation procedures to assure the accuracy of information
214 received.

215 Section 10. Section 377.604, Florida Statutes, is amended
216 to read:

217 377.604 Required reports.—Every person who produces,
218 imports, exports, refines, transports, transmits, converts,
219 stores, sells, or holds known reserves of any form of energy
220 resources used as fuel shall report to the department
221 ~~commission~~, at the request of and in a manner prescribed by the
222 department ~~commission~~, on forms provided by the department
223 ~~commission~~. Such forms shall be designed in such a manner as to
224 indicate:

225 (1) The identity of the person or persons making the
226 report.

227 (2) The quantity of energy resources extracted, produced,
228 imported, exported, refined, transported, transmitted,
229 converted, stored, or sold except at retail.

230 (3) The quantity of energy resources known to be held in
231 reserve in the state.

232 (4) The identity of each refinery from which petroleum
233 products have normally been obtained and the type and quantity
234 of products secured from that refinery for sale or resale in
235 this state.

236 (5) Any other information which the department ~~commission~~
237 deems proper pursuant to the intent of ss. 377.601-377.608.

238 Section 11. Section 377.605, Florida Statutes, is amended
239 to read:

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240 377.605 Use of existing information.—The department
241 ~~commission~~ may utilize to the fullest extent possible any
242 existing energy information already prepared for state or
243 federal agencies. Every state, county, and municipal agency
244 shall cooperate with the department ~~commission~~ and shall submit
245 any information on energy to the department ~~commission~~ upon
246 request.

247 Section 12. Section 377.606, Florida Statutes, is amended
248 to read:

249 377.606 Records of the department ~~commission~~; limits of
250 confidentiality.—The information or records of individual
251 persons, as defined in this section, obtained by the department
252 ~~commission~~ as a result of a report, investigation, or
253 verification required by the department ~~commission~~ shall be open
254 to the public, except such information the disclosure of which
255 would be likely to cause substantial harm to the competitive
256 position of the person providing such information and which is
257 requested to be held confidential by the person providing such
258 information. Such proprietary information is confidential and
259 exempt from the provisions of s. 119.07(1). Information reported
260 by entities other than the department ~~commission~~ in documents or
261 reports open to public inspection shall under no circumstances
262 be classified as confidential by the department ~~commission~~.
263 Divulgence of proprietary information as is requested to be held
264 confidential, except upon order of a court of competent
265 jurisdiction or except to an officer of the state entitled to
266 receive the same in his or her official capacity, shall be a
267 misdemeanor of the second degree, punishable as provided in ss.

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268 775.082 and 775.083. Nothing in this section shall be construed
269 to prohibit the publication or divulgence by other means of data
270 so classified as to prevent identification of particular
271 accounts or reports made to the department ~~commission~~ in
272 compliance with s. 377.603 or to prohibit the disclosure of such
273 information to properly qualified legislative committees. The
274 department ~~commission~~ shall establish a system which permits
275 reasonable access to information developed.

276 Section 13. For the purpose of incorporating the amendment
277 made by this act to section 377.602, Florida Statutes, in a
278 reference thereto, Section 377.607, Florida Statutes, is
279 reenacted to read:

280 377.607 Violations; penalties.—Any person who willfully
281 fails to submit information as required by ss. 377.601-377.608,
282 or submits false information, is guilty of a misdemeanor of the
283 first degree, punishable as provided in ss. 775.082 and 775.083.

284 Section 14. Section 377.608, Florida Statutes, is amended
285 to read:

286 377.608 Prosecution of cases by state attorney.—The state
287 attorney shall prosecute all cases certified to him or her for
288 prosecution by the department ~~commission~~ immediately upon
289 receipt of the evidence transmitted by the department
290 ~~commission~~, or as soon thereafter as practicable.

291 Section 15. Subsections (1), (2), and (3) of section
292 377.701, Florida Statutes, are amended to read:

293 377.701 Petroleum allocation.—

294 (1) The Department of Environmental Protection Florida
295 ~~Energy and Climate Commission~~ shall assume the state's role in

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296 petroleum allocation and conservation, including the development
297 of a fair and equitable petroleum plan. The department
298 ~~commission~~ shall constitute the responsible state agency for
299 performing the functions of any federal program delegated to the
300 state, which relates to petroleum supply, demand, and
301 allocation.

302 (2) The department ~~commission~~ shall, in addition to
303 assuming the duties and responsibilities provided by subsection
304 (1), perform the following:

305 (a) In projecting available supplies of petroleum,
306 coordinate with the Department of Revenue to secure information
307 necessary to assure the sufficiency and accuracy of data
308 submitted by persons affected by any federal fuel allocation
309 program.

310 (b) Require such periodic reports from public and private
311 sources as may be necessary to the fulfillment of its
312 responsibilities under this act. Such reports may include:
313 petroleum use; all sales, including end-user sales, except
314 retail gasoline and retail fuel oil sales; inventories; expected
315 supplies and allocations; and petroleum conservation measures.

316 (c) In cooperation with the Department of Revenue and
317 other relevant state agencies, provide for long-range studies
318 regarding the usage of petroleum in the state in order to:

- 319 1. Comprehend the consumption of petroleum resources.
- 320 2. Predict future petroleum demands in relation to
321 available resources.
- 322 3. Report the results of such studies to the Legislature.

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323 (3) For the purpose of determining accuracy of data, all
324 state agencies shall timely provide the department ~~commission~~
325 with petroleum-use information in a format suitable to the needs
326 of the allocation program.

327 Section 16. Section 377.703, Florida Statutes, is amended
328 to read:

329 377.703 Additional functions of the Department of
330 Environmental Protection ~~Florida Energy and Climate Commission.~~

331 (1) LEGISLATIVE INTENT.—Recognizing that energy supply and
332 demand questions have become a major area of concern to the
333 state which must be dealt with by effective and well-coordinated
334 state action, it is the intent of the Legislature to promote the
335 efficient, effective, and economical management of energy
336 problems, centralize energy coordination responsibilities,
337 pinpoint responsibility for conducting energy programs, and
338 ensure the accountability of state agencies for the
339 implementation of s. 377.601(2), the state energy policy. It is
340 the specific intent of the Legislature that nothing in this act
341 shall in any way change the powers, duties, and responsibilities
342 assigned by the Florida Electrical Power Plant Siting Act, part
343 II of chapter 403, or the powers, duties, and responsibilities
344 of the Florida Public Service Commission.

345 (2) ~~FLORIDA ENERGY AND CLIMATE COMMISSION, DUTIES.~~—The
346 department ~~commission~~ shall perform the following functions
347 consistent with the development of a state energy policy:

348 (a) The department ~~commission~~ shall assume the
349 responsibility for development of an energy emergency
350 contingency plan to respond to serious shortages of primary and

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351 secondary energy sources. Upon a finding by the Governor,
352 implementation of any emergency program shall be upon order of
353 the Governor that a particular kind or type of fuel is, or that
354 the occurrence of an event which is reasonably expected within
355 30 days will make the fuel, in short supply. The department
356 ~~commission~~ shall then respond by instituting the appropriate
357 measures of the contingency plan to meet the given emergency or
358 energy shortage. The Governor may utilize the provisions of s.
359 252.36(5) to carry out any emergency actions required by a
360 serious shortage of energy sources.

361 (b) The department ~~commission~~ shall be responsible for
362 performing or coordinating the functions of any federal energy
363 programs delegated to the state, including energy supply,
364 demand, conservation, or allocation.

365 (c) The department ~~commission~~ shall analyze present and
366 proposed federal energy programs and make recommendations
367 regarding those programs to the Governor and the Legislature.

368 (d) The department ~~commission~~ shall coordinate efforts to
369 seek federal support or other support for state energy
370 activities, including energy conservation, research, or
371 development, and shall be responsible for the coordination of
372 multiagency energy conservation programs and plans.

373 (e) The department ~~commission~~ shall analyze energy data
374 collected and prepare long-range forecasts of energy supply and
375 demand in coordination with the Florida Public Service
376 Commission, which shall have responsibility for electricity and
377 natural gas forecasts. To this end, the forecasts shall contain:

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378 1. An analysis of the relationship of state economic
379 growth and development to energy supply and demand, including
380 the constraints to economic growth resulting from energy supply
381 constraints.

382 2. Plans for the development of renewable energy resources
383 and reduction in dependence on depletable energy resources,
384 particularly oil and natural gas, and an analysis of the extent
385 to which renewable energy sources are being utilized in the
386 state.

387 3. Consideration of alternative scenarios of statewide
388 energy supply and demand for 5, 10, and 20 years to identify
389 strategies for long-range action, including identification of
390 potential social, economic, and environmental effects.

391 4. An assessment of the state's energy resources,
392 including examination of the availability of commercially
393 developable and imported fuels, and an analysis of anticipated
394 effects on the state's environment and social services resulting
395 from energy resource development activities or from energy
396 supply constraints, or both.

397 (f) The department ~~commission~~ shall submit an annual
398 report to the Governor and the Legislature reflecting its
399 activities and making recommendations of policies for
400 improvement of the state's response to energy supply and demand
401 and its effect on the health, safety, and welfare of the people
402 of Florida. The report shall include a report from the Florida
403 Public Service Commission on electricity and natural gas and
404 information on energy conservation programs conducted and
405 underway in the past year and shall include recommendations for

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406 energy conservation programs for the state, including, but not
407 limited to, the following factors:

408 1. Formulation of specific recommendations for improvement
409 in the efficiency of energy utilization in governmental,
410 residential, commercial, industrial, and transportation sectors.

411 2. Collection and dissemination of information relating to
412 energy conservation.

413 3. Development and conduct of educational and training
414 programs relating to energy conservation.

415 4. An analysis of the ways in which state agencies are
416 seeking to implement s. 377.601(2), the state energy policy, and
417 recommendations for better fulfilling this policy.

418 (g) The department ~~commission~~ has authority to adopt rules
419 pursuant to ss. 120.536(1) and 120.54 to implement the
420 provisions of this act.

421 (h) The department ~~commission~~ shall promote the
422 development and use of renewable energy resources, in
423 conformance with the provisions of chapter 187 and s. 377.601,
424 by:

425 1. Establishing goals and strategies for increasing the
426 use of solar energy in this state.

427 2. Aiding and promoting the commercialization of solar
428 energy technology, in cooperation with the Florida Solar Energy
429 Center, Enterprise Florida, Inc., and any other federal, state,
430 or local governmental agency which may seek to promote research,
431 development, and demonstration of solar energy equipment and
432 technology.

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433 3. Identifying barriers to greater use of solar energy
434 systems in this state, and developing specific recommendations
435 for overcoming identified barriers, with findings and
436 recommendations to be submitted annually in the report to the
437 Governor and Legislature required under paragraph (f).

438 4. In cooperation with the Department of Transportation,
439 the Department of Community Affairs, Enterprise Florida, Inc.,
440 the Florida Solar Energy Center, and the Florida Solar Energy
441 Industries Association, investigating opportunities, pursuant to
442 the National Energy Policy Act of 1992, the Housing and
443 Community Development Act of 1992, and any subsequent federal
444 legislation, for solar electric vehicles and other solar energy
445 manufacturing, distribution, installation, and financing efforts
446 which will enhance this state's position as the leader in solar
447 energy research, development, and use.

448 5. Undertaking other initiatives to advance the
449 development and use of renewable energy resources in this state.

450

451 In the exercise of its responsibilities under this paragraph,
452 the department ~~commission~~ shall seek the assistance of the solar
453 energy industry in this state and other interested parties and
454 is authorized to enter into contracts, retain professional
455 consulting services, and expend funds appropriated by the
456 Legislature for such purposes.

457 (i) The department ~~commission~~ shall promote energy
458 conservation in all energy use sectors throughout the state and
459 shall constitute the state agency primarily responsible for this
460 function. To this end, the department ~~commission~~ shall

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461 coordinate the energy conservation programs of all state
462 agencies and review and comment on the energy conservation
463 programs of all state agencies.

464 (j) The department ~~commission~~ shall serve as the state
465 clearinghouse for indexing and gathering all information related
466 to energy programs in state universities, in private
467 universities, in federal, state, and local government agencies,
468 and in private industry and shall prepare and distribute such
469 information in any manner necessary to inform and advise the
470 citizens of the state of such programs and activities. This
471 shall include developing and maintaining a current index and
472 profile of all research activities, which shall be identified by
473 energy area and may include a summary of the project, the amount
474 and sources of funding, anticipated completion dates, or, in
475 case of completed research, conclusions, recommendations, and
476 applicability to state government and private sector functions.
477 The department ~~commission~~ shall coordinate, promote, and respond
478 to efforts by all sectors of the economy to seek financial
479 support for energy activities. The department ~~commission~~ shall
480 provide information to consumers regarding the anticipated
481 energy-use and energy-saving characteristics of products and
482 services in coordination with any federal, state, or local
483 governmental agencies as may provide such information to
484 consumers.

485 (k) The department ~~commission~~ shall coordinate energy-
486 related programs of state government, including, but not limited
487 to, the programs provided in this section. To this end, the
488 department ~~commission~~ shall:

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489 1. Provide assistance to other state agencies, counties,
490 municipalities, and regional planning agencies to further and
491 promote their energy planning activities.

492 2. Require, in cooperation with the Department of
493 Management Services, all state agencies to operate state-owned
494 and state-leased buildings in accordance with energy
495 conservation standards as adopted by the Department of
496 Management Services. Every 3 months, the Department of
497 Management Services shall furnish the department ~~commission~~ data
498 on agencies' energy consumption and emissions of greenhouse
499 gases in a format prescribed by the department ~~commission~~.

500 3. Promote the development and use of renewable energy
501 resources, energy efficiency technologies, and conservation
502 measures.

503 4. Promote the recovery of energy from wastes, including,
504 but not limited to, the use of waste heat, the use of
505 agricultural products as a source of energy, and recycling of
506 manufactured products. Such promotion shall be conducted in
507 conjunction with, and after consultation with, the Department of
508 Environmental Protection and the Florida Public Service
509 Commission where electrical generation or natural gas is
510 involved, and any other relevant federal, state, or local
511 governmental agency having responsibility for resource recovery
512 programs.

513 (1) The department ~~commission~~ shall develop, coordinate,
514 and promote a comprehensive research plan for state programs.
515 Such plan shall be consistent with state energy policy and shall
516 be updated on a biennial basis.

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517 (m) In recognition of the devastation to the economy of
518 this state and the dangers to the health and welfare of
519 residents of this state caused by severe hurricanes, and the
520 potential for such impacts caused by other natural disasters,
521 the department ~~commission~~ shall include in its energy emergency
522 contingency plan and provide to the Florida Building Commission
523 for inclusion in the Florida Energy Efficiency Code for Building
524 Construction specific provisions to facilitate the use of cost-
525 effective solar energy technologies as emergency remedial and
526 preventive measures for providing electric power, street
527 lighting, and water heating service in the event of electric
528 power outages.

529 (3) The department ~~commission~~ shall be responsible for the
530 administration of the Coastal Energy Impact Program provided for
531 and described in Pub. L. No. 94-370, 16 U.S.C. s. 1456a.

532 Section 17. Section 377.801, Florida Statutes, is amended
533 to read:

534 377.801 Short title.—Sections 377.801-377.807 ~~377.806~~ may
535 be cited as the "Florida Energy and Climate Protection Act."

536 Section 18. Section 377.802, Florida Statutes, is amended
537 to read:

538 377.802 Purpose.—This act is intended to provide
539 incentives for Florida's citizens, businesses, school districts,
540 and local governments to take action to diversify the state's
541 energy supplies, reduce dependence on foreign oil, and mitigate
542 the effects of climate change by providing funding for
543 activities designed to achieve these goals. The grant programs
544 in this act are intended to stimulate capital investment in and

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545 enhance the market for renewable energy technologies and
546 technologies intended to diversify Florida's energy supplies,
547 reduce dependence on foreign oil, and combat or limit climate
548 change impacts. This act is also intended to provide incentives
549 for the purchase of energy-efficient appliances ~~and rebates for~~
550 ~~solar energy equipment installations for residential and~~
551 ~~commercial buildings.~~

552 Section 19. Section 377.803, Florida Statutes, is amended
553 to read:

554 377.803 Definitions.—As used in ss. 377.801-377.807
555 ~~377.806~~, the term:

556 (1) "Act" means the Florida Energy and Climate Protection
557 Act.

558 (2) "Department" means the Department of Environmental
559 Protection ~~"Commission"~~ means the Florida Energy and Climate
560 ~~Commission.~~

561 (3) "Person" means an individual, partnership, joint
562 venture, private or public corporation, association, firm,
563 public service company, or any other public or private entity.

564 (4) "Renewable energy" means electrical, mechanical, or
565 thermal energy produced from a method that uses one or more of
566 the following fuels or energy sources: hydrogen, biomass, as
567 defined in s. 366.91, solar energy, geothermal energy, wind
568 energy, ocean energy, waste heat, or hydroelectric power.

569 (5) "Renewable energy technology" means any technology
570 that generates or utilizes a renewable energy resource.

571 ~~(6) "Solar energy system" means equipment that provides~~
572 ~~for the collection and use of incident solar energy for water~~

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573 ~~heating, space heating or cooling, or other applications that~~
574 ~~would normally require a conventional source of energy such as~~
575 ~~petroleum products, natural gas, or electricity that performs~~
576 ~~primarily with solar energy. In other systems in which solar~~
577 ~~energy is used in a supplemental way, only those components that~~
578 ~~collect and transfer solar energy shall be included in this~~
579 ~~definition.~~

580 ~~(7) "Solar photovoltaic system" means a device that~~
581 ~~converts incident sunlight into electrical current.~~

582 ~~(8) "Solar thermal system" means a device that traps heat~~
583 ~~from incident sunlight in order to heat water.~~

584 Section 20. Section 377.804, Florida Statutes, is amended
585 to read:

586 377.804 Renewable Energy and Energy-Efficient Technologies
587 Grants Program.—

588 (1) The Renewable Energy and Energy-Efficient Technologies
589 Grants Program is established within the department ~~commission~~
590 to provide renewable energy matching grants for demonstration,
591 commercialization, research, and development projects relating
592 to renewable energy technologies and innovative technologies
593 that significantly increase energy efficiency for vehicles and
594 commercial buildings.

595 (2) Matching grants for projects described in subsection
596 (1) may be made to any of the following:

597 (a) Municipalities and county governments.

598 (b) Established for-profit companies licensed to do
599 business in the state.

600 (c) Universities and colleges in the state.

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601 (d) Utilities located and operating within the state.

602 (e) Not-for-profit organizations.

603 (f) Other qualified persons, as determined by the
604 department commission.

605 (3) The department commission may adopt rules pursuant to
606 ss. 120.536(1) and 120.54 to provide for application
607 requirements, provide for ranking of applications, and
608 administer the awarding of grants under this program.

609 (4) Factors the department commission shall consider in
610 awarding grants include, but are not limited to:

611 (a) The availability of matching funds or other in-kind
612 contributions applied to the total project from an applicant.
613 The department commission shall give greater preference to
614 projects that provide such matching funds or other in-kind
615 contributions.

616 (b) The degree to which the project stimulates in-state
617 capital investment and economic development in metropolitan and
618 rural areas, including the creation of jobs and the future
619 development of a commercial market for renewable energy
620 technologies.

621 (c) The extent to which the proposed project has been
622 demonstrated to be technically feasible based on pilot project
623 demonstrations, laboratory testing, scientific modeling, or
624 engineering or chemical theory that supports the proposal.

625 (d) The degree to which the project incorporates an
626 innovative new technology or an innovative application of an
627 existing technology.

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628 (e) The degree to which a project generates thermal,
629 mechanical, or electrical energy by means of a renewable energy
630 resource that has substantial long-term production potential.

631 (f) The degree to which a project demonstrates efficient
632 use of energy and material resources.

633 (g) The degree to which the project fosters overall
634 understanding and appreciation of renewable energy technologies.

635 (h) The ability to administer a complete project.

636 (i) Project duration and timeline for expenditures.

637 (j) The geographic area in which the project is to be
638 conducted in relation to other projects.

639 (k) The degree of public visibility and interaction.

640 (5) The department ~~commission~~ shall solicit the expertise
641 of state agencies, Enterprise Florida, Inc., and state
642 universities, and may solicit the expertise of other public and
643 private entities it deems appropriate, in evaluating project
644 proposals. State agencies shall cooperate with the department
645 ~~commission~~ and provide such assistance as requested.

646 (6) The commission shall coordinate and actively consult
647 with the Department of Agriculture and Consumer Services during
648 the review and approval process of grants relating to bioenergy
649 projects for renewable energy technology. Factors for
650 consideration in awarding grants relating to bioenergy projects
651 may include, but are not limited to, the degree to which:

652 (a) The project stimulates in-state capital investment and
653 economic development in metropolitan and rural areas, including
654 the creation of jobs and the future development of a commercial
655 market for bioenergy.

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656 (b) The project produces bioenergy from Florida-grown
657 crops or biomass.

658 (c) The project demonstrates efficient use of energy and
659 material resources.

660 (d) The project fosters overall understanding and
661 appreciation of bioenergy technologies.

662 (e) Matching funds and in-kind contributions from an
663 applicant are available.

664 (f) The project duration and the timeline for expenditures
665 are acceptable.

666 (g) The project has a reasonable assurance of enhancing
667 the value of agricultural products or will expand agribusiness
668 in the state.

669 (h) Preliminary market and feasibility research has been
670 conducted by the applicant or others and shows there is a
671 reasonable assurance of a potential market.

672 (7) Each grant application shall be accompanied by an
673 affidavit from the applicant attesting to the accuracy of the
674 statements contained in the application.

675 Section 21. Section 377.806, Florida Statutes, is
676 repealed.

677 Section 22. Section 377.807, Florida Statutes, is amended
678 to read:

679 377.807 Energy-efficient appliance rebate program.—

680 (1) The department ~~Florida Energy and Climate Commission~~
681 is authorized to develop and administer a consumer rebate
682 program for residential energy-efficient appliances, consistent

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683 with 42 U.S.C. s. 15821 and any federal agency guidance or
684 regulations issued in furtherance of federal law.

685 (2) The department ~~commission~~ may adopt rules pursuant to
686 ss. 120.536(1) and 120.54 designating eligible appliances,
687 rebate amounts, and the administration of the issuance of
688 rebates. The rules shall be consistent with 42 U.S.C. s. 15821
689 and any subsequent implementing federal regulations or guidance.

690 (3) The department ~~commission~~ is authorized to enter into
691 contracts or memoranda of agreement with other agencies of the
692 state, public-private partnerships, or other arrangements such
693 that the most efficient means of administering consumer rebates
694 can be achieved.

695 Section 23. Section 377.808, Florida Statutes, is amended
696 to read:

697 377.808 Florida Green Government Grants Act.—

698 (1) This section may be cited as the "Florida Green
699 Government Grants Act."

700 (2) The Department of Environmental Protection Florida
701 ~~Energy and Climate Commission~~ shall use funds specifically
702 appropriated to award grants under this section to assist local
703 governments, including municipalities, counties, and school
704 districts, in the development and implementation of programs
705 that achieve green standards. Green standards shall be
706 determined by the department ~~commission~~ and shall provide for
707 cost-efficient solutions, reducing greenhouse gas emissions,
708 improving quality of life, and strengthening the state's
709 economy.

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710 (3) The department ~~commission~~ shall adopt rules pursuant
711 to chapter 120 to administer the grants provided for in this
712 section. In accordance with the rules adopted by the department
713 ~~commission~~ under this section, the department ~~commission~~ may
714 provide grants from funds specifically appropriated for this
715 purpose to local governments for the costs of achieving green
716 standards, including necessary administrative expenses. The
717 rules of the department ~~commission~~ shall:

718 (a) Designate one or more suitable green government
719 standards frameworks from which local governments may develop a
720 greening government initiative and from which projects may be
721 eligible for funding pursuant to this section.

722 (b) Require that projects that plan, design, construct,
723 upgrade, or replace facilities reduce greenhouse gas emissions
724 and be cost-effective, environmentally sound, permittable, and
725 implementable.

726 (c) Require local governments to match state funds with
727 direct project cost sharing or in-kind services.

728 (d) Provide for a scale of matching requirements for local
729 governments on the basis of population in order to assist rural
730 and undeveloped areas of the state with any financial burden of
731 addressing climate change impacts.

732 (e) Require grant applications to be submitted on
733 appropriate forms developed and adopted by the department
734 ~~commission~~ with appropriate supporting documentation and require
735 records to be maintained.

736 (f) Establish a system to determine the relative priority
737 of grant applications. The system shall consider greenhouse gas

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738 reductions, energy savings and efficiencies, and proven
739 technologies.

740 (g) Establish requirements for competitive procurement of
741 engineering and construction services, materials, and equipment.

742 (h) Provide for termination of grants when program
743 requirements are not met.

744 (4) Each local government is limited to not more than two
745 grant applications during each application period announced by
746 the department ~~commission~~. However, a local government may not
747 have more than three active projects expending grant funds
748 during any state fiscal year.

749 (5) The department ~~commission~~ shall perform an adequate
750 overview of each grant, which may include technical review, site
751 inspections, disbursement approvals, and auditing to
752 successfully implement this section.

753 Section 24. Section 377.809, Florida Statutes, is amended
754 to read:

755 377.809 Energy Economic Zone Pilot Program.—

756 (1) The Department of Community Affairs, in consultation
757 with the Department of Transportation, shall implement an Energy
758 Economic Zone Pilot Program for the purpose of developing a
759 model to help communities cultivate green economic development,
760 encourage renewable electric energy generation, manufacture
761 products that contribute to energy conservation and green jobs,
762 and further implement chapter 2008-191, Laws of Florida,
763 relative to discouraging sprawl and developing energy-efficient
764 land use patterns and greenhouse gas reduction strategies. The
765 Office of Tourism, Trade, and Economic Development and the

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766 Department of Environmental Protection Florida Energy and
767 Climate Commission shall provide technical assistance to the
768 departments in developing and administering the program.

769 (2) (a) The application for a pilot project shall:

770 1. Identify the proposed location of the energy economic
771 zone, which must be within an adopted urban service area and may
772 include a county landfill outside the urban service boundary;

773 2. Present a proposed strategic plan for development and
774 redevelopment in the energy economic zone;

775 3. Demonstrate consistency of the strategic plan with the
776 local comprehensive plan or include proposed plan amendments
777 necessary to achieve consistency; and

778 4. Identify comprehensive plan amendments that will be
779 proposed to implement chapter 2008-191, Laws of Florida.

780 (b) The strategic plan under subparagraph (a)1. must
781 include mixed-use and form-based standards that integrate
782 multimodal transportation facilities with land use and
783 development patterns to reduce reliance on automobiles,
784 encourage certified green building developments and renewable
785 energy systems, encourage creation of green jobs, and
786 demonstrate how local financial and regulatory incentives will
787 be used in the energy economic zone.

788 (c) The Department of Community Affairs shall grant at
789 least one application if the application meets the requirements
790 of this subsection and the community has demonstrated a prior
791 commitment to energy conservation, carbon reduction, green
792 building, and economic development. The Department of Community
793 Affairs and the Office of Tourism, Trade, and Economic

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794 Development shall provide the pilot community, including
795 businesses within the energy economic zone, with technical
796 assistance in identifying and qualifying for eligible grants and
797 credits in job creation, energy, and other areas.

798 (3) The Department of Community Affairs, with the
799 assistance of the Office of Tourism, Trade, and Economic
800 Development, shall submit an interim report by February 15,
801 2010, to the Governor, the President of the Senate, and the
802 Speaker of the House of Representatives regarding the status of
803 the pilot program. The report shall contain any recommendations
804 deemed appropriate by the department for statutory changes to
805 accomplish the goals of the pilot program community, including
806 whether it would be beneficial to provide financial incentives
807 similar to those offered to an enterprise zone.

808 (4) If the pilot project is ongoing, the Department of
809 Community Affairs, with the assistance of the Office of Tourism,
810 Trade, and Economic Development, shall submit a report to the
811 Governor, the President of the Senate, and the Speaker of the
812 House of Representatives by February 15, 2012, evaluating
813 whether the pilot program has demonstrated success. The report
814 shall contain recommendations with regard to whether the program
815 should be expanded for use by other local governments and
816 whether state policies should be revised to encourage the goals
817 of the program.

818 Section 25. Section 409.508, Florida Statutes, is amended
819 to read:

820 409.508 Low-income home energy assistance program.—

821 (1) As used in this section:

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822 (a) "Eligible household" means a household eligible for
823 funds from the Low-income Home Energy Assistance Act of 1981, 42
824 U.S.C. ss. 8621 et seq.

825 (b) "Home energy" means a source of heating or cooling in
826 residential dwellings.

827 (c) "Utility" means any person, corporation, partnership,
828 municipality, cooperative, association, or other legal entity
829 and its lessees, trustees, or receivers now or hereafter owning,
830 operating, managing, or controlling any plant or other facility
831 supplying electricity or natural gas to or for the public within
832 this state, directly or indirectly, for compensation.

833 (2) The Department of Environmental Protection Community
834 ~~Affairs~~ is designated as the state agency to administer the Low-
835 income Home Energy Assistance Act of 1981, 42 U.S.C. ss. 8621 et
836 seq. The Department of Environmental Protection Community
837 ~~Affairs~~ is authorized to provide home energy assistance benefits
838 to eligible households which may be in the form of cash,
839 vouchers, certificates, or direct payments to electric or
840 natural gas utilities or other energy suppliers and operators of
841 low-rent, subsidized housing in behalf of eligible households.
842 Priority shall be given to eligible households having at least
843 one elderly or handicapped individual and to eligible households
844 with the lowest incomes.

845 (3) Agreements may be established between electric or
846 natural gas utility companies, other energy suppliers, the
847 Department of Revenue, and the Department of Environmental
848 Protection Community Affairs for the purpose of providing
849 payments to energy suppliers in the form of a credit against

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850 sales and use taxes due or direct payments to energy suppliers
851 for services rendered to low-income, eligible households.

852 (4) The Department of Environmental Protection Community
853 ~~Affairs~~ shall adopt rules to carry out the provisions of this
854 act.

855 Section 26. Section 409.509, Florida Statutes, is amended
856 to read:

857 409.509 Definitions; weatherization of low-income
858 residences.—As used in this act, the term:

859 (1) "Community action agency" means a private corporation
860 or public agency established pursuant to the Economic
861 Opportunity Act of 1964, Pub. L. No. 88-452, which is authorized
862 to administer funds from federal, state, local, or private
863 funding entities to assess, design, operate, finance, and
864 oversee antipoverty programs.

865 (2) "Department" means the Department of Environmental
866 Protection Community Affairs.

867 (3) "Energy assessment" means an analysis of a dwelling
868 unit to determine the need for cost-effective energy
869 conservation measures as determined by the department.

870 (4) "Household" means an individual or group of
871 individuals living in a dwelling unit as defined by the
872 department.

873 (5) "Low income" means household income that is at or
874 below 125 percent of the federally established poverty level.

875 (6) "Residence" means a dwelling unit as defined by the
876 department.

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877 (7) "Weatherization" means materials or measures and their
878 installation as defined in the federal Energy Conservation and
879 Production Act, Pub. L. No. 94-385, which are used to improve
880 the thermal efficiency of a residence.

881 (8) "Weatherizing agency" means any approved department
882 grantee that bears the responsibility for ensuring the
883 performance of weatherization of residences under this act and
884 has been approved by the department, that was performing
885 weatherization services as of July 1, 1988, unless such agency
886 has withdrawn or lost its designation as a result of failure to
887 perform under acceptable contract conditions as determined by
888 the department.

889 Section 27. For the purpose of incorporating the amendment
890 made by this act to section 409.509, Florida Statutes, in a
891 reference thereto, Section 409.5091, Florida Statutes, is
892 reenacted to read:

893 409.5091 Department responsible for weatherizing agencies;
894 energy assessment.—

895 (1) The department is responsible for ensuring that
896 weatherizing agencies comply with state laws and department
897 rules.

898 (2) Before a residence is weatherized, the department
899 shall require that an energy assessment be conducted.

900 Section 28. For the purpose of incorporating the amendment
901 made by this act to section 409.509, Florida Statutes, in a
902 reference thereto, Section 409.5092, Florida Statutes, is
903 reenacted to read:

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904 409.5092 Permission for weatherization; rules.—Before a
905 leased or rented residence is weatherized, written permission
906 for the weatherization shall be obtained from the owner of the
907 residence. The department shall adopt rules to ensure that:

908 (1) The benefits of weatherization assistance in
909 connection with a leased or rented residence accrue primarily to
910 low-income tenants.

911 (2) As a result of weatherization, the rent on the
912 residence is not increased and the tenant is not evicted for a
913 time period set by the department.

914 Section 29. For the purpose of incorporating the amendment
915 made by this act to section 409.509, Florida Statutes, in a
916 reference thereto, Section 409.5093, Florida Statutes, is
917 reenacted to read:

918 409.5093 Replacement agency.—If any area of the state has
919 no designated weatherization agency as a result of withdrawal or
920 loss of designation by departmental action, a replacement agency
921 or agencies may be selected following a process delineated by
922 federal and state law, regulations, and rules.

923 Section 30. Paragraph (ccc) of subsection (7) of section
924 212.08, Florida Statutes, is repealed.

925 Section 31. Paragraph (y) of subsection (8) of section
926 213.053, Florida Statutes, is amended to read:

927 213.053 Confidentiality and information sharing.—

928 (8) Notwithstanding any other provision of this section,
929 the department may provide:

930 (y) Information relative to ~~ss. 212.08(7)(ccc) and 220.192~~
931 to the Department of Environmental Protection Florida Energy and

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932 ~~Climate Commission~~ for use in the conduct of its official
933 business.

934

935 Disclosure of information under this subsection shall be
936 pursuant to a written agreement between the executive director
937 and the agency. Such agencies, governmental or nongovernmental,
938 shall be bound by the same requirements of confidentiality as
939 the Department of Revenue. Breach of confidentiality is a
940 misdemeanor of the first degree, punishable as provided by s.
941 775.082 or s. 775.083.

942 Section 32. Subsections (3), (4), (5), and (8) of section
943 220.192, Florida Statutes, are amended to read:

944 220.192 Renewable energy technologies investment tax
945 credit.—

946 (3) CORPORATE APPLICATION PROCESS.—Any corporation wishing
947 to obtain tax credits available under this section must submit
948 to the Department of Environmental Protection ~~Florida Energy and~~
949 ~~Climate Commission~~ an application for tax credit that includes a
950 complete description of all eligible costs for which the
951 corporation is seeking a credit and a description of the total
952 amount of credits sought. The Department of Environmental
953 Protection ~~Florida Energy and Climate Commission~~ shall make a
954 determination on the eligibility of the applicant for the
955 credits sought and certify the determination to the applicant
956 and the Department of Revenue. The corporation must attach the
957 Department of Environmental Protection' ~~Florida Energy and~~
958 ~~Climate Commission's~~ certification to the tax return on which
959 the credit is claimed. The Department of Environmental

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960 ~~Protection Florida Energy and Climate Commission~~ shall be
961 responsible for ensuring that the corporate income tax credits
962 granted in each fiscal year do not exceed the limits provided
963 for in this section. The Department of Environmental Protection
964 ~~Florida Energy and Climate Commission~~ is authorized to adopt the
965 necessary rules, guidelines, and application materials for the
966 application process.

967 (4) TAXPAYER APPLICATION PROCESS.—To claim a credit under
968 this section, each taxpayer must apply to the Department of
969 Environmental Protection ~~Florida Energy and Climate Commission~~
970 for an allocation of each type of annual credit by the date
971 established by the Department of Environmental Protection
972 ~~Florida Energy and Climate Commission~~. The application form may
973 be established by the Department of Environmental Protection
974 ~~Florida Energy and Climate Commission~~. The form must include an
975 affidavit from each taxpayer certifying that all information
976 contained in the application, including all records of eligible
977 costs claimed as the basis for the tax credit, are true and
978 correct. Approval of the credits under this section shall be
979 accomplished on a first-come, first-served basis, based upon the
980 date complete applications are received by the Department of
981 Environmental Protection ~~Florida Energy and Climate Commission~~.
982 A taxpayer shall submit only one complete application based upon
983 eligible costs incurred within a particular state fiscal year.
984 Incomplete placeholder applications will not be accepted and
985 will not secure a place in the first-come, first-served
986 application line. If a taxpayer does not receive a tax credit
987 allocation due to the exhaustion of the annual tax credit

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988 authorizations, then such taxpayer may reapply in the following
989 year for those eligible costs and will have priority over other
990 applicants for the allocation of credits.

991 (5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF
992 CREDITS.—

993 (a) In addition to its existing audit and investigation
994 authority, the Department of Revenue may perform any additional
995 financial and technical audits and investigations, including
996 examining the accounts, books, and records of the tax credit
997 applicant, which are necessary to verify the eligible costs
998 included in the tax credit return and to ensure compliance with
999 this section. The Department of Environmental Protection Florida
1000 ~~Energy and Climate Commission~~ shall provide technical assistance
1001 when requested by the Department of Revenue on any technical
1002 audits or examinations performed pursuant to this section.

1003 (b) It is grounds for forfeiture of previously claimed and
1004 received tax credits if the Department of Revenue determines, as
1005 a result of an audit or examination or from information received
1006 from the Department of Environmental Protection Florida ~~Energy~~
1007 ~~and Climate Commission~~, that a taxpayer received tax credits
1008 pursuant to this section to which the taxpayer was not entitled.
1009 The taxpayer is responsible for returning forfeited tax credits
1010 to the Department of Revenue, and such funds shall be paid into
1011 the General Revenue Fund of the state.

1012 (c) The Department of Environmental Protection Florida
1013 ~~Energy and Climate Commission~~ may revoke or modify any written
1014 decision granting eligibility for tax credits under this section
1015 if it is discovered that the tax credit applicant submitted any

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1016 false statement, representation, or certification in any
1017 application, record, report, plan, or other document filed in an
1018 attempt to receive tax credits under this section. The
1019 Department of Environmental Protection Florida Energy and
1020 Climate Commission shall immediately notify the Department of
1021 Revenue of any revoked or modified orders affecting previously
1022 granted tax credits. Additionally, the taxpayer must notify the
1023 Department of Revenue of any change in its tax credit claimed.

1024 (d) The taxpayer shall file with the Department of Revenue
1025 an amended return or such other report as the Department of
1026 Revenue prescribes by rule and shall pay any required tax and
1027 interest within 60 days after the taxpayer receives notification
1028 from the Department of Environmental Protection Florida Energy
1029 and Climate Commission that previously approved tax credits have
1030 been revoked or modified. If the revocation or modification
1031 order is contested, the taxpayer shall file an amended return or
1032 other report as provided in this paragraph within 60 days after
1033 a final order is issued after proceedings.

1034 (e) A notice of deficiency may be issued by the Department
1035 of Revenue at any time within 3 years after the taxpayer
1036 receives formal notification from the Department of
1037 Environmental Protection Florida Energy and Climate Commission
1038 that previously approved tax credits have been revoked or
1039 modified. If a taxpayer fails to notify the Department of
1040 Revenue of any changes to its tax credit claimed, a notice of
1041 deficiency may be issued at any time.

1042 (8) PUBLICATION.—The Department of Environmental
1043 Protection Florida Energy and Climate Commission shall determine

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1044 and publish on a regular basis the amount of available tax
1045 credits remaining in each fiscal year.

1046 Section 33. Subsections (2) and (5) of section 288.1089,
1047 Florida Statutes, are amended to read:

1048 288.1089 Innovation Incentive Program.—

1049 (2) As used in this section, the term:

1050 ~~(e)-(d)~~ "Department" means the Department of Environmental
1051 Protection ~~"Commission" means the Florida Energy and Climate~~
1052 ~~Commission.~~

1053 ~~(d)-(e)~~ "Cumulative investment" means cumulative capital
1054 investment and all eligible capital costs, as defined in s.
1055 220.191.

1056 (5) Enterprise Florida, Inc., shall evaluate proposals for
1057 all three categories of innovation incentive awards and transmit
1058 recommendations for awards to the office. Before making its
1059 recommendations on alternative and renewable energy projects,
1060 Enterprise Florida, Inc., shall solicit comments and
1061 recommendations from the department ~~Florida Energy and Climate~~
1062 ~~Commission~~. For each project, the evaluation and recommendation
1063 to the office must include, but need not be limited to:

1064 (a) A description of the project, its required facilities,
1065 and the associated product, service, or research and development
1066 associated with the project.

1067 (b) The percentage of match provided for the project.

1068 (c) The number of full-time equivalent jobs that will be
1069 created by the project, the total estimated average annual wages
1070 of such jobs, and the types of business activities and jobs
1071 likely to be stimulated by the project.

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1072 (d) The cumulative investment to be dedicated to the
1073 project within 5 years and the total investment expected in the
1074 project if more than 5 years.

1075 (e) The projected economic and fiscal impacts on the local
1076 and state economies relative to investment.

1077 (f) A statement of any special impacts the project is
1078 expected to stimulate in a particular business sector in the
1079 state or regional economy or in the state's universities and
1080 community colleges.

1081 (g) A statement of any anticipated or proposed
1082 relationships with state universities.

1083 (h) A statement of the role the incentive is expected to
1084 play in the decision of the applicant to locate or expand in
1085 this state.

1086 (i) A recommendation and explanation of the amount of the
1087 award needed to cause the applicant to expand or locate in this
1088 state.

1089 (j) A discussion of the efforts and commitments made by
1090 the local community in which the project is to be located to
1091 induce the applicant's location or expansion, taking into
1092 consideration local resources and abilities.

1093 (k) A recommendation for specific performance criteria the
1094 applicant would be expected to achieve in order to receive
1095 payments from the fund and penalties or sanctions for failure to
1096 meet or maintain performance conditions.

1097 (l) Additional evaluative criteria for a research and
1098 development facility project, including:

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1099 1. A description of the extent to which the project has
1100 the potential to serve as catalyst for an emerging or evolving
1101 cluster.

1102 2. A description of the extent to which the project has or
1103 could have a long-term collaborative research and development
1104 relationship with one or more universities or community colleges
1105 in this state.

1106 3. A description of the existing or projected impact of
1107 the project on established clusters or targeted industry
1108 sectors.

1109 4. A description of the project's contribution to the
1110 diversity and resiliency of the innovation economy of this
1111 state.

1112 5. A description of the project's impact on special needs
1113 communities, including, but not limited to, rural areas,
1114 distressed urban areas, and enterprise zones.

1115 (m) Additional evaluative criteria for alternative and
1116 renewable energy proposals, including:

1117 1. The availability of matching funds or other in-kind
1118 contributions applied to the total project from an applicant.
1119 The department ~~commission~~ shall give greater preference to
1120 projects that provide such matching funds or other in-kind
1121 contributions.

1122 2. The degree to which the project stimulates in-state
1123 capital investment and economic development in metropolitan and
1124 rural areas, including the creation of jobs and the future
1125 development of a commercial market for renewable energy
1126 technologies.

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1127 3. The extent to which the proposed project has been
1128 demonstrated to be technically feasible based on pilot project
1129 demonstrations, laboratory testing, scientific modeling, or
1130 engineering or chemical theory that supports the proposal.

1131 4. The degree to which the project incorporates an
1132 innovative new technology or an innovative application of an
1133 existing technology.

1134 5. The degree to which a project generates thermal,
1135 mechanical, or electrical energy by means of a renewable energy
1136 resource that has substantial long-term production potential.

1137 6. The degree to which a project demonstrates efficient
1138 use of energy and material resources.

1139 7. The degree to which the project fosters overall
1140 understanding and appreciation of renewable energy technologies.

1141 8. The ability to administer a complete project.

1142 9. Project duration and timeline for expenditures.

1143 10. The geographic area in which the project is to be
1144 conducted in relation to other projects.

1145 11. The degree of public visibility and interaction.

1146 Section 34. Subsection (9) of section 288.9607, Florida
1147 Statutes, is amended to read:

1148 288.9607 Guaranty of bond issues.—

1149 (9) The membership of the corporation is authorized and
1150 directed to conduct such investigation as it may deem necessary
1151 for promulgation of regulations to govern the operation of the
1152 guaranty program authorized by this section. The regulations may
1153 include such other additional provisions, restrictions, and
1154 conditions as the corporation, after its investigation referred

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1155 to in this subsection, shall determine to be proper to achieve
1156 the most effective utilization of the guaranty program. This may
1157 include, without limitation, a detailing of the remedies that
1158 must be exhausted by bondholders, a trustee acting on their
1159 behalf, or other credit provided before calling upon the
1160 corporation to perform under its guaranty agreement and the
1161 subrogation of other rights of the corporation with reference to
1162 the capital project and its operation or the financing in the
1163 event the corporation makes payment pursuant to the applicable
1164 guaranty agreement. The regulations promulgated by the
1165 corporation to govern the operation of the guaranty program may
1166 contain specific provisions with respect to the rights of the
1167 corporation to enter, take over, and manage all financed
1168 properties upon default. These regulations shall be submitted by
1169 the corporation to the Department of Environmental Protection
1170 ~~Florida Energy and Climate Commission~~ for approval.

1171 Section 35. Subsection (5) of section 366.82, Florida
1172 Statutes, is amended to read:

1173 366.82 Definition; goals; plans; programs; annual reports;
1174 energy audits.—

1175 (5) The Department of Environmental Protection ~~Florida~~
1176 ~~Energy and Climate Commission~~ shall be a party in the
1177 proceedings to adopt goals and shall file with the commission
1178 comments on the proposed goals, including, but not limited to:

1179 (a) An evaluation of utility load forecasts, including an
1180 assessment of alternative supply-side and demand-side resource
1181 options.

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1182 (b) An analysis of various policy options that can be
1183 implemented to achieve a least-cost strategy, including
1184 nonutility programs targeted at reducing and controlling the per
1185 capita use of electricity in the state.

1186 (c) An analysis of the impact of state and local building
1187 codes and appliance efficiency standards on the need for
1188 utility-sponsored conservation and energy efficiency measures
1189 and programs.

1190 Section 36. Section 366.85, Florida Statutes, is repealed.

1191 Section 37. Subsection (3) of section 366.92, Florida
1192 Statutes, is amended to read:

1193 366.92 Florida renewable energy policy.—

1194 (3) The commission shall adopt rules for a renewable
1195 portfolio standard requiring each provider to supply renewable
1196 energy to its customers directly, by procuring, or through
1197 renewable energy credits. In developing the RPS rule, the
1198 commission shall consult the Department of Environmental
1199 Protection ~~and the Florida Energy and Climate Commission~~. The
1200 rule shall not be implemented until ratified by the Legislature.
1201 The commission shall present a draft rule for legislative
1202 consideration by February 1, 2009.

1203 (a) In developing the rule, the commission shall evaluate
1204 the current and forecasted levelized cost in cents per kilowatt
1205 hour through 2020 and current and forecasted installed capacity
1206 in kilowatts for each renewable energy generation method through
1207 2020.

1208 (b) The commission's rule:

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1209 1. Shall include methods of managing the cost of
1210 compliance with the renewable portfolio standard, whether
1211 through direct supply or procurement of renewable power or
1212 through the purchase of renewable energy credits. The commission
1213 shall have rulemaking authority for providing annual cost
1214 recovery and incentive-based adjustments to authorized rates of
1215 return on common equity to providers to incentivize renewable
1216 energy. Notwithstanding s. 366.91(3) and (4), upon the
1217 ratification of the rules developed pursuant to this subsection,
1218 the commission may approve projects and power sales agreements
1219 with renewable power producers and the sale of renewable energy
1220 credits needed to comply with the renewable portfolio standard.
1221 In the event of any conflict, this subparagraph shall supersede
1222 s. 366.91(3) and (4). However, nothing in this section shall
1223 alter the obligation of each public utility to continuously
1224 offer a purchase contract to producers of renewable energy.

1225 2. Shall provide for appropriate compliance measures and
1226 the conditions under which noncompliance shall be excused due to
1227 a determination by the commission that the supply of renewable
1228 energy or renewable energy credits was not adequate to satisfy
1229 the demand for such energy or that the cost of securing
1230 renewable energy or renewable energy credits was cost
1231 prohibitive.

1232 3. May provide added weight to energy provided by wind and
1233 solar photovoltaic over other forms of renewable energy, whether
1234 directly supplied or procured or indirectly obtained through the
1235 purchase of renewable energy credits.

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1236 4. Shall determine an appropriate period of time for which
1237 renewable energy credits may be used for purposes of compliance
1238 with the renewable portfolio standard.

1239 5. Shall provide for monitoring of compliance with and
1240 enforcement of the requirements of this section.

1241 6. Shall ensure that energy credited toward compliance
1242 with the requirements of this section is not credited toward any
1243 other purpose.

1244 7. Shall include procedures to track and account for
1245 renewable energy credits, including ownership of renewable
1246 energy credits that are derived from a customer-owned renewable
1247 energy facility as a result of any action by a customer of an
1248 electric power supplier that is independent of a program
1249 sponsored by the electric power supplier.

1250 8. Shall provide for the conditions and options for the
1251 repeal or alteration of the rule in the event that new
1252 provisions of federal law supplant or conflict with the rule.

1253 (c) Beginning on April 1 of the year following final
1254 adoption of the commission's renewable portfolio standard rule,
1255 each provider shall submit a report to the commission describing
1256 the steps that have been taken in the previous year and the
1257 steps that will be taken in the future to add renewable energy
1258 to the provider's energy supply portfolio. The report shall
1259 state whether the provider was in compliance with the renewable
1260 portfolio standard during the previous year and how it will
1261 comply with the renewable portfolio standard in the upcoming
1262 year.

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1263 Section 38. Subsections (3) and (6) of section 403.44,
1264 Florida Statutes, are amended to read:

1265 403.44 Florida Climate Protection Act.—

1266 (3) The department may adopt rules for a cap-and-trade
1267 regulatory program to reduce greenhouse gas emissions from major
1268 emitters. When developing the rules, the department shall
1269 consult with the ~~Florida Energy and Climate Commission and the~~
1270 Florida Public Service Commission and may consult with the
1271 Governor's Action Team for Energy and Climate Change. The
1272 department shall not adopt rules until after January 1, 2010.
1273 The rules shall not become effective until ratified by the
1274 Legislature.

1275 (6) Recognizing that the international, national, and
1276 neighboring state policies and the science of climate change
1277 will evolve, prior to submitting the proposed rules to the
1278 Legislature for consideration, the department ~~shall submit the~~
1279 ~~proposed rules to the Florida Energy and Climate Commission,~~
1280 ~~which shall review the proposed rules and~~ submit a report to the
1281 Governor, the President of the Senate, the Speaker of the House
1282 of Representatives, and the department. The report shall
1283 address:

1284 (a) The overall cost-effectiveness of the proposed cap-
1285 and-trade system in combination with other policies and measures
1286 in meeting statewide targets.

1287 (b) The administrative burden to the state of
1288 implementing, monitoring, and enforcing the program.

1289 (c) The administrative burden on entities covered under
1290 the cap.

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- 1291 (d) The impacts on electricity prices for consumers.
- 1292 (e) The specific benefits to the state's economy for early
1293 adoption of a cap-and-trade system for greenhouse gases in the
1294 context of federal climate change legislation and the
1295 development of new international compacts.
- 1296 (f) The specific benefits to the state's economy
1297 associated with the creation and sale of emissions offsets from
1298 economic sectors outside of the emissions cap.
- 1299 (g) The potential effects on leakage if economic activity
1300 relocates out of the state.
- 1301 (h) The effectiveness of the combination of measures in
1302 meeting identified targets.
- 1303 (i) The economic implications for near-term periods of
1304 short-term and long-term targets specified in the overall
1305 policy.
- 1306 (j) The overall costs and benefits of a cap-and-trade
1307 system to the economy of the state.
- 1308 (k) The impacts on low-income consumers that result from
1309 energy price increases.
- 1310 (l) The consistency of the program with other state and
1311 possible federal efforts.
- 1312 (m) The evaluation of the conditions under which the state
1313 should consider linking its trading system to the systems of
1314 other states or other countries and how that might be affected
1315 by the potential inclusion in the rule of a safety valve.
- 1316 (n) The timing and changes in the external environment,
1317 such as proposals by other states or implementation of a federal
1318 program that would spur reevaluation of the Florida program.

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1319 (o) The conditions and options for eliminating the Florida
1320 program if a federal program were to supplant it.

1321 (p) The need for a regular reevaluation of the progress of
1322 other emitting regions of the country and of the world, and
1323 whether other regions are abating emissions in a commensurate
1324 manner.

1325 (q) The desirability of and possibilities of broadening
1326 the scope of the state's cap-and-trade system at a later date to
1327 include more emitting activities as well as sinks in Florida,
1328 the conditions that would need to be met to do so, and how the
1329 program would encourage these conditions to be met, including
1330 developing monitoring and measuring techniques for land use
1331 emissions and sinks, regulating sources upstream, and other
1332 considerations.

1333 Section 39. Section 526.207, Florida Statutes, is
1334 repealed.

1335 Section 40. Subsection (3) of section 570.954, Florida
1336 Statutes, is amended to read:

1337 570.954 Farm-to-fuel initiative.-

1338 ~~(3) The department shall coordinate with and solicit the~~
1339 ~~expertise of the state energy office within the Department of~~
1340 ~~Environmental Protection when developing and implementing this~~
1341 ~~initiative.~~

1342 Section 41. Subsections (5), (11), (12), and (13) of
1343 section 1004.648, Florida Statutes, are amended to read:

1344 1004.648 Florida Energy Systems Consortium.-

1345 (5) The director, whose office shall be located at the
1346 University of Florida, shall report to the Department of

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1347 ~~Environmental Protection Florida Energy and Climate Commission~~
1348 ~~created pursuant to s. 377.6015.~~

1349 (11) The oversight board, in consultation with the
1350 ~~Department of Environmental Protection Florida Energy and~~
1351 ~~Climate Commission~~, shall ensure that the consortium:

1352 (a) Maintains accurate records of any funds received by
1353 the consortium.

1354 (b) Meets financial and technical performance
1355 expectations, which may include external technical reviews as
1356 required.

1357 (12) The steering committee shall consist of the
1358 university representatives included in the Centers of Excellence
1359 proposals for the Florida Energy Systems Consortium and the
1360 Center of Excellence in Ocean Energy Technology-Phase II which
1361 were reviewed during the 2007-2008 fiscal year by the Florida
1362 Technology, Research, and Scholarship Board created in s.
1363 1004.226(4); a university representative appointed by the
1364 President of Florida International University; and a
1365 representative appointed by the Commissioner of Agriculture
1366 ~~the Florida Energy and Climate Commission~~. The steering
1367 committee shall be responsible for establishing and ensuring the
1368 success of the consortium's mission under subsection (9).

1369 (13) By November 1 of each year, the consortium shall
1370 submit an annual report to the Governor, the President of the
1371 Senate, the Speaker of the House of Representatives, and the
1372 ~~Department of Environmental Protection Florida Energy and~~
1373 ~~Climate Commission~~ regarding its activities, including, but not

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1374 limited to, education and research related to, and the
1375 development and deployment of, alternative energy technologies.

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1379

T I T L E A M E N D M E N T

1380

Remove lines 20-107 and insert:

1381

providing for a type two transfer of the Florida

1382

Energy and Climate Commission's powers, duties,

1383

functions, records, personnel, and property,

1384

unexpended balances of appropriations, allocations,

1385

and other funds, administrative authority,

1386

administrative rules, pending issues, and existing

1387

contracts from the Executive Office of the Governor to

1388

the Department of Environmental Protection; providing

1389

for a type two transfer of the powers, duties,

1390

functions, records, personnel, and property,

1391

unexpended balances of appropriations, allocations,

1392

and other funds, administrative authority,

1393

administrative rules, pending issues, and existing

1394

contracts of the Low-Income Home Energy Assistance

1395

Program and the Weatherization Assistance Program from

1396

the Department of Community Affairs to the Department

1397

of Environmental Protection; amending s. 377.6015,

1398

F.S., relating to the Florida Energy and Climate

1399

Commission; striking language creating the commission

1400

and transferring various authorizations and duties to

1401

the Department of Environmental Protection; amending

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB ENUS 11-01 (2011)

Amendment No. 2

1402 s. 377.602, F.S.; replacing the Florida Energy and
1403 Climate Commission definition with the Department of
1404 Environmental Protection; amending s. 377.603, F.S.;
1405 conforming statutes regarding energy data collection,
1406 rule-making, and preparation of reports; amending s.
1407 377.604, F.S.; conforming statutes regarding required
1408 reports of energy resources used as fuel; amending s.
1409 377.605, F.S.; conforming statutes regarding use of
1410 existing information; amending s. 377.606, F.S.;
1411 conforming statutes regarding records; reenacting s.
1412 377.607, F.S., for purposes of incorporation; amending
1413 s. 377.608, F.S.; conforming statutes regarding
1414 prosecution of cases by the state attorney; amending
1415 s. 377.701, F.S.; conforming statutes regarding
1416 petroleum allocation and conservation; amending s.
1417 377.703, F.S.; conforming statutes regarding
1418 additional functions of the department; amending s.
1419 377.801, F.S.; correcting a reference; amending s.
1420 377.802, F.S.; revising legislative intent; amending
1421 s. 377.803, F.S.; replacing the Florida Energy and
1422 Climate Commission definition with Department of
1423 Environmental Protection within the Florida Energy and
1424 Climate Protection Act; removing a definition;
1425 amending s. 377.804, F.S.; conforming statutes
1426 regarding the Renewable Energy and Energy-Efficient
1427 Technologies Grants Program; repealing s. 377.806,
1428 F.S., relating to the Solar Energy System Incentives
1429 Program; amending s. 377.807, F.S.; conforming

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB ENUS 11-01 (2011)

Amendment No. 2

1430 statutes regarding the Energy-Efficient Appliance
1431 Rebate Program; amending s. 377.808, F.S.; conforming
1432 statutes regarding the Florida Green Government Grants
1433 Act; amending s. 377.809, F.S.; conforming statutes
1434 regarding the Energy Economic Zone Pilot Program;
1435 amending s. 409.508, F.S.; reassigning administration
1436 of the Low-Income Home Energy Assistance Program from
1437 the Department of Community Affairs to the Department
1438 of Environmental Protection; amending s. 409.509,
1439 F.S.; reassigning administration of the Weatherization
1440 Assistance Program from the Department of Community
1441 Affairs to the Department of Environmental Protection;
1442 reenacting ss. 409.5091, 409.5092, and 409.5093, F.S.,
1443 relating to the Weatherization Assistance Program, for
1444 purposes of incorporation; repealing s.
1445 212.08(7)(ccc), F.S., relating to the sales and use
1446 tax exemption for equipment, machinery, and other
1447 materials used for renewable energy technologies;
1448 amending s. 213.053, F.S.; conforming statutes
1449 regarding information-sharing with the Department of
1450 Revenue; amending s. 220.192, F.S.; conforming
1451 statutes regarding the Renewable Energy Technologies
1452 Investment Tax Credit Program; amending s. 288.1089,
1453 F.S.; conforming statutes regarding the Innovation
1454 Incentive Program; amending s. 288.9607, F.S.;
1455 conforming statutes regarding the federal Section 1705
1456 Loan Guarantee Program; amending s. 366.82, F.S.;
1457 conforming statutes relating to the Florida Energy

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB ENUS 11-01 (2011)

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1458 Efficiency and Conservation Act; repealing s. 366.85,
1459 F.S., relating to responsibilities of Division of
1460 Consumer Services within the Department of Agriculture
1461 and Consumer Services; amending s. 366.92, F.S.;
1462 conforming statutes regarding Florida's renewable
1463 energy policy; amending s. 403.44, F.S.; conforming
1464 statutes regarding the Florida Climate Protection Act;
1465 repealing s. 526.207, F.S., relating to a study of
1466 life-cycle greenhouse gas emissions associated with
1467 renewable fuels; amending s. 570.954, F.S.; removing
1468 obsolete language from the Farm-to-Fuel Initiative;
1469 amending s. 1004.648, F.S.; conforming statutes
1470 relating to the Florida Energy Systems Consortium;
1471 providing an

1 A bill to be entitled
2 An act relating to energy incentives and initiatives;
3 amending s. 377.601, F.S.; revising legislative intent
4 relating to the state's energy policy; creating s. 366.90,
5 F.S.; providing legislative intent relating to renewable
6 energy production of electricity; amending s. 366.92,
7 F.S.; deleting legislative intent provisions; deleting and
8 revising definitions; deleting provisions for the
9 renewable portfolio standard and renewable energy credits;
10 providing a mechanism for providers to recover costs to
11 produce or purchase renewable energy under certain
12 conditions; exempting from requirements for a
13 determination of need those renewable energy projects for
14 which cost recovery is provided under the mechanism;
15 requiring providers to include specified information
16 related to renewable energy development in reports to the
17 Public Service Commission; amending s. 403.503, F.S.;
18 revising the definition of "electrical power plant" for
19 purposes of the Florida Electrical Power Plant Siting Act;
20 providing for a type two transfer of the Florida Energy
21 and Climate Commission's powers, duties, functions,
22 records, personnel, and property, unexpended balances of
23 appropriations, allocations, and other funds,
24 administrative authority, administrative rules, pending
25 issues, and existing contracts from the Executive Office
26 of the Governor to the Department of Agriculture and
27 Consumer Services; providing for a type two transfer of
28 the powers, duties, functions, records, personnel, and
29 property, unexpended balances of appropriations,

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2011

30 allocations, and other funds, administrative authority,
31 administrative rules, pending issues, and existing
32 contracts of the Low-Income Home Energy Assistance Program
33 and the Weatherization Assistance Program from the
34 Department of Community Affairs to the Department of
35 Agriculture and Consumer Services; amending s. 377.6015,
36 F.S., relating to the Florida Energy and Climate
37 Commission; striking language creating the commission and
38 transferring various authorizations and duties to the
39 Department of Agriculture and Consumer Services; amending
40 s. 377.602, F.S.; replacing the Florida Energy and Climate
41 Commission definition with the Department of Agriculture
42 and Consumer Services; amending s. 377.603, F.S.;
43 conforming statutes regarding energy data collection,
44 rule-making, and preparation of reports; amending s.
45 377.604, F.S.; conforming statutes regarding required
46 reports of energy resources used as fuel; amending s.
47 377.605, F.S.; conforming statutes regarding use of
48 existing information; amending s. 377.606, F.S.;
49 conforming statutes regarding records; reenacting s.
50 377.607; F.S., for purposes of incorporation; amending s.
51 377.608, F.S.; conforming statutes regarding prosecution
52 of cases by the state attorney; amending s. 377.701, F.S.;
53 conforming statutes regarding petroleum allocation and
54 conservation; amending s. 377.703, F.S.; conforming
55 statutes regarding additional functions of the department;
56 amending s. 377.801, F.S.; correcting a reference;
57 amending s. 377.802, F.S.; revising legislative intent;
58 amending s. 377.803, F.S.; replacing the Florida Energy

59 and Climate Commission definition with Department of
 60 Agriculture and Consumer Services within the Florida
 61 Energy and Climate Protection Act; removing a definition;
 62 amending s. 377.804, F.S.; conforming statutes regarding
 63 the Renewable Energy and Energy-Efficient Technologies
 64 Grants Program; repealing s. 377.806, F.S., relating to
 65 the Solar Energy System Incentives Program; amending s.
 66 377.807, F.S.; conforming statutes regarding the Energy-
 67 Efficient Appliance Rebate Program; amending s. 377.808,
 68 F.S.; conforming statutes regarding the Florida Green
 69 Government Grants Act; amending s. 377.809, F.S.;
 70 conforming statutes regarding the Energy Economic Zone
 71 Pilot Program; amending s. 409.508, F.S.; reassigning
 72 administration of the Low-Income Home Energy Assistance
 73 Program from the Department of Community Affairs to the
 74 Department of Agriculture and Consumer Services; amending
 75 s. 409.509, F.S.; reassigning administration of the
 76 Weatherization Assistance Program from the Department of
 77 Community Affairs to the Department of Agriculture and
 78 Consumer Services; reenacting ss. 409.5091, 409.5092, and
 79 409.5093, F.S., relating to the Weatherization Assistance
 80 Program, for purposes of incorporation; repealing s.
 81 212.08(7)(ccc), F.S., relating to the sales and use tax
 82 exemption for equipment, machinery, and other materials
 83 used for renewable energy technologies; amending s.
 84 213.053, F.S.; conforming statutes regarding information-
 85 sharing with the Department of Revenue; amending s.
 86 220.192, F.S.; conforming statutes regarding the Renewable
 87 Energy Technologies Investment Tax Credit Program;

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88 | amending s. 288.1089, F.S.; conforming statutes regarding
 89 | the Innovation Incentive Program; amending s. 288.9607,
 90 | F.S.; conforming statutes regarding the federal Section
 91 | 1705 Loan Guarantee Program; amending s. 366.82, F.S.;
 92 | conforming statutes relating to the Florida Energy
 93 | Efficiency and Conservation Act; repealing s. 366.85,
 94 | F.S., relating to responsibilities of Division of Consumer
 95 | Services within the Department of Agriculture and Consumer
 96 | Services; amending s. 366.92, F.S.; conforming statutes
 97 | regarding Florida's renewable energy policy; amending s.
 98 | 403.44, F.S.; conforming statutes regarding the Florida
 99 | Climate Protection Act; amending s. 570.074, F.S.;
 100 | renaming the Department of Agriculture and Consumer
 101 | Services' Office of Water Coordination as the Office of
 102 | Energy and Water; repealing s. 526.207, F.S., relating to
 103 | a study of life-cycle greenhouse gas emissions associated
 104 | with renewable fuels; amending s. 570.954, F.S.; removing
 105 | obsolete language from the Farm-to-Fuel Initiative;
 106 | amending s. 1004.648, F.S.; conforming statutes relating
 107 | to the Florida Energy Systems Consortium; providing an
 108 | effective date.

109 |
 110 | Be It Enacted by the Legislature of the State of Florida:
 111 |

112 | Section 1. Section 377.601, Florida Statutes, is amended
 113 | to read:

114 | 377.601 Legislative intent.—

115 | (1) The purpose of the state's energy policy is to ensure
 116 | an affordable, adequate, and reliable supply of energy for the

117 | state in a manner that promotes the health and welfare of the
 118 | public, promotes sustainable economic growth, and minimizes and
 119 | mitigates any adverse impacts. The Legislature intends that
 120 | governance of the state's energy policy be efficiently directed
 121 | toward achieving this purpose. The Legislature finds that the
 122 | ~~state's energy security can be increased by lessening dependence~~
 123 | ~~on foreign oil; that the impacts of global climate change can be~~
 124 | ~~reduced through the reduction of greenhouse gas emissions; and~~
 125 | ~~that the implementation of alternative energy technologies can~~
 126 | ~~be a source of new jobs and employment opportunities for many~~
 127 | ~~Floridians. The Legislature further finds that the state is~~
 128 | ~~positioned at the front line against potential impacts of global~~
 129 | ~~climate change. Human and economic costs of those impacts can be~~
 130 | ~~averted by global actions and, where necessary, adapted to by a~~
 131 | ~~concerted effort to make Florida's communities more resilient~~
 132 | ~~and less vulnerable to these impacts. In focusing the~~
 133 | ~~government's policy and efforts to benefit and protect our~~
 134 | ~~state, its citizens, and its resources, the Legislature believes~~
 135 | ~~that a single government entity with a specific focus on energy~~
 136 | ~~and climate change is both desirable and advantageous. Further,~~
 137 | ~~the Legislature finds that energy infrastructure provides the~~
 138 | ~~foundation for secure and reliable access to the energy supplies~~
 139 | ~~and services on which Florida depends. Therefore, there is~~
 140 | ~~significant value to Florida consumers that comes from~~
 141 | ~~investment in Florida's energy infrastructure that increases~~
 142 | ~~system reliability, enhances energy independence and~~
 143 | ~~diversification, stabilizes energy costs, and reduces greenhouse~~
 144 | ~~gas emissions.~~

145 | (2) In furtherance of this purpose, the state's energy

146 | policy shall be implemented through effective, efficient, and
 147 | reliable governance and shall be guided by the following goals
 148 | in order of their priority:

- 149 | (a) Ensuring an affordable energy supply.
- 150 | (b) Ensuring adequate supply and capacity.
- 151 | (c) Ensuring a secure and reliable energy supply.
- 152 | (d) Minimizing energy cost volatility.
- 153 | (e) Minimizing the negative impacts of energy production
 154 | on the state's environment, social fabric, and the public health
 155 | and welfare.
- 156 | (f) Maximizing economic synergies for the state associated
 157 | with its energy policy.

158 | (g) Reducing the net export of energy expenditures.
 159 | (3) It is further the policy of the state of Florida to:

160 | (a) Develop and promote the effective use of energy in the
 161 | state, discourage all forms of energy waste, and recognize and
 162 | address the potential of global climate change wherever
 163 | possible.

164 | (b) Play a leading role in developing and instituting
 165 | energy management programs aimed at promoting energy
 166 | conservation, energy security, and the reduction of greenhouse
 167 | gas emissions.

168 | (c) Include energy considerations in all state, regional,
 169 | and local planning.

170 | (d) Utilize and manage effectively energy resources used
 171 | within state agencies.

172 | (e) Encourage local governments to include energy
 173 | considerations in all planning and to support their work in
 174 | promoting energy management programs.

175 (f) Include the full participation of citizens in the
 176 development and implementation of energy programs.

177 (g) Consider in its decisions the energy needs of each
 178 economic sector, including residential, industrial, commercial,
 179 agricultural, and governmental uses, and reduce those needs
 180 whenever possible.

181 (h) Promote energy education and the public dissemination
 182 of information on energy and its environmental, economic, and
 183 social impact.

184 (i) Encourage the research, development, demonstration,
 185 and application of alternative energy resources, particularly
 186 renewable energy resources.

187 (j) Consider, in its decisionmaking, the social, economic,
 188 and environmental impacts of energy-related activities,
 189 including the whole-life-cycle impacts of any potential energy
 190 use choices, so that detrimental effects of these activities are
 191 understood and minimized.

192 (k) Develop and maintain energy emergency preparedness
 193 plans to minimize the effects of an energy shortage within
 194 Florida.

195 Section 2. Section 366.90, Florida Statutes, is created to
 196 read:

197 366.90 Renewable energy for electricity production.-
 198 In furtherance of the energy policy goals established in s.
 199 377.601, the Legislature finds that it is in the public interest
 200 to promote the development of renewable energy resources in the
 201 state, for purposes of electricity production, through the
 202 mechanisms established in ss. 366.91 and 366.92. The Legislature
 203 further finds that renewable energy resources have the potential

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204 to help diversify fuel types to alleviate the state's growing
205 dependence on natural gas and other fossil fuels for the
206 production of electricity, minimize the volatility of fuel
207 costs, encourage investment within the state, improve
208 environmental conditions, and make the state a leader in new and
209 innovative technologies.

210 Section 3. Section 366.92, Florida Statutes, is amended to
211 read:

212 366.92 Florida renewable energy policy.—

213 ~~(1) It is the intent of the Legislature to promote the~~
214 ~~development of renewable energy; protect the economic viability~~
215 ~~of Florida's existing renewable energy facilities; diversify the~~
216 ~~types of fuel used to generate electricity in Florida; lessen~~
217 ~~Florida's dependence on natural gas and fuel oil for the~~
218 ~~production of electricity; minimize the volatility of fuel~~
219 ~~costs; encourage investment within the state; improve~~
220 ~~environmental conditions; and, at the same time, minimize the~~
221 ~~costs of power supply to electric utilities and their customers.~~

222 (1)(2) As used in this section, the term:

223 ~~(a) "Florida renewable energy resources" means renewable~~
224 ~~energy, as defined in s. 377.803, that is produced in Florida.~~

225 ~~(a)(b)~~ "Provider" means a "utility" as defined in s.
226 366.8255(1)(a).

227 ~~(b)(c)~~ "Renewable energy" means renewable energy as
228 defined in s. 366.91~~(2)(d)~~ that is produced in the state.

229 ~~(d) "Renewable energy credit" or "REC" means a product~~
230 ~~that represents the unbundled, separable, renewable attribute of~~
231 ~~renewable energy produced in Florida and is equivalent to 1~~
232 ~~megawatt-hour of electricity generated by a source of renewable~~

233 ~~energy located in Florida.~~

234 ~~(e) "Renewable portfolio standard" or "RPS" means the~~
 235 ~~minimum percentage of total annual retail electricity sales by a~~
 236 ~~provider to consumers in Florida that shall be supplied by~~
 237 ~~renewable energy produced in Florida.~~

238 ~~(3) The commission shall adopt rules for a renewable~~
 239 ~~portfolio standard requiring each provider to supply renewable~~
 240 ~~energy to its customers directly, by procuring, or through~~
 241 ~~renewable energy credits. In developing the RPS rule, the~~
 242 ~~commission shall consult the Department of Environmental~~
 243 ~~Protection and the Florida Energy and Climate Commission. The~~
 244 ~~rule shall not be implemented until ratified by the Legislature.~~
 245 ~~The commission shall present a draft rule for legislative~~
 246 ~~consideration by February 1, 2009.~~

247 ~~(a) In developing the rule, the commission shall evaluate~~
 248 ~~the current and forecasted levelized cost in cents per kilowatt~~
 249 ~~hour through 2020 and current and forecasted installed capacity~~
 250 ~~in kilowatts for each renewable energy generation method through~~
 251 ~~2020.~~

252 ~~(b) The commission's rule:~~

253 ~~1. Shall include methods of managing the cost of~~
 254 ~~compliance with the renewable portfolio standard, whether~~
 255 ~~through direct supply or procurement of renewable power or~~
 256 ~~through the purchase of renewable energy credits. The commission~~
 257 ~~shall have rulemaking authority for providing annual cost~~
 258 ~~recovery and incentive-based adjustments to authorized rates of~~
 259 ~~return on common equity to providers to incentivize renewable~~
 260 ~~energy. Notwithstanding s. 366.91(3) and (4), upon the~~
 261 ~~ratification of the rules developed pursuant to this subsection,~~

262 | ~~the commission may approve projects and power sales agreements~~
 263 | ~~with renewable power producers and the sale of renewable energy~~
 264 | ~~credits needed to comply with the renewable portfolio standard.~~
 265 | ~~In the event of any conflict, this subparagraph shall supersede~~
 266 | ~~s. 366.91(3) and (4). However, nothing in this section shall~~
 267 | ~~alter the obligation of each public utility to continuously~~
 268 | ~~offer a purchase contract to producers of renewable energy.~~

269 | ~~2. Shall provide for appropriate compliance measures and~~
 270 | ~~the conditions under which noncompliance shall be excused due to~~
 271 | ~~a determination by the commission that the supply of renewable~~
 272 | ~~energy or renewable energy credits was not adequate to satisfy~~
 273 | ~~the demand for such energy or that the cost of securing~~
 274 | ~~renewable energy or renewable energy credits was cost~~
 275 | ~~prohibitive.~~

276 | ~~3. May provide added weight to energy provided by wind and~~
 277 | ~~solar photovoltaic over other forms of renewable energy, whether~~
 278 | ~~directly supplied or procured or indirectly obtained through the~~
 279 | ~~purchase of renewable energy credits.~~

280 | ~~4. Shall determine an appropriate period of time for which~~
 281 | ~~renewable energy credits may be used for purposes of compliance~~
 282 | ~~with the renewable portfolio standard.~~

283 | ~~5. Shall provide for monitoring of compliance with and~~
 284 | ~~enforcement of the requirements of this section.~~

285 | ~~6. Shall ensure that energy credited toward compliance~~
 286 | ~~with the requirements of this section is not credited toward any~~
 287 | ~~other purpose.~~

288 | ~~7. Shall include procedures to track and account for~~
 289 | ~~renewable energy credits, including ownership of renewable~~
 290 | ~~energy credits that are derived from a customer-owned renewable~~

291 | ~~energy facility as a result of any action by a customer of an~~
 292 | ~~electric power supplier that is independent of a program~~
 293 | ~~sponsored by the electric power supplier.~~

294 | ~~8. Shall provide for the conditions and options for the~~
 295 | ~~repeal or alteration of the rule in the event that new~~
 296 | ~~provisions of federal law supplant or conflict with the rule.~~

297 | ~~(c) Beginning on April 1 of the year following final~~
 298 | ~~adoption of the commission's renewable portfolio standard rule,~~
 299 | ~~each provider shall submit a report to the commission describing~~
 300 | ~~the steps that have been taken in the previous year and the~~
 301 | ~~steps that will be taken in the future to add renewable energy~~
 302 | ~~to the provider's energy supply portfolio. The report shall~~
 303 | ~~state whether the provider was in compliance with the renewable~~
 304 | ~~portfolio standard during the previous year and how it will~~
 305 | ~~comply with the renewable portfolio standard in the upcoming~~
 306 | ~~year.~~

307 | ~~(2)(4)~~ Subject to the provisions of this subsection ~~In~~
 308 | ~~order to demonstrate the feasibility and viability of clean~~
 309 | ~~energy systems,~~ the commission shall provide for full cost
 310 | recovery under the environmental cost-recovery clause of all
 311 | reasonable and prudent costs incurred by a provider to produce
 312 | or purchase ~~for~~ renewable energy for purposes of supplying
 313 | electrical energy to its retail customers ~~projects that are zero~~
 314 | ~~greenhouse gas emitting at the point of generation, up to a~~
 315 | ~~total of 110 megawatts statewide, and for which the provider has~~
 316 | ~~secured necessary land, zoning permits, and transmission rights~~
 317 | ~~within the state. Such costs shall be deemed reasonable and~~
 318 | ~~prudent for purposes of cost recovery so long as the provider~~
 319 | ~~has used reasonable and customary industry practices in the~~

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320 ~~design, procurement, and construction of the project in a cost-~~
321 ~~effective manner appropriate to the location of the facility.~~
322 ~~The provider shall report to the commission as part of the cost-~~
323 ~~recovery proceedings the construction costs, in-service costs,~~
324 ~~operating and maintenance costs, hourly energy production of the~~
325 ~~renewable energy project, and any other information deemed~~
326 ~~relevant by the commission. Any provider constructing a clean~~
327 ~~energy facility pursuant to this section shall file for cost~~
328 ~~recovery no later than July 1, 2009.~~

329 (a) A provider may petition the commission no later than
330 July 1, 2015, requesting recovery of costs over the useful life
331 of a project to produce renewable energy or over the term of a
332 contract to purchase renewable energy, or a combination of both,
333 subject to the cost cap in paragraph (c). The provider has sole
334 discretion to determine the type and technology of the renewable
335 energy resource that it intends to use. However, at least 20
336 percent of the total capacity for which a provider is permitted
337 to recover costs in any calendar year under this subsection must
338 be produced or purchased from renewable energy resources other
339 than solar energy. A provider must file with the commission, no
340 later than when the provider files a petition for cost recovery
341 under this subsection, a schedule of planned production and
342 purchases for the calendar year in which cost recovery is
343 requested. If any portion of the capacity required from nonsolar
344 renewable energy resources is committed but, for reasons found
345 by the commission to be beyond the control of the provider, is
346 not available during the calendar year for which cost recovery
347 is requested, the provider may continue to recover costs to
348 produce or purchase renewable energy from solar energy resources

349 if the provider continues in good faith to pursue the production
350 or purchase of renewable energy from nonsolar resources. The
351 provider has sole discretion to determine whether to construct
352 new renewable energy generating facilities, convert existing
353 fossil fuel generating facilities to renewable energy generating
354 facilities, or contract for the purchase of renewable energy
355 from third-party generating facilities in the state.

356 (b) In addition to the full cost recovery for such
357 renewable energy projects, a return on equity of 50 basis points
358 above the provider's last authorized rate of return on equity
359 approved by the commission for energy projects shall be approved
360 and provided for a project to produce renewable energy if a
361 majority of the costs of the energy-producing components
362 incorporated into such projects are manufactured in the state.

363 (c) For the production or purchase of renewable energy
364 under this subsection, a provider may annually recover costs up
365 to and in excess of its full avoided cost, as defined in s.
366 366.051 and approved by the commission, if the recovery of costs
367 in excess of the provider's full avoided cost does not exceed,
368 on an annual basis, 2 percent of the provider's total revenues
369 from the retail sale of electricity for calendar year 2010. For
370 purposes of cost recovery under this subsection, costs shall be
371 computed using a methodology that reflects the actual annual
372 revenue requirements contracted for payment for the purchase of
373 renewable capacity and energy from a nonutility renewable
374 generator or the revenue requirements using conventional
375 regulatory accounting for a utility-owned renewable generator.

376 (d) Cost recovery under this subsection is limited to new
377 construction or conversion projects for which construction is

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378 commenced on or after July 1, 2011, and to purchases made on or
379 after that date. All renewable energy projects for which costs
380 are approved by the commission for recovery through the
381 environmental cost recovery clause before July 1, 2011, are not
382 subject to or included in the calculation of the cost cap. At
383 least 5 percent of the total costs of solar generation for which
384 a provider is permitted recovery in any calendar year under this
385 subsection shall be dedicated to the provider's demand-side
386 renewable energy system incentive program approved by the
387 commission pursuant to s. 366.82.

388 (e) The costs incurred by a provider to produce or
389 purchase renewable energy under this subsection are deemed to be
390 prudent for purposes of cost recovery if the provider
391 demonstrates to the commission that the project is the most
392 cost-effective alternative for the type of renewable energy
393 resource selected by the utility and that it has used reasonable
394 and customary industry practices in the design, procurement, and
395 construction of the project.

396 (f) Subject to the cost cap in paragraph (c), the
397 commission shall allow a provider to recover the costs
398 associated with the production or purchase of renewable energy
399 under this subsection as follows:

400 1. For new renewable energy generating facilities, the
401 commission shall allow recovery of reasonable and prudent costs,
402 including, but not limited to, the siting, licensing,
403 engineering, design, permitting, construction, operation, and
404 maintenance of such facilities, including any applicable taxes
405 and a return based on the provider's last authorized rate of
406 return.

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407 2. For conversion of existing fossil fuel generating
408 facilities to renewable energy generating facilities, the
409 commission shall allow recovery of reasonable and prudent
410 conversion costs, including the costs of retirement of the
411 fossil fuel plant that exceed any amounts accrued by the
412 provider for such purposes through rates previously set by the
413 commission.

414 3. For purchase of renewable energy from third-party
415 generating facilities in the state, the commission shall allow
416 recovery of reasonable and prudent costs associated with the
417 purchase.

418 (g) In a proceeding to recover costs incurred under this
419 subsection, a provider must provide the commission all cost
420 information, hourly energy production information, and other
421 information deemed relevant by the commission with respect to
422 each project.

423 (h) When a provider purchases renewable energy under this
424 subsection at a cost in excess of its full avoided cost, the
425 seller must surrender to the provider all renewable attributes
426 of the renewable energy purchased.

427 (i) Revenues derived from any renewable energy credit,
428 carbon credit, or other mechanism that attributes value to the
429 production of renewable energy, either existing or hereafter
430 devised, received by a provider by virtue of the production or
431 purchase of renewable energy for which cost recovery is approved
432 under this subsection shall be shared with the provider's
433 ratepayers such that the ratepayers are credited at least 75
434 percent of such revenues. However, the provider is not required
435 to share with its ratepayers any value derived from credits

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436 received by the provider by virtue of the purchase of renewable
437 energy from a third-party generating facility in the state that
438 does not exceed 2 megawatts in capacity and that is not a
439 regulated utility or its unregulated affiliate.

440 (j) Section 403.519 does not apply to a renewable energy
441 generating facility constructed or converted from an existing
442 fossil fuel generating facility under this subsection, and the
443 commission is not required to submit a report for such a project
444 under s. 403.507(4)(a).

445 (3) Each provider shall, in its 10-year site plan
446 submitted to the commission pursuant to s. 186.801, provide the
447 following information:

448 (a) The amount of renewable energy resources the provider
449 produces or purchases.

450 (b) The amount of renewable energy resources the provider
451 plans to produce or purchase over the 10-year planning horizon
452 and the means by which such production or purchases will be
453 achieved.

454 (c) A statement indicating how the production and purchase
455 of renewable energy resources impact the provider's present and
456 future capacity and energy needs.

457 (4)-(5) Each municipal electric utility and rural electric
458 cooperative shall develop standards for the promotion,
459 encouragement, and expansion of the use of renewable energy
460 resources and energy conservation and efficiency measures. On or
461 before April 1, 2009, and annually thereafter, each municipal
462 electric utility and electric cooperative shall submit to the
463 commission a report that identifies such standards.

464 (5)-(6) ~~Nothing in~~ This section and any action taken under

465 this section may not ~~shall~~ be construed to impede or impair the
 466 terms and conditions of, or serve as a basis for renegotiating
 467 or repricing, an existing contract ~~contracts.~~

468 (6) ~~(7)~~ The commission may adopt rules to administer and
 469 implement the provisions of this section.

470 Section 4. Subsection (14) of section 403.503, Florida
 471 Statutes, is amended to read:

472 403.503 Definitions relating to Florida Electrical Power
 473 Plant Siting Act.—As used in this act:

474 (14) "Electrical power plant" means, for the purpose of
 475 certification, any steam ~~or solar~~ electrical generating facility
 476 using any process or fuel, including nuclear materials, except
 477 that this term does not include any steam ~~or solar~~ electrical
 478 generating facility of less than 75 megawatts in capacity or any
 479 solar electrical generating facility of any sized capacity
 480 unless the applicant for such a facility elects to apply for
 481 certification under this act. This term also includes the site;
 482 all associated facilities that will be owned by the applicant
 483 that are physically connected to the site; all associated
 484 facilities that are indirectly connected to the site by other
 485 proposed associated facilities that will be owned by the
 486 applicant; and associated transmission lines that will be owned
 487 by the applicant which connect the electrical power plant to an
 488 existing transmission network or rights-of-way to which the
 489 applicant intends to connect. At the applicant's option, this
 490 term may include any offsite associated facilities that will not
 491 be owned by the applicant; offsite associated facilities that
 492 are owned by the applicant but that are not directly connected
 493 to the site; any proposed terminal or intermediate substations

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494 or substation expansions connected to the associated
 495 transmission line; or new transmission lines, upgrades, or
 496 improvements of an existing transmission line on any portion of
 497 the applicant's electrical transmission system necessary to
 498 support the generation injected into the system from the
 499 proposed electrical power plant.

500 Section 5. All of the powers, duties, functions, records,
 501 personnel, and property; unexpended balances of appropriations,
 502 allocations, and other funds; administrative authority;
 503 administrative rules; pending issues; and existing contracts of
 504 the Florida Energy and Climate Commission in the Executive
 505 Office of the Governor, are transferred by a type two transfer,
 506 pursuant to s. 20.06(2), Florida Statutes, to the Department of
 507 Agriculture and Consumer Services.

508 Section 6. All of the powers, duties, functions, records,
 509 personnel, and property; unexpended balances of appropriations,
 510 allocations, and other funds; administrative authority;
 511 administrative rules; pending issues; and existing contracts of
 512 the Low-Income Home Energy Assistance Program, authorized under
 513 s. 409.508, Florida Statutes, and the Weatherization Assistance
 514 Program, authorized in ss. 409.509-409.5093, Florida Statutes,
 515 in the Department of Community Affairs, are transferred by a
 516 type two transfer, pursuant to s. 20.06(2), Florida Statutes, to
 517 the Department of Agriculture and Consumer Services.

518 Section 7. Section 377.6015, Florida Statutes, is amended
 519 to read:

520 377.6015 Department of Agriculture and Consumer Services;
 521 powers and duties Florida Energy and Climate Commission.-

522 ~~(1) The Florida Energy and Climate Commission is created~~

523 ~~within the Executive Office of the Governor. The commission~~
 524 ~~shall be comprised of nine members appointed by the Governor,~~
 525 ~~the Commissioner of Agriculture, and the Chief Financial~~
 526 ~~Officer.~~

527 ~~(a) The Governor shall appoint one member from three~~
 528 ~~persons nominated by the Florida Public Service Commission~~
 529 ~~Nominating Council, created in s. 350.031, to each of seven~~
 530 ~~seats on the commission. The Commissioner of Agriculture shall~~
 531 ~~appoint one member from three persons nominated by the council~~
 532 ~~to one seat on the commission. The Chief Financial Officer shall~~
 533 ~~appoint one member from three persons nominated by the council~~
 534 ~~to one seat on the commission.~~

535 ~~1. The council shall submit the recommendations to the~~
 536 ~~Governor, the Commissioner of Agriculture, and the Chief~~
 537 ~~Financial Officer by September 1 of those years in which the~~
 538 ~~terms are to begin the following October or within 60 days after~~
 539 ~~a vacancy occurs for any reason other than the expiration of the~~
 540 ~~term. The Governor, the Commissioner of Agriculture, and the~~
 541 ~~Chief Financial Officer may proffer names of persons to be~~
 542 ~~considered for nomination by the council.~~

543 ~~2. The Governor, the Commissioner of Agriculture, and the~~
 544 ~~Chief Financial Officer shall fill a vacancy occurring on the~~
 545 ~~commission by appointment of one of the applicants nominated by~~
 546 ~~the council only after a background investigation of such~~
 547 ~~applicant has been conducted by the Department of Law~~
 548 ~~Enforcement.~~

549 ~~3. Members shall be appointed to 3-year terms; however, in~~
 550 ~~order to establish staggered terms, for the initial~~
 551 ~~appointments, the Governor shall appoint four members to 3-year~~

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552 ~~terms, two members to 2-year terms, and one member to a 1-year~~
553 ~~term, and the Commissioner of Agriculture and the Chief~~
554 ~~Financial Officer shall each appoint one member to a 3-year term~~
555 ~~and shall appoint a successor when that appointee's term expires~~
556 ~~in the same manner as the original appointment.~~

557 ~~4. The Governor shall select from the membership of the~~
558 ~~commission one person to serve as chair.~~

559 ~~5. A vacancy on the commission shall be filled for the~~
560 ~~unexpired portion of the term in the same manner as the original~~
561 ~~appointment.~~

562 ~~6. If the Governor, the Commissioner of Agriculture, or~~
563 ~~the Chief Financial Officer has not made an appointment within~~
564 ~~30 consecutive calendar days after the receipt of the~~
565 ~~recommendations, the council shall initiate, in accordance with~~
566 ~~this section, the nominating process within 30 days.~~

567 ~~7. Each appointment to the commission shall be subject to~~
568 ~~confirmation by the Senate during the next regular session after~~
569 ~~the vacancy occurs. If the Senate refuses to confirm or fails to~~
570 ~~consider the appointment of the Governor, the Commissioner of~~
571 ~~Agriculture, or the Chief Financial Officer, the council shall~~
572 ~~initiate, in accordance with this section, the nominating~~
573 ~~process within 30 days.~~

574 ~~8. The Governor or the Governor's successor may recall an~~
575 ~~appointee.~~

576 ~~9. Notwithstanding subparagraph 7. and for the initial~~
577 ~~appointments to the commission only, each initial appointment to~~
578 ~~the commission is subject to confirmation by the Senate by the~~
579 ~~2010 Regular Session. If the Senate refuses to confirm or fails~~
580 ~~to consider an appointment made by the Governor, the~~

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581 ~~Commissioner of Agriculture, or the Chief Financial Officer, the~~
 582 ~~council shall initiate, in accordance with this section, the~~
 583 ~~nominating process within 30 days after the Senate's refusal to~~
 584 ~~confirm or failure to consider such appointment. This~~
 585 ~~subparagraph expires July 1, 2010.~~

586 ~~(b) Members must meet the following qualifications and~~
 587 ~~restrictions:~~

588 ~~1. A member must be an expert in one or more of the~~
 589 ~~following fields: energy, natural resource conservation,~~
 590 ~~economics, engineering, finance, law, transportation and land~~
 591 ~~use, consumer protection, state energy policy, or another field~~
 592 ~~substantially related to the duties and functions of the~~
 593 ~~commission. The commission shall fairly represent the fields~~
 594 ~~specified in this subparagraph.~~

595 ~~2. Each member shall, at the time of appointment and at~~
 596 ~~each commission meeting during his or her term of office,~~
 597 ~~disclose:~~

598 ~~a. Whether he or she has any financial interest, other~~
 599 ~~than ownership of shares in a mutual fund, in any business~~
 600 ~~entity that, directly or indirectly, owns or controls, or is an~~
 601 ~~affiliate or subsidiary of, any business entity that may be~~
 602 ~~affected by the policy recommendations developed by the~~
 603 ~~commission.~~

604 ~~b. Whether he or she is employed by or is engaged in any~~
 605 ~~business activity with any business entity that, directly or~~
 606 ~~indirectly, owns or controls, or is an affiliate or subsidiary~~
 607 ~~of, any business entity that may be affected by the policy~~
 608 ~~recommendations developed by the commission.~~

609 ~~(c) The chair may designate the following ex officio,~~

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610 ~~nonvoting members to provide information and advice to the~~
611 ~~commission at the request of the chair:~~

612 ~~1. The chair of the Florida Public Service Commission, or~~
613 ~~his or her designee.~~

614 ~~2. The Public Counsel, or his or her designee.~~

615 ~~3. A representative of the Department of Agriculture and~~
616 ~~Consumer Services.~~

617 ~~4. A representative of the Department of Financial~~
618 ~~Services.~~

619 ~~5. A representative of the Department of Environmental~~
620 ~~Protection.~~

621 ~~6. A representative of the Department of Community~~
622 ~~Affairs.~~

623 ~~7. A representative of the Board of Governors of the State~~
624 ~~University System.~~

625 ~~8. A representative of the Department of Transportation.~~

626 ~~(2) Members shall serve without compensation but are~~
627 ~~entitled to reimbursement for per diem and travel expenses as~~
628 ~~provided in s. 112.061.~~

629 ~~(3) Meetings of the commission may be held in various~~
630 ~~locations around the state and at the call of the chair;~~
631 ~~however, the commission must meet at least six times each year.~~

632 (1)(4) The Department of Agriculture and Consumer Services
633 commission may:

634 (a) Employ staff and counsel as needed in the performance
635 of its duties.

636 (b) Prosecute and defend legal actions in its own name.

637 (c) Form advisory groups consisting of members of the
638 public to provide information on specific issues.

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639 (2)~~(5)~~ The department ~~commission~~ shall:

640 (a) Administer the Florida Renewable Energy and Energy-
641 Efficient Technologies Grants Program pursuant to s. 377.804 to
642 assure a robust grant portfolio.

643 (b) Develop policy for requiring grantees to provide
644 royalty-sharing or licensing agreements with state government
645 for commercialized products developed under a state grant.

646 (c) Administer the Florida Green Government Grants Act
647 pursuant to s. 377.808 and set annual priorities for grants.

648 (d) Administer the information gathering and reporting
649 functions pursuant to ss. 377.601-377.608.

650 (e) Administer petroleum planning and emergency
651 contingency planning pursuant to ss. 377.701, 377.703, and
652 377.704.

653 (f) Represent Florida in the Southern States Energy
654 Compact pursuant to ss. 377.71-377.712.

655 ~~(g) Complete the annual assessment of the efficacy of
656 Florida's Energy and Climate Change Action Plan, upon completion
657 by the Governor's Action Team on Energy and Climate Change
658 pursuant to the Governor's Executive Order 2007-128, and provide
659 specific recommendations to the Governor and the Legislature
660 each year to improve results.~~

661 (g)~~(h)~~ Administer the provisions of the Florida Energy and
662 Climate Protection Act pursuant to ss. 377.801-377.806.

663 (h)~~(i)~~ Advocate for energy and climate change issues and
664 provide educational outreach and technical assistance in
665 cooperation with the state's academic institutions.

666 (i)~~(j)~~ Be a party in the proceedings to adopt goals and
667 submit comments to the Public Service Commission pursuant to s.

668 366.82.

669 (j)~~(k)~~ Adopt rules pursuant to chapter 120 in order to
670 implement all powers and duties described in this section.

671 Section 8. Subsection (1) and paragraphs (a) and (b) of
672 subsection (2) of section 377.602, Florida Statutes, are amended
673 to read:

674 377.602 Definitions.—As used in ss. 377.601-377.608:

675 (1) "Department" means the Department of Agriculture and
676 Consumer Services ~~"Commission"~~ means the ~~Florida Energy and~~
677 ~~Climate Commission.~~

678 (2) "Energy resources" includes, but shall not be limited
679 to:

680 (a) Energy converted from solar radiation, wind, hydraulic
681 potential, tidal movements, biomass, geothermal sources, and
682 other energy resources the department ~~commission~~ determines to
683 be important to the production or supply of energy.

684 (b) Propane, butane, motor gasoline, kerosene, home
685 heating oil, diesel fuel, other middle distillates, aviation
686 gasoline, kerosene-type jet fuel, naphtha-type jet fuel,
687 residual fuels, crude oil, and other petroleum products and
688 hydrocarbons as may be determined by the department ~~commission~~
689 to be of importance.

690 Section 9. Section 377.603, Florida Statutes, is amended
691 to read:

692 377.603 Energy data collection; powers and duties of the
693 department ~~commission~~.—

694 (1) The department ~~commission~~ may collect data on the
695 extraction, production, importation, exportation, refinement,
696 transportation, transmission, conversion, storage, sale, or

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697 reserves of energy resources in this state in an efficient and
698 expeditious manner.

699 (2) The department ~~commission~~ may prepare periodic reports
700 of energy data it collects.

701 (3) The department ~~commission~~ may adopt and promulgate
702 such rules and regulations as are necessary to carry out the
703 provisions of ss. 377.601-377.608. Such rules shall be pursuant
704 to chapter 120.

705 (4) The department ~~commission~~ shall maintain internal
706 validation procedures to assure the accuracy of information
707 received.

708 Section 10. Section 377.604, Florida Statutes, is amended
709 to read:

710 377.604 Required reports.—Every person who produces,
711 imports, exports, refines, transports, transmits, converts,
712 stores, sells, or holds known reserves of any form of energy
713 resources used as fuel shall report to the department
714 ~~commission~~, at the request of and in a manner prescribed by the
715 department ~~commission~~, on forms provided by the department
716 ~~commission~~. Such forms shall be designed in such a manner as to
717 indicate:

718 (1) The identity of the person or persons making the
719 report.

720 (2) The quantity of energy resources extracted, produced,
721 imported, exported, refined, transported, transmitted,
722 converted, stored, or sold except at retail.

723 (3) The quantity of energy resources known to be held in
724 reserve in the state.

725 (4) The identity of each refinery from which petroleum

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726 products have normally been obtained and the type and quantity
727 of products secured from that refinery for sale or resale in
728 this state.

729 (5) Any other information which the department ~~commission~~
730 deems proper pursuant to the intent of ss. 377.601-377.608.

731 Section 11. Section 377.605, Florida Statutes, is amended
732 to read:

733 377.605 Use of existing information.—The department
734 ~~commission~~ may utilize to the fullest extent possible any
735 existing energy information already prepared for state or
736 federal agencies. Every state, county, and municipal agency
737 shall cooperate with the department ~~commission~~ and shall submit
738 any information on energy to the department ~~commission~~ upon
739 request.

740 Section 12. Section 377.606, Florida Statutes, is amended
741 to read:

742 377.606 Records of the department ~~commission~~; limits of
743 confidentiality.—The information or records of individual
744 persons, as defined in this section, obtained by the department
745 ~~commission~~ as a result of a report, investigation, or
746 verification required by the department ~~commission~~ shall be open
747 to the public, except such information the disclosure of which
748 would be likely to cause substantial harm to the competitive
749 position of the person providing such information and which is
750 requested to be held confidential by the person providing such
751 information. Such proprietary information is confidential and
752 exempt from the provisions of s. 119.07(1). Information reported
753 by entities other than the department ~~commission~~ in documents or
754 reports open to public inspection shall under no circumstances

755 | be classified as confidential by the department ~~commission~~.
 756 | Divulgence of proprietary information as is requested to be held
 757 | confidential, except upon order of a court of competent
 758 | jurisdiction or except to an officer of the state entitled to
 759 | receive the same in his or her official capacity, shall be a
 760 | misdemeanor of the second degree, punishable as provided in ss.
 761 | 775.082 and 775.083. Nothing in this section shall be construed
 762 | to prohibit the publication or divulgence by other means of data
 763 | so classified as to prevent identification of particular
 764 | accounts or reports made to the department ~~commission~~ in
 765 | compliance with s. 377.603 or to prohibit the disclosure of such
 766 | information to properly qualified legislative committees. The
 767 | department ~~commission~~ shall establish a system which permits
 768 | reasonable access to information developed.

769 | Section 13. For the purpose of incorporating the amendment
 770 | made by this act to section 377.602, Florida Statutes, in a
 771 | reference thereto, Section 377.607, Florida Statutes, is
 772 | reenacted to read:

773 | 377.607 Violations; penalties.—Any person who willfully
 774 | fails to submit information as required by ss. 377.601-377.608,
 775 | or submits false information, is guilty of a misdemeanor of the
 776 | first degree, punishable as provided in ss. 775.082 and 775.083.

777 | Section 14. Section 377.608, Florida Statutes, is amended
 778 | to read:

779 | 377.608 Prosecution of cases by state attorney.—The state
 780 | attorney shall prosecute all cases certified to him or her for
 781 | prosecution by the department ~~commission~~ immediately upon
 782 | receipt of the evidence transmitted by the department
 783 | ~~commission~~, or as soon thereafter as practicable.

784 Section 15. Subsections (1), (2), and (3) of section
 785 377.701, Florida Statutes, are amended to read:

786 377.701 Petroleum allocation.—

787 (1) The Department of Agriculture and Consumer Services
 788 ~~Florida Energy and Climate Commission~~ shall assume the state's
 789 role in petroleum allocation and conservation, including the
 790 development of a fair and equitable petroleum plan. The
 791 department ~~commission~~ shall constitute the responsible state
 792 agency for performing the functions of any federal program
 793 delegated to the state, which relates to petroleum supply,
 794 demand, and allocation.

795 (2) The department ~~commission~~ shall, in addition to
 796 assuming the duties and responsibilities provided by subsection
 797 (1), perform the following:

798 (a) In projecting available supplies of petroleum,
 799 coordinate with the Department of Revenue to secure information
 800 necessary to assure the sufficiency and accuracy of data
 801 submitted by persons affected by any federal fuel allocation
 802 program.

803 (b) Require such periodic reports from public and private
 804 sources as may be necessary to the fulfillment of its
 805 responsibilities under this act. Such reports may include:
 806 petroleum use; all sales, including end-user sales, except
 807 retail gasoline and retail fuel oil sales; inventories; expected
 808 supplies and allocations; and petroleum conservation measures.

809 (c) In cooperation with the Department of Revenue and
 810 other relevant state agencies, provide for long-range studies
 811 regarding the usage of petroleum in the state in order to:

812 1. Comprehend the consumption of petroleum resources.

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813 2. Predict future petroleum demands in relation to
814 available resources.

815 3. Report the results of such studies to the Legislature.

816 (3) For the purpose of determining accuracy of data, all
817 state agencies shall timely provide the department ~~commission~~
818 with petroleum-use information in a format suitable to the needs
819 of the allocation program.

820 Section 16. Section 377.703, Florida Statutes, is amended
821 to read:

822 377.703 Additional functions of the Department of
823 Agriculture and Consumer Services ~~Florida Energy and Climate~~
824 ~~Commission.~~-

825 (1) LEGISLATIVE INTENT.-Recognizing that energy supply and
826 demand questions have become a major area of concern to the
827 state which must be dealt with by effective and well-coordinated
828 state action, it is the intent of the Legislature to promote the
829 efficient, effective, and economical management of energy
830 problems, centralize energy coordination responsibilities,
831 pinpoint responsibility for conducting energy programs, and
832 ensure the accountability of state agencies for the
833 implementation of s. 377.601(2), the state energy policy. It is
834 the specific intent of the Legislature that nothing in this act
835 shall in any way change the powers, duties, and responsibilities
836 assigned by the Florida Electrical Power Plant Siting Act, part
837 II of chapter 403, or the powers, duties, and responsibilities
838 of the Florida Public Service Commission.

839 (2) ~~FLORIDA ENERGY AND CLIMATE COMMISSION; DUTIES.~~-The
840 department ~~commission~~ shall perform the following functions
841 consistent with the development of a state energy policy:

842 (a) The department ~~commission~~ shall assume the
 843 responsibility for development of an energy emergency
 844 contingency plan to respond to serious shortages of primary and
 845 secondary energy sources. Upon a finding by the Governor,
 846 implementation of any emergency program shall be upon order of
 847 the Governor that a particular kind or type of fuel is, or that
 848 the occurrence of an event which is reasonably expected within
 849 30 days will make the fuel, in short supply. The department
 850 ~~commission~~ shall then respond by instituting the appropriate
 851 measures of the contingency plan to meet the given emergency or
 852 energy shortage. The Governor may utilize the provisions of s.
 853 252.36(5) to carry out any emergency actions required by a
 854 serious shortage of energy sources.

855 (b) The department ~~commission~~ shall be responsible for
 856 performing or coordinating the functions of any federal energy
 857 programs delegated to the state, including energy supply,
 858 demand, conservation, or allocation.

859 (c) The department ~~commission~~ shall analyze present and
 860 proposed federal energy programs and make recommendations
 861 regarding those programs to the Governor and the Legislature.

862 (d) The department ~~commission~~ shall coordinate efforts to
 863 seek federal support or other support for state energy
 864 activities, including energy conservation, research, or
 865 development, and shall be responsible for the coordination of
 866 multiagency energy conservation programs and plans.

867 (e) The department ~~commission~~ shall analyze energy data
 868 collected and prepare long-range forecasts of energy supply and
 869 demand in coordination with the Florida Public Service
 870 Commission, which shall have responsibility for electricity and

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871 natural gas forecasts. To this end, the forecasts shall contain:

872 1. An analysis of the relationship of state economic
873 growth and development to energy supply and demand, including
874 the constraints to economic growth resulting from energy supply
875 constraints.

876 2. Plans for the development of renewable energy resources
877 and reduction in dependence on depletable energy resources,
878 particularly oil and natural gas, and an analysis of the extent
879 to which renewable energy sources are being utilized in the
880 state.

881 3. Consideration of alternative scenarios of statewide
882 energy supply and demand for 5, 10, and 20 years to identify
883 strategies for long-range action, including identification of
884 potential social, economic, and environmental effects.

885 4. An assessment of the state's energy resources,
886 including examination of the availability of commercially
887 developable and imported fuels, and an analysis of anticipated
888 effects on the state's environment and social services resulting
889 from energy resource development activities or from energy
890 supply constraints, or both.

891 (f) The department ~~commission~~ shall submit an annual
892 report to the Governor and the Legislature reflecting its
893 activities and making recommendations of policies for
894 improvement of the state's response to energy supply and demand
895 and its effect on the health, safety, and welfare of the people
896 of Florida. The report shall include a report from the Florida
897 Public Service Commission on electricity and natural gas and
898 information on energy conservation programs conducted and
899 underway in the past year and shall include recommendations for

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900 energy conservation programs for the state, including, but not
901 limited to, the following factors:

902 1. Formulation of specific recommendations for improvement
903 in the efficiency of energy utilization in governmental,
904 residential, commercial, industrial, and transportation sectors.

905 2. Collection and dissemination of information relating to
906 energy conservation.

907 3. Development and conduct of educational and training
908 programs relating to energy conservation.

909 4. An analysis of the ways in which state agencies are
910 seeking to implement s. 377.601(2), the state energy policy, and
911 recommendations for better fulfilling this policy.

912 (g) The department ~~commission~~ has authority to adopt rules
913 pursuant to ss. 120.536(1) and 120.54 to implement the
914 provisions of this act.

915 (h) The department ~~commission~~ shall promote the
916 development and use of renewable energy resources, in
917 conformance with the provisions of chapter 187 and s. 377.601,
918 by:

919 1. Establishing goals and strategies for increasing the
920 use of solar energy in this state.

921 2. Aiding and promoting the commercialization of solar
922 energy technology, in cooperation with the Florida Solar Energy
923 Center, Enterprise Florida, Inc., and any other federal, state,
924 or local governmental agency which may seek to promote research,
925 development, and demonstration of solar energy equipment and
926 technology.

927 3. Identifying barriers to greater use of solar energy
928 systems in this state, and developing specific recommendations

929 | for overcoming identified barriers, with findings and
 930 | recommendations to be submitted annually in the report to the
 931 | Governor and Legislature required under paragraph (f).

932 | 4. In cooperation with the Department of Environmental
 933 | Protection, the Department of Transportation, the Department of
 934 | Community Affairs, Enterprise Florida, Inc., the Florida Solar
 935 | Energy Center, and the Florida Solar Energy Industries
 936 | Association, investigating opportunities, pursuant to the
 937 | National Energy Policy Act of 1992, the Housing and Community
 938 | Development Act of 1992, and any subsequent federal legislation,
 939 | for solar electric vehicles and other solar energy
 940 | manufacturing, distribution, installation, and financing efforts
 941 | which will enhance this state's position as the leader in solar
 942 | energy research, development, and use.

943 | 5. Undertaking other initiatives to advance the
 944 | development and use of renewable energy resources in this state.

945 |
 946 | In the exercise of its responsibilities under this paragraph,
 947 | the department ~~commission~~ shall seek the assistance of the solar
 948 | energy industry in this state and other interested parties and
 949 | is authorized to enter into contracts, retain professional
 950 | consulting services, and expend funds appropriated by the
 951 | Legislature for such purposes.

952 | (i) The department ~~commission~~ shall promote energy
 953 | conservation in all energy use sectors throughout the state and
 954 | shall constitute the state agency primarily responsible for this
 955 | function. To this end, the department ~~commission~~ shall
 956 | coordinate the energy conservation programs of all state
 957 | agencies and review and comment on the energy conservation

958 | programs of all state agencies.

959 | (j) The department ~~commission~~ shall serve as the state
 960 | clearinghouse for indexing and gathering all information related
 961 | to energy programs in state universities, in private
 962 | universities, in federal, state, and local government agencies,
 963 | and in private industry and shall prepare and distribute such
 964 | information in any manner necessary to inform and advise the
 965 | citizens of the state of such programs and activities. This
 966 | shall include developing and maintaining a current index and
 967 | profile of all research activities, which shall be identified by
 968 | energy area and may include a summary of the project, the amount
 969 | and sources of funding, anticipated completion dates, or, in
 970 | case of completed research, conclusions, recommendations, and
 971 | applicability to state government and private sector functions.
 972 | The department ~~commission~~ shall coordinate, promote, and respond
 973 | to efforts by all sectors of the economy to seek financial
 974 | support for energy activities. The department ~~commission~~ shall
 975 | provide information to consumers regarding the anticipated
 976 | energy-use and energy-saving characteristics of products and
 977 | services in coordination with any federal, state, or local
 978 | governmental agencies as may provide such information to
 979 | consumers.

980 | (k) The department ~~commission~~ shall coordinate energy-
 981 | related programs of state government, including, but not limited
 982 | to, the programs provided in this section. To this end, the
 983 | department ~~commission~~ shall:

- 984 | 1. Provide assistance to other state agencies, counties,
 985 | municipalities, and regional planning agencies to further and
 986 | promote their energy planning activities.

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987 2. Require, in cooperation with the Department of
988 Management Services, all state agencies to operate state-owned
989 and state-leased buildings in accordance with energy
990 conservation standards as adopted by the Department of
991 Management Services. Every 3 months, the Department of
992 Management Services shall furnish the department ~~commission~~ data
993 on agencies' energy consumption and emissions of greenhouse
994 gases in a format prescribed by the department ~~commission~~.

995 3. Promote the development and use of renewable energy
996 resources, energy efficiency technologies, and conservation
997 measures.

998 4. Promote the recovery of energy from wastes, including,
999 but not limited to, the use of waste heat, the use of
1000 agricultural products as a source of energy, and recycling of
1001 manufactured products. Such promotion shall be conducted in
1002 conjunction with, and after consultation with, the Department of
1003 Environmental Protection and the Florida Public Service
1004 Commission where electrical generation or natural gas is
1005 involved, and any other relevant federal, state, or local
1006 governmental agency having responsibility for resource recovery
1007 programs.

1008 (1) The department ~~commission~~ shall develop, coordinate,
1009 and promote a comprehensive research plan for state programs.
1010 Such plan shall be consistent with state energy policy and shall
1011 be updated on a biennial basis.

1012 (m) In recognition of the devastation to the economy of
1013 this state and the dangers to the health and welfare of
1014 residents of this state caused by severe hurricanes, and the
1015 potential for such impacts caused by other natural disasters,

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1016 | the department ~~commission~~ shall include in its energy emergency
 1017 | contingency plan and provide to the Florida Building Commission
 1018 | for inclusion in the Florida Energy Efficiency Code for Building
 1019 | Construction specific provisions to facilitate the use of cost-
 1020 | effective solar energy technologies as emergency remedial and
 1021 | preventive measures for providing electric power, street
 1022 | lighting, and water heating service in the event of electric
 1023 | power outages.

1024 | (3) The department ~~commission~~ shall be responsible for the
 1025 | administration of the Coastal Energy Impact Program provided for
 1026 | and described in Pub. L. No. 94-370, 16 U.S.C. s. 1456a.

1027 | Section 17. Section 377.801, Florida Statutes, is amended
 1028 | to read:

1029 | 377.801 Short title.—Sections 377.801-377.807 ~~377.806~~ may
 1030 | be cited as the "Florida Energy and Climate Protection Act."

1031 | Section 18. Section 377.802, Florida Statutes, is amended
 1032 | to read:

1033 | 377.802 Purpose.—This act is intended to provide
 1034 | incentives for Florida's citizens, businesses, school districts,
 1035 | and local governments to take action to diversify the state's
 1036 | energy supplies, reduce dependence on foreign oil, and mitigate
 1037 | the effects of climate change by providing funding for
 1038 | activities designed to achieve these goals. The grant programs
 1039 | in this act are intended to stimulate capital investment in and
 1040 | enhance the market for renewable energy technologies and
 1041 | technologies intended to diversify Florida's energy supplies,
 1042 | reduce dependence on foreign oil, and combat or limit climate
 1043 | change impacts. This act is also intended to provide incentives
 1044 | for the purchase of energy-efficient appliances ~~and rebates for~~

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1045 ~~solar energy equipment installations for residential and~~
 1046 ~~commercial buildings.~~

1047 Section 19. Section 377.803, Florida Statutes, is amended
 1048 to read:

1049 377.803 Definitions.—As used in ss. 377.801–377.807
 1050 ~~377.806~~, the term:

1051 (1) "Act" means the Florida Energy and Climate Protection
 1052 Act.

1053 (2) "Department" means the Department of Agriculture and
 1054 Consumer Services ~~"Commission"~~ means the Florida Energy and
 1055 ~~Climate Commission.~~

1056 (3) "Person" means an individual, partnership, joint
 1057 venture, private or public corporation, association, firm,
 1058 public service company, or any other public or private entity.

1059 (4) "Renewable energy" means electrical, mechanical, or
 1060 thermal energy produced from a method that uses one or more of
 1061 the following fuels or energy sources: hydrogen, biomass, as
 1062 defined in s. 366.91, solar energy, geothermal energy, wind
 1063 energy, ocean energy, waste heat, or hydroelectric power.

1064 (5) "Renewable energy technology" means any technology
 1065 that generates or utilizes a renewable energy resource.

1066 ~~(6) "Solar energy system" means equipment that provides~~
 1067 ~~for the collection and use of incident solar energy for water~~
 1068 ~~heating, space heating or cooling, or other applications that~~
 1069 ~~would normally require a conventional source of energy such as~~
 1070 ~~petroleum products, natural gas, or electricity that performs~~
 1071 ~~primarily with solar energy. In other systems in which solar~~
 1072 ~~energy is used in a supplemental way, only those components that~~
 1073 ~~collect and transfer solar energy shall be included in this~~

1074 | ~~definition.~~

1075 | ~~(7) "Solar photovoltaic system" means a device that~~
 1076 | ~~converts incident sunlight into electrical current.~~

1077 | ~~(8) "Solar thermal system" means a device that traps heat~~
 1078 | ~~from incident sunlight in order to heat water.~~

1079 | Section 20. Section 377.804, Florida Statutes, is amended
 1080 | to read:

1081 | 377.804 Renewable Energy and Energy-Efficient Technologies
 1082 | Grants Program.—

1083 | (1) The Renewable Energy and Energy-Efficient Technologies
 1084 | Grants Program is established within the department ~~commission~~
 1085 | to provide renewable energy matching grants for demonstration,
 1086 | commercialization, research, and development projects relating
 1087 | to renewable energy technologies and innovative technologies
 1088 | that significantly increase energy efficiency for vehicles and
 1089 | commercial buildings.

1090 | (2) Matching grants for projects described in subsection
 1091 | (1) may be made to any of the following:

1092 | (a) Municipalities and county governments.

1093 | (b) Established for-profit companies licensed to do
 1094 | business in the state.

1095 | (c) Universities and colleges in the state.

1096 | (d) Utilities located and operating within the state.

1097 | (e) Not-for-profit organizations.

1098 | (f) Other qualified persons, as determined by the
 1099 | department ~~commission~~.

1100 | (3) The department ~~commission~~ may adopt rules pursuant to
 1101 | ss. 120.536(1) and 120.54 to provide for application
 1102 | requirements, provide for ranking of applications, and

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1103 administer the awarding of grants under this program.

1104 (4) Factors the department ~~commission~~ shall consider in
1105 awarding grants include, but are not limited to:

1106 (a) The availability of matching funds or other in-kind
1107 contributions applied to the total project from an applicant.
1108 The department ~~commission~~ shall give greater preference to
1109 projects that provide such matching funds or other in-kind
1110 contributions.

1111 (b) The degree to which the project stimulates in-state
1112 capital investment and economic development in metropolitan and
1113 rural areas, including the creation of jobs and the future
1114 development of a commercial market for renewable energy
1115 technologies.

1116 (c) The extent to which the proposed project has been
1117 demonstrated to be technically feasible based on pilot project
1118 demonstrations, laboratory testing, scientific modeling, or
1119 engineering or chemical theory that supports the proposal.

1120 (d) The degree to which the project incorporates an
1121 innovative new technology or an innovative application of an
1122 existing technology.

1123 (e) The degree to which a project generates thermal,
1124 mechanical, or electrical energy by means of a renewable energy
1125 resource that has substantial long-term production potential.

1126 (f) The degree to which a project demonstrates efficient
1127 use of energy and material resources.

1128 (g) The degree to which the project fosters overall
1129 understanding and appreciation of renewable energy technologies.

1130 (h) The ability to administer a complete project.

1131 (i) Project duration and timeline for expenditures.

1132 (j) The geographic area in which the project is to be
 1133 conducted in relation to other projects.

1134 (k) The degree of public visibility and interaction.

1135 (5) The department ~~commission~~ shall solicit the expertise
 1136 of state agencies, Enterprise Florida, Inc., and state
 1137 universities, and may solicit the expertise of other public and
 1138 private entities it deems appropriate, in evaluating project
 1139 proposals. State agencies shall cooperate with the department
 1140 ~~commission~~ and provide such assistance as requested.

1141 (6) ~~The commission shall coordinate and actively consult~~
 1142 ~~with the Department of Agriculture and Consumer Services during~~
 1143 ~~the review and approval process of grants relating to bioenergy~~
 1144 ~~projects for renewable energy technology.~~ Factors for
 1145 consideration in awarding grants relating to bioenergy projects
 1146 may include, but are not limited to, the degree to which:

1147 (a) The project stimulates in-state capital investment and
 1148 economic development in metropolitan and rural areas, including
 1149 the creation of jobs and the future development of a commercial
 1150 market for bioenergy.

1151 (b) The project produces bioenergy from Florida-grown
 1152 crops or biomass.

1153 (c) The project demonstrates efficient use of energy and
 1154 material resources.

1155 (d) The project fosters overall understanding and
 1156 appreciation of bioenergy technologies.

1157 (e) Matching funds and in-kind contributions from an
 1158 applicant are available.

1159 (f) The project duration and the timeline for expenditures
 1160 are acceptable.

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1161 (g) The project has a reasonable assurance of enhancing
 1162 the value of agricultural products or will expand agribusiness
 1163 in the state.

1164 (h) Preliminary market and feasibility research has been
 1165 conducted by the applicant or others and shows there is a
 1166 reasonable assurance of a potential market.

1167 (7) Each grant application shall be accompanied by an
 1168 affidavit from the applicant attesting to the accuracy of the
 1169 statements contained in the application.

1170 Section 21. Section 377.806, Florida Statutes, is
 1171 repealed.

1172 Section 22. Section 377.807, Florida Statutes, is amended
 1173 to read:

1174 377.807 Energy-efficient appliance rebate program.—

1175 (1) The department ~~Florida Energy and Climate Commission~~
 1176 is authorized to develop and administer a consumer rebate
 1177 program for residential energy-efficient appliances, consistent
 1178 with 42 U.S.C. s. 15821 and any federal agency guidance or
 1179 regulations issued in furtherance of federal law.

1180 (2) The department ~~commission~~ may adopt rules pursuant to
 1181 ss. 120.536(1) and 120.54 designating eligible appliances,
 1182 rebate amounts, and the administration of the issuance of
 1183 rebates. The rules shall be consistent with 42 U.S.C. s. 15821
 1184 and any subsequent implementing federal regulations or guidance.

1185 (3) The department ~~commission~~ is authorized to enter into
 1186 contracts or memoranda of agreement with other agencies of the
 1187 state, public-private partnerships, or other arrangements such
 1188 that the most efficient means of administering consumer rebates
 1189 can be achieved.

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1190 Section 23. Section 377.808, Florida Statutes, is amended
 1191 to read:

1192 377.808 Florida Green Government Grants Act.—

1193 (1) This section may be cited as the "Florida Green
 1194 Government Grants Act."

1195 (2) The Department of Agriculture and Consumer Services
 1196 ~~Florida Energy and Climate Commission~~ shall use funds
 1197 specifically appropriated to award grants under this section to
 1198 assist local governments, including municipalities, counties,
 1199 and school districts, in the development and implementation of
 1200 programs that achieve green standards. Green standards shall be
 1201 determined by the department ~~commission~~ and shall provide for
 1202 cost-efficient solutions, reducing greenhouse gas emissions,
 1203 improving quality of life, and strengthening the state's
 1204 economy.

1205 (3) The department ~~commission~~ shall adopt rules pursuant
 1206 to chapter 120 to administer the grants provided for in this
 1207 section. In accordance with the rules adopted by the department
 1208 ~~commission~~ under this section, the department ~~commission~~ may
 1209 provide grants from funds specifically appropriated for this
 1210 purpose to local governments for the costs of achieving green
 1211 standards, including necessary administrative expenses. The
 1212 rules of the department ~~commission~~ shall:

1213 (a) Designate one or more suitable green government
 1214 standards frameworks from which local governments may develop a
 1215 greening government initiative and from which projects may be
 1216 eligible for funding pursuant to this section.

1217 (b) Require that projects that plan, design, construct,
 1218 upgrade, or replace facilities reduce greenhouse gas emissions

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1219 and be cost-effective, environmentally sound, permittable, and
 1220 implementable.

1221 (c) Require local governments to match state funds with
 1222 direct project cost sharing or in-kind services.

1223 (d) Provide for a scale of matching requirements for local
 1224 governments on the basis of population in order to assist rural
 1225 and undeveloped areas of the state with any financial burden of
 1226 addressing climate change impacts.

1227 (e) Require grant applications to be submitted on
 1228 appropriate forms developed and adopted by the department
 1229 ~~commission~~ with appropriate supporting documentation and require
 1230 records to be maintained.

1231 (f) Establish a system to determine the relative priority
 1232 of grant applications. The system shall consider greenhouse gas
 1233 reductions, energy savings and efficiencies, and proven
 1234 technologies.

1235 (g) Establish requirements for competitive procurement of
 1236 engineering and construction services, materials, and equipment.

1237 (h) Provide for termination of grants when program
 1238 requirements are not met.

1239 (4) Each local government is limited to not more than two
 1240 grant applications during each application period announced by
 1241 the department ~~commission~~. However, a local government may not
 1242 have more than three active projects expending grant funds
 1243 during any state fiscal year.

1244 (5) The department ~~commission~~ shall perform an adequate
 1245 overview of each grant, which may include technical review, site
 1246 inspections, disbursement approvals, and auditing to
 1247 successfully implement this section.

1248 Section 24. Section 377.809, Florida Statutes, is amended
 1249 to read:

1250 377.809 Energy Economic Zone Pilot Program.—

1251 (1) The Department of Community Affairs, in consultation
 1252 with the Department of Transportation, shall implement an Energy
 1253 Economic Zone Pilot Program for the purpose of developing a
 1254 model to help communities cultivate green economic development,
 1255 encourage renewable electric energy generation, manufacture
 1256 products that contribute to energy conservation and green jobs,
 1257 and further implement chapter 2008-191, Laws of Florida,
 1258 relative to discouraging sprawl and developing energy-efficient
 1259 land use patterns and greenhouse gas reduction strategies. The
 1260 Office of Tourism, Trade, and Economic Development and the
 1261 Department of Agriculture and Consumer Services ~~Florida Energy~~
 1262 ~~and Climate Commission~~ shall provide technical assistance to the
 1263 departments in developing and administering the program.

1264 (2) (a) The application for a pilot project shall:

1265 1. Identify the proposed location of the energy economic
 1266 zone, which must be within an adopted urban service area and may
 1267 include a county landfill outside the urban service boundary;

1268 2. Present a proposed strategic plan for development and
 1269 redevelopment in the energy economic zone;

1270 3. Demonstrate consistency of the strategic plan with the
 1271 local comprehensive plan or include proposed plan amendments
 1272 necessary to achieve consistency; and

1273 4. Identify comprehensive plan amendments that will be
 1274 proposed to implement chapter 2008-191, Laws of Florida.

1275 (b) The strategic plan under subparagraph (a)1. must
 1276 include mixed-use and form-based standards that integrate

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1277 multimodal transportation facilities with land use and
 1278 development patterns to reduce reliance on automobiles,
 1279 encourage certified green building developments and renewable
 1280 energy systems, encourage creation of green jobs, and
 1281 demonstrate how local financial and regulatory incentives will
 1282 be used in the energy economic zone.

1283 (c) The Department of Community Affairs shall grant at
 1284 least one application if the application meets the requirements
 1285 of this subsection and the community has demonstrated a prior
 1286 commitment to energy conservation, carbon reduction, green
 1287 building, and economic development. The Department of Community
 1288 Affairs and the Office of Tourism, Trade, and Economic
 1289 Development shall provide the pilot community, including
 1290 businesses within the energy economic zone, with technical
 1291 assistance in identifying and qualifying for eligible grants and
 1292 credits in job creation, energy, and other areas.

1293 (3) The Department of Community Affairs, with the
 1294 assistance of the Office of Tourism, Trade, and Economic
 1295 Development, shall submit an interim report by February 15,
 1296 2010, to the Governor, the President of the Senate, and the
 1297 Speaker of the House of Representatives regarding the status of
 1298 the pilot program. The report shall contain any recommendations
 1299 deemed appropriate by the department for statutory changes to
 1300 accomplish the goals of the pilot program community, including
 1301 whether it would be beneficial to provide financial incentives
 1302 similar to those offered to an enterprise zone.

1303 (4) If the pilot project is ongoing, the Department of
 1304 Community Affairs, with the assistance of the Office of Tourism,
 1305 Trade, and Economic Development, shall submit a report to the

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1306 Governor, the President of the Senate, and the Speaker of the
 1307 House of Representatives by February 15, 2012, evaluating
 1308 whether the pilot program has demonstrated success. The report
 1309 shall contain recommendations with regard to whether the program
 1310 should be expanded for use by other local governments and
 1311 whether state policies should be revised to encourage the goals
 1312 of the program.

1313 Section 25. Section 409.508, Florida Statutes, is amended
 1314 to read:

1315 409.508 Low-income home energy assistance program.—

1316 (1) As used in this section:

1317 (a) "Eligible household" means a household eligible for
 1318 funds from the Low-income Home Energy Assistance Act of 1981, 42
 1319 U.S.C. ss. 8621 et seq.

1320 (b) "Home energy" means a source of heating or cooling in
 1321 residential dwellings.

1322 (c) "Utility" means any person, corporation, partnership,
 1323 municipality, cooperative, association, or other legal entity
 1324 and its lessees, trustees, or receivers now or hereafter owning,
 1325 operating, managing, or controlling any plant or other facility
 1326 supplying electricity or natural gas to or for the public within
 1327 this state, directly or indirectly, for compensation.

1328 (2) The Department of Agriculture and Consumer Services
 1329 ~~Community Affairs~~ is designated as the state agency to
 1330 administer the Low-income Home Energy Assistance Act of 1981, 42
 1331 U.S.C. ss. 8621 et seq. The Department of Agriculture and
 1332 Consumer Services ~~Community Affairs~~ is authorized to provide
 1333 home energy assistance benefits to eligible households which may
 1334 be in the form of cash, vouchers, certificates, or direct

1335 payments to electric or natural gas utilities or other energy
 1336 suppliers and operators of low-rent, subsidized housing in
 1337 behalf of eligible households. Priority shall be given to
 1338 eligible households having at least one elderly or handicapped
 1339 individual and to eligible households with the lowest incomes.

1340 (3) Agreements may be established between electric or
 1341 natural gas utility companies, other energy suppliers, the
 1342 Department of Revenue, and the Department of Agriculture and
 1343 Consumer Services ~~Community Affairs~~ for the purpose of providing
 1344 payments to energy suppliers in the form of a credit against
 1345 sales and use taxes due or direct payments to energy suppliers
 1346 for services rendered to low-income, eligible households.

1347 (4) The Department of Agriculture and Consumer Services
 1348 ~~Community Affairs~~ shall adopt rules to carry out the provisions
 1349 of this act.

1350 Section 26. Section 409.509, Florida Statutes, is amended
 1351 to read:

1352 409.509 Definitions; weatherization of low-income
 1353 residences.—As used in this act, the term:

1354 (1) "Community action agency" means a private corporation
 1355 or public agency established pursuant to the Economic
 1356 Opportunity Act of 1964, Pub. L. No. 88-452, which is authorized
 1357 to administer funds from federal, state, local, or private
 1358 funding entities to assess, design, operate, finance, and
 1359 oversee antipoverty programs.

1360 (2) "Department" means the Department of Agriculture and
 1361 Consumer Services ~~Community Affairs~~.

1362 (3) "Energy assessment" means an analysis of a dwelling
 1363 unit to determine the need for cost-effective energy

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1364 conservation measures as determined by the department.

1365 (4) "Household" means an individual or group of
 1366 individuals living in a dwelling unit as defined by the
 1367 department.

1368 (5) "Low income" means household income that is at or
 1369 below 125 percent of the federally established poverty level.

1370 (6) "Residence" means a dwelling unit as defined by the
 1371 department.

1372 (7) "Weatherization" means materials or measures and their
 1373 installation as defined in the federal Energy Conservation and
 1374 Production Act, Pub. L. No. 94-385, which are used to improve
 1375 the thermal efficiency of a residence.

1376 (8) "Weatherizing agency" means any approved department
 1377 grantee that bears the responsibility for ensuring the
 1378 performance of weatherization of residences under this act and
 1379 has been approved by the department, that was performing
 1380 weatherization services as of July 1, 1988, unless such agency
 1381 has withdrawn or lost its designation as a result of failure to
 1382 perform under acceptable contract conditions as determined by
 1383 the department.

1384 Section 27. For the purpose of incorporating the amendment
 1385 made by this act to section 409.509, Florida Statutes, in a
 1386 reference thereto, Section 409.5091, Florida Statutes, is
 1387 reenacted to read:

1388 409.5091 Department responsible for weatherizing agencies;
 1389 energy assessment.—

1390 (1) The department is responsible for ensuring that
 1391 weatherizing agencies comply with state laws and department
 1392 rules.

1393 (2) Before a residence is weatherized, the department
 1394 shall require that an energy assessment be conducted.

1395 Section 28. For the purpose of incorporating the amendment
 1396 made by this act to section 409.509, Florida Statutes, in a
 1397 reference thereto, Section 409.5092, Florida Statutes, is
 1398 reenacted to read:

1399 409.5092 Permission for weatherization; rules.—Before a
 1400 leased or rented residence is weatherized, written permission
 1401 for the weatherization shall be obtained from the owner of the
 1402 residence. The department shall adopt rules to ensure that:

1403 (1) The benefits of weatherization assistance in
 1404 connection with a leased or rented residence accrue primarily to
 1405 low-income tenants.

1406 (2) As a result of weatherization, the rent on the
 1407 residence is not increased and the tenant is not evicted for a
 1408 time period set by the department.

1409 Section 29. For the purpose of incorporating the amendment
 1410 made by this act to section 409.509, Florida Statutes, in a
 1411 reference thereto, Section 409.5093, Florida Statutes, is
 1412 reenacted to read:

1413 409.5093 Replacement agency.—If any area of the state has
 1414 no designated weatherization agency as a result of withdrawal or
 1415 loss of designation by departmental action, a replacement agency
 1416 or agencies may be selected following a process delineated by
 1417 federal and state law, regulations, and rules.

1418 Section 30. Paragraph (ccc) of subsection (7) of section
 1419 212.08, Florida Statutes, is repealed.

1420 Section 31. Paragraph (y) of subsection (8) of section
 1421 213.053, Florida Statutes, is amended to read:

1422 213.053 Confidentiality and information sharing.—
 1423 (8) Notwithstanding any other provision of this section,
 1424 the department may provide:
 1425 (y) Information relative to ss. ~~212.08(7)(ccc)~~ and 220.192
 1426 to the Department of Agriculture and Consumer Services Florida
 1427 ~~Energy and Climate Commission~~ for use in the conduct of its
 1428 official business.

1429
 1430 Disclosure of information under this subsection shall be
 1431 pursuant to a written agreement between the executive director
 1432 and the agency. Such agencies, governmental or nongovernmental,
 1433 shall be bound by the same requirements of confidentiality as
 1434 the Department of Revenue. Breach of confidentiality is a
 1435 misdemeanor of the first degree, punishable as provided by s.
 1436 775.082 or s. 775.083.

1437 Section 32. Subsections (3), (4), (5), and (8) of section
 1438 220.192, Florida Statutes, are amended to read:

1439 220.192 Renewable energy technologies investment tax
 1440 credit.—

1441 (3) CORPORATE APPLICATION PROCESS.—Any corporation wishing
 1442 to obtain tax credits available under this section must submit
 1443 to the Department of Agriculture and Consumer Services Florida
 1444 ~~Energy and Climate Commission~~ an application for tax credit that
 1445 includes a complete description of all eligible costs for which
 1446 the corporation is seeking a credit and a description of the
 1447 total amount of credits sought. The Department of Agriculture
 1448 and Consumer Services Florida ~~Energy and Climate Commission~~
 1449 shall make a determination on the eligibility of the applicant
 1450 for the credits sought and certify the determination to the

1451 applicant and the Department of Revenue. The corporation must
 1452 attach the Department of Agriculture and Consumer Services'
 1453 ~~Florida Energy and Climate Commission's~~ certification to the tax
 1454 return on which the credit is claimed. The Department of
 1455 Agriculture and Consumer Services ~~Florida Energy and Climate~~
 1456 ~~Commission~~ shall be responsible for ensuring that the corporate
 1457 income tax credits granted in each fiscal year do not exceed the
 1458 limits provided for in this section. The Department of
 1459 Agriculture and Consumer Services ~~Florida Energy and Climate~~
 1460 ~~Commission~~ is authorized to adopt the necessary rules,
 1461 guidelines, and application materials for the application
 1462 process.

1463 (4) TAXPAYER APPLICATION PROCESS.—To claim a credit under
 1464 this section, each taxpayer must apply to the Department of
 1465 Agriculture and Consumer Services ~~Florida Energy and Climate~~
 1466 ~~Commission~~ for an allocation of each type of annual credit by
 1467 the date established by the Department of Agriculture and
 1468 Consumer Services ~~Florida Energy and Climate Commission~~. The
 1469 application form may be established by the Department of
 1470 Agriculture and Consumer Services ~~Florida Energy and Climate~~
 1471 ~~Commission~~. The form must include an affidavit from each
 1472 taxpayer certifying that all information contained in the
 1473 application, including all records of eligible costs claimed as
 1474 the basis for the tax credit, are true and correct. Approval of
 1475 the credits under this section shall be accomplished on a first-
 1476 come, first-served basis, based upon the date complete
 1477 applications are received by the Department of Agriculture and
 1478 Consumer Services ~~Florida Energy and Climate Commission~~. A
 1479 taxpayer shall submit only one complete application based upon

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1480 eligible costs incurred within a particular state fiscal year.
1481 Incomplete placeholder applications will not be accepted and
1482 will not secure a place in the first-come, first-served
1483 application line. If a taxpayer does not receive a tax credit
1484 allocation due to the exhaustion of the annual tax credit
1485 authorizations, then such taxpayer may reapply in the following
1486 year for those eligible costs and will have priority over other
1487 applicants for the allocation of credits.

1488 (5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF
1489 CREDITS.—

1490 (a) In addition to its existing audit and investigation
1491 authority, the Department of Revenue may perform any additional
1492 financial and technical audits and investigations, including
1493 examining the accounts, books, and records of the tax credit
1494 applicant, which are necessary to verify the eligible costs
1495 included in the tax credit return and to ensure compliance with
1496 this section. The Department of Agriculture and Consumer
1497 Services Florida Energy and Climate Commission shall provide
1498 technical assistance when requested by the Department of Revenue
1499 on any technical audits or examinations performed pursuant to
1500 this section.

1501 (b) It is grounds for forfeiture of previously claimed and
1502 received tax credits if the Department of Revenue determines, as
1503 a result of an audit or examination or from information received
1504 from the Department of Agriculture and Consumer Services Florida
1505 Energy and Climate Commission, that a taxpayer received tax
1506 credits pursuant to this section to which the taxpayer was not
1507 entitled. The taxpayer is responsible for returning forfeited
1508 tax credits to the Department of Revenue, and such funds shall

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1509 | be paid into the General Revenue Fund of the state.

1510 | (c) The Department of Agriculture and Consumer Services
1511 | ~~Florida Energy and Climate Commission~~ may revoke or modify any
1512 | written decision granting eligibility for tax credits under this
1513 | section if it is discovered that the tax credit applicant
1514 | submitted any false statement, representation, or certification
1515 | in any application, record, report, plan, or other document
1516 | filed in an attempt to receive tax credits under this section.
1517 | The Department of Agriculture and Consumer Services ~~Florida~~
1518 | ~~Energy and Climate Commission~~ shall immediately notify the
1519 | Department of Revenue of any revoked or modified orders
1520 | affecting previously granted tax credits. Additionally, the
1521 | taxpayer must notify the Department of Revenue of any change in
1522 | its tax credit claimed.

1523 | (d) The taxpayer shall file with the Department of Revenue
1524 | an amended return or such other report as the Department of
1525 | Revenue prescribes by rule and shall pay any required tax and
1526 | interest within 60 days after the taxpayer receives notification
1527 | from the Department of Agriculture and Consumer Services ~~Florida~~
1528 | ~~Energy and Climate Commission~~ that previously approved tax
1529 | credits have been revoked or modified. If the revocation or
1530 | modification order is contested, the taxpayer shall file an
1531 | amended return or other report as provided in this paragraph
1532 | within 60 days after a final order is issued after proceedings.

1533 | (e) A notice of deficiency may be issued by the Department
1534 | of Revenue at any time within 3 years after the taxpayer
1535 | receives formal notification from the Department of Agriculture
1536 | and Consumer Services ~~Florida Energy and Climate Commission~~ that
1537 | previously approved tax credits have been revoked or modified.

1538 If a taxpayer fails to notify the Department of Revenue of any
 1539 changes to its tax credit claimed, a notice of deficiency may be
 1540 issued at any time.

1541 (8) PUBLICATION.—The Department of Agriculture and
 1542 Consumer Services ~~Florida Energy and Climate Commission~~ shall
 1543 determine and publish on a regular basis the amount of available
 1544 tax credits remaining in each fiscal year.

1545 Section 33. Subsections (2) and (5) of section 288.1089,
 1546 Florida Statutes, are amended to read:

1547 288.1089 Innovation Incentive Program.—

1548 (2) As used in this section, the term:

1549 (e)-(d) "Department" means the Department of Agriculture
 1550 and Consumer Services ~~"Commission" means the Florida Energy and~~
 1551 ~~Climate Commission.~~

1552 (d)-(e) "Cumulative investment" means cumulative capital
 1553 investment and all eligible capital costs, as defined in s.
 1554 220.191.

1555 (5) Enterprise Florida, Inc., shall evaluate proposals for
 1556 all three categories of innovation incentive awards and transmit
 1557 recommendations for awards to the office. Before making its
 1558 recommendations on alternative and renewable energy projects,
 1559 Enterprise Florida, Inc., shall solicit comments and
 1560 recommendations from the department ~~Florida Energy and Climate~~
 1561 ~~Commission~~. For each project, the evaluation and recommendation
 1562 to the office must include, but need not be limited to:

1563 (a) A description of the project, its required facilities,
 1564 and the associated product, service, or research and development
 1565 associated with the project.

1566 (b) The percentage of match provided for the project.

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1567 (c) The number of full-time equivalent jobs that will be
1568 created by the project, the total estimated average annual wages
1569 of such jobs, and the types of business activities and jobs
1570 likely to be stimulated by the project.

1571 (d) The cumulative investment to be dedicated to the
1572 project within 5 years and the total investment expected in the
1573 project if more than 5 years.

1574 (e) The projected economic and fiscal impacts on the local
1575 and state economies relative to investment.

1576 (f) A statement of any special impacts the project is
1577 expected to stimulate in a particular business sector in the
1578 state or regional economy or in the state's universities and
1579 community colleges.

1580 (g) A statement of any anticipated or proposed
1581 relationships with state universities.

1582 (h) A statement of the role the incentive is expected to
1583 play in the decision of the applicant to locate or expand in
1584 this state.

1585 (i) A recommendation and explanation of the amount of the
1586 award needed to cause the applicant to expand or locate in this
1587 state.

1588 (j) A discussion of the efforts and commitments made by
1589 the local community in which the project is to be located to
1590 induce the applicant's location or expansion, taking into
1591 consideration local resources and abilities.

1592 (k) A recommendation for specific performance criteria the
1593 applicant would be expected to achieve in order to receive
1594 payments from the fund and penalties or sanctions for failure to
1595 meet or maintain performance conditions.

- 1596 (1) Additional evaluative criteria for a research and
 1597 development facility project, including:
- 1598 1. A description of the extent to which the project has
 1599 the potential to serve as catalyst for an emerging or evolving
 1600 cluster.
- 1601 2. A description of the extent to which the project has or
 1602 could have a long-term collaborative research and development
 1603 relationship with one or more universities or community colleges
 1604 in this state.
- 1605 3. A description of the existing or projected impact of
 1606 the project on established clusters or targeted industry
 1607 sectors.
- 1608 4. A description of the project's contribution to the
 1609 diversity and resiliency of the innovation economy of this
 1610 state.
- 1611 5. A description of the project's impact on special needs
 1612 communities, including, but not limited to, rural areas,
 1613 distressed urban areas, and enterprise zones.
- 1614 (m) Additional evaluative criteria for alternative and
 1615 renewable energy proposals, including:
- 1616 1. The availability of matching funds or other in-kind
 1617 contributions applied to the total project from an applicant.
 1618 The department ~~commission~~ shall give greater preference to
 1619 projects that provide such matching funds or other in-kind
 1620 contributions.
- 1621 2. The degree to which the project stimulates in-state
 1622 capital investment and economic development in metropolitan and
 1623 rural areas, including the creation of jobs and the future
 1624 development of a commercial market for renewable energy

1625 technologies.

1626 3. The extent to which the proposed project has been
 1627 demonstrated to be technically feasible based on pilot project
 1628 demonstrations, laboratory testing, scientific modeling, or
 1629 engineering or chemical theory that supports the proposal.

1630 4. The degree to which the project incorporates an
 1631 innovative new technology or an innovative application of an
 1632 existing technology.

1633 5. The degree to which a project generates thermal,
 1634 mechanical, or electrical energy by means of a renewable energy
 1635 resource that has substantial long-term production potential.

1636 6. The degree to which a project demonstrates efficient
 1637 use of energy and material resources.

1638 7. The degree to which the project fosters overall
 1639 understanding and appreciation of renewable energy technologies.

1640 8. The ability to administer a complete project.

1641 9. Project duration and timeline for expenditures.

1642 10. The geographic area in which the project is to be
 1643 conducted in relation to other projects.

1644 11. The degree of public visibility and interaction.

1645 Section 34. Subsection (9) of section 288.9607, Florida
 1646 Statutes, is amended to read:

1647 288.9607 Guaranty of bond issues.—

1648 (9) The membership of the corporation is authorized and
 1649 directed to conduct such investigation as it may deem necessary
 1650 for promulgation of regulations to govern the operation of the
 1651 guaranty program authorized by this section. The regulations may
 1652 include such other additional provisions, restrictions, and
 1653 conditions as the corporation, after its investigation referred

1654 to in this subsection, shall determine to be proper to achieve
 1655 the most effective utilization of the guaranty program. This may
 1656 include, without limitation, a detailing of the remedies that
 1657 must be exhausted by bondholders, a trustee acting on their
 1658 behalf, or other credit provided before calling upon the
 1659 corporation to perform under its guaranty agreement and the
 1660 subrogation of other rights of the corporation with reference to
 1661 the capital project and its operation or the financing in the
 1662 event the corporation makes payment pursuant to the applicable
 1663 guaranty agreement. The regulations promulgated by the
 1664 corporation to govern the operation of the guaranty program may
 1665 contain specific provisions with respect to the rights of the
 1666 corporation to enter, take over, and manage all financed
 1667 properties upon default. These regulations shall be submitted by
 1668 the corporation to the Department of Agriculture and Consumer
 1669 Services ~~Florida Energy and Climate Commission~~ for approval.

1670 Section 35. Subsection (5) of section 366.82, Florida
 1671 Statutes, is amended to read:

1672 366.82 Definition; goals; plans; programs; annual reports;
 1673 energy audits.—

1674 (5) The Department of Agriculture and Consumer Services
 1675 ~~Florida Energy and Climate Commission~~ shall be a party in the
 1676 proceedings to adopt goals and shall file with the commission
 1677 comments on the proposed goals, including, but not limited to:

1678 (a) An evaluation of utility load forecasts, including an
 1679 assessment of alternative supply-side and demand-side resource
 1680 options.

1681 (b) An analysis of various policy options that can be
 1682 implemented to achieve a least-cost strategy, including

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1683 nonutility programs targeted at reducing and controlling the per
 1684 capita use of electricity in the state.

1685 (c) An analysis of the impact of state and local building
 1686 codes and appliance efficiency standards on the need for
 1687 utility-sponsored conservation and energy efficiency measures
 1688 and programs.

1689 Section 36. Section 366.85, Florida Statutes, is repealed.

1690 Section 37. Subsection (3) of section 366.92, Florida
 1691 Statutes, is amended to read:

1692 366.92 Florida renewable energy policy.—

1693 (3) The commission shall adopt rules for a renewable
 1694 portfolio standard requiring each provider to supply renewable
 1695 energy to its customers directly, by procuring, or through
 1696 renewable energy credits. In developing the RPS rule, the
 1697 commission shall consult the Department of Environmental
 1698 Protection and the Department of Agriculture and Consumer
 1699 Services ~~Florida Energy and Climate Commission~~. The rule shall
 1700 not be implemented until ratified by the Legislature. The
 1701 commission shall present a draft rule for legislative
 1702 consideration by February 1, 2009.

1703 (a) In developing the rule, the commission shall evaluate
 1704 the current and forecasted levelized cost in cents per kilowatt
 1705 hour through 2020 and current and forecasted installed capacity
 1706 in kilowatts for each renewable energy generation method through
 1707 2020.

1708 (b) The commission's rule:

1709 1. Shall include methods of managing the cost of
 1710 compliance with the renewable portfolio standard, whether
 1711 through direct supply or procurement of renewable power or

1712 through the purchase of renewable energy credits. The commission
 1713 shall have rulemaking authority for providing annual cost
 1714 recovery and incentive-based adjustments to authorized rates of
 1715 return on common equity to providers to incentivize renewable
 1716 energy. Notwithstanding s. 366.91(3) and (4), upon the
 1717 ratification of the rules developed pursuant to this subsection,
 1718 the commission may approve projects and power sales agreements
 1719 with renewable power producers and the sale of renewable energy
 1720 credits needed to comply with the renewable portfolio standard.
 1721 In the event of any conflict, this subparagraph shall supersede
 1722 s. 366.91(3) and (4). However, nothing in this section shall
 1723 alter the obligation of each public utility to continuously
 1724 offer a purchase contract to producers of renewable energy.

1725 2. Shall provide for appropriate compliance measures and
 1726 the conditions under which noncompliance shall be excused due to
 1727 a determination by the commission that the supply of renewable
 1728 energy or renewable energy credits was not adequate to satisfy
 1729 the demand for such energy or that the cost of securing
 1730 renewable energy or renewable energy credits was cost
 1731 prohibitive.

1732 3. May provide added weight to energy provided by wind and
 1733 solar photovoltaic over other forms of renewable energy, whether
 1734 directly supplied or procured or indirectly obtained through the
 1735 purchase of renewable energy credits.

1736 4. Shall determine an appropriate period of time for which
 1737 renewable energy credits may be used for purposes of compliance
 1738 with the renewable portfolio standard.

1739 5. Shall provide for monitoring of compliance with and
 1740 enforcement of the requirements of this section.

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1741 6. Shall ensure that energy credited toward compliance
1742 with the requirements of this section is not credited toward any
1743 other purpose.

1744 7. Shall include procedures to track and account for
1745 renewable energy credits, including ownership of renewable
1746 energy credits that are derived from a customer-owned renewable
1747 energy facility as a result of any action by a customer of an
1748 electric power supplier that is independent of a program
1749 sponsored by the electric power supplier.

1750 8. Shall provide for the conditions and options for the
1751 repeal or alteration of the rule in the event that new
1752 provisions of federal law supplant or conflict with the rule.

1753 (c) Beginning on April 1 of the year following final
1754 adoption of the commission's renewable portfolio standard rule,
1755 each provider shall submit a report to the commission describing
1756 the steps that have been taken in the previous year and the
1757 steps that will be taken in the future to add renewable energy
1758 to the provider's energy supply portfolio. The report shall
1759 state whether the provider was in compliance with the renewable
1760 portfolio standard during the previous year and how it will
1761 comply with the renewable portfolio standard in the upcoming
1762 year.

1763 Section 38. Subsections (3) and (6) of section 403.44,
1764 Florida Statutes, are amended to read:

1765 403.44 Florida Climate Protection Act.—

1766 (3) The department may adopt rules for a cap-and-trade
1767 regulatory program to reduce greenhouse gas emissions from major
1768 emitters. When developing the rules, the department shall
1769 consult with the Department of Agriculture and Consumer Services

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1770 ~~Florida Energy and Climate Commission~~ and the Florida Public
1771 Service Commission and may consult with the Governor's Action
1772 Team for Energy and Climate Change. The department shall not
1773 adopt rules until after January 1, 2010. The rules shall not
1774 become effective until ratified by the Legislature.

1775 (6) Recognizing that the international, national, and
1776 neighboring state policies and the science of climate change
1777 will evolve, prior to submitting the proposed rules to the
1778 Legislature for consideration, the department shall submit the
1779 proposed rules to the Department of Agriculture and Consumer
1780 Services ~~Florida Energy and Climate Commission~~, which shall
1781 review the proposed rules and submit a report to the Governor,
1782 the President of the Senate, the Speaker of the House of
1783 Representatives, and the department. The report shall address:

1784 (a) The overall cost-effectiveness of the proposed cap-
1785 and-trade system in combination with other policies and measures
1786 in meeting statewide targets.

1787 (b) The administrative burden to the state of
1788 implementing, monitoring, and enforcing the program.

1789 (c) The administrative burden on entities covered under
1790 the cap.

1791 (d) The impacts on electricity prices for consumers.

1792 (e) The specific benefits to the state's economy for early
1793 adoption of a cap-and-trade system for greenhouse gases in the
1794 context of federal climate change legislation and the
1795 development of new international compacts.

1796 (f) The specific benefits to the state's economy
1797 associated with the creation and sale of emissions offsets from
1798 economic sectors outside of the emissions cap.

1799 (g) The potential effects on leakage if economic activity
 1800 relocates out of the state.

1801 (h) The effectiveness of the combination of measures in
 1802 meeting identified targets.

1803 (i) The economic implications for near-term periods of
 1804 short-term and long-term targets specified in the overall
 1805 policy.

1806 (j) The overall costs and benefits of a cap-and-trade
 1807 system to the economy of the state.

1808 (k) The impacts on low-income consumers that result from
 1809 energy price increases.

1810 (l) The consistency of the program with other state and
 1811 possible federal efforts.

1812 (m) The evaluation of the conditions under which the state
 1813 should consider linking its trading system to the systems of
 1814 other states or other countries and how that might be affected
 1815 by the potential inclusion in the rule of a safety valve.

1816 (n) The timing and changes in the external environment,
 1817 such as proposals by other states or implementation of a federal
 1818 program that would spur reevaluation of the Florida program.

1819 (o) The conditions and options for eliminating the Florida
 1820 program if a federal program were to supplant it.

1821 (p) The need for a regular reevaluation of the progress of
 1822 other emitting regions of the country and of the world, and
 1823 whether other regions are abating emissions in a commensurate
 1824 manner.

1825 (q) The desirability of and possibilities of broadening
 1826 the scope of the state's cap-and-trade system at a later date to
 1827 include more emitting activities as well as sinks in Florida,

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1828 | the conditions that would need to be met to do so, and how the
 1829 | program would encourage these conditions to be met, including
 1830 | developing monitoring and measuring techniques for land use
 1831 | emissions and sinks, regulating sources upstream, and other
 1832 | considerations.

1833 | Section 39. Section 570.074, Florida Statutes, is amended
 1834 | to read:

1835 | 570.074 Department of Agriculture and Consumer Services;
 1836 | energy and water policy eoordination.—The commissioner may
 1837 | create an Office of Energy and Water Coerdination under the
 1838 | supervision of a senior manager exempt under s. 110.205 in the
 1839 | Senior Management Service. The commissioner may designate the
 1840 | bureaus and positions in the various organizational divisions of
 1841 | the department that report to this office relating to any matter
 1842 | over which the department has jurisdiction in matters relating
 1843 | to energy and water policy affecting agriculture, application of
 1844 | such policies, and coordination of such matters with state and
 1845 | federal agencies.

1846 | Section 40. Section 526.207, Florida Statutes, is
 1847 | repealed.

1848 | Section 41. Subsection (3) of section 570.954, Florida
 1849 | Statutes, is amended to read:

1850 | 570.954 Farm-to-fuel initiative.—

1851 | ~~(3) The department shall coordinate with and solicit the~~
 1852 | ~~expertise of the state energy office within the Department of~~
 1853 | ~~Environmental Protection when developing and implementing this~~
 1854 | ~~initiative.~~

1855 | Section 42. Subsections (5), (11), (12), and (13) of
 1856 | section 1004.648, Florida Statutes, are amended to read:

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1857 | 1004.648 Florida Energy Systems Consortium.—
 1858 | (5) The director, whose office shall be located at the
 1859 | University of Florida, shall report to the Department of
 1860 | Agriculture and Consumer Services ~~Florida Energy and Climate~~
 1861 | ~~Commission created pursuant to s. 377.6015.~~
 1862 | (11) The oversight board, in consultation with the
 1863 | Department of Agriculture and Consumer Services ~~Florida Energy~~
 1864 | ~~and Climate Commission~~, shall ensure that the consortium:
 1865 | (a) Maintains accurate records of any funds received by
 1866 | the consortium.
 1867 | (b) Meets financial and technical performance
 1868 | expectations, which may include external technical reviews as
 1869 | required.
 1870 | (12) The steering committee shall consist of the
 1871 | university representatives included in the Centers of Excellence
 1872 | proposals for the Florida Energy Systems Consortium and the
 1873 | Center of Excellence in Ocean Energy Technology-Phase II which
 1874 | were reviewed during the 2007-2008 fiscal year by the Florida
 1875 | Technology, Research, and Scholarship Board created in s.
 1876 | 1004.226(4); a university representative appointed by the
 1877 | President of Florida International University; and a
 1878 | representative appointed by the Commissioner of Agriculture
 1879 | ~~the Florida Energy and Climate Commission~~. The steering
 1880 | committee shall be responsible for establishing and ensuring the
 1881 | success of the consortium's mission under subsection (9).
 1882 | (13) By November 1 of each year, the consortium shall
 1883 | submit an annual report to the Governor, the President of the
 1884 | Senate, the Speaker of the House of Representatives, and the
 1885 | Department of Agriculture and Consumer Services ~~Florida Energy~~

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1886 | ~~and Climate Commission~~ regarding its activities, including, but
 1887 | not limited to, education and research related to, and the
 1888 | development and deployment of, alternative energy technologies.

1889 | Section 43. This act shall take effect July 1, 2011.

1890

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENUS 11-02 Florida Public Service Commission (PSC)
SPONSOR(S): Energy & Utilities Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Energy & Utilities Subcommittee, Keating, Collins, [Signature]

SUMMARY ANALYSIS

The Florida Public Service Commission (PSC) came under intense scrutiny in recent years as a result of several allegations of unethical behavior. This string of allegations cast the PSC in a negative light, heightened public distrust of the agency, and created uncertainty in Florida's regulatory environment.

The bill addresses these concerns through the following reforms:

- Adopts certain provisions from the Code of Judicial Conduct as standards of conduct applicable to commissioners.
Defines ex parte communications and prohibits commissioners and their direct staff from engaging in ex parte communications concerning substantive matters...
Expands monetary penalties to apply to any individual who makes a prohibited ex parte communication...
Provides that persons involved in the selection of PSC commissioners, including the Governor and specified legislative members, shall not attempt to sway the independent judgment of the commission...
Provides that an individual commissioner may not demand or require any member of the PSC staff, other than the commissioner's direct staff, to develop, present, or pursue a particular opinion, position, or course of action...
Establishes training and continuing education requirements, concerning substantive and ethical matters, for commissioners and PSC staff.
Specifies the authority of the PSC to employ an executive director, a general counsel, and an inspector general, and specifies the authority of the executive director and general counsel to hire necessary technical, professional, and clerical staff.
Requires each person offering testimony in a PSC proceeding to disclose, at the time the testimony is offered, any financial or fiduciary relationship between the person and any party to the proceeding.

The bill transfers the Office of Public Counsel from the legislative branch to the Office of the Attorney General as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel is \$2.5 million and 16.5 full time positions from the General Revenue Fund for the 2010-2011 fiscal year.

The bill will have no fiscal impact on state or local governments and no economic impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Role and Organization of the Florida Public Service Commission

The Florida Public Service Commission (PSC or commission) is an arm of the legislative branch of government.¹ The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.² In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.³

On its website,⁴ the PSC provides the following overview of its role:

The work of the Florida Public Service Commission is a balancing act. The Commission must balance the needs of a utility and its shareholders with the needs of consumers. Traditionally, the Commission achieved this goal by establishing exclusive utility service territories, regulating the rates and profits of a utility, and placing an affirmative obligation on the utility to provide service to all who requested it. For electric and water customers in the state, many of the Commission's traditional methods for achieving the balance continue today. Legislative action during the 1995 session to open up the local telephone market to increased competition, however, calls for the Commission to facilitate entry of new firms into the local telephone market, while at the same time ensuring that neither the new entrant nor the incumbent local exchange company is unfairly advantaged or disadvantaged. Section 364.01(4), F.S., calls for the Commission to exercise its jurisdiction to encourage and promote competition. The Commission's role in the increasingly competitive telephone industry remains one of balance.

In performing this role, the PSC conducts proceedings ranging from workshops and rulemaking to informal "proposed agency action" proceedings and formal evidentiary hearings. Although it is authorized to refer matters to the Division of Administrative Hearings (DOAH) for assignment to an administrative law judge (ALJ),⁵ the PSC is unique in that it conducts most of its own formal evidentiary hearings. In these hearings, commissioners rule on procedural matters, establish evidence of record, weigh the record evidence, and apply the law to the facts of the case. Thus, in conducting formal hearings, PSC commissioners essentially serve the role of administrative law judges. Unlike ALJs, however, commissioners have the authority to make the final findings of fact and conclusion of law. In proceedings at either DOAH or the PSC, parties and interested persons are prohibited from making ex parte communications with the decision maker concerning the merits of the proceeding.⁶

¹ Section 350.001, F.S.

² <http://www.psc.state.fl.us/about/overview.aspx#one>

³ *Id.* During 2009, the PSC regulated five investor-owned electric companies, seven investor-owned natural gas utilities, and more than 160 investor-owned water and/or wastewater utilities. The PSC also has competitive market oversight for more than 1,250 telecommunications companies in the state of Florida. While the PSC does not regulate the rates and service of publicly-owned, municipal or cooperative utilities, it does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations and planning, over 34 municipally-owned electric systems and 18 rural electric cooperatives. The PSC also has jurisdiction, with regard to territorial boundaries and safety, over 27 municipally-owned natural gas utilities and exercises safety authority over all electric and natural gas systems operating in the state.

⁴ *Id.*

⁵ Sections 350.125 and 120.569(2), F.S.

⁶ Sections 120.66(1), F.S., and 350.042(1), F.S.

The PSC is authorized to employ clerical, technical, and professional personnel reasonably necessary for the performance of its duties, including one or more court reporters.⁷ As set forth in its most recent Statement of Agency Organization & Operations, the PSC carries out its work primarily through two offices: the Office of the Executive Director and the Office of the General Counsel.⁸

The Office of the Executive Director is responsible for directing, planning, and administering the overall activities of the commission staff with the exception of the Office of the General Counsel. The Executive Director, who is selected by the commission, consults with and advises the commissioners on regulatory, internal management, and budgetary matters and acts as an interagency liaison. In addition, the Office of Executive Director oversees the technical divisions involved directly in the substantive issues within the PSC's jurisdiction.

The Office of the General Counsel provides legal counsel to the commission on all matters under its jurisdiction. This office also supervises the procedural and legal aspects of all cases before the commission. In conjunction with the appropriate technical staff, the office prepares recommendations to the commission and prepares written commission orders. The office is also responsible for defending commission orders on appeal, for defending commission rules challenged before the Division of Administrative Hearings, and for representing the commission before state and federal courts.

Prior to 1979, three commissioners were elected to the PSC in a statewide election. In 1978, the Legislature changed the commission to a five-member board,⁹ with members appointed to staggered 4-year terms.¹⁰ This structure remains today. A Chair is selected by majority vote of the commissioners to serve a two-year term.¹¹ The Chair is the chief administrative officer of the PSC, presiding at all hearings and conferences when present, setting PSC hearings, and performing those duties prescribed by law.¹²

Public Service Commissioners – Standards of Conduct

The PSC is required to perform its duties independently.¹³ Part III of Chapter 112, F.S., establishes a code of ethics for public officers and employees, which includes public service commissioners. Generally, this code prohibits public officers, including commissioners, from soliciting or accepting anything of value to influence a vote or official action, using their official position to secure a special benefit, disclosing or using non-public information for personal benefit, soliciting gifts from lobbyists, and soliciting an honorarium from anyone or accepting an honorarium from a lobbyist. This code also establishes restrictions on public officers, including commissioners, from doing business with one's own agency, having outside employment or contractual relationships that conflict with public duties, representing any party before one's agency for compensation for two years after leaving office, and employing relatives in the agency. Finally, this code requires that public officers, including commissioners, disclose voting conflicts when a vote would result in a special private gain or loss, file quarterly reports for gifts over \$100 from persons not lobbyists or relatives, file quarterly reports for receipt of honorarium-related expenses from lobbyists, and disclose certain financial interests.

In addition to the provisions of part III of chapter 112, public service commissioners are subject to more stringent requirements in s. 350.041, F.S. In the event of a conflict between part III of chapter 112 and s. 350.041, F.S., the more restrictive provision applies.¹⁴ Section 350.041, F.S., provides the following standards of conduct:

⁷ Section 350.06, F.S.

⁸ *Florida Public Service Commission, Statement of Agency Organization & Operations*, February 2010.

<http://www.psc.state.fl.us/home/files/SAOO.pdf>

⁹ <http://www.psc.state.fl.us/about/overview.aspx#one>

¹⁰ Section 350.01, F.S.

¹¹ *Id.*

¹² *Id.* See also, <http://www.psc.state.fl.us/about/overview.aspx#one>

¹³ Section 350.001, F.S.

¹⁴ Section 350.041(1), F.S.

- A commissioner may not accept anything from a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not accept anything from a party in a proceeding currently pending before the commission.
- A commissioner may not accept any form of employment with, or engage in any business activity with, a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not have any financial interest in a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility), except for shares in a mutual fund.
- A commissioner may not serve as the representative of, or serve as an executive officer or employee of, a political party; campaign for any candidate for public office; or become a candidate for any public office without first resigning.
- A commissioner, during his or her term of office, may not make any public comment on the merits of a formal proceeding in which a person's substantial interests are determined.
- A commissioner may not conduct himself or herself in an unprofessional manner during the performance of official duties.
- A commissioner must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.
- A Commissioner may not directly or indirectly, through staff or other means, solicit anything of value from a regulated public utility, an affiliate or subsidiary of the utility, or any party appearing in a proceeding considered by the Commission in the last 2 years.

Ex Parte Communications

Commissioners are prohibited from engaging in certain ex parte communications with persons who are "legally interested in a proceeding" before the commission.¹⁵ This prohibition applies only to communications concerning "the merits, threat, or offer of reward" in a proceeding, and thus does not include discussions on procedural issues.¹⁶ This prohibition does not preclude ex parte communications in all proceedings: rulemaking, declaratory statements, workshops, and internal affairs meetings are specifically excluded.¹⁷ Thus, the prohibition applies to proceedings in which the substantial interests of a person are determined, including proposed agency action proceedings and formal hearings under ss. 120.569 or 120.57, F.S. This prohibition prohibits an individual from discussing ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days.¹⁸ The prohibition does not apply to each commissioner's personal aide and administrative assistant.¹⁹ The law does not define ex parte communications.

If a commissioner receives a prohibited ex parte communication, he or she must: place on the record of the proceeding a copy of any written correspondence or a memo stating the substance of any oral communication; provide written notice to all parties to the proceeding; and provide all parties the opportunity to respond to the ex parte communication.²⁰ The commissioner may choose to withdraw from the proceeding if he or she believes it is necessary to do so to eliminate the effect of having received the communication. Any individual other than a commissioner that makes a prohibited ex parte communication must submit to the PSC: a written statement describing the nature of the communication; copies of all written communications made and written responses received; and a memorandum stating the substance of all oral communications made and oral responses received. The PSC must place this information on the record of the relevant proceeding.²¹

¹⁵ Section 350.042(1), F.S. The law does not define "ex parte communications" for purposes of this section. The law also does not define what persons are "legally interested in a proceeding."

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 350.042(4), F.S.

²¹ Section 350.042(5), F.S.

The penalties for failing to timely place a prohibited ex parte communication on the record depend on the party involved. A commissioner who fails to place the communication on the record within 15 days is subject to removal and a civil penalty of up to \$5,000.²² Any other person who participated in the communication faces a 2-year ban on practice before the PSC.²³

Office of Public Counsel

The Office of Public Counsel was created by the Legislature in 1974, as an office of the Legislature. The Public Counsel represents the general public of Florida in proceedings before the PSC and in proceedings before counties that have elected to regulate private water and wastewater companies.²⁴ The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court.²⁵ The Public Counsel must perform his or her duties independently.²⁶

To perform its duties, the Public Counsel is granted the following specific powers in s. 350.0611, F.S.:

- To appear in, or petition to initiate, proceedings before the PSC or counties and advocate any position which he or she deems to be in the public interest, and to conduct discovery in such proceedings.
- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in such proceedings.
- To seek review of any determination, finding, or order of the commission or the counties in any proceeding in which he or she has participated as a party.
- To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions.
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission.

In a January 25, 2011, presentation to the Energy & Utilities Subcommittee, the Public Counsel provided examples of the types of cases that his office handles. These cases include proceedings involving utility base rates, charges for the recovery of nuclear power plant development costs, and other types of cost-recovery and pass-through charges for electric, natural gas, water, and wastewater utilities. The Office of Public Counsel also administers a portion of the Lifeline program that provides credits from the federal Universal Service Fund to certain low-income customers for local phone service.²⁷

In 2005, the Legislature created the Committee on Public Service Commission Oversight in s. 350.012, F.S. The committee, comprised of 12 members (6 Senate members appointed by the President of the Senate and 6 House members appointed by the Speaker of the House of Representatives), was created to appoint a public counsel and to screen persons nominated by the PSC Nominating Council for the Governor's consideration for appointment.²⁸

In 2008, the Legislature removed the committee's role in the public service commissioner selection process. The committee was renamed the Committee on Public Counsel Oversight.²⁹ The committee's primary duty is to appoint a Public Counsel, though it also may file a complaint with the Commission on Ethics alleging a violation of Chapter 350, F.S., by a commissioner, former commissioner, former commission employee, or member of the Public Service Commission Nominating

²² Section 350.042(6), F.S.

²³ Section 350.042(7)(d), F.S.

²⁴ Section 350.0611, F.S.

²⁵ Section 350.061(1), F.S.

²⁶ *Id.*

²⁷ Section 364.10(3), F.S.

²⁸ Chapter 2005-132, L.O.F.

²⁹ Chapter 2008-227, L.O.F.

Council.³⁰ The Public Counsel serves at the pleasure of the Committee on Public Counsel Oversight, subject to biennial reconfirmation by the committee.³¹

In addition to the Office of Public Counsel, the Attorney General often intervenes in high-profile utility rate-setting proceedings at the PSC to represent the citizens of Florida.

Effect of Proposed Changes

Role and Organization of the Florida Public Service Commission

The bill establishes the respective powers of the commission and its executive director and general counsel with respect to agency personnel matters. The bill specifies that the commission must employ an executive director, a general counsel, and an inspector general. Each individual commissioner is authorized to employ a chief advisor and executive assistant to serve as the direct staff of the commissioner. These provisions appear to reflect existing practice within the agency.

The bill provides that the executive director selected by the commission is subject to confirmation by the Senate.

The bill further specifies that the executive director is responsible for employing clerical, technical, and professional personnel, including court reporters, reasonably necessary to assist the PSC in performing its duties. The bill grants the executive director sole authority with respect to employment, compensation, supervision, and direction of these personnel. Further, the bill specifies that the general counsel, in consultation with the executive director, is responsible for employing legal staff reasonably necessary to assist the PSC in performing its duties. These provisions appear generally to reflect agency practice, though they clearly specify the executive director's sole authority – distinct from the commission's authority – over agency personnel matters.

As a whole, these provisions may help ensure that the PSC's professional, technical, and legal staff provide unbiased and independent analysis and advice to the commission.

The bill provides that the commission, in exercising its jurisdiction, shall not establish or implement any policy that is contrary to or an expansion of the authority granted by the legislature. This language appears to restate but emphasize existing law with respect to the delegation of authority to an agency.

Public Service Commissioners – Standards of Conduct

The bill adopts new provisions into the standards of conduct applicable to commissioners. Specifically, the bill adds a statement of intent which provides:

Professional, impartial, and honorable commissioners are indispensable to the effective performance of the commission's duties. A commissioner shall maintain high standards of conduct and shall personally observe those standards so that the integrity and impartiality of the commission may be preserved.

This provision is an adaptation of the first Canon of the Code of Judicial Conduct.³²

The bill adopts additional new standards, again adapted from the Code of Judicial Conduct, to reflect that they are being applied to public service commissioners rather than members of the judicial branch. These standards provide:

³⁰ Section 350.012, F.S.

³¹ Section 350.061(1), F.S.

³² The Code of Judicial Conduct is established and may be amended by the Florida Supreme Court. Accordingly, adoption of the code solely by reference may constitute an unlawful delegation of legislative authority. The bill does not adopt the code solely by reference, instead adapting concepts from the code into statutory standards. Hence, the bill does not present a delegation issue.

- The chair, or the presiding commissioner in the chair's absence, shall require order and decorum in commission proceedings.
- A commissioner shall be patient, dignified, and courteous to litigants, other commissioners, witnesses, lawyers, PSC staff, and others with whom the commissioner deals in an official capacity.
- A commissioner shall perform official duties without bias or prejudice.
- A commissioner shall not, with respect to parties or classes of parties, cases, controversies, or issues likely to come before the commission, make pledges, promises, or commitments that are inconsistent with the impartial performance of the commissioner's official duties.
- A commissioner shall not be swayed by partisan interests, public clamor, or fear of criticism.

Any alleged violation of these standards would continue to be accepted and investigated by the Commission on Ethics, with any findings and recommendations sent to the Governor and the PSC Nominating Council. The Governor would continue to have authority to enforce these findings.

Ex Parte Communications

The bill establishes a definition of "ex parte communication" as any communication that, if written or printed or in electronic form, is not served on all parties to a proceeding or, if oral, is made without adequate notice to the parties and an opportunity for the parties to be present and heard.

The bill extends the prohibition on ex parte communications to apply not just to commissioners but also to each commissioner's direct staff. This provision should ensure that the commission's direct staff, who currently are not subject to statutory limits on ex parte communications, do not serve, intentionally or unintentionally, as a conduit for ex parte communications to commissioners.

The bill extends the prohibition on ex parte communications to cover both the merits and procedural issues in pending proposed agency action proceedings, formal hearing proceedings under ss. 120.569 and 120.57, F.S., and proceedings on declaratory statements under s. 120.565, F.S. With respect to certain procedural matters, the bill allows ex parte communications only if the commissioner, or a member of the commissioner's direct staff, reasonably believes that no party will gain a procedural or tactical advantage and notifies other parties so that they have an opportunity to respond. This provision is adopted from the Code of Judicial Conduct applicable to judges.

The bill prohibits an individual from discussing ex parte with a commissioner, or a member of the commissioner's direct staff, the merits of any issue that the individual reasonably foresees will be filed with the commission. Current law limits these discussions to matters that an individual knows will be filed with the PSC within 90 days.

The bill authorizes up to a \$5,000 civil penalty for individuals, other than commissioners and their direct staff, who knowingly fail to comply with the ex parte laws. This is the same monetary penalty that commissioners and their staff are subject to.

Prohibited Influence on Commissioners and Staff

The bill creates a new provision of law which states that neither the Governor, the House Speaker, the Senate President, nor any member of the PSC Nominating Council shall attempt to sway the independent judgment of the commission by bringing pressure to bear upon a commissioner through that person's role in the process of selecting or reconfirming commissioners. The bill authorizes the Commission on Ethics to receive and investigate sworn complaints of violations.

The bill also creates new provisions which prohibit an individual commissioner from demanding or requiring any member of the commission staff, other than the commissioner's direct staff, to develop, present, or pursue a particular opinion, position, or course of action in relation to any substantive matter pending before the commission or a panel of commissioners. The bill indicates that the purpose of this provision is to ensure that each commissioner, as a member of a collegial body, is afforded the benefit

of unbiased and independent analysis and advice from its professional and technical staff. The bill authorizes the PSC's inspector general to receive and investigate complaints of violations of this subsection. Violations of these provisions are treated as acts of malfeasance for purposes of Florida's Whistle-blower's Act, codified at ss. 112.3187-112.31895, F.S. The bill clarifies that the commission, as a collegial body, is not prohibited from directing its staff to pursue a course of action consistent with direction provided by the collegial body. Further, the bill clarifies that it does not prohibit an individual commissioner from any otherwise lawful communication with commission staff, including any expression of opinion, position, or concern regarding a matter within the jurisdiction of the commission.

Initial and Continuing Education Requirements

The bill establishes initial and continuing training and education requirements for commissioners. The bill requires that a person appointed to the commission must complete a comprehensive study course before voting on any matter. This course would cover substantive matters within the commission's jurisdiction, relevant aspects of administrative law, and standards of conduct. In addition, the bill requires annual ethics training for commissioners and PSC staff. The bill requires the executive director and general counsel to develop these training courses. The bill also requires that each commissioner complete at least 10 hours of continuing professional education each year related to substantive matters within the PSC's jurisdiction.

Testimony in Commission Proceedings

The bill creates provisions that require each person offering testimony in a commission proceeding to disclose, at the time the testimony is offered, any financial or fiduciary relationship between the person and any party to the proceeding. The bill provides that a determination by the commission that a person has knowingly violated this requirement constitutes agency action upon which a hearing may be sought under Chapter 120, F.S.

Public Counsel

The bill moves the Office of Public Counsel from the Legislature to the Attorney General's office. Because the Attorney General's office is authorized to intervene in actions affecting the citizens of Florida and has done so in numerous PSC proceedings, transfer of the Office of Public Counsel to the Attorney General's office should avoid the situation in which more than one state entity participates on behalf of the same client, i.e., Floridians.

To effect this change, the bill provides that the Public Counsel shall be appointed by, and serve at the pleasure of, the Attorney General. The bill also provides that the Attorney General may authorize the Public Counsel to employ personnel and retain experts. The bill provides that the Attorney General shall allocate salaries and expenses of the Public Counsel and his or her employees from funds appropriated by the Legislature. To reflect the transfer of the Office of Public Counsel out of the Legislature, the bill eliminates the Committee on Public Counsel Oversight through the repeal of s. 350.012, F.S.

The bill transfers the Office of Public Counsel from the legislative branch to the Office of the Attorney General as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel is \$2.5 million and 16.5 full time positions from the General Revenue Fund for the 2010-2011 fiscal year.

The bill amends s. 112.324(8)(a) and (c), F.S., concerning the proper authorities to take action on reports and findings of the Commission on Ethics, to reflect the transfer of the Office of Public Counsel from the legislative to the executive branch.

Miscellaneous Provisions

The bill repeals s. 350.121, F.S., related to commission inquiries. It appears that this provision has not been used in almost 20 years and that the investigatory powers set forth in the provision are largely duplicative of the PSC's authority to access records of regulated entities.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.324, F.S., relating to procedures on complaints of ethics violations.

Section 2. Amends s. 350.001, F.S., providing legislative intent with respect to the Florida Public Service Commission (PSC).

Section 3. Repeals s. 350.012, F.S., relating to the Committee on Public Counsel Oversight.

Section 4. Amends s. 350.031, F.S., relating to the Florida Public Service Commission Nominating Council.

Section 5. Creates s. 350.035, F.S., relating to prohibited influence on PSC commissioners and staff.

Section 6. Amends s. 350.04, F.S., relating to training and continuing education of PSC commissioners.

Section 7. Amends s. 350.041, F.S., relating to PSC commissioner standards of conduct.

Section 8. Amends s. 350.042, F.S., relating to ex parte communications.

Section 9. Amends s. 350.06, F.S., relating to the PSC place of meeting, expenditures, and employment of personnel.

Section 10. Amends s. 350.061, F.S., relating to appointment of the Public Counsel.

Section 11. Amends s. 350.0613, F.S., relating to employees of the Public Counsel.

Section 12. Amends s. 350.0614, F.S., relating to compensation and expenses of the Public Counsel.

Section 13. Provides for a type two transfer of the Office of Public Counsel from the Legislature to the Office of the Attorney General.

Section 14. Repeals s. 350.121, F.S., relating to commission inquiries.

Section 15. Creates s. 350.122, F.S., relating to disclosure of certain affiliations upon providing testimony before the commission.

Section 16. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill transfers the Office of Public Counsel from the legislative branch to the Office of Attorney General as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel is \$2.5 million and 16.5 full time positions from the General Revenue Fund for the 2010-2011 fiscal year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to organization and standards of the
 3 Public Service Commission; amending s. 112.324, F.S.;
 4 revising provisions for disposition of ethics complaints
 5 against the Public Counsel and employees of the Public
 6 Counsel; amending s. 350.001, F.S.; revising legislative
 7 intent; repealing s. 350.012, F.S., relating to the
 8 creation and organization of the Committee on Public
 9 Counsel Oversight; amending s. 350.031, F.S.; relating to
 10 terms of members of the Public Service Commission
 11 Nominating Council; creating s. 350.035, F.S.; prohibiting
 12 attempts by certain persons to sway the judgment of
 13 commissioners; providing for the Commission on Ethics to
 14 receive and investigate complaints of violations pursuant
 15 to specified procedures; prohibiting commissioners from
 16 requiring or demanding that certain commission staff
 17 pursue particular positions or courses of action;
 18 requiring the inspector general of the commission to
 19 investigate complaints of violations; amending s. 350.04,
 20 F.S.; requiring commissioners to complete a course of
 21 study developed by the executive director and general
 22 counsel; requiring commissioners to complete continuing
 23 education; providing training requirements for
 24 commissioners and commission employees; requiring
 25 certifications of compliance to be provided to the
 26 Legislature; amending s. 350.041, F.S.; revising
 27 legislative intent; revising standards of conduct for
 28 commissioners; revising provisions for investigation and

29 | reports by the Commission on Ethics of alleged violations;
 30 | authorizing commission employees to request opinions from
 31 | the Commission on Ethics; amending s. 350.042, F.S.;
 32 | revising provisions for communications concerning agency
 33 | proceedings; providing for application of such provisions
 34 | to members of a commissioner's direct staff; revising
 35 | restrictions on such communications by commissioners and
 36 | their direct staff; defining the term "ex parte
 37 | communication"; providing a civil penalty; amending s.
 38 | 350.06, F.S.; revising provisions for the offices of the
 39 | commission, payment of moneys, and employment of
 40 | personnel; amending s. 350.061, F.S.; providing for
 41 | appointment of the Public Counsel by, and service of the
 42 | Public Counsel at the pleasure of, the Attorney General;
 43 | amending ss. 350.0613 and 350.0614, F.S.; providing powers
 44 | and duties of the Attorney General regarding the Public
 45 | Counsel and his or her employees to conform provisions to
 46 | the transfer of the Office of Public Counsel; transferring
 47 | the Office of Public Counsel from the legislative branch
 48 | to the Office of the Attorney General; repealing s.
 49 | 350.121, F.S.; relating to commission inquiries; creating
 50 | s. 350.122, F.S.; requiring persons testifying before the
 51 | Public Service Commission to disclose certain financial
 52 | and fiduciary relationships; providing that a
 53 | determination by the commission that a violation occurred
 54 | constitutes agency action for which a hearing may be
 55 | sought; providing an effective date.
 56 |

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

58

59 Section 1. Paragraphs (a) and (c) of subsection (8) of
60 section 112.324, Florida Statutes, are amended to read:

61 (8) If, in cases pertaining to complaints other than
62 complaints against impeachable officers or members of the
63 Legislature, upon completion of a full and final investigation
64 by the commission, the commission finds that there has been a
65 violation of this part or of s. 8, Art. II of the State
66 Constitution, it shall be the duty of the commission to report
67 its findings and recommend appropriate action to the proper
68 disciplinary official or body as follows, and such official or
69 body shall have the power to invoke the penalty provisions of
70 this part, including the power to order the appropriate
71 elections official to remove a candidate from the ballot for a
72 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the
73 State Constitution:

74 (a) The President of the Senate and the Speaker of the
75 House of Representatives, jointly, in any case concerning ~~the~~
76 ~~Public Counsel~~, members of the Public Service Commission,
77 members of the Public Service Commission Nominating Council, the
78 Auditor General, the director of the Office of Program Policy
79 Analysis and Government Accountability, or members of the
80 Legislative Committee on Intergovernmental Relations.

81 (c) The President of the Senate, in any case concerning an
82 employee of the Senate; the Speaker of the House of
83 Representatives, in any case concerning an employee of the House
84 of Representatives; or the President and the Speaker, jointly,

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85 in any case concerning an employee of a committee of the
 86 Legislature whose members are appointed solely by the President
 87 and the Speaker or in any case concerning an employee of the
 88 ~~Public Counsel~~, Public Service Commission, Auditor General,
 89 Office of Program Policy Analysis and Government Accountability,
 90 or Legislative Committee on Intergovernmental Relations.

91 Section 2. Section 350.001, Florida Statutes, is amended
 92 to read:

93 350.001 Legislative intent.—

94 (1) The Florida Public Service Commission has been and
 95 shall continue to be an arm of the legislative branch of
 96 government. In the exercise of its jurisdiction, the commission
 97 shall neither establish nor implement any regulatory policy that
 98 is contrary to, or is an expansion of, the authority granted to
 99 it by the Legislature.

100 (2) The Public Service Commission shall perform its duties
 101 independently, impartially, professionally, honorably, and
 102 without undue influence from any person, pursuant to s. 350.041.

103 Section 3. Section 350.012, Florida Statutes, is repealed.

104 Section 4. Paragraphs (b) and (d) of subsection (1) of
 105 section 350.031, Florida Statutes, are amended to read:

106 350.031 Florida Public Service Commission Nominating
 107 Council.—

108 (1)

109 (b) All terms shall be for 4 years except those members of
 110 the House and Senate, who shall serve 2-year terms concurrent
 111 with the 2-year elected terms of House members. ~~All terms of the~~
 112 ~~members of the Public Service Commission Nominating Council~~

113 ~~existing on June 30, 2008, shall terminate upon the effective~~
 114 ~~date of this act; however, such members may serve an additional~~
 115 ~~term if reappointed by the Speaker of the House of~~
 116 ~~Representatives or the President of the Senate.~~ To establish
 117 staggered terms, appointments of members shall be made for
 118 initial terms to begin on July 1, 2008, with each appointing
 119 officer to appoint three legislator members, one of whom shall
 120 be a member of the minority party, to terms through the
 121 remainder of the 2-year elected terms of House members; one
 122 nonlegislator member to a 6-month term; one nonlegislator member
 123 to an 18-month term; and one nonlegislator member to a 42-month
 124 term. Thereafter, the terms of the nonlegislator members of the
 125 Public Service Commission Nominating Council shall begin on
 126 January 2 of the year the term commences and end 4 years later
 127 on January 1.

128 (d) Vacancies on the council shall be filled for the
 129 unexpired portion of the term in the same manner as original
 130 appointments to the council. A member may not be reappointed to
 131 the council, except for a member of the House of Representatives
 132 or the Senate who may be appointed to two 2-year terms, ~~members~~
 133 ~~who are reappointed pursuant to paragraph (b)~~, or a person who
 134 is appointed to fill the remaining portion of an unexpired term.

135 Section 5. Section 350.035, Florida Statutes, is created
 136 to read:

137 350.035 Prohibited influence on commissioners and
 138 commission staff.-

139 (1) (a) Neither the Governor, the President of the Senate,
 140 the Speaker of the House of Representatives, nor a member of the

141 Public Service Commission Nominating Council shall attempt to
 142 sway the independent judgment of the commission by bringing
 143 pressure to bear upon a commissioner or commission employee
 144 through that person's role in the nomination, appointment, or
 145 confirmation of commissioners.

146 (b) The Commission on Ethics shall receive and investigate
 147 sworn complaints of violations of this subsection pursuant to
 148 ss. 112.322-112.3241.

149 (2) (a) To ensure that each commissioner, as a member of a
 150 collegial body, is afforded the benefit of unbiased and
 151 independent analysis and advice from its professional and
 152 technical staff, an individual commissioner may not demand or
 153 require any member of the commission staff, other than the
 154 commissioner's direct staff, to develop, present, or pursue a
 155 particular opinion, position, or course of action in relation to
 156 any substantive matter pending before the commission or a panel
 157 of commissioners. This paragraph does not prohibit the
 158 commission, as a collegial body, from directing its staff to
 159 pursue a course of action consistent with direction provided by
 160 the collegial body. Further, this paragraph is not intended to
 161 prohibit an individual commissioner from any otherwise lawful
 162 communication with commission staff, including any expression of
 163 opinion, position, or concern regarding a matter within the
 164 jurisdiction of the commission. A violation of this subsection
 165 is an act of malfeasance for purposes of ss. 112.3187-112.31895.

166 (b) The inspector general of the commission shall receive
 167 and investigate complaints of violations of this subsection.

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168 Section 6. Section 350.04, Florida Statutes, is amended to
 169 read:

170 350.04 Qualifications of commissioners; training and
 171 continuing education.—

172 (1) A commissioner may not, at the time of appointment or
 173 during his or her term of office:

174 (a) ~~(1)~~ Have any financial interest, other than ownership
 175 of shares in a mutual fund, in any business entity which, either
 176 directly or indirectly, owns or controls any public utility
 177 regulated by the commission, in any public utility regulated by
 178 the commission, or in any business entity which, either directly
 179 or indirectly, is an affiliate or subsidiary of any public
 180 utility regulated by the commission.

181 (b) ~~(2)~~ Be employed by or engaged in any business activity
 182 with any business entity which, either directly or indirectly,
 183 owns or controls any public utility regulated by the commission,
 184 by any public utility regulated by the commission, or by any
 185 business entity which, either directly or indirectly, is an
 186 affiliate or subsidiary of any public utility regulated by the
 187 commission.

188 (2) Before voting on any matter before the commission,
 189 each person appointed to the commission after July 1, 2011,
 190 shall complete a comprehensive course of study, developed by the
 191 commission's executive director and general counsel in
 192 coordination with the National Association of Regulatory Utility
 193 Commissioners Subcommittee on Education and Research, that
 194 addresses the substantive matters within the jurisdiction of the
 195 commission, administrative law applicable to commission

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196 proceedings, and standards of conduct applicable to
 197 commissioners. Thereafter, each commissioner must annually
 198 complete no less than 10 hours of continuing professional
 199 education directly related to substantive matters within the
 200 jurisdiction of the commission.

201 (3) No less than once every 12 months, each commissioner
 202 and commission employee shall receive training, in a form
 203 developed by the commission's executive director and general
 204 counsel, that addresses the ethical standards of conduct
 205 applicable to commissioners and the commission's staff.

206 (4) The chair of the commission shall certify the
 207 commission's compliance with these requirements, and each
 208 commissioner shall certify his or her individual compliance with
 209 the continuing professional education requirements provided in
 210 subsection (2). Each certification of compliance shall be
 211 provided to the President of the Senate and the Speaker of the
 212 House of Representatives.

213 Section 7. Section 350.041, Florida Statutes, is amended
 214 to read:

215 350.041 Commissioners; standards of conduct.—

216 (1) STATEMENT OF INTENT.—

217 (a) Professional, impartial, and honorable commissioners
 218 are indispensable to the effective performance of the
 219 commission's duties. A commissioner shall maintain high
 220 standards of conduct and shall personally observe those
 221 standards so that the integrity and impartiality of the
 222 commission may be preserved. The standards of conduct provided
 223 in this section should be construed and applied to further that

224 | objective.

225 | **(b)** In addition to the provisions of part III of chapter
 226 | 112, which are applicable to public service commissioners by
 227 | virtue of their being public officers and full-time employees of
 228 | the legislative branch of government, the conduct of public
 229 | service commissioners shall be governed by the standards of
 230 | conduct provided in this section. Nothing shall prohibit the
 231 | standards of conduct from being more restrictive than part III
 232 | of chapter 112. Further, this section shall not be construed to
 233 | contravene the restrictions of part III of chapter 112. In the
 234 | event of a conflict between this section and part III of chapter
 235 | 112, the more restrictive provision shall apply.

236 | **(2) STANDARDS OF CONDUCT.—**

237 | **(a)** A commissioner may not accept anything from any
 238 | business entity which, either directly or indirectly, owns or
 239 | controls any public utility regulated by the commission, from
 240 | any public utility regulated by the commission, or from any
 241 | business entity which, either directly or indirectly, is an
 242 | affiliate or subsidiary of any public utility regulated by the
 243 | commission. A commissioner may attend conferences and associated
 244 | meals and events that are generally available to all conference
 245 | participants without payment of any fees in addition to the
 246 | conference fee. Additionally, while attending a conference, a
 247 | commissioner may attend meetings, meals, or events that are not
 248 | sponsored, in whole or in part, by any representative of any
 249 | public utility regulated by the commission and that are limited
 250 | to commissioners only, committee members, or speakers if the
 251 | commissioner is a member of a committee of the association of

252 regulatory agencies that organized the conference or is a
 253 speaker at the conference. It is not a violation of this
 254 paragraph for a commissioner to attend a conference for which
 255 conference participants who are employed by a utility regulated
 256 by the commission have paid a higher conference registration fee
 257 than the commissioner, or to attend a meal or event that is
 258 generally available to all conference participants without
 259 payment of any fees in addition to the conference fee and that
 260 is sponsored, in whole or in part, by a utility regulated by the
 261 commission. If, during the course of an investigation by the
 262 Commission on Ethics into an alleged violation of this
 263 paragraph, allegations are made as to the identity of the person
 264 giving or providing the prohibited gift, that person must be
 265 given notice and an opportunity to participate in the
 266 investigation and relevant proceedings to present a defense. If
 267 the Commission on Ethics determines that the person gave or
 268 provided a prohibited gift, the person may not appear before the
 269 commission or otherwise represent anyone before the commission
 270 for a period of 2 years.

271 (b) A commissioner may not accept any form of employment
 272 with or engage in any business activity with any business entity
 273 which, either directly or indirectly, owns or controls any
 274 public utility regulated by the commission, any public utility
 275 regulated by the commission, or any business entity which,
 276 either directly or indirectly, is an affiliate or subsidiary of
 277 any public utility regulated by the commission.

278 (c) A commissioner may not have any financial interest,
 279 other than shares in a mutual fund, in any public utility

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280 regulated by the commission, in any business entity which,
 281 either directly or indirectly, owns or controls any public
 282 utility regulated by the commission, or in any business entity
 283 which, either directly or indirectly, is an affiliate or
 284 subsidiary of any public utility regulated by the commission. If
 285 a commissioner acquires any financial interest prohibited by
 286 this section during his or her term of office as a result of
 287 events or actions beyond the commissioner's control, he or she
 288 shall immediately sell such financial interest or place such
 289 financial interest in a blind trust at a financial institution.
 290 A commissioner may not attempt to influence, or exercise any
 291 control over, decisions regarding the blind trust.

292 (d) A commissioner may not accept anything from a party in
 293 a proceeding currently pending before the commission. If, during
 294 the course of an investigation by the Commission on Ethics into
 295 an alleged violation of this paragraph, allegations are made as
 296 to the identity of the person giving or providing the prohibited
 297 gift, that person must be given notice and an opportunity to
 298 participate in the investigation and relevant proceedings to
 299 present a defense. If the Commission on Ethics determines that
 300 the person gave or provided a prohibited gift, the person may
 301 not appear before the commission or otherwise represent anyone
 302 before the commission for a period of 2 years.

303 (e) A commissioner may not serve as the representative of
 304 any political party or on any executive committee or other
 305 governing body of a political party; serve as an executive
 306 officer or employee of any political party, committee,
 307 organization, or association; receive remuneration for

308 activities on behalf of any candidate for public office; engage
 309 on behalf of any candidate for public office in the solicitation
 310 of votes or other activities on behalf of such candidacy; or
 311 become a candidate for election to any public office without
 312 first resigning from office.

313 (f) A commissioner, during his or her term of office, may
 314 not make any public comment regarding the merits of any
 315 proceeding under ss. 120.569 and 120.57 currently pending before
 316 the commission.

317 (g) A commissioner may not conduct himself or herself in
 318 an unprofessional manner at any time during the performance of
 319 his or her official duties.

320 (h) The chair shall require order and decorum in
 321 proceedings before the commission. In the absence of the chair,
 322 the commissioner presiding over a commission proceeding shall
 323 require order and decorum in the proceeding.

324 (i) A commissioner shall be patient, dignified, and
 325 courteous to litigants, other commissioners, witnesses, lawyers,
 326 commission staff, and others with whom the commissioner deals in
 327 an official capacity.

328 (j) A commissioner shall perform his or her official
 329 duties without bias or prejudice. A commissioner may not, in the
 330 performance of his or her official duties, by words or conduct
 331 manifest bias or prejudice.

332 (k) A commissioner may not, with respect to parties or
 333 classes of parties, cases, controversies, or issues likely to
 334 come before the commission, make pledges, promises, or
 335 commitments that are inconsistent with the impartial performance

336 of the commissioner's official duties.

337 (l) A commissioner may not be swayed by partisan
 338 interests, public clamor, or fear of criticism.

339 (m)-(h) A commissioner must avoid impropriety in all of his
 340 or her activities and must act at all times in a manner that
 341 promotes public confidence in the integrity and impartiality of
 342 the commission.

343 (n)-(i) A commissioner may not directly or indirectly,
 344 through staff or other means, solicit anything of value from any
 345 public utility regulated by the commission, or from any business
 346 entity that, whether directly or indirectly, is an affiliate or
 347 subsidiary of any public utility regulated by the commission, or
 348 from any party appearing in a proceeding considered by the
 349 commission in the last 2 years.

350 (3) INVESTIGATIONS; REPORTS; ADVISORY OPINIONS.-

351 (a) The Commission on Ethics shall accept and investigate
 352 any alleged violations of this section pursuant to the
 353 procedures contained in ss. 112.322-112.3241.

354 (b) The Commission on Ethics shall provide the Governor
 355 and the Florida Public Service Commission Nominating Council
 356 with a report of its findings and recommendations with respect
 357 to alleged violations by a public service commissioner. The
 358 Governor is authorized to enforce these ~~the~~ findings and
 359 recommendations ~~of the Commission on Ethics,~~ pursuant to part
 360 III of chapter 112.

361 (c) A public service commissioner, a commission employee,
 362 or a member of the Florida Public Service Commission Nominating
 363 Council may request an advisory opinion from the Commission on

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364 Ethics, pursuant to s. 112.322(3)(a), regarding the standards of
 365 conduct or prohibitions set forth in this section and ss.
 366 350.031, 350.04, and 350.042.

367 Section 8. Section 350.042, Florida Statutes, is amended
 368 to read:

369 350.042 Ex parte communications.—

370 (1) Each A commissioner and member of a commissioner's
 371 direct staff shall ~~should~~ accord to every person who is a party
 372 to or is registered with the commission as an interested person
 373 in a proposed agency action proceeding, or who is a party to a
 374 proceeding under s. 120.565, s. 120.569, or s. 120.57 ~~legally~~
 375 ~~interested in a proceeding,~~ or the person's lawyer, full right
 376 to be heard according to law, and, except as authorized by law,
 377 shall not ~~neither~~ initiate, solicit, or ~~nor~~ consider ex parte
 378 communications concerning a pending proposed agency action ~~the~~
 379 ~~merits, threat, or offer of reward in any proceeding or a~~
 380 proceeding under s. 120.565, s. 120.569, or s. 120.57 ~~other than~~
 381 ~~a proceeding under s. 120.54 or s. 120.565, workshops, or~~
 382 ~~internal affairs meetings.~~ No individual shall discuss ex parte
 383 with a commissioner or a member of a commissioner's direct staff
 384 the merits of any issue that he or she reasonably foresees ~~knows~~
 385 will be filed with the commission ~~within 90 days.~~ ~~The provisions~~
 386 ~~of this subsection shall not apply to commission staff.~~

387 (a) As used in this section, the term "ex parte
 388 communication" means any communication that:

389 1. If it is a written or printed communication or a
 390 communication in electronic form, is not served on all parties
 391 to a proceeding; or

392 2. If it is an oral communication, is made without
 393 adequate notice to the parties and without an opportunity for
 394 the parties to be present and heard.

395 (b) Where circumstances require, ex parte communications
 396 concerning scheduling, administrative purposes, or emergencies
 397 that do not deal with substantive matters or issues on the
 398 merits are authorized, if:

399 1. The commissioner or member of a commissioner's direct
 400 staff reasonably believes that no party will gain a procedural
 401 or tactical advantage as a result of the ex parte communication;
 402 and

403 2. The commissioner or member of a commissioner's direct
 404 staff makes provision promptly to notify all parties of the
 405 substance of the ex parte communication and, where possible,
 406 allows an opportunity to respond.

407 (2) The provisions of this section shall not prohibit an
 408 individual residential ratepayer from communicating with a
 409 commissioner or member of a commissioner's direct staff,
 410 provided that the ratepayer is representing only himself or
 411 herself, without compensation.

412 (3) This section shall not apply to oral communications or
 413 discussions in scheduled and noticed open public meetings of
 414 educational programs or of a conference or other meeting of an
 415 association of regulatory agencies.

416 (4) If a commissioner or member of a commissioner's direct
 417 staff knowingly receives an ex parte communication prohibited by
 418 this section ~~relative to a proceeding other than as set forth in~~
 419 ~~subsection (1),~~ to which he or she is assigned, he or she must

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420 place on the record of the proceeding copies of all written
421 communications received, all written responses to the
422 communications, and a memorandum stating the substance of all
423 oral communications received and all oral responses made, and
424 shall give written notice to all parties to the communication
425 that such matters have been placed on the record. Any party to
426 the proceeding who desires to respond to the ~~an ex parte~~
427 communication may do so. The response must be received by the
428 commission within 10 days after receiving notice that the ~~ex~~
429 ~~parte~~ communication has been placed on the record. The
430 commissioner may, if he or she deems it necessary to eliminate
431 the effect of an ex parte communication received by him or her,
432 withdraw from the proceeding, in which case the chair shall
433 substitute another commissioner for the proceeding.

434 (5) Any individual who makes an ex parte communication
435 prohibited by this section shall submit to the commission a
436 written statement describing the nature of such communication,
437 to include the name of the person making the communication, the
438 name of each ~~the~~ commissioner or direct staff member of a
439 commissioner ~~commissioners~~ receiving the communication, copies
440 of all written communications made, all written responses to
441 such communications, and a memorandum stating the substance of
442 all oral communications received and all oral responses made.
443 The commission shall place on the record of a proceeding all
444 such communications.

445 (6) Any commissioner or member of a commissioner's direct
446 staff who knowingly fails to place on the record any ex parte
447 communication prohibited by this section ~~such communications~~, in

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448 violation of this ~~the~~ section, within 15 days after ~~of~~ the date
 449 of the ~~such~~ communication is subject to removal or dismissal and
 450 may be assessed a civil penalty not to exceed \$5,000. Any
 451 individual who knowingly fails to comply with subsection (5) may
 452 be assessed a civil penalty not to exceed \$5,000.

453 (7)(a) It is ~~shall be~~ the duty of the Commission on Ethics
 454 to receive and investigate sworn complaints of violations of
 455 this section pursuant to the procedures contained in ss.
 456 112.322-112.3241.

457 (b) If the Commission on Ethics finds that there has been
 458 a violation of this section by a public service commissioner or
 459 member of a commissioner's direct staff, it shall provide the
 460 Governor and the Florida Public Service Commission Nominating
 461 Council with a report of its findings and recommendations. The
 462 Governor is authorized to enforce the findings and
 463 recommendations of the Commission on Ethics, pursuant to part
 464 III of chapter 112.

465 (c) If a commissioner, a member of a commissioner's direct
 466 staff, or other individual fails or refuses to pay the
 467 Commission on Ethics any civil penalties assessed pursuant to
 468 ~~the provisions of~~ this section, the Commission on Ethics may
 469 bring an action in any circuit court to enforce the ~~such~~
 470 penalty.

471 (d) If, during the course of an investigation by the
 472 Commission on Ethics into an alleged violation of this section,
 473 allegations are made as to the identity of the person who
 474 participated in the ex parte communication, that person must be
 475 given notice and an opportunity to participate in the

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476 investigation and relevant proceedings to present a defense. If
 477 the Commission on Ethics determines that the person participated
 478 in the ex parte communication, the person may not appear before
 479 the commission or otherwise represent anyone before the
 480 commission for a period of 2 years.

481 Section 9. Subsections (1), (2), and (3) of section
 482 350.06, Florida Statutes, are amended to read:

483 350.06 Place of meeting; expenditures; employment of
 484 personnel; records availability and fees.—

485 (1) The offices of the commission ~~said commissioners~~ shall
 486 be in the vicinity of Tallahassee, but the commissioners may
 487 hold sessions anywhere in the state at their discretion.

488 (2) All sums of money authorized to be paid on account of
 489 the commission ~~said commissioners~~ shall be paid out of the State
 490 Treasury only on the order of the Chief Financial Officer.

491 (3)(a) The commission shall ~~commissioners may~~ employ an
 492 executive director, a general counsel, and an inspector general
 493 ~~clerical, technical, and professional personnel reasonably~~
 494 ~~necessary for the performance of their duties and may also~~
 495 ~~employ one or more persons capable of stenographic court~~
 496 ~~reporting, to be known as the official reporters of the~~
 497 ~~commission.~~ Selection of the executive director shall be subject
 498 to confirmation by the Senate. Until such time as the Senate
 499 confirms the selection of the executive director, the individual
 500 selected shall perform the functions of the position. If the
 501 Senate refuses to confirm or fails to consider the selection
 502 during its next regular session, the commission shall, within 30
 503 days, select another individual for Senate confirmation. This

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504 process shall continue until the Senate has confirmed a
 505 selection. In case of a vacancy in the position of executive
 506 director, the commission shall select a new executive director
 507 in the same manner as the original selection.

508 (b) Each commissioner may employ a chief advisor and an
 509 executive assistant to serve as the direct staff of the
 510 commissioner.

511 (c) Notwithstanding any other provision of law, the
 512 executive director shall employ clerical, technical, and
 513 professional personnel reasonably necessary to assist the
 514 commission in the performance of its duties, and may employ one
 515 or more persons capable of stenographic court reporting, to be
 516 known as the official reporters of the commission. The executive
 517 director shall have sole authority with respect to employment,
 518 compensation, supervision, and direction of agency personnel
 519 other than those personnel employed by the commission and
 520 individual commissioners under paragraphs (a) and (b).

521 (d) The general counsel shall, in consultation with the
 522 executive director, employ attorneys, paralegals, legal
 523 secretaries, and other personnel reasonably necessary to assist
 524 the commission in the performance of its duties.

525 Section 10. Subsection (1) of section 350.061, Florida
 526 Statutes, is amended to read:

527 350.061 Public Counsel; appointment; oath; restrictions on
 528 Public Counsel and his or her employees.—

529 (1) ~~The Attorney General Committee on Public Counsel~~
 530 ~~Oversight~~ shall appoint a Public Counsel ~~by majority vote of the~~
 531 ~~members of the committee~~ to represent the general public of

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532 Florida before the Florida Public Service Commission. The Public
 533 Counsel shall be an attorney admitted to practice before the
 534 Florida Supreme Court and shall serve at the pleasure of the
 535 Attorney General ~~Committee on Public Counsel Oversight~~, subject
 536 ~~to biennial reconfirmation by the committee~~. The Public Counsel
 537 shall perform his or her duties independently. Vacancies in the
 538 office shall be filled in the same manner as the original
 539 appointment.

540 Section 11. Section 350.0613, Florida Statutes, is amended
 541 to read:

542 350.0613 Public Counsel; employees; receipt of pleadings.-
 543 The Attorney General ~~committee~~ may authorize the Public Counsel
 544 to employ clerical and technical assistants whose
 545 qualifications, duties, and responsibilities the Attorney
 546 General ~~committee~~ shall from time to time prescribe. The
 547 Attorney General ~~committee~~ may from time to time authorize
 548 retention of the services of additional attorneys or experts to
 549 the extent that the best interests of the people of the state
 550 will be better served thereby, including the retention of expert
 551 witnesses and other technical personnel for participation in
 552 contested proceedings before the commission. The commission
 553 shall furnish the Public Counsel with copies of the initial
 554 pleadings in all proceedings before the commission, and if the
 555 Public Counsel intervenes as a party in any proceeding he or she
 556 shall be served with copies of all subsequent pleadings,
 557 exhibits, and prepared testimony, if used. Upon filing notice of
 558 intervention, the Public Counsel shall serve all interested
 559 parties with copies of such notice and all of his or her

560 subsequent pleadings and exhibits.

561 Section 12. Section 350.0614, Florida Statutes, is amended
562 to read:

563 350.0614 Public Counsel; compensation and expenses.—

564 ~~(1)~~ The salaries and expenses of the Public Counsel and
565 his or her employees shall be allocated by the Attorney General
566 ~~committee~~ only from moneys appropriated to the Public Counsel by
567 the Legislature.

568 ~~(2) The Legislature declares and determines that the~~
569 ~~Public Counsel is under the legislative branch of government~~
570 ~~within the intention of the legislation as expressed in chapter~~
571 ~~216, and no power shall be in the Executive Office of the~~
572 ~~Governor or its successor to release or withhold funds~~
573 ~~appropriated to it, but the same shall be available for~~
574 ~~expenditure as provided by law and the rules or decisions of the~~
575 ~~Committee on Public Counsel Oversight.~~

576 ~~(3) Neither the Executive Office of the Governor nor the~~
577 ~~Department of Management Services or its successor shall have~~
578 ~~power to determine the number, or fix the compensation, of the~~
579 ~~employees of the Public Counsel or to exercise any manner of~~
580 ~~control over them.~~

581 Section 13. (1) All powers, duties, functions, records,
582 offices, personnel, property, pending issues, and existing
583 contracts, administrative authority, administrative rules, and
584 unexpended balances of appropriations, allocations, and other
585 funds relating to the Office of Public Counsel pursuant to s.
586 350.061, Florida Statutes, are transferred by a type two
587 transfer, as defined in s. 20.06(2), Florida Statutes, from the

588 Legislature to the Office of the Attorney General. The Office of
 589 Public Counsel shall be funded from the General Revenue Fund.

590 (2) Notwithstanding ss. 216.292 and 216.351, Florida
 591 Statutes, upon approval by the Legislative Budget Commission,
 592 the Executive Office of the Governor shall transfer funds and
 593 positions between the Legislature and the Office of the Attorney
 594 General to implement this act.

595 Section 14. Section 350.121, Florida Statutes, is
 596 repealed.

597 Section 15. Section 350.122, Florida Statutes, is created
 598 to read:

599 350.122 Testimony; public disclosure of affiliation.—

600 (1) Each person offering testimony at a meeting, workshop,
 601 hearing, or other scheduled event of the commission shall
 602 disclose any financial or fiduciary relationship with any party
 603 to the proceedings at the time the testimony is provided to the
 604 commission.

605 (2) The determination by the commission that a person has
 606 knowingly violated this section constitutes agency action for
 607 which a hearing may be sought under chapter 120.

608 Section 16. This act shall take effect July 1, 2011.