Energy & Utilities Subcommittee

MEETING PACKET

Wednesday, January 25, 2012
212 Knott Building
11:00 AM – 1:30 PM

Dean Cannon
Speaker

Scott Plakon
Chair

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENUS 12-01 Repeal of the Florida Institute for Nuclear Detection and Security
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		Whittier	Collins

SUMMARY ANALYSIS

In 2004, the Legislature created the Florida Institute for Nuclear Detection and Security (FINDS or Institute) within the Department of Nuclear Engineering and Radiological Sciences at the University of Florida (UF or University). FINDS was to serve as a "design-basis center for research, development, testing, and engineering projects that directly address and satisfy critical nuclear detection and security needs facing the state and the nation." The Institute was to be headed by a director who possessed a national reputation in the field of nuclear sciences and was to be appointed by the Dean of the College of Engineering at UF. The activities of FINDS were to be directed by an eight-member Board of Advisors, serving two-, three-, and four-year terms.

The Institute was to solicit and receive state, federal, and private funds for the purpose of conducting research and development in the area of nuclear security technology. Faculty at the UF College of Engineering report that no monies were appropriated nor obtained to fund FINDS and it was staffed by only two faculty members who have since left the University. When funding did not materialize, the Institute's Board of Advisors was not established.

According to UF faculty, although still authorized within the statutes, the Institute is not active, it appears there were no records nor reports that were issued by the Institute, and the research that would have been done by FINDS is being conducted within other areas of the University and is not dependent on the Institute.

The bill repeals the obsolete Institute and its advisory board from the statutes.

There appears to be no fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2004, the Legislature created the Florida Institute for Nuclear Detection and Security (FINDS or Institute) within the Department of Nuclear Engineering and Radiological Sciences at the University of Florida (UF or University).[1] FINDS was to serve as a "design-basis center for research, development, testing, and engineering projects that directly address and satisfy critical nuclear detection and security needs facing the state and the nation."[2] The Institute was to be headed by a director who possessed a national reputation in the field of nuclear sciences and was to be appointed by the Dean of the College of Engineering at UF.

Activities of the Institute were to include, but not be limited to:[3]

- The design and testing of innovative interrogation, detection, and assessment devices for monitoring nuclear material;
- Exploring the development of devices for identification of isotopes and materials in structural, agricultural, and biological systems of various types; and
- Contributing to the education and training of high-quality scientists and engineers in the application of engineering solutions in homeland security, detection, imaging, and interrogation of systems, and nonproliferation policy.

Application areas were to include, but not be limited to:[4]

- Portal monitoring, wide area search, and cargo screening applications;
- Structural monitoring for post-tensioned bridges;
- Biological and agricultural monitoring; and
- Development of nonproliferation policies.

The activities of FINDS were to be directed by an eight-member Board of Advisors,[5] serving two-, three-, and four-year terms.[6]

The Institute was to solicit and receive state, federal, and private funds for the purpose of conducting research and development in the area of nuclear security technology.[7] Faculty at the UF College of Engineering report that no monies were appropriated nor obtained to fund FINDS and it was staffed by only two faculty members who have since left the University. When funding did not materialize, the Board of Advisors that was intended to manage the Institute was not established.[8]

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[1] See s. 1004.63, F.S.
[2] Section 1004.63(1), F.S.
[3] Section 1004.63(3), (4), and (5), F.S.
[4] Section 1004.63(3), F.S.
[5] According to s. 1004.63(6)(a), F.S., "Members of the board of advisors shall include, but are not limited to, a citizen of the State of Florida with interest in the area of public security; a faculty member from FINDS; a scientist of national reputation in the field of nuclear sciences; a representative of the nuclear energy industry in Florida; a representative of the national nuclear energy industry; a representative of the Federal Government programs in nuclear energy or homeland security; a member of the Florida Senate Committee on Home Defense, Public Security, and Ports or other Senate standing committee of similar jurisdiction; and a member of the Florida House Coordinating Committee on Public Security or other House of Representatives standing committee of similar jurisdiction."
[6] Section 1004.63(6), F.S.
[7] Section 1004.63(2), F.S.
[8] Conversation with Dr. David P. Norton, Associate Dean for Research and Graduate Programs, College of Engineering, University of Florida, January 20, 2012.

According to UF faculty, although still authorized within the statutes, the Institute is not active, there appear to be no records nor reports that were issued by the Institute, and the research that would have been done by FINDS is being conducted within other areas of the University and is not dependent on the Institute.[9]

Effects of Proposed Changes

This bill repeals the obsolete Florida Institute for Nuclear Detection and Security and its advisory board from the statutes.

B. SECTION DIRECTORY:

Section 1. Repeals s. 1004.63, F.S., relating to the Florida Institute for Nuclear Detection and Security.

Section 2. Provides an effective date of July 1, 2012.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

[9] Conversation with Dr. David P. Norton, Associate Dean for Research and Graduate Programs, College of Engineering, University of Florida, January 20, 2012.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL ORIGINAL YEAR

A bill to be entitled

An act relating to the Florida Institute for Nuclear Detection and Security; repealing s. 1004.63, F.S., relating to the Florida Institute for Nuclear Detection and Security and its Board of Advisors; providing an effective date.

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

Section 1. Section 1004.63, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 695 Development of Oil and Gas Resources
SPONSOR(S): Ford
TIED BILLS: **IDEN./SIM. BILLS:** SB 1158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating	Collins
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

For purposes of the oil and gas development and production, the Board of Trustees of the Internal Improvement Trust Fund (comprised of the Governor and Cabinet) is authorized to negotiate, sell, and convey leasehold estates in lands whose title is vested in any state board, department, or agency or is vested in the state and controlled and managed by any such board, department or agency. If the Board believes there is a demand for the purchase of oil and gas leases on a portion of the land owned, controlled, or managed by a state board, department, or agency, then the Board must place such oil and gas leases on the market. Applicants for a lease must submit sealed bids to the Board, which, at a public meeting, will consider the bids. In its discretion, the Board may award the lease to the highest and best bidder. If the Board finds that the bids do not represent the fair value of the lease, that the execution of the lease is contrary to the public welfare, that the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may reject all bids, give notice and call for new bids, or withdraw the land from the market.

The bill creates an undesignated section of law that, notwithstanding the provisions of chapter 253, F.S., authorizes a land management agency to establish, by contract, a public-private partnership with a business entity if the agency determines that there is an opportunity to develop oil and gas resources from onshore lands owned by a board, department, or agency of the state and that such development would "yield greater, near-term revenue returns for the state." The bill requires a business entity that wishes to enter into a public-private partnership contract to submit to the land management agency a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. The business entity may nominate state land that is to be explored and developed under the public-private partnership contract. The bill specifies the matters that the land management agency must consider and requires that the land management agency select a private partner based on the business proposal.

A public-private partnership contract created under the bill requires approval by the Board and must provide:

- A minimum 3-year period during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production.
- A selection process in which the private partner may select prospective parcels of state land for exploration and lease after the geophysical seismic testing.
- A right of first refusal to lease a parcel of state land identified as a result of the geophysical seismic exploration for the development and production of oil or gas resources for a term of at least 5 years.
- Negotiated royalty rates and a lease bonus.
- Confidentiality for a period of at least 10 years for the geophysical information, seismic interpretation, or geological information developed as a result of the geophysical seismic exploration by the business entity before the selection of lease areas.

The bill's impact on state revenues and expenditures is indeterminate. Some state land management agencies may be required to expend funds to obtain the necessary resources to review proposals and negotiate public-private partnership contracts. The bill may encourage oil and gas exploration and production companies to pursue opportunities to conduct operations on state lands which could provide potential new investment and job growth.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 253, F.S., governs the acquisition, administration, and disposition of state lands.

Pursuant to s. 253.03, F.S., the Board of Trustees of the Internal Improvement Trust Fund[1] (Board) is empowered to acquire, administer, manage, control, supervise, conserve, protect, and dispose of all lands owned by, or which may inure to, the state or any of its agencies, departments, boards, or commissions. The Florida Department of Environmental Protection (DEP), through its Division of State Lands (DSL), serves as staff to the Board.[2]

The Board is directed and authorized to enter into leases for the use, benefit, and possession of public lands by agencies which may properly use and possess them for the benefit of the state.[3] The DSL manages the leases, subleases, easements, use agreements, deed restrictions, reverter revisions, and other approvals for all activities on state-owned lands the title to which is or will be vested in the Board.[4]

Florida has more than 3.8 million acres of conservation lands. Nearly all of this land is open for public recreation and nearly all of the lands require some form of stewardship activity. The DSL leases these lands to state agencies and local governments to manage. The DSL has leased over 500 conservation areas that include parks, preserves, forests, wildlife management areas, and other conservation and recreation areas. The DSL also leases non-conservation lands to state agencies and local governments for uses such as universities, correctional institutions, and other government buildings.

For purposes of the development and production of oil and gas, the Board is authorized to negotiate, sell, and convey leasehold estates in lands whose title is vested in any state board, department, or agency or is vested in the state and controlled and managed by any such board, department or agency.[5] If the Board believes there is a demand for the purchase of oil and gas leases on a portion of the land owned, controlled, or managed by a state board, department, or agency, then the board must place such oil and gas leases on the market.[6] The Board may designate the blocks, tracts, or parcels available for lease. A lease may be made only after public notice, and the lease form must be made publicly available at the Board's office.[7] For lands not already developed for oil or gas, the Board must determine in advance the amount of royalty, never less than one-eighth in kind or in value, and a definite rental, increasing annually after the first 2 years.[8]

Applicants for a lease must submit sealed bids to the Board, which may not be opened until the time and place specified in the public notice.[9] At a public meeting, the Board will consider any and all bids timely submitted for leasing the advertised lands and, in its discretion, may award the lease to the highest and best bidder. If the Board finds that the bids do not represent the fair value of the lease, that the execution of the lease is contrary to the public welfare, that the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may reject all bids, give notice and call for new bids, or withdraw the land from the market.[10]

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[1] The Board is comprised of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 253.02(1), F.S.
[2] Section 253.002(1), F.S.
[3] Section 253.03(2), F.S.
[4] http://www.dep.state.fl.us/lands/use.htm (viewed on January 23, 2012)
[5] Section 253.51, F.S.
[6] Section 253.52, F.S.
[7] *Id.*
[8] Section 253.53, F.S.
[9] *Id.*
[10] Section 253.54, F.S.

Each lease must be for a primary term no longer than 10 years and must require that, to remain in full force and effect, operations be carried on in good faith and in a skillful and diligent manner with no cessation of more than 30 consecutive days or that oil or gas is being produced from the leased land in paying quantities. Each lease must provide for its termination in the absence of drilling or reworking operations or production of oil or gas in paying quantities.[11]

The Board may require a surety or property bond, an irrevocable letter of credit, or other proof of financial responsibility from each lessee of public land or mineral interest prior to the time the lessee mines, drills, or extracts petroleum, petroleum products, or gas from the land. The surety bond, irrevocable letter of credit, or other proof of financial responsibility serves as security and is to be forfeited to the Board to pay for any damages caused by mining or drilling operations performed by the lessee.[12]

Florida law prohibits oil and gas leases in specified areas except under certain conditions. In particular, no board or agency or the state has the authority to sell, execute, or enter into any such lease relating to any of the following lands, submerged or unsubmerged:

- Lands within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.
- Lands in the tidal waters of the state, abutting on or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.
- Lands on any improved beach, located outside of an incorporated town or municipality, or covering such lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly consented to the granting or sale of such lease by resolution.
- Defined submerged lands in territorial waters.[13]

A person wishing to conduct geophysical operations in search of oil, gas, or minerals must first obtain a permit from the Department of Environmental Protection.[14] The application must contain a statement, in general terms, of the location in which the operation is intended to be conducted. Any information relating to the location of the operation and other information relating to leasing plans, exploration budgets, and other proprietary information that could provide an economic advantage to competitors must be kept confidential by the department for 10 years and exempt from the provisions of s. 119.07(1), F.S., and may not be released to the public without the consent of the person submitting the application.[15]

Whenever geophysical operations are conducted on state-owned mineral lands, the person conducting the operations must provide the Division of Resource Management (the Division) within DEP, acting as agent of the owner of the minerals, a copy of the noninterpreted information derived from the geophysical operations. Any information received by the Division must, upon request of the person conducting the geophysical operations, be held confidential for 10 years from the date of receipt by the division and is exempt from disclosure under any state statute.[16]

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[11] Section 253.55, F.S.
[12] Section 253.571, F.S. Damages include, but are not limited to, air, water, and ground pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the state.
[13] Section 253.61, F.S.
[14] Section 377.2408 and 377.2424, F.S.
[15] Section 377.2408, F.S.
[16] Section 377.2409, F.S.

Effect of Proposed Changes

The bill creates an undesignated section of law that, notwithstanding the provisions of chapter 253, F.S., authorizes a land management agency to establish a public-private partnership with a business entity if the agency determines that there is an opportunity to develop oil and gas resources from onshore lands owned by a board, department, or agency of the state and that such development would "yield greater, near-term revenue returns for the state."

The bill requires a business entity that wishes to enter into a public-private partnership to submit to the land management agency a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. The business entity may nominate state land that is to be explored and developed under the public-private partnership. The proposal must provide an estimate of the revenues that the project is expected to generate for the state.

The land management agency must review the proposal in a timely manner and "in a manner that is consistent with contemporary industry practices." The bill requires that the geophysical seismic exploration must be of a duration consistent with industry practices. The geophysical data acquired and the subsequent interpretation must be made available to the land management agency or its representatives for review during the period of geophysical seismic exploration, but the bill provides that this information shall remain in the sole possession of the business entity until the business entity has selected the lease areas.

The bill requires that the land management agency select a private partner based on the business proposal. In selecting a private partner, the land management agency must consider, at a minimum, "the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues." If more than one business entity submits a proposal for substantially the same area, the land management agency must evaluate each proposal and select the proposal that it finds will provide the best value for the state.

The bill provides that the public-private partnership must be established through a contract that provides for the following:

- A minimum 3-year period during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production.
- A selection process in which the private partner may select prospective parcels of state land for exploration and lease after the geophysical seismic testing.
- A right of first refusal to lease a parcel of state land identified as a result of the geophysical seismic exploration for the development and production of oil or gas resources for a term of at least 5 years.
- Negotiated royalty rates and a lease bonus.
- Confidentiality for a period of at least 10 years for the geophysical information, seismic interpretation, or geological information developed as a result of the geophysical seismic exploration by the business entity before the selection of lease areas.

The bill provides that this contract must be approved by the Board of Trustees of the Internal Improvement Trust Fund in order to be legally binding on the State of Florida. The bill further provides that the financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity.

The bill provides an alternative mechanism for obtaining leasing rights to develop oil and gas resources on certain state lands that departs from current law in a number of ways:

- The business entity, rather than the Board, chooses the state lands designated for lease for development and production of oil and gas.
- The business entity obtains a contractual right of first refusal to lease the state lands it identifies for development and production of oil and gas resources, rather than the Board publicly

soliciting and receiving sealed bids and having the discretion to award the lease to the highest and best bidder or reject all bids and withdraw the land from the market.

- The business entity negotiates royalty rates and a lease bonus with the land management agency, rather than the Board determining the amount of royalty in advance based on the statutory minimum of one-eighth in kind or in value, and a definite, escalating rental.
- The business entity retains sole possession of geophysical data it produces (but would make it available for review by land management agency or its representatives), rather than the state holding the information as confidential and exempt from disclosure under the public records law.
- The bill does not appear to require the business entity to provide a surety or property bond, an irrevocable letter of credit, or other proof of financial responsibility as security to pay for any damages caused by mining or drilling operations performed by the entity.

The bill states in one instance that a land management agency *may participate* in a public-private partnership but states elsewhere that the land management agency, after receiving and reviewing a business proposal or proposals, *shall select* a private partner. Thus, it is not clear whether the bill permits or requires a land management agency to enter into such a partnership. If the land management agency has discretion, the only specific criteria that a land management agency must use in order to exercise its discretion is to consider the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues.

B. SECTION DIRECTORY:

Section 1. Creates an undesignated section of law establishing a process that allows land management agencies to create public-private partnerships with business entities to explore for oil and gas resources and to develop such resources on state lands.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill's impact on state revenues is indeterminate. The impact will depend on the response of oil and gas exploration and production companies, the terms of any public-private partnership contracts negotiated with such companies by land management agencies, and actual oil and gas production.

2. Expenditures:

   The bill's impact on state expenditures is indeterminate. The bill is not clear as to whether the land management agencies have the discretion to decline to select a private partner after receiving and reviewing a public-private partnership proposal. If the land management agencies do not retain this discretion, these agencies may be required to expend funds to obtain the necessary resources to review proposals and negotiate public-private partnership contracts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage oil and gas exploration and production companies to pursue opportunities to conduct operations on state lands which could provide potential new investment and job growth.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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:

The bill may create a new public records exemption. Section 377.2409, F.S., provides that any noninterpreted information derived from the geophysical operations formation received by DEP's Division of Resource Management must, upon request of the person conducting the geophysical operations, be held confidential for 10 years from the date of receipt by the division and is exempt from disclosure under any state statute. The bill would create an exemption for geophysical information, seismic interpretation, or geological information developed as a result of geophysical seismic exploration and provided to land management agencies. Article I, Section 24, of the Florida Constitution provides that any new exemption from the state's public records laws must be the single subject of a separate bill.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states in one instance that a land management agency *may* participate in a public-private partnership but states elsewhere that the land management agency, after receiving and reviewing a business proposal or proposals, *shall* select a private partner. Thus, it is not clear whether the bill permits or requires a land management agency to enter into such a partnership.

The bill provides that a land management agency must review a business proposal in a timely manner. The bill does not define what may be considered timely or untimely.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the development of oil and gas resources; authorizing a land management agency to enter into a public-private partnership with a business entity to develop oil and gas resources on onshore state lands if the development yields near-term revenues for the state; providing that the financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity; requiring that a business entity seeking a public-private partnership contract submit a business proposal to the agency for review; specifying the information to be included in the business proposal; requiring that the geophysical data and the subsequent interpretation be made available to the agency for review but remain in the possession of the business entity; providing criteria for the agency to use in selecting the exploration proposal by a business entity; providing criteria for the public-private partnership contract; requiring a proposed public-private partnership contract to be approved by the Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund; providing an effective date.

WHEREAS, the detection and development of oil and gas deposits on onshore lands owned by a board, department, or

agency of the state may provide the opportunity to produce higher, near-term revenues to the state, and

WHEREAS, the monetary reward for discovering new reserves of oil and gas deposits may be significant, and

WHEREAS, the exploration for oil and gas deposits by three-dimensional, geophysical seismic methods and production, with its related infrastructure, involving directional drilling and horizontal drilling, although costly, is more thorough and provides more data than older methods of exploration and production in use over the past 50 years, NOW, THEREFORE,

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

Section 1. (1) DUTIES; AUTHORITY.—Notwithstanding the provisions in chapter 253, Florida Statutes, if a land management agency determines that there is an opportunity to develop oil and gas resources on onshore lands owned by a board, department, or agency of this state to yield greater, near-term revenue returns for the state, the land management agency may participate with a business entity authorized to conduct business in the state in a public-private partnership contract.

(2) PRIVATE-PARTNER RESPONSIBILITIES.—The financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity.

(3) PROPOSAL SELECTION.—

(a) A business entity seeking a public-private partnership contract shall submit a business proposal that describes the

exploration for oil or gas resources and the development of state lands for those purposes. The business entity may nominate state land that is to be explored and developed under the public-private partnership contract. The proposal shall provide an estimate of the revenues that the project is expected to generate for the state.

(b) The land management agency shall review the business proposal in a timely manner and in a manner that is consistent with contemporary industry practices. The geophysical seismic exploration shall be of a duration consistent with industry practices. The geophysical data acquired and the subsequent interpretation shall be made available to the land management agency or its representatives for review during the period provided for in paragraph (4)(a), but shall remain in the sole possession of the business entity until the business entity has selected the lease areas.

(c) The land management agency shall select a private partner based on the business proposal. The land management agency's consideration must include, but need not be limited to, the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues. If more than one entity submits a proposal for a public-private partnership for substantially the same area, the land management agency shall evaluate and select the single proposal that will provide the best value for the state.

(4) PUBLIC-PRIVATE PARTNERSHIP CONTRACT.—The public-private partnership contract shall provide for:

(a) A period of 3 years or longer during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production;

(b) A selection process in which the private partner may select prospective parcels of state land for exploration and lease after the geophysical seismic testing;

(c) A first right of refusal to lease a parcel of state land identified as a result of the geophysical seismic exploration for the development and production of oil or gas resources for a term of at least 5 years;

(d) Negotiated royalty rates and a lease bonus; and

(e) Confidentiality for a period of at least 10 years for the geophysical information, seismic interpretation, or geological information developed as a result of the geophysical seismic exploration by the business entity before the selection of lease areas.

(5) APPROVAL OF CONTRACT.—The proposed public-private partnership contract must be approved by the Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund in order to be legally binding on the State of Florida.

Section 2. This act shall take effect July 1, 2012.

Amendment No.

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	_____

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee

Representative Ford offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. (1) DUTIES; AUTHORITY.—Notwithstanding the provisions in chapter 253, Florida Statutes, if a land management agency determines that there is an opportunity to develop oil and gas resources under onshore lands owned by a board, department, or agency of this state to yield greater, near-term revenue returns for the state, the land management agency may participate with a business entity authorized to conduct business in the state in a public-private partnership contract.

(2) PRIVATE-PARTNER RESPONSIBILITIES.—The financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity.

(3) PROPOSAL SELECTION.—

(a) A business entity seeking a public-private partnership contract shall submit a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. The business entity may nominate state land that is to be explored and developed under the public-private partnership contract. The proposal shall provide an estimate of the revenues that the project is expected to generate for the state.

(b) The land management agency shall review the business proposal in a timely manner and in a manner that is consistent with contemporary industry practices. The geophysical seismic exploration, drilling, and production activities proposed shall be of a duration consistent with industry practices.

(c) The land management agency shall select a private partner based on the business proposal. The land management agency's consideration must include, but need not be limited to, the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues. If more than one entity submits a proposal for a public-private partnership for substantially the same area, the land management agency shall evaluate and select the single proposal that will provide the best value for the state.

(d) The geophysical data acquired and the subsequent interpretation shall be made available to the land management agency or its representatives for review during the period provided in paragraph (4)(a), but shall remain in the sole

possession of the business entity until the business entity has selected the lease areas.

(4) PUBLIC-PRIVATE PARTNERSHIP CONTRACT.—The public-private partnership contract shall provide for:

(a) A period of 3 years or longer during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production;

(b) A selection process after geophysical operations are concluded in which the private partner may select and lease prospective parcels of state land for the purpose of exploration and production;

(c) The leasing of state lands identified as a result of the geophysical seismic operations, which shall be for a term of at least 5 years; and

(d) Negotiated royalty rates and a lease bonus.

(5) APPROVAL OF CONTRACT.—The proposed public-private partnership contract must be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund in order to be legally binding on the State of Florida.

Section 2. This act shall take effect upon becoming a law.

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

Remove the entire title and insert:

Amendment No.

An act relating to the development of oil and gas resources; authorizing a land management agency to enter into a public-private partnership with a business entity to develop oil and gas resources upon onshore state lands if the development yields near-term revenues for the state; providing that the financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity; requiring that a business entity seeking a public-private partnership contract submit a business proposal to the agency for review; specifying the information to be included in the business proposal; providing criteria for the agency to use in selecting the exploration proposal by a business entity; requiring that the geophysical data and the subsequent interpretation be made available to the agency or its representative for review but remain in the possession of the business entity; providing criteria for the public-private partnership contract; requiring a proposed public-private partnership contract to be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund; providing an effective date.

WHEREAS, the exploration and development of oil and gas deposits under onshore lands owned by a board, department, or agency of the state may provide the opportunity to produce higher, near-term revenues to the state, and

WHEREAS, the monetary reward for discovering new reserves of oil and gas deposits may be significant, and

WHEREAS, the exploration for oil and gas deposits via modern three-dimensional, geophysical seismic methods and

production, with its technological improvements, including directional and horizontal drilling, although costly, is more efficient and yields better results than older methods of exploration and production employed during the past 50 years,

NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1391 Economic Development
SPONSOR(S): Kreegel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1878

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating	Collins
2) Business & Consumer Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Babcock Ranch is "Southwest Florida's City of Tomorrow" and a "sustainable, environmentally sensitive, green community" planned for development in Charlotte County that bills itself as a "living laboratory for research on energy efficiency, emerging technologies and true green living."

The bill creates the "Babcock Sustainable Community Demonstration Project Act."

The bill creates s. 288.036, F.S., which provides for the certification of projects that meet specified standards as "Sustainable Community Demonstration Projects" ("projects" or "project"). Such projects must demonstrate "the catalytic economic, technological, and environmental benefits of a prototypical community as a living laboratory for accelerating economic development through innovative technological infrastructure and capital investment, including clean renewable energy systems and smart grid technologies." The bill also establishes a list of items that a Sustainable Community Demonstration Project must be designed to demonstrate. The bill requires the Department of Economic Opportunity (DEO) to review and certify projects as Sustainable Community Demonstration Projects.

The bill also creates s. 366.94, F.S., which authorizes the Public Service Commission (PSC) to approve the recovery of costs incurred by a "provider" for "renewable energy generating facilities that emit zero greenhouse gases at the point of generation, have integrated smart grid infrastructure, and are constructed and operated as part of a [certified] Sustainable Community Demonstration Project." Under current law, public utilities likely would not invest in such projects due to the costs and/or capacity benefits of such projects relative to traditional generation resources and the resulting risk that a project would not be deemed prudent by the PSC for cost recovery purposes. The bill establishes a list of factors that the PSC must consider in determining whether to approve cost recovery and provides that costs will be considered reasonable and prudent if the provider has used reasonable and customary industry practices in the design, procurement, and construction of the facility and has integrated smart grid infrastructure in a cost-effective manner appropriate to the location of the facility. The bill provides that approved costs will be recovered through the utility's environmental cost recovery charge authorized under s. 366.8255, F.S. The bill establishes requirements for a "provider," as part of a cost-recovery proceeding, to report to the PSC certain cost and production information.

The DEO and the PSC may need to dedicate or acquire resources to implement their respective responsibilities under the bill, though it is not clear at this point whether additional funding for either agency would be needed. The Revenue Estimating Conference has not addressed the impacts of this bill.

To the extent that the bill results in the development and construction of new renewable energy generating facilities and smart grid infrastructure, investment in these facilities will likely generate a number of design and construction jobs and a smaller number of permanent jobs to operate and maintain the facilities. The costs of these facilities would be recovered through the utility's environmental cost recovery charge authorized under s. 366.8255, F.S., which is applied to the rates of all customers of the utility.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Babcock Ranch is a "sustainable, environmentally sensitive, green community" planned for development in Charlotte County.[1] According to its website, "Babcock Ranch is the first city planned to be powered by the sun, with the majority of its electric needs generated from the largest on-site solar photovoltaic energy facility powering any city on earth,"[2] a $300 million solar photovoltaic facility constructed by Florida Power & Light Company (FPL) with an initial generating capacity of 75 megawatts (MW).[3] In addition, the planned community would allow residents and companies to program their homes and businesses through an advanced electricity distribution network, or "Smart Grid." This Smart Grid would provide real-time monitoring and remote programming of every outlet in a house or business in the community and would provide for greater reliability within the community's distribution system.[4]

Babcock Ranch's website describes the planned community further:

> Homes, businesses, and government buildings will all be built using groundbreaking energy-efficient methods and materials. Ultra-modern electric vehicles will glide along avenues beneath the glow of solar-powered street lamps, plugging in to recharge at convenient community-wide recharging stations. Ingenious, revolutionary Smart Grid technologies will monitor and manage energy use while Smart Home technology will allow residents to operate their homes at maximum efficiency, thereby reducing energy costs. For businesses, we'll help imaginative companies move from research and development into implementation – demonstrating the benefits of widespread adoption of green technologies powered by clean, renewable energy.[5]

Babcock Ranch bills itself as a "living laboratory for research on energy efficiency, emerging technologies and true green living."[6]

Current law authorizes the Public Service Commission (PSC) to approve cost recovery for certain economic development expenses incurred by public utilities.[7] These expenses are limited to the following:

- Expenditures for operational assistance, including the participation in trade shows and prospecting missions with state and local entities.
- Expenditures for assisting state and local governments in the design of strategic plans for economic development activities.
- Expenditures for marketing and research services, including assisting local governments in marketing specific sites for business and industry development or recruitment, and assisting local governments in responding to inquiries from business and industry concerning the development of specific sites.

Current law does not include economic development impacts as matters that the PSC must consider in determining whether to approve cost recovery for new power plants, including renewable energy projects.

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[1] http://www.babcockranchflorida.com/home.asp (viewed on January 22, 2012)
[2] *Ibid.*
[3] http://www.babcockranchflorida.com/innovationvideo.asp and http://www.babcockranchflorida.com/solar.asp (viewed on January 22, 2012)
[4] http://www.babcockranchflorida.com/smart_grid.asp (viewed on January 22, 2012)
[5] http://www.babcockranchflorida.com/innovation.asp (viewed on January 22, 2012)
[6] http://www.babcockranchflorida.com/living_laboratory.asp (viewed on January 22, 2012)
[7] Section 288.035, F.S.

Absent specific authority to recover the costs of renewable energy projects, 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.[8] 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.[9]

A non-utility entity that develops an electrical generation project and sells power at retail to the public is considered under Florida law to be a "public utility" subject to regulation by the PSC.[10]

Effect of Proposed Changes

The bill creates the "Babcock Sustainable Community Demonstration Project Act."

The bill creates s. 288.036, F.S., which provides for the certification of projects that meet specified standards as "Sustainable Community Demonstration Projects" ("projects" or "project"). Such projects must demonstrate "the catalytic economic, technological, and environmental benefits of a prototypical community as a living laboratory for accelerating economic development through innovative technological infrastructure and capital investment, including clean renewable energy systems and smart grid technologies."

The bill also establishes a list of items that a Sustainable Community Demonstration Project must be designed to demonstrate. Pursuant to the provisions created by the bill as s. 288.036(3), F.S., a project must be designed to demonstrate the following:

- The economic feasibility and viability of clean renewable energy systems and smart grid infrastructure and technologies.
- The affordability and appeal of a sustainable smart community to industry and residents.
- The ability to attract a cluster of complementary industries and stimulate new capital investment in sustainable innovation and community infrastructure.
- The efficient management of energy distribution and consumption using smart grid systems to improve grid performance and community design and construction features.
- The incorporation of sustainable community design principles and construction features in a way that promotes health and wellness and the development and use of innovative alternatives in personal transportation, such as electric vehicles.
- The catalytic effect of a renewable energy-centered community and smart grid infrastructure system in spurring job creation.
- The ability to attract companies to this state to invest and create new jobs and industry.
- The stabilization of energy prices over time.
- The opportunities to enter into partnerships with the State University System in conducting research in innovative clean energy and smart technology communities and technologies and the translation of that research into business opportunities.
- The effectiveness of enhanced building techniques and design criteria in providing storm safety.

The bill requires the Department of Economic Opportunity (DEO) to review and certify projects as Sustainable Community Demonstration Projects. Pursuant to the provisions created by the bill as s.

[8] 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.
[9] Section 366.06(1), F.S.
[10] PW Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988).

288.036(4), F.S., a project must be certified if, in addition to complying with any applicable law, the project:

- Is comprehensive in scope by addressing the full range of community infrastructure, including renewable energy systems, smart grid technologies, data communications networks, alternative transportation mobility systems, sources for powering electric vehicles, digital learning centers, health and wellness features, and storm safety.
- Has in place the permits and entitlements required for primary infrastructure before securing building permits for a particular phase of construction.
- Proposes to produce more electricity from on-site renewable energy generating facilities and distributed rooftop renewable energy facilities than the community is projected to use annually.
- Incorporates and integrates smart grid infrastructure and technology as a tool for improving grid performance; manages energy distribution, transmission, and consumption; maximizes efficiencies; and deploys high-speed digital operating systems and data transmission networks.
- Uses reasonable and customary industry practices in the design and construction of proposed renewable energy systems and smart grid infrastructure.
- Consists of a land area of at least 10,000 contiguous acres and is located within a legislatively created special district or approved development of regional impact.
- Includes a plan for developing project benchmarks and evaluating, measuring, and reporting project results, with the involvement of members of the Florida Energy Systems Consortium and research universities, and extending the application of project knowledge throughout the state in partnership with the State University System.

It is not clear whether DEO, in its review, must consider only the items delineated in s. 288.036(4), F.S., or whether it must also consider whether the project demonstrates each of the items delineated in s. 288.036(3), F.S. Arguably, demonstration of the items delineated in subsection (3) could be considered necessary in order for a project to be found in compliance with "any applicable law" and eligible for certification under subsection (4). It is not clear if this is the intended result.

The bill also creates s. 366.94, F.S., which authorizes the PSC to approve the recovery of costs incurred by a "provider" for "renewable energy generating facilities that emit zero greenhouse gases at the point of generation, have integrated smart grid infrastructure, and are constructed and operated as part of a [certified] Sustainable Community Demonstration Project." The bill provides that the PSC, in determining whether to approve cost recovery, must consider the "projected long-term stabilization of energy costs and the legislative findings in ss. 366.91(1) and 366.92(1), including, but not limited to:

1. Promoting this state's leadership among competitor states in the development of renewable energy resources;
2. Diversifying the fuel mix;
3. Reducing the growing dependence on fuel sources which results in an outflow of this state's capital;
4. Encouraging new investments in innovation and job creation; and
5. Protecting the economic viability of renewable energy resources in this state."[11,12]

The bill provides that, for purposes of cost recovery, costs will be considered reasonable and prudent if the provider has used reasonable and customary industry practices in the design, procurement, and construction of the facility and has integrated smart grid infrastructure in a cost-effective manner

[11] Section 366.91(1), F.S., states: "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."

[12] Section 366.92(1), F.S., states: "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."

appropriate to the location of the facility. Costs would be recovered through the utility's environmental cost recovery charge authorized under s. 366.8255, F.S., which is applied to the rates of all customers of the utility.[13]

The bill includes provisions that appear to grant both a Sustainable Community Demonstration Project and a provider the authority, individually, to initiate cost recovery proceedings. The bill states that a "provider" must initiate proceedings with the PSC no later than January 1, 2013. The bill also provides, however, that a Sustainable Community Demonstration Project certified by DEO "may use customary and innovative alternatives for financing and recovering prudent and reasonable costs in planned energy infrastructure, such as renewable energy generating facilities and integrated smart grid infrastructure, and may initiate proceedings with the Public Service Commission pursuant to s. 366.94."

The bill establishes requirements for a provider, as part of a cost-recovery proceeding, to report to the PSC certain cost and production information.

B. SECTION DIRECTORY:

Section 1. Provides that the act may be cited as the "Babcock Sustainable Community Demonstration Project Act."

Section 2. Creates s. 288.036, F.S., relating to creation of a Sustainable Community Demonstration Project.

Section 3. Creates s. 366.94, F.S., relating to cost recovery for renewable energy as part of a Sustainable Community Demonstration Project.

Section 4. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may require the Department of Economic Opportunity to dedicate or acquire resources to establish the expertise necessary to evaluate proposed Sustainable Community Demonstration

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[13] Section 366.8255, F.S., establishes a mechanism by which investor-owned electric utilities are authorized to recover specified "environmental compliance costs" through an annual adjustment to their rates. "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.
2. Operation and maintenance expenses.
3. Fuel procurement costs.
4. Purchased power costs.
5. Emission allowance costs.
6. Direct taxes on environmental equipment.
7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.
8. Costs or expenses prudently incurred for the quantification, reporting, and third-party verification as required for participation in greenhouse gas emission registries for greenhouse gases as defined in s. 403.44, F.S.
9. Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

Projects for certification and to evaluate such projects. The bill may require the Public Service Commission (PSC) to dedicate or acquire resources to evaluate requests for cost recovery under the non-traditional standard of review established by the bill and for rulemaking. It is not clear at this point whether additional funding at these agencies would be needed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would allow for the development and construction of new renewable energy generating facilities and smart grid infrastructure in areas certified by the Department of Economic Opportunity as Sustainable Community Demonstration Projects. Investment in these utility facilities would likely generate a number of design and construction jobs and a smaller number of permanent jobs to operate and maintain the facilities. It is not clear if the addition of these facilities in a Sustainable Community Demonstration Project would spur indirectly any additional investment and job growth.

The costs of these facilities would be recovered through the utility's environmental cost recovery charge authorized under s. 366.8255, F.S., which is applied to the rates of all customers of the utility.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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:

The bill grants rulemaking authority to the PSC. The PSC is authorized to adopt rules to implement the bill's provisions that require the PSC to review, for purposes of cost recovery, proposed utility investment in certain renewable energy generating facilities constructed as part of a Sustainable Community Demonstration Project.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is not clear whether the Department of Economic Opportunity (DEO), in its review for certification of a proposed Sustainable Community Demonstration Project, must consider only the items delineated in s. 288.036(4), F.S., or whether it must also consider whether the project demonstrates each of the items delineated in s. 288.036(3), F.S. Arguably, demonstration of the items delineated in subsection (3) could be considered necessary in order for a project to be found in compliance with "any applicable

law" and eligible for certification under subsection (4). It is not clear if this is the intended result. If this is not the intended result, it is not clear what purpose is served by the inclusion of subsection (3).

The bill includes provisions that appear to grant both a Sustainable Community Demonstration Project and a provider the authority, individually, to initiate cost recovery proceedings. The bill states that a "provider" must initiate proceedings with the PSC no later than January 1, 2013. The bill also provides, however, that a Sustainable Community Demonstration Project certified by DEO "may use customary and innovative alternatives for financing and recovering prudent and reasonable costs in planned energy infrastructure, such as renewable energy generating facilities and integrated smart grid infrastructure, and may initiate proceedings with the Public Service Commission pursuant to s. 366.94." (Emphasis added). This latter provision appears to grant extraordinary legal standing to an entity other than a regulated utility or utility customer with respect to a proceeding for recovery of utility costs. First, it would grant a non-utility entity the unique right to petition for cost recovery from a utility's ratepayers for a project initiated by the non-utility entity. The non-utility entity would be permitted to petition for recovery of electric generation (and transmission and distribution system) costs without regard to a utility's system needs or requirements. Second, it would likely grant the non-utility entity, as a petitioner, the right to protest or appeal a PSC order on cost recovery when it may not otherwise have legal standing to intervene in such a proceeding.

The bill does not define the term "provider." From the context, "provider" appears to refer to a regulated public utility, but this is not clear.

The bill establishes the PSC's authority to approve recovery of costs incurred by a provider for "renewable energy generating facilities that emit zero greenhouse gases at the point of generation, have integrated smart grid infrastructure, and are constructed and operated as part of [a certified project]." The definition of "costs" provided in the bill refers only to costs associated with a "renewable energy generating facility" but does not mention "integrated smart grid infrastructure." It is not clear if the bill is intended to allow cost recovery (1) for only a renewable energy generating facility with components that allow it to integrate into a smart grid OR (2) for both a renewable energy generating facility AND transmission/distribution/metering infrastructure that could makeup part of a "smart grid." The bill does not define the term "integrated smart grid infrastructure."

The bill provides that the PSC, in evaluating a request for cost recovery, must consider "projected long-term stabilization of energy costs." It is not clear whether this evaluation should be done on a project-specific, utility-wide, or statewide basis.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to economic development; providing a short title; creating s. 288.036, F.S.; establishing the Sustainable Community Demonstration Project; providing a purpose; providing legislative findings and intent; requiring that the Department of Economic Opportunity certify projects that meet certain requirements; authorizing a certified project to initiate proceedings pursuant to s. 366.94, F.S.; creating s. 366.94, F.S.; providing definitions; authorizing the Public Service Commission to approve all reasonable and prudent costs incurred by providers of certain renewable energy generating facilities; requiring that the commission consider certain factors when determining whether to approve the recovery of costs; requiring that a provider initiate proceedings with the commission by a specified date; providing requirements for the proceedings; providing for application; authorizing the commission to adopt rules; providing an effective date.

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

Section 1. This act may be cited as the "Babcock Sustainable Community Demonstration Project Act."

Section 2. Section 288.036, Florida Statutes, is created to read:

288.036 Sustainable Community Demonstration Project.—

(1) The purpose of this section is to establish the Sustainable Community Demonstration Project and to certify projects that demonstrate the catalytic economic, technological, and environmental benefits of a prototypical community as a living laboratory for accelerating economic development through innovative technological infrastructure and capital investment, including clean renewable energy systems and smart grid technologies.

(2) The Legislature finds that the Sustainable Community Demonstration Project is in the public interest and will advance state economic development goals and promote fuel diversity, energy independence, and innovation in this state as expressed in the legislative findings and intent in ss. 366.91 and 366.92. It is the intent of the Legislature that a project certified as a Sustainable Community Demonstration Project result in the creation of a cluster of high-wage, high-skilled complementary technology and communications industries which can become a magnet for new capital investment, job creation, and innovation in the region and throughout the state, and serve as a model for the future development of new communities and the retrofitting of existing communities.

(3) A project must be designed to demonstrate:

(a) The economic feasibility and viability of clean renewable energy systems and smart grid infrastructure and technologies.

(b) The affordability and appeal of a sustainable smart community to industry and residents.

(c) The ability to attract a cluster of complementary

industries and stimulate new capital investment in sustainable innovation and community infrastructure.

(d) The efficient management of energy distribution and consumption using smart grid systems to improve grid performance and community design and construction features.

(e) The incorporation of sustainable community design principles and construction features in a way that promotes health and wellness and the development and use of innovative alternatives in personal transportation, such as electric vehicles.

(f) The catalytic effect of a renewable energy-centered community and smart grid infrastructure system in spurring job creation.

(g) The ability to attract companies to this state to invest and create new jobs and industry.

(h) The stabilization of energy prices over time.

(i) The opportunities to enter into partnerships with the State University System in conducting research in innovative clean energy and smart technology communities and technologies and the translation of that research into business opportunities.

(j) The effectiveness of enhanced building techniques and design criteria in providing storm safety.

(4) The Department of Economic Opportunity shall certify a project as a Sustainable Community Demonstration Project if, in addition to complying with any applicable law, the project:

(a) Is comprehensive in scope by addressing the full range of community infrastructure, including renewable energy systems,

smart grid technologies, data communications networks, alternative transportation mobility systems, sources for powering electric vehicles, digital learning centers, health and wellness features, and storm safety.

(b) Has in place the permits and entitlements required for primary infrastructure before securing building permits for a particular phase of construction.

(c) Proposes to produce more electricity from on-site renewable energy generating facilities and distributed rooftop renewable energy facilities than the community is projected to use annually.

(d) Incorporates and integrates smart grid infrastructure and technology as a tool for improving grid performance; manages energy distribution, transmission, and consumption; maximizes efficiencies; and deploys high-speed digital operating systems and data transmission networks.

(e) Uses reasonable and customary industry practices in the design and construction of proposed renewable energy systems and smart grid infrastructure.

(f) Consists of a land area of at least 10,000 contiguous acres and is located within a legislatively created special district or approved development of regional impact.

(g) Includes a plan for developing project benchmarks and evaluating, measuring, and reporting project results, with the involvement of members of the Florida Energy Systems Consortium and research universities, and extending the application of project knowledge throughout the state in partnership with the State University System.

(5) A project certified under this section may use customary and innovative alternatives for financing and recovering prudent and reasonable costs in planned energy infrastructure, such as renewable energy generating facilities and integrated smart grid infrastructure, and may initiate proceedings with the Public Service Commission pursuant to s. 366.94.

Section 3. Section 366.94, Florida Statutes, is created to read:

366.94 Renewable energy cost recovery as part of a Sustainable Community Demonstration Project.—

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

(a) "Costs" include all costs or expenses incurred by a provider in siting, licensing, designing, constructing, and operating a renewable energy generating facility, including, but not limited to, construction costs, inservice capital investments, engineering expenses, operation and maintenance expenses, and any applicable taxes. This term does not include the land on which the facility is constructed.

(b) "Renewable energy" has the same meaning as provided in s. 366.91(2)(d).

(c) "Renewable energy generating facility" or "facility" means a facility of less than 75 megawatt gross capacity which generates renewable energy, is constructed and operated as part of a Sustainable Community Demonstration Project certified under s. 288.036, and is part of the electric utility grid for this state.

(2) To demonstrate the feasibility and viability of

renewable energy generating facilities integrated with smart grid infrastructure and the economic benefits for this state, and as an investment in renewable energy, the commission may approve all reasonable and prudent costs incurred by a provider under the environmental cost-recovery clause in s. 366.8255 for renewable energy generating facilities that emit zero greenhouse gases at the point of generation, have integrated smart grid infrastructure, and are constructed and operated as part of a Sustainable Community Demonstration Project certified under s. 288.036.

(a) When determining whether to approve the recovery of costs, the commission shall consider, among other factors, the projected long-term stabilization of energy costs and the legislative findings and intent in ss. 366.91(1) and 366.92(1), including, but not limited to:

1. Promoting this state's leadership among competitor states in the development of renewable energy resources;

2. Diversifying the fuel mix;

3. Reducing the growing dependence on fuel sources which results in an outflow of this state's capital;

4. Encouraging new investments in innovation and job creation; and

5. Protecting the economic viability of renewable energy resources in this state.

(b) For purposes of this section, costs are reasonable and prudent if the provider has used reasonable and customary industry practices in the design, procurement, and construction of the facility and has integrated smart grid infrastructure in

a cost-effective manner appropriate to the location of the facility.

(c) A provider must initiate proceedings with the commission no later than January 1, 2013.

(d) As part of the proceedings, each provider shall report its construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy electrical generating facility, and any other information deemed relevant by the commission.

(3) This section applies only to a facility constructed and operated as part of a Sustainable Community Demonstration Project certified under s. 288.036.

(4) The commission may adopt rules as necessary to administer this section.

Section 4. This act shall take effect upon becoming a law.

Amendment No.

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	_____

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee

Representative Kreegel offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as the "Sustainable Community Demonstration Project Act."

Section 2. Section 288.036, Florida Statutes, is created to read:

288.036 Sustainable Community Demonstration Project.—

(1) The purpose of this section is to establish the Sustainable Community Demonstration Project and to certify projects that demonstrate the catalytic economic, technological, and environmental benefits of a prototypical community as a living laboratory for accelerating economic development through innovative technological infrastructure and capital investment, including clean renewable energy systems and smart grid technologies.

(2) The Legislature finds that a Sustainable Community Demonstration Project is in the public interest and will advance state economic development goals and promote fuel diversity, energy independence, and innovation in this state as expressed in the legislative findings and intent in ss. 366.91 and 366.92. It is the intent of the Legislature that a project certified as a Sustainable Community Demonstration Project result in the creation of a cluster of high-wage, high-skilled complementary technology and communications industries which can become a magnet for new capital investment, job creation, and innovation in the region and throughout the state, and serve as a model for the future development of new communities and the retrofitting of existing communities.

(3) The Department of Economic Opportunity shall certify a project as a Sustainable Community Demonstration Project if, in addition to complying with any applicable law other than this act, the project:

(a) Is comprehensive in scope by addressing the full range of community infrastructure, including renewable energy systems, smart grid technologies, data communications networks, alternative transportation mobility systems, sources for powering electric vehicles, digital learning centers, health and wellness features, and storm safety.

(b) Has in place the permits and entitlements required for primary infrastructure before securing building permits for a particular phase of construction.

(c) Proposes to meet the majority of its electricity needs from renewable sources and produce more electricity from on-site

renewable energy generating facilities and distributed rooftop renewable energy facilities than the community is projected to use annually.

(d) Incorporates and integrates smart grid infrastructure and technology as a tool for improving grid performance; manages energy distribution, transmission, and consumption; maximizes efficiencies; and deploys high-speed digital operating systems and data transmission networks.

(e) Uses reasonable and customary industry practices in the design and construction of proposed renewable energy systems and smart grid infrastructure.

(f) Consists of a land area of at least 2,500 contiguous acres.

(g) Includes an accountability plan for developing project benchmarks and evaluating, measuring, and reporting project results against the criteria provided in subsection (4), with the involvement of members of the Florida Energy Systems Consortium and research universities, and extending the application of project knowledge throughout the state in partnership with the State University System. The plan shall provide for submission of the initial evaluation of project results to the Department of Economic Opportunity no later than July 1, 2014.

(4) A project is intended to demonstrate:

(a) The economic feasibility and viability of clean renewable energy systems and smart grid infrastructure and technologies.

(b) The affordability and appeal of a sustainable smart community to industry and residents.

(c) The ability to attract a cluster of complementary industries and stimulate new capital investment in sustainable innovation and community infrastructure.

(d) The efficient management of energy distribution and consumption using smart grid systems to improve grid performance and community design and construction features.

(e) The incorporation of sustainable community design principles and construction features in a way that promotes health and wellness and the development and use of innovative alternatives in personal transportation, such as electric vehicles.

(f) The catalytic effect of a renewable energy-centered community and smart grid infrastructure system in spurring job creation.

(g) The ability to attract companies to this state to invest and create new jobs and industry.

(h) The stabilization of energy prices over time.

(i) The opportunities to enter into partnerships with the State University System in conducting research in innovative clean energy and smart technology communities and technologies and the translation of that research into business opportunities.

(j) The effectiveness of enhanced building techniques and design criteria in providing storm safety.

(5) When part of a project certified under this section, a provider may use customary and innovative alternatives for

financing and recovering prudent and reasonable costs in planned energy infrastructure, such as renewable energy generating facilities and integrated smart grid infrastructure, and may initiate proceedings with the Public Service Commission pursuant to s. 366.94.

Section 3. Section 366.94, Florida Statutes, is created to read:

366.94 Renewable energy cost recovery as part of a Sustainable Community Demonstration Project.—

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

(a) "Costs" include all costs or expenses incurred by a provider in siting, licensing, designing, constructing, and operating a renewable energy generating facility and transmission, distribution and metering systems using integrated smart grid infrastructure and components. These costs include, but are not limited to, construction costs, inservice capital investments, engineering expenses, operation and maintenance expenses, and any applicable taxes. This term does not include the land on which the facility is constructed.

(b) "Renewable energy" has the same meaning as provided in s. 366.91(2)(d).

(c) "Renewable energy generating facility" or "facility" means a facility of less than 75 megawatt gross capacity which generates renewable energy, emits zero greenhouse gases at the point of generation, is constructed and operated by a provider as part of a Sustainable Community Demonstration Project certified under s. 288.036, and is part of the electric utility

grid for this state. The term includes associated transmission and distribution systems.

(2) To demonstrate the feasibility and viability of renewable energy generating facilities and integrated smart grid infrastructure and the economic benefits for this state, and as an investment in renewable energy, the commission may approve all reasonable and prudent costs incurred by a provider under the environmental cost-recovery clause in s. 366.8255 for renewable energy generating facilities and integrated smart grid infrastructure, constructed and operated as part of a Sustainable Community Demonstration Project certified under s. 288.036.

(a) When determining whether to approve the recovery of costs, the commission shall consider, among other factors, the projected long-term stabilization of energy costs and the legislative findings and intent in ss. 366.91(1) and 366.92(1), including, but not limited to:

1. Promoting this state's leadership among competitor states in the development of renewable energy resources;

2. Diversifying the fuel mix;

3. Reducing the growing dependence on fuel sources which results in an outflow of this state's capital;

4. Encouraging new investments in innovation and job creation;

5. Protecting the economic viability of renewable energy resources in this state; and

6. Minimizing the volatility of fuel costs.

(b) For purposes of this section, costs are reasonable and prudent if the provider has used reasonable and customary industry practices in the design, procurement, and construction of the facility and has integrated smart grid infrastructure in a cost-effective manner appropriate to the location of the facility.

(c) A provider must initiate proceedings with the commission no later than January 1, 2013.

(d) As part of the proceedings, each provider shall report its construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy electrical generating facility, and any other information deemed relevant by the commission.

(e) The Legislature recognizes the potential catalytic effect that a demonstration project under this act will have on economic growth, job creation, entrepreneurial innovation and energy diversification. The Legislature also recognizes the investment and knowledge necessary to position this state as a hub for renewable energy and smart technology infrastructure, products and expertise, while reducing the risk of price instability and customer rate hikes resulting from the current lack of fuel diversity. As a result, the amount of cost recovery the commission may authorize for a demonstration project under this act is limited to a maximum of 5 cents per month for an average residential customer using 1,000 kilowatt hours per month, calculated on a levelized basis over the life of a facility projected to produce cost savings in a majority of those years.

(3) This section applies only to a facility constructed and operated as part of a Sustainable Community Demonstration Project certified under s. 288.036. However, this section does not preclude a provider that is not a part of a Sustainable Community Demonstration Project from seeking cost recovery under any other applicable provision of law.

(4) The commission may adopt rules as necessary to administer this section.

Section 4. This act shall take effect upon becoming a law.

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

Remove the entire title and insert:

An act relating to economic development; providing a short title; creating s. 288.036, F.S.; establishing the Sustainable Community Demonstration Project; providing a purpose; providing legislative findings and intent; requiring that the Department of Economic Opportunity certify projects that meet certain requirements; authorizing a provider, as part of a certified project, to initiate proceedings pursuant to s. 366.94, F.S.; creating s. 366.94, F.S.; providing definitions; authorizing the Public Service Commission to approve all reasonable and prudent costs incurred by providers of certain renewable energy generating facilities; requiring that the commission consider certain factors when determining whether to approve the recovery of costs; requiring that a provider initiate proceedings with the commission by a specified date; providing requirements for

the proceedings; establishing a cap on the amount the commission may approve for cost recovery; providing for application; authorizing the commission to adopt rules; providing an effective date.

Discussion of Energy Policy Issues

Department of Agriculture and Consumer Services
Energy Policy Recommendations for the Legislature's Consideration
January 12, 2012

Infrastructure Investment:
Proposal 1 — Reinstate the following sales tax incentives at the recommended caps and clearly define eligible cost. Reinstatement of these tax incentives will promote the development of renewable energy infrastructure which would give Florida an advantage over other states when investors are looking to build plants.

- Renewable Energy Technologies Sales Tax Exemption- $1 million per year;
- Renewable Energy Technologies Investment Tax Credit - Increase current cap of $6.5 million to $10 million per year; and
- Renewable Energy Production Tax Credit - Remains the same at $0.01 for each kilowatt-hour of energy produced and sold with a cap of $5 million per year.

In order to avoid misinterpretations of which entities are eligible for tax credits, clarify that an "electric utility" refers to those utilities that sell electricity on a retail basis.

Reporting Requirements:
Proposal 2 — Require the Department of Agriculture and Consumer Services (DACS) to develop a comprehensive statewide forest inventory analysis identifying where available biomass is located and ensuring forest sustainability.

Proposal 3 — Require the utilities, who file 10-year site plans with the Public Service Commission (PSC), to report the amount of renewable energy resources produced, purchased and proposed in Florida over the 10 year planning horizon and how it will impact present and future capacity and energy needs.

Power Plant (over 75 MW) Need Determination Process:
Proposal 4 —Require the PSC to take into account the need to diversify Florida's energy generation fuel supply during a Need Determination proceeding. By placing value on fuel diversity, opportunities for alternative sources of energy improve, strengthening Florida's energy security.

Public Interest Determination for Renewable Energy Projects:
Proposal 5 — Require the PSC to establish criteria for evaluating proposed renewable energy facilities or negotiated renewable energy power purchase agreements and establish reporting criteria. The requirement would create a consistent framework by which the PSC would evaluate renewable proposals and determine whether they are in the public interest, establish what information utilities must provide, and what criteria renewable projects will be evaluated against. Given this new framework, remove the current law that requires the PSC to adopt rules for a renewable portfolio standard.

Based on the criteria established in Proposal 5, require the PSC to set an investor-owned utility limit of 1 percent or 75 MW, whichever is less, of its overall generation capacity portfolio in any one year of approved renewable energy investments where those investment costs are above the

least cost alternative. Placing a cap on the overall effect on the utilities' generation portfolio will avoid unreasonable rate impacts on customers.

Proposal 6 — Allow a utility to invest in a PSC approved financing project with renewable energy facilities in Florida. Currently this type of utility financing project is allowed with government solid waste facilities, but not with private renewable energy facilities. A joint utility and private renewable energy financing project would allow the utility to recover its expenses and a reasonable profit. This would promote investment by utilities in renewable energy facilities, when such a contract is determined by the PSC to be in the public interest.

Energy Efficiency:

Proposal 7 — Require all buildings in the state building fleet, 5,000 square feet or more of conditioned space, to report their energy consumption, and requires the Department of Management Services to go to rule making in coordination with DACS to establish standard and uniform benchmarking and reporting requirements. Currently this reporting is not standardized across state agencies making the reporting incomplete and inaccurate.

Proposal 8 —The legislature should direct DACS's Office of Energy in coordination with the Florida Energy Systems Consortium to evaluate methods to promote energy conservation and efficiency. Further, it should provide the consumer clear guidance on energy efficiency savings. The report should be completed by March 1, 2013, and presented to the Governor and the legislature. Also, the legislature should require the PSC to evaluate how the Florida Energy Efficiency and Conservation Act (FEECA) statutes provide conservation and efficiency programs that are in the public interest and without undue burden on the customer.

Removing Barriers to Future Investments:

Proposal 9 —Clarify that electric vehicle charging stations are a service to the public and not the retail sale of electricity. This ensures that government entities or businesses installing and providing this service are not subject to the undue burden of regulatory fees that may be instituted by the PSC if they were to be considered retailers of electricity.

- Would direct the Florida Building Commission in coordination with DACS and the PSC to adopt rules to standardize the building and electric codes, permitting, and installation of the charging stations.
- Also would direct DACS to adopt rules to address definitions, method of sale, labeling requirements and price posting requirements to allow for consistency for consumers and the industry.
- The PSC is also instructed to conduct a study of the effects of the charging stations on energy consumption in the state as well as the effects on the grid.

Proposal 10 — Require DACS in consultation with the University of Florida/Institute for Food and Agriculture Sciences to determine whether a plant material is exempt from the regulatory permitting process based on scientific evidence and practical experience. This would streamline the permitting process for feedstock crops for biofuels.

Proposal 11 — Task the PSC to evaluate its current interconnection and net metering rules.

TAB 1 – Tax Incentives

Reinstate the following tax incentives at the recommended caps and clearly define "eligible costs." Reinstatement of these tax incentives will promote the development of renewable energy infrastructure which would give Florida an advantage over other states when investors are looking to build plants.

- Renewable Energy Technologies Sales Tax Exemption- $1 million per year;
- Renewable Energy Technologies Investment Tax Credit - Increase current cap of $6.5 million to $10 million per year; and
- Renewable Energy Production Tax Credit - Remains the same at $0.01 for each kilowatt-hour of energy produced and sold with a cap of $5 million per year.

In order to avoid misinterpretations of which entities are eligible for tax credits, clarify that an "electric utility" refers to those utilities that sell electricity on a retail basis.

Section 1. Paragraph (hhh) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(hhh) *Equipment, machinery, and other materials for renewable energy technologies.*—

1. As used in this paragraph, the term:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by rule of the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by rule of the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Renewable fuel" means a fuel produced from renewable biomass that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel. "Biomass" means biomass as defined in s. 366.91(2)(a).

2. The sale or use of the following in the state is exempt from the tax imposed by this chapter:

Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100) and other renewable fuels, including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel distribution qualify for the exemption provided in this sub-subparagraph.

3. The Department of Agriculture and Consumer Services shall provide to the Department of Revenue a list of items eligible for the exemption provided in this paragraph.

4.a. The exemption provided in this paragraph shall be available to a purchaser only through a refund of previously paid taxes. An eligible item is subject to refund one time. A person who has received a refund on an eligible item shall notify the next purchaser of the item that such item is no longer eligible for a refund of paid taxes. This notification shall be provided to each subsequent purchaser on the sales invoice or other proof of purchase.

b. To be eligible to receive the exemption provided in this paragraph, a purchaser shall file an application with the Department of Agriculture and Consumer Services. The application shall be developed by the Department of Agriculture and Consumer Services, in consultation with the Department of Revenue, and shall require:

(I) The name and address of the person claiming the refund.

(II) A specific description of the purchase for which a refund is sought, including, when applicable, a serial number or other permanent identification number.

(III)The sales invoice or other proof of purchase showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

(IV)A sworn statement that the information provided is accurate and that the requirements of this paragraph have been met.

c. Within 30 days after receipt of an application, the Department of Agriculture and Consumer Services shall review the application and shall notify the applicant of any deficiencies. Upon receipt of a completed application, the Department of Agriculture and Consumer Services shall evaluate the application for exemption and issue a written certification that the applicant is eligible for a refund or issue a written denial of such certification . The Department of Agriculture and Consumer Services shall provide the Department of Revenue with a copy of each certification issued upon approval of an application.

d. Each certified applicant shall be responsible for forwarding a certified copy of the application and copies of all required documentation to the Department of Revenue within 6 months after certification by the Department of Agriculture and Consumer Services.

e. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval by the Department of Revenue.

f. The Department of Agriculture and Consumer Services may adopt by rule the form for the application for a certificate, requirements for the content and format of information submitted to the Department of Agriculture and Consumer Services in support of the application, other procedural requirements, and criteria by which the application will be determined by rule. The Department of Agriculture and Consumer Services may adopt all other rules pursuant to ss. 120.536(1) and 120.54 to administer this paragraph, including rules establishing additional forms and procedures for claiming this exemption.

g. The Department of Agriculture and Consumer Services shall be responsible for ensuring that the total amounts of the exemptions authorized do not exceed the limits as specified in subparagraph 2.

5. Approval of the exemptions under this section is on a first-come, first-served basis, based upon the date complete applications are received by the Department of Agriculture and Consumer Services. Incomplete placeholder applications will not be accepted and will not secure a place in the first-come, first-served application line. The Department of Agriculture and Consumer Services shall determine and publish on its website on a regular basis the amount of sales tax funds remaining in each fiscal year.

6. This paragraph expires July 1, 2016.

Section 2. Section 220.192, Florida Statutes, is amended to read:

220.192 Renewable energy technologies investment tax credit.—

(1) DEFINITIONS.—For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in ~~former~~ s. 212.08(7)(hhh)~~(ccc)~~.

(b) "Corporation" includes a general partnership, limited partnership, limited liability company, unincorporated business, or other business entity, including entities taxed as partnerships for federal income tax purposes.

(c) "Eligible costs" means~~:~~ seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2012 ~~2006~~, and June

30, 2016 ~~2010~~, up to a limit of $10 ~~$6.5~~ million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100), ~~and~~ ethanol (E10-E100), and other renewable fuel in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for biodiesel (B10-B100), ~~and~~ ethanol (E10-E100), and other renewable fuel distribution qualify as an eligible cost under this subparagraph.

~~1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.~~

~~2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.~~

~~3.~~

(d) "Ethanol" means ethanol as defined in ~~former~~ s.

212.08(7)(hhh) ~~(ccc)~~.

(e) "Renewable fuel" means a fuel produced from renewable biomass that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel. "Biomass" means biomass as defined in s. 366.91(2)(a). ~~"Hydrogen fuel cell" means hydrogen fuel cell as defined in former s. 212.08(7)(ccc).~~

(f) "Taxpayer" includes a corporation as defined in paragraph (b) or s. 220.03.

(2) TAX CREDIT.—For tax years beginning on or after January 1, 2013 ~~2007~~, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2013 ~~2007~~, and ending December 31, 2016 ~~2010~~, after which the credit shall expire. If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in tax years beginning January 1, 2013 ~~2007~~, and ending December 31, 2018 ~~2012~~, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

(3) CORPORATE APPLICATION PROCESS.—Any corporation wishing to obtain tax credits available under this section must submit to the Department of Agriculture and Consumer Services an

application for tax credit that includes a complete description of all eligible costs for which the corporation is seeking a credit and a description of the total amount of credits sought. The Department of Agriculture and Consumer Services shall make a determination on the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue. The corporation must attach the Department of Agriculture and Consumer Services' certification to the tax return on which the credit is claimed. The Department of Agriculture and Consumer Services is responsible for ensuring that the corporate income tax credits granted in each fiscal year do not exceed the limits provided for in this section. The Department of Agriculture and Consumer Services may adopt the necessary rules and forms for the application process.

(4) TAXPAYER APPLICATION PROCESS.—To claim a credit under this section, each taxpayer must apply to the Department of Agriculture and Consumer Services for an allocation of each type of annual credit by the date established by the Department of Agriculture and Consumer Services. The application form adopted by <u>rule of</u> the Department of Agriculture and Consumer Services must include an affidavit from each taxpayer certifying that all information contained in the application, including all records of eligible costs claimed as the basis for the tax credit, are true and correct. Approval of the credits under this section is on a first-come, first-served basis, based upon the date complete applications are received by the Department of Agriculture and Consumer Services. A taxpayer must submit only one complete application based upon eligible costs incurred

within a particular state fiscal year. Incomplete placeholder applications will not be accepted and will not secure a place in the first-come, first-served application line. If a taxpayer does not receive a tax credit allocation due to the exhaustion of the annual tax credit authorizations, then such taxpayer may reapply in the following year for those eligible costs and will have priority over other applicants for the allocation of credits.

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

(a) In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, which are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with this section. The Department of Agriculture and Consumer Services shall provide technical assistance when requested by the Department of Revenue on any technical audits or examinations performed pursuant to this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of an audit or examination or from information received from the Department of Agriculture and Consumer Services, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of

the state.

(c) The Department of Agriculture and Consumer Services may revoke or modify any written decision granting eligibility for tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this section. The Department of Agriculture and Consumer Services shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

(d) The taxpayer shall file with the Department of Revenue an amended return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax and interest within 60 days after the taxpayer receives notification from the Department of Agriculture and Consumer Services that previously approved tax credits have been revoked or modified. If the revocation or modification order is contested, the taxpayer shall file an amended return or other report as provided in this paragraph within 60 days after a final order is issued after proceedings.

(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Department of Agriculture and Consumer Services that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed,

a notice of deficiency may be issued at any time.

(6) TRANSFERABILITY OF CREDIT.—

(a) For tax years beginning on or after January 1, 2014 ~~2009~~, any corporation or subsequent transferee allowed a tax credit under this section may transfer the credit, in whole or in part, to any taxpayer by written agreement without transferring any ownership interest in the property generating the credit or any interest in the entity owning such property. The transferee is entitled to apply the credits against the tax with the same effect as if the transferee had incurred the eligible costs.

(b) To perfect the transfer, the transferor shall provide the Department of Revenue with a written transfer statement notifying the Department of Revenue of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The Department of Revenue shall, upon receipt of a transfer statement conforming to the requirements of this section, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

(c) A tax credit authorized under this section that is held by a corporation and not transferred under this subsection shall be passed through to the taxpayers designated as partners, members, or owners, respectively, in the manner agreed to by such persons regardless of whether such partners, members, or

owners are allocated or allowed any portion of the federal energy tax credit for the eligible costs. A corporation that passes the credit through to a partner, member, or owner must comply with the notification requirements described in paragraph (b). The partner, member, or owner must attach a copy of the certificate to each tax return on which the partner, member, or owner claims any portion of the credit.

(7) RULES.—The Department of Revenue in coordination with the Department of Agriculture and Consumer Services shall have the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section, including rules relating to:

(a) The forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(b) The implementation and administration of the provisions allowing a transfer of a tax credit, including rules prescribing forms, reporting requirements, and specific procedures, guidelines, and requirements necessary to transfer a tax credit.

(c) Each applicant is eligible to receive up to $1 million in tax credits.

(8) PUBLICATION.—The Department of Agriculture and Consumer Services shall determine and publish on its website on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 3. Section 220.193, Florida Statutes, is amended to read:

220.193 Florida renewable energy production credit.—

(1) The purpose of this section is to encourage the development and expansion of facilities that produce renewable energy in Florida.

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

(a) "Commission" shall mean the Public Service Commission.

(b) "Department" shall mean the Department of Revenue.

(c) "Expanded facility" shall mean a Florida renewable energy facility that increases its electrical production and sale by more than 5 percent above the facility's electrical production and sale during the 2011 ~~2005~~ calendar year.

(d) "Florida renewable energy facility" shall mean a facility in the state that produces electricity for sale from renewable energy, as defined in s. 377.803.

(e) "New facility" shall mean a Florida renewable energy facility that is operationally placed in service after May 1, 2012 ~~2006~~.

(f) "Sale" or "sold" includes the use of electricity by the producer of such electricity which decreases the amount of electricity that the producer would otherwise have to purchase.

(g) "Taxpayer" includes a general partnership, limited partnership, limited liability company, trust, or other artificial entity in which a corporation, as defined in s. 220.03(1)(e), owns an interest and is taxed as a partnership or is disregarded as a separate entity from the corporation under this chapter.

(3) An annual credit against the tax imposed by this section shall be allowed to a taxpayer, based on the taxpayer's

production and sale of electricity from a new or expanded Florida renewable energy facility. For a new facility, the credit shall be based on the taxpayer's sale of the facility's entire electrical production. For an expanded facility, the credit shall be based on the increases in the facility's electrical production that are achieved after May 1, 2012 ~~2006~~.

(a) The credit shall be $0.01 for each kilowatt-hour of electricity produced and sold by the taxpayer to an unrelated party during a given tax year.

(b) The credit may be claimed for electricity produced and sold on or after January 1, 2013 ~~2007~~. Beginning in 2014 ~~2008~~ and continuing until 2017 ~~2011~~, each taxpayer claiming a credit under this section must first apply to the department by February 1 of each year for an allocation of available credit. The department, in consultation with the commission, shall develop an application form. The application form shall, at a minimum, require a sworn affidavit from each taxpayer certifying the increase in production and sales that form the basis of the application and certifying that all information contained in the application is true and correct.

(c) If the amount of credits applied for each year exceeds $5 million, the department shall award to each applicant a prorated amount based on each applicant's increased production and sales and the increased production and sales of all applicants.

(d) If the credit granted pursuant to this section is not fully used in one year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried

forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers in the order provided in s. 220.02(8).

(e) A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group.

(f)1. Tax credits that may be available under this section to an entity eligible under this section may be transferred after a merger or acquisition to the surviving or acquiring entity and used in the same manner with the same limitations.

2. The entity or its surviving or acquiring entity as described in subparagraph 1. may transfer any unused credit in whole or in units of no less than 25 percent of the remaining credit. The entity acquiring such credit may use it in the same manner and with the same limitations under this section. Such transferred credits may not be transferred again although they may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section.

3. In the event the credit provided for under this section is reduced as a result of an examination or audit by the department, such tax deficiency shall be recovered from the first entity or the surviving or acquiring entity to have claimed such credit up to the amount of credit taken. Any subsequent deficiencies shall be assessed against any entity acquiring and claiming such credit, or in the case of multiple

succeeding entities in the order of credit succession.

(g) Notwithstanding any other provision of this section, credits for the production and sale of electricity from a new or expanded Florida renewable energy facility may be earned between January 1, 2013 ~~2007~~, and June 30, 2016 ~~2010~~. The combined total amount of tax credits which may be granted for all taxpayers under this section is limited to $5 million per state fiscal year.

(h) A taxpayer claiming a credit under this section shall be required to add back to net income that portion of its business deductions claimed on its federal return paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under this section.

(i) A taxpayer claiming credit under this section may not claim a credit under s. 220.192. A taxpayer claiming credit under s. 220.192 may not claim a credit under this section.

(j) When an entity treated as a partnership or a disregarded entity under this chapter produces and sells electricity from a new or expanded renewable energy facility, the credit earned by such entity shall pass through in the same manner as items of income and expense pass through for federal income tax purposes. When an entity applies for the credit and the entity has received the credit by a pass-through, the application must identify the taxpayer that passed the credit through, all taxpayers that received the credit, and the percentage of the credit that passes through to each recipient and must provide other information that the department requires.

(k) A taxpayer's use of the credit granted pursuant to

this section does not reduce the amount of any credit available to such taxpayer under s. 220.186.

(4) The department may adopt rules to implement and administer this section, including rules prescribing forms, the documentation needed to substantiate a claim for the tax credit, ~~and~~ the specific procedures and guidelines for claiming the credit, and each applicant is eligible to receive up to $500,000 in tax credits.

(5) This section shall take effect upon becoming law and shall apply to tax years beginning on and after January 1, 2013 ~~2007~~.

Section 4. Section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(1) LEGISLATIVE FINDINGS AND DECLARATIONS.—The Legislature finds that retaining and expanding existing businesses in the state, encouraging the creation of new businesses in the state, attracting new businesses from outside the state, and generally providing conditions favorable for the growth of target industries creates high-quality, high-wage employment opportunities for residents of the state and strengthens the state's economic foundation. The Legislature also finds that incentives narrowly focused in application and scope tend to be more effective in achieving the state's economic development goals. The Legislature further finds that higher-wage jobs reduce the state's share of hidden costs, such as public assistance and subsidized health care associated with low-wage

jobs. Therefore, the Legislature declares that it is the policy of the state to encourage the growth of higher-wage jobs and a diverse economic base by providing state tax refunds to qualified target industry businesses that originate or expand in the state or that relocate to the state.

(2) DEFINITIONS.—As used in this section:

(a) "Account" means the Economic Development Incentives Account within the Economic Development Trust Fund established under s. 288.095.

(b) "Authorized local economic development agency" means a public or private entity, including an entity defined in s. 288.075, authorized by a county or municipality to promote the general business or industrial interests of that county or municipality.

(c) "Average private sector wage in the area" means the statewide private sector average wage or the average of all private sector wages and salaries in the county or in the standard metropolitan area in which the business is located.

(d) "Business" means an employing unit, as defined in s. 443.036, that is registered for unemployment compensation purposes with the state agency providing unemployment tax collection services under an interagency agreement pursuant to s. 443.1316, or a subcategory or division of an employing unit that is accepted by the state agency providing unemployment tax collection services as a reporting unit.

(e) "Corporate headquarters business" means an international, national, or regional headquarters office of a multinational or multistate business enterprise or national

trade association, whether separate from or connected with other facilities used by such business.

(f) "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065.

(g) "Expansion of an existing business" means the expansion of an existing Florida business by or through additions to real and personal property, resulting in a net increase in employment of not less than 10 percent at such business.

(h) "Fiscal year" means the fiscal year of the state.

(i) "Jobs" means full-time equivalent positions, including, but not limited to, positions obtained from a temporary employment agency or employee leasing company or through a union agreement or coemployment under a professional employer organization agreement, that result directly from a project in this state. The term does not include temporary construction jobs involved with the construction of facilities for the project or any jobs previously included in any application for tax refunds under s. 288.1045 or this section.

(j) "Local financial support" means funding from local sources, public or private, that is paid to the Economic Development Trust Fund and that is equal to 20 percent of the annual tax refund for a qualified target industry business. A qualified target industry business may not provide, directly or indirectly, more than 5 percent of such funding in any fiscal year. The sources of such funding may not include, directly or indirectly, state funds appropriated from the General Revenue Fund or any state trust fund, excluding tax revenues shared with

local governments pursuant to law.

(k) "Local financial support exemption option" means the option to exercise an exemption from the local financial support requirement available to any applicant whose project is located in a brownfield area, a rural city, or a rural community. Any applicant that exercises this option is not eligible for more than 80 percent of the total tax refunds allowed such applicant under this section.

(l) "New business" means a business that applies for a tax refund under this section before beginning operations in this state and that is a legal entity separate from any other commercial or industrial operations owned by the same business.

(m) "Project" means the creation of a new business or expansion of an existing business.

(n) "Qualified target industry business" means a target industry business approved by the department to be eligible for tax refunds under this section.

(o) "Rural city" means a city having a population of 10,000 or fewer, or a city having a population of greater than 10,000 but fewer than 20,000 that has been determined by the department to have economic characteristics such as, but not limited to, a significant percentage of residents on public assistance, a significant percentage of residents with income below the poverty level, or a significant percentage of the city's employment base in agriculture-related industries.

(p) "Rural community" means:

1. A county having a population of 75,000 or fewer.

2. A county having a population of 125,000 or fewer that

is contiguous to a county having a population of 75,000 or fewer.

3. A municipality within a county described in subparagraph 1. or subparagraph 2.

For purposes of this paragraph, population shall be determined in accordance with the most recent official estimate pursuant to s. 186.901.

(q) "Target industry business" means a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the department in consultation with Enterprise Florida, Inc.:

1. Future growth.—Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in, international markets and businesses that replace domestic and international imports of goods or services.

2. Stability.—The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not typically subject to decline during an economic downturn.

3. High wage.—The industry should pay relatively high wages compared to statewide or area averages.

4. Market and resource independent.—The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis, except for businesses in the renewable energy industry.

5. Industrial base diversification and strengthening.—The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis. Special consideration should also be given to the development of strong industrial clusters that include defense and homeland security businesses.

6. Positive economic impact.—The industry is expected to have strong positive economic impacts on or benefits to the state or regional economies. Special consideration should be given to industries that facilitate the development of the state as a hub for domestic and global trade and logistics.

The term does not include any business engaged in retail industry activities; any electrical utility company as defined in s.366.02(2); any phosphate or other solid minerals severance, mining, or processing operation; any oil or gas exploration or production operation; or any business subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. Any business within NAICS code 5611 or 5614, office administrative services and business

support services, respectively, may be considered a target industry business only after the local governing body and Enterprise Florida, Inc., make a determination that the community where the business may locate has conditions affecting the fiscal and economic viability of the local community or area, including but not limited to, factors such as low per capita income, high unemployment, high underemployment, and a lack of year-round stable employment opportunities, and such conditions may be improved by the location of such a business to the community. By January 1 of every 3rd year, beginning January 1, 2011, the department, in consultation with Enterprise Florida, Inc., economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists, shall review and, as appropriate, revise the list of such target industries and submit the list to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(r) "Taxable year" means taxable year as defined in s. 220.03(1)(y).

(3) TAX REFUND; ELIGIBLE AMOUNTS.—

(a) There shall be allowed, from the account, a refund to a qualified target industry business for the amount of eligible taxes certified by the department that were paid by the business. The total amount of refunds for all fiscal years for each qualified target industry business must be determined pursuant to subsection (4). The annual amount of a refund to a qualified target industry business must be determined pursuant to subsection (6).

(b)1. Upon approval by the department, a qualified target industry business shall be allowed tax refund payments equal to $3,000 multiplied by the number of jobs specified in the tax refund agreement under subparagraph (5)(a)1., or equal to $6,000 multiplied by the number of jobs if the project is located in a rural community or an enterprise zone.

2. A qualified target industry business shall be allowed additional tax refund payments equal to $1,000 multiplied by the number of jobs specified in the tax refund agreement under subparagraph (5)(a)1. if such jobs pay an annual average wage of at least 150 percent of the average private sector wage in the area, or equal to $2,000 multiplied by the number of jobs if such jobs pay an annual average wage of at least 200 percent of the average private sector wage in the area.

3. A qualified target industry business shall be allowed tax refund payments in addition to the other payments authorized in this paragraph equal to $1,000 multiplied by the number of jobs specified in the tax refund agreement under subparagraph (5)(a)1. if the local financial support is equal to that of the state's incentive award under subparagraph 1.

4. In addition to the other tax refund payments authorized in this paragraph, a qualified target industry business shall be allowed a tax refund payment equal to $2,000 multiplied by the number of jobs specified in the tax refund agreement under subparagraph (5)(a)1. if the business:

a. Falls within one of the high-impact sectors designated under s. 288.108; or

b. Increases exports of its goods through a seaport or

airport in the state by at least 10 percent in value or tonnage in each of the years that the business receives a tax refund under this section. For purposes of this sub-subparagraph, seaports in the state are limited to the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

(c) A qualified target industry business may not receive refund payments of more than 25 percent of the total tax refunds specified in the tax refund agreement under subparagraph (5)(a)1. in any fiscal year. Further, a qualified target industry business may not receive more than $1.5 million in refunds under this section in any single fiscal year, or more than $2.5 million in any single fiscal year if the project is located in an enterprise zone. A qualified target industry business may not receive more than $7 million in refund payments under this section in all fiscal years, or more than $7.5 million if the project is located in an enterprise zone.

(d) After entering into a tax refund agreement under subsection (5), a qualified target industry business may:

1. Receive refunds from the account for the following taxes due and paid by that business beginning with the first taxable year of the business that begins after entering into the agreement:

a. Corporate income taxes under chapter 220.

b. Insurance premium tax under s. 624.509.

2. Receive refunds from the account for the following taxes due and paid by that business after entering into the

agreement:

a. Taxes on sales, use, and other transactions under chapter 212.

b. Intangible personal property taxes under chapter 199.

c. Excise taxes on documents under chapter 201.

d. Ad valorem taxes paid, as defined in s. 220.03(1).

e. State communications services taxes administered under chapter 202. This provision does not apply to the gross receipts tax imposed under chapter 203 and administered under chapter 202 or the local communications services tax authorized under s. 202.19.

(e) However, a qualified target industry business may not receive a refund under this section for any amount of credit, refund, or exemption previously granted to that business for any of the taxes listed in paragraph (d). If a refund for such taxes is provided by the department, which taxes are subsequently adjusted by the application of any credit, refund, or exemption granted to the qualified target industry business other than as provided in this section, the business shall reimburse the account for the amount of that credit, refund, or exemption. A qualified target industry business shall notify and tender payment to the department within 20 days after receiving any credit, refund, or exemption other than one provided in this section.

(f) Refunds made available under this section may not be expended in connection with the relocation of a business from one community to another community in the state unless the department determines that, without such relocation, the

business will move outside the state or determines that the business has a compelling economic rationale for relocation and that the relocation will create additional jobs.

(g) A qualified target industry business that fraudulently claims a refund under this section:

1. Is liable for repayment of the amount of the refund to the account, plus a mandatory penalty in the amount of 200 percent of the tax refund which shall be deposited into the General Revenue Fund.

2. Commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

TAB 1 – Tax Incentives

Reinstate the following tax incentives at the recommended caps and clearly define "eligible costs." Reinstatement of these tax incentives will promote the development of renewable energy infrastructure which would give Florida an advantage over other states when investors are looking to build plants.

- Renewable Energy Technologies Sales Tax Exemption- $1 million per year;
- Renewable Energy Technologies Investment Tax Credit - Increase current cap of $6.5 million to $10 million per year; and
- Renewable Energy Production Tax Credit - Remains the same at $0.01 for each kilowatt-hour of energy produced and sold with a cap of $5 million per year.

In order to avoid misinterpretations of which entities are eligible for tax credits, clarify that an "electric utility" refers to those utilities that sell electricity on a retail basis.

TAB 2 – Forest Inventory Analysis

Require the Department of Agriculture and Consumer Services (DACS) to develop a comprehensive statewide forest inventory analysis identifying where available biomass is located and ensuring forest sustainability.

Section 1. The Department of Agriculture and Consumer Services shall conduct a comprehensive statewide forest inventory analysis and study, utilizing Geographic Information System, to identify where available biomass is located, determine the available biomass resources, and ensure forest sustainability within the state. The Department shall submit the results of the study to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

TAB 3 – 10-Year Site Plans

Require the utilities, who file 10-year site plans with the Public Service Commission (PSC), to report the amount of renewable energy resources produced, purchased and proposed in Florida over the 10 year planning horizon and how it will impact present and future capacity and energy needs.

Section 1. Section 186.801, Florida Statutes, is amended to read:

186.801 Ten-year site plans.—

(1) Beginning January 1, 1974, each electric utility shall submit to the Public Service Commission a 10-year site plan which shall estimate its power-generating needs and the general location of its proposed power plant sites. The 10-year plan shall be reviewed and submitted not less frequently than every 2 years.

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

(c) The anticipated environmental impact of each proposed electrical power plant site.

(d) Possible alternatives to the proposed plan.

(e) The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

(f) The extent to which the plan is consistent with the state comprehensive plan.

(g) The plan with respect to the information of the state on energy availability and consumption.

(h) The amount of renewable energy resources the provid4er produces or purchases.

(i) The amount of renewable energy resources the provider plans to produce or purchase over the 10-year planning horixzon and the means by which such production or purchases will be achieved.

(j) A statement indicating how the production and purchase of renewable energy resources impact the providers present and future capacity and energy needs.

(3) In order to enable it to carry out its duties under this section, the commission may, after hearing, establish a study fee which shall not exceed $1,000 for each proposed plan studied.

(4) The commission may adopt rules governing the method of submitting, processing, and studying the 10-year plans as

57 required by this section.

TAB 4 – Need Determination Proceedings

Require the PSC to take into account the need to diversify Florida's energy generation fuel supply during a Need Determination proceeding. By placing value on fuel diversity, opportunities for alternative sources of energy improve, strengthening Florida's energy security.

Section 1. Section 403.519, Florida Statutes, is amended to read:

403.519 Exclusive forum for determination of need.—

(1) On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act.

(2) The applicant shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 21 days prior to the scheduled date for the proceeding. The commission shall publish notice of the proceeding in the manner specified by chapter 120 at least 21 days prior to the scheduled date for the proceeding.

(3) The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need to improve the balance of power plant fuel diversity and reduce Florida's dependence on fuel oil and natural gas, ~~for fuel diversity~~ and supply reliability, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available. The commission shall also

expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4). An order entered pursuant to this section constitutes final agency action.

(4) In making its determination on a proposed electrical power plant using nuclear materials or synthesis gas produced by integrated gasification combined cycle power plant as fuel, the commission shall hold a hearing within 90 days after the filing of the petition to determine need and shall issue an order granting or denying the petition within 135 days after the date of the filing of the petition. The commission shall be the sole forum for the determination of this matter and the issues addressed in the petition, which accordingly shall not be reviewed in any other forum, or in the review of proceedings in such other forum. In making its determination to either grant or deny the petition, the commission shall take into account ~~consider~~ the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, the need for adequate electricity at a reasonable cost, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

(a) The applicant's petition shall include:

1. A description of the need for the generation capacity.

2. A description of how the proposed nuclear or integrated gasification combined cycle power plant will enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. A description of and a nonbinding estimate of the cost of the nuclear or integrated gasification combined cycle power plant, including any costs associated with new, expanded, or relocated electrical transmission lines or facilities of any size that are necessary to serve the nuclear power plant.

4. The annualized base revenue requirement for the first 12 months of operation of the nuclear or integrated gasification combined cycle power plant.

5. Information on whether there were any discussions with any electric utilities regarding ownership of a portion of the nuclear or integrated gasification combined cycle power plant by such electric utilities.

(b) In making its determination, the commission shall take into account matters within its jurisdiction, which it deems relevant, including whether the nuclear or integrated gasification combined cycle power plant will:

1. Provide needed base-load capacity.

2. Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. Provide the most cost-effective source of power, taking

into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

(c) No provision of rule 25-22.082, Florida Administrative Code, shall be applicable to a nuclear or integrated gasification combined cycle power plant sited under this act, including provisions for cost recovery, and an applicant shall not otherwise be required to secure competitive proposals for power supply prior to making application under this act or receiving a determination of need from the commission.

(d) The commission's determination of need for a nuclear or integrated gasification combined cycle power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4)(a). An order entered pursuant to this section constitutes final agency action. Any petition for reconsideration of a final order on a petition for need determination shall be filed within 5 days after the date of such order. The commission's final order, including any order on reconsideration, shall be reviewable on appeal in the Florida Supreme Court. Inasmuch as delay in the determination of need will delay siting of a nuclear or integrated gasification combined cycle power plant or diminish the opportunity for savings to customers under the federal Energy Policy Act of 2005, the Supreme Court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over matters not accorded similar precedence by law.

(e) After a petition for determination of need for a nuclear or integrated gasification combined cycle power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant and new, expanded, or relocated electrical transmission lines or facilities of any size that are necessary to serve the nuclear power plant, shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred. Proceeding with the construction of the nuclear or integrated gasification combined cycle power plant following an order by the commission approving the need for the nuclear or integrated gasification combined cycle power plant under this act shall not constitute or be evidence of imprudence. Imprudence shall not include any cost increases due to events beyond the utility's control. Further, a utility's right to recover costs associated with a nuclear or integrated gasification combined cycle power plant may not be raised in any other forum or in the review of proceedings in such other forum. Costs incurred prior to commercial operation shall be recovered pursuant to chapter 366.

TAB 5 – Public Interest Determination for New Renewable Resources

Require the PSC to establish criteria for evaluating proposed renewable energy facilities or negotiated renewable energy power purchase agreements and establish reporting criteria. The requirement would create a consistent framework by which the PSC would evaluate renewable proposals and determine whether they are in the public interest, establish what information utilities must provide, and what criteria renewable projects will be evaluated against. Given this new framework, remove the current law that requires the PSC to adopt rules for a renewable portfolio standard.

Based on the criteria established in Proposal 5, require the PSC to set an investor-owned utility limit of 1 percent or 75 MW, whichever is less, of its overall generation capacity portfolio in any one year of approved renewable energy investments where those investment costs are above the least cost alternative. Placing a cap on the overall effect on the utilities' generation portfolio will avoid unreasonable rate impacts on customers.

Section 1. Section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

(1) 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.

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

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

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

(c) "Renewable energy" means renewable energy as defined in s. 366.91(2)(d).

(d) "Renewable energy facility" means a renewable energy facility as defined in s. 366.91(2)(e). ~~"Renewable energy credit" or "REC" means a product that represents the unbundled, separable, renewable attribute of renewable energy produced in Florida and is equivalent to 1 megawatt-hour of electricity generated by a source of renewable energy located in Florida.~~

~~(e) "Renewable portfolio standard" or "RPS" means the minimum percentage of total annual retail electricity sales by a provider to consumers in Florida that shall be supplied by~~

~~renewable energy produced in Florida.~~

~~(3) The commission shall adopt rules for a renewable portfolio standard requiring each provider to supply renewable energy to its customers directly, by procuring, or through renewable energy credits. In developing the RPS rule, the commission shall consult the Department of Environmental Protection and the Department of Agriculture and Consumer Services. The rule shall not be implemented until ratified by the Legislature. The commission shall present a draft rule for legislative consideration by February 1, 2009.~~

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

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

~~1. Shall include methods of managing the cost of compliance with the renewable portfolio standard, whether through direct supply or procurement of renewable power or through the purchase of renewable energy credits. The commission shall have rulemaking authority for providing annual cost recovery and incentive-based adjustments to authorized rates of return on common equity to providers to incentivize renewable energy. Notwithstanding s. 366.91(3) and (4), upon the ratification of the rules developed pursuant to this subsection, the commission may approve projects and power sales agreements with renewable power producers and the sale of renewable energy credits needed to comply with the renewable portfolio standard.~~

~~In the event of any conflict, this subparagraph shall supersede s. 366.91(3) and (4). However, nothing in this section shall alter the obligation of each public utility to continuously offer a purchase contract to producers of renewable energy.~~

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

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

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

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

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

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

~~sponsored by the electric power supplier.~~

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

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

(3) ~~(4)~~ Upon the filing of a petition by a utility the commission shall make a public interest determination regarding investments in renewable energy.

(a) The criteria the commission shall use for evaluating whether proposed renewable energy facilities or negotiated renewable energy purchased power agreements are in the public interest shall include at a minimum whether the proposed facilities or negotiated purchased power agreements:

1. Provide adequate electricity at a reasonable cost;

2. Diversify the types of fuel used to generate electricity in Florida in order to promote reliable electric service;

3. Help lessen Florida's dependence on imported fuels for the production of electricity;

4. Reduce the risk of fuel cost volatility in Florida, thereby promoting rate stability;

5. Reduce regulatory costs with adverse environmental impacts in Florida;

6. Promote economic development.

(b) Any renewable energy project proposed by a utility pursuant to this section shall be put out to competitive bid.

(c) The commission shall provide minimum requirements and information to be included in a Request for Proposal (RFP) and other information related to the RFP process.

(d) Utilities shall report to the commission on an annual basis the status of approved renewable energy facilities and, upon operation, specific data on job creation, fuel displaced by renewable energy, operational statistics and any other information deemed relevant by the commission in assessing the benefits of the projects to the state and the need for additional renewable generation.

(4) UTILITY INVESTMENTS IN A NEW RENEWABLE ENERGY FACILITY.--

(a) Upon petition by the utility, the commission shall have the authority to approve for cost recovery purposes, the costs associated with a utility self-built renewable energy facility or negotiated purchase power agreement that has been determined to be in the public interest.

(b) The commission shall provide for cost recovery in its annual cost recovery proceedings of all reasonable and prudent costs incurred by a utility pursuant to this section.

(c) Total annual investments made under this provision for

self-built renewable energy facilities that are above avoided costs as defined by 366.051 F.S. shall not exceed 1% or 75 MW, whichever is less, of the utilities' overall generation portfolio in any one year.

(5) Revenues derived from any renewable energy credit, carbon credit, or other mechanism that attributes value to the production of renewable energy, either existing or hereafter devised, received by a provider by virtue of the production or purchase of renewable energy for which cost recovery is approved under this subsection with the provider's ratepayers such that the rates are credited at least 70 percent of such revenues.

~~In order to demonstrate the feasibility and viability of clean energy systems, the commission shall provide for full cost recovery under the environmental cost-recovery clause of all reasonable and prudent costs incurred by a provider for renewable energy projects that are zero greenhouse gas emitting at the point of generation, up to a total of 110 megawatts statewide, and for which the provider has secured necessary land, zoning permits, and transmission rights within the state. Such costs shall be deemed reasonable and prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility. The provider shall report to the commission as part of the cost-recovery proceedings the construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy project, and any other information deemed relevant by the~~

~~commission. Any provider constructing a clean energy facility pursuant to this section shall file for cost recovery no later than July 1, 2009.~~

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

(7) ~~(6)~~ Nothing in this section shall be construed to impede or impair terms and conditions of existing contracts.

(8) ~~(7)~~ The commission shall ~~may~~ adopt rules to administer and implement the provisions of this section by January 1, 2013.

TAB 6 – Renewable Energy Financing Projects

Allow a utility to invest in a PSC approved financing project with renewable energy facilities in Florida. Currently this type of utility financing project is allowed with government solid waste facilities, but not with private renewable energy facilities. A joint utility and private renewable energy financing project would allow the utility to recover its expenses and a reasonable profit. This would promote investment by utilities in renewable energy facilities, when such a contract is determined by the PSC to be in the public interest.

Section 1. Section 366.91, Florida Statutes, is amended to read:

366.91 Renewable energy.—

(1) 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.

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

(a) "Biomass" means a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

(b) "Customer-owned renewable generation" means an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy.

(c) "Net metering" means a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on site.

(d) "Renewable energy" means electrical energy produced

from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

(e) "Renewable energy facility" means a facility that produces electric energy in Florida as defined by renewable energy in (d).

(3) On or before January 1, 2006, each public utility must continuously offer a purchase contract to producers of renewable energy. The commission shall establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers and may adopt rules to administer this section. The contract shall contain payment provisions for energy and capacity which are based upon the utility's full avoided costs, as defined in s. 366.051; however, capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Each contract must provide a contract term of at least 10 years. Prudent and reasonable costs associated with a renewable energy contract shall be recovered from the ratepayers of the contracting utility, without

differentiation among customer classes, through the appropriate cost-recovery clause mechanism administered by the commission.

(4) On or before January 1, 2006, each municipal electric utility and rural electric cooperative whose annual sales, as of July 1, 1993, to retail customers were greater than 2,000 gigawatt hours must continuously offer a purchase contract to producers of renewable energy containing payment provisions for energy and capacity which are based upon the utility's or cooperative's full avoided costs, as determined by the governing body of the municipal utility or cooperative; however, capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Each contract must provide a contract term of at least 10 years.

(5) On or before January 1, 2009, each public utility shall develop a standardized interconnection agreement and net metering program for customer-owned renewable generation. The commission shall establish requirements relating to the expedited interconnection and net metering of customer-owned renewable generation by public utilities and may adopt rules to administer this section.

(6) On or before July 1, 2009, each municipal electric utility and each rural electric cooperative that sells electricity at retail shall develop a standardized interconnection agreement and net metering program for customer-

owned renewable generation. Each governing authority shall establish requirements relating to the expedited interconnection and net metering of customer-owned generation. By April 1 of each year, each municipal electric utility and rural electric cooperative utility serving retail customers shall file a report with the commission detailing customer participation in the interconnection and net metering program, including, but not limited to, the number and total capacity of interconnected generating systems and the total energy net metered in the previous year.

(7) Under the provisions of subsections (5) and (6), when a utility purchases power generated from biogas produced by the anaerobic digestion of agricultural waste, including food waste or other agricultural byproducts, net metering shall be available at a single metering point or as a part of conjunctive billing of multiple points for a customer at a single location, so long as the provision of such service and its associated charges, terms, and other conditions are not reasonably projected to result in higher cost electric service to the utility's general body of ratepayers or adversely affect the adequacy or reliability of electric service to all customers, as determined by the commission for public utilities, or as determined by the governing authority of the municipal electric utility or rural electric cooperative that serves at retail.

(8) A contracting producer of renewable energy must pay the actual costs of its interconnection with the transmission grid or distribution system.

(9) FINANCING PROJECTS —

(a) Upon the filing of a petition for approval by a public utility under this section, the commission shall have the authority to allow the public utility to enter into a contract with a renewable energy facility to provide financing to such renewable energy facility for the construction of the electrical component of that facility.

(b) When reviewing a petition, the commission shall consider the criteria set forth in 366.92(3) F.S.

(c) The public utility must currently be providing electrical energy at retail within the geographic area the renewable energy facility is located.

(d) The amount of financing, including all carrying costs, plus reasonable and prudent administrative costs incurred by the public utility, must be recovered from the ratepayers of the public utility pursuant to the provisions of the Florida Energy Efficiency and Conservation Act. A public utility may not be required to pay to the renewable energy facility any funding in excess of that collected from its ratepayers.

(10) FINANCING PROJECTS-CAPACITY PAYMENTS AND REFUNDS.—As pertaining to the Financing Projects Program pursuant to paragraph (9), the amounts required of a public utility as financing-capacity payments shall be paid to the renewable energy facility during the construction of the project as established by the contract and approved by the commission. Such payments are subject to being refunded in full or proportionately to the public utility if the electrical component of the renewable energy facility fails. Any refund shall be calculated and paid annually. If during the life of the

contract a renewable energy facility is abandoned, closed down, or rendered illegal by applicable law, ordinance, or regulation, the full amount of any unrefunded financing-capacity payments is subject to being refunded to the public utility. Any refund by a renewable energy facility of financing-capacity payments to a public utility shall be refunded by the public utility to its customers as a credit shown on the customers' bills as soon as is practicable after the receipt of the refunded portions. The obligation to make a refund is binding on the renewable energy facility and its successors in interest. In the case of a combination of renewable energy facilities, if such combination is dissolved or otherwise ceases to function, the refund is a legal and binding obligation of the individual renewable energy facilities which participated in the formation of the combination, in proportion to their interests.

(11) ELECTRIC ENERGY PRICING PROGRAM.—As pertaining to the Financing Project Program in paragraph (9), the commission shall establish rules relating to the purchase of capacity or energy by electric utilities as defined in this section from renewable energy facilities. The commission shall authorize levelized payments for purchase of capacity or energy from a renewable energy facility. Payments provided pursuant to this subsection are subject to the terms and conditions set forth in subsection (10) for financing-capacity payments, and such payments are recoverable from ratepayers of the electric utility as provided in subparagraph (9)(d).

TAB 7 – Agency Energy Reporting

Require all buildings in the state building fleet, 5,000 square feet or more of conditioned space, to report their energy consumption, and requires the Department of Management Services to go to rule making in coordination with DACS to establish standard and uniform benchmarking and reporting requirements. Currently this reporting is not standardized across state agencies making the reporting incomplete and inaccurate.

Section 1. Section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(1) ENERGY CONSUMPTION AND COST DATA.—Each state agency shall collect data on energy consumption and cost. The data gathered shall be on state-owned facilities and metered state-leased facilities used by the state of 5,000 net square feet or more of conditioned space ~~of 5,000 net square feet or more~~. This ~~These~~ data will be used in the computation of the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. Collected data shall be reported annually to the department in a format prescribed by the department.

(2) ENERGY MANAGEMENT COORDINATORS.—Each state agency, the Florida Public Service Commission, the Department of Military Affairs, and the judicial branch shall appoint a coordinator whose responsibility shall be to advise the head of the state agency on matters relating to energy consumption in facilities under the control of that head or in space occupied by the various units comprising that state agency, in vehicles operated by that state agency, and in other energy-consuming activities of the state agency. The coordinator shall implement the energy management program agreed upon by the state agency concerned and assist the department in the development of the State Energy Management Plan.

(3) CONTENTS OF THE STATE ENERGY MANAGEMENT PLAN.—The Department of Management Services in coordination with The

Department of Agriculture and Consumer Services shall adopt rules and forms for the development of the ~~develop a~~ state energy management plan consisting of, but not limited to, the following elements:

(a) Data-gathering requirements;

(b) Standard and uniform benchmarking requirements as a measure to evaluate the energy efficiency of state-owned and leased buildings;

(c) ~~(b)~~ Building energy audit procedures;

(d) ~~(c)~~ Standard and uniform ~~Uniform~~ data analysis and reporting procedures;

(e) ~~(d)~~ Employee energy education program measures;

(f) ~~(e)~~ Energy consumption reduction techniques;

(g) ~~(f)~~ Training program for state agency energy management coordinators; and

(h) ~~(g)~~ Guidelines for building managers.

The plan shall include a description of actions that state agencies shall take to reduce consumption of electricity and nonrenewable energy sources used for space heating and cooling, ventilation, lighting, water heating, and transportation.

(4) ADOPTION OF STANDARDS.—

(a) All state agencies shall adopt a standard and uniform state-wide sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings.

(b) No state agency shall enter into new leasing agreements for office space that does not meet Energy Star

building standards, except when the appropriate state agency head determines that no other viable or cost-effective alternative exists.

(c) All state agencies shall develop energy conservation measures and guidelines for new and existing office space where state agencies occupy ~~more than~~ 5,000 square feet or more of conditioned space. These conservation measures shall focus on programs that may reduce energy consumption and, when established, provide a net reduction in occupancy costs.

TAB 8 – Energy Efficiency and Conservation Evaluations

The legislature should direct DACS's Office of Energy in coordination with the Florida Energy Systems Consortium to evaluate methods to promote energy conservation and efficiency. Further, it should provide the consumer clear guidance on energy efficiency savings. The report should be completed by March 1, 2013, and presented to the Governor and the legislature.

Also, the legislature should require the PSC to evaluate how the Florida Energy Efficiency and Conservation Act (FEECA) statutes provide conservation and efficiency programs that are in the public interest and without undue burden on the customer.

Section 1. The Department of Agriculture and Consumer Services' Office of Energy in consultation with the Florida Public Service Commission, the Florida Building Commission and the Florida Energy Systems Consortium shall develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures. The Department shall post the information on its website by July 1, 2013.

Section 2. The Florida Public Service Commission (PSC) shall evaluate and prepare a report on the Florida Energy Efficiency and Conservation Act (FEECA) statutes and determine whether they remain in the public interest. The evaluation shall consider the costs to ratepayers, the incentives and disincentives associated with FEECA, and whether the programs create benefits without undue burden on the customer. The models and methods used to determine conservation goals shall be specifically addressed in the report. The PSC shall submit the report to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than January 31, 2013.

TAB 9 – Electric Vehicle Charging Stations

Clarify that electric vehicle charging stations are a service to the public and not the retail sale of electricity. This ensures that government entities or businesses installing and providing this service are not subject to the undue burden of regulatory fees that may be instituted by the PSC if they were to be considered retailers of electricity.

- Would direct the Florida Building Commission in coordination with DACS and the PSC to adopt rules to standardize the building and electric codes, permitting, and installation of the charging stations.
- Also would direct DACS to adopt rules to address definitions, method of sale, labeling requirements and price posting requirements to allow for consistency for consumers and the industry.
- The PSC is also instructed to conduct a study of the effects of the charging stations on energy consumption in the state as well as the effects on the grid.

Section 1. Section 366.94, Florida Statutes, is created to read:

366.94 - Electric Vehicle Charging Stations.--

(1) The Legislature finds that the provision of electric vehicle charging to the public is a service and not the retail sale of electricity. The rates, terms and conditions of electric vehicle charging services are not subject to regulation under this chapter regardless of the provider. Nothing in this section affects the ability of individuals, businesses or government entities to acquire install and/or utilize an electric vehicle charger for their own use for their own vehicles.

(2) The Florida Building Commission in coordination with the Department of Agriculture and Consumer Services and the Public Service Commission shall develop rules to provide uniform standards for building and electric codes, local permitting and installation of electric vehicle charging stations. The development of these standards is expressly preempted to the state and the Florida Building Commission in coordination with the Department of Agriculture and Consumer Services and the Public Service Commission. Any local government enforcing the subject areas of the standards established by this section must use the standards set forth pursuant to this section.

(3) The Department of Agriculture and Consumer Services shall develop rules to provide definitions, methods of sale, labeling requirements and price posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.

(4) The Public Service Commission is directed to conduct a study of the effects of the charging stations on energy consumption in the state as well as the effects on the grid. The Public Service Commission shall also investigate the feasibility of using off-grid solar photovoltaic power as a source of electricity for the electric vehicle charging stations.

(5) Parking spaces for electric vehicle charging stations.-

(a) It is unlawful for a person to stop, stand, or park a vehicle that is not capable of using an electrical recharging station within any parking space specifically designated for charging an electric vehicle.

(b) If a law enforcement officer finds a motor vehicle in violation of this section, the officer or specialist shall charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction, punishable as provided in s. 316.008(4) or s. 318.18.

TAB 10 – Streamlining Permitting for Biofuel Feedstock Crops

Require DACS in consultation with the University of Florida/Institute for Food and Agriculture Sciences to determine whether a plant material is exempt from the regulatory permitting process based on scientific evidence and practical experience. This would streamline the permitting process for feedstock crops for biofuels.

Section 1. Section 581.083, Florida Statutes, is amended to read:

581.083 Introduction or release of plant pests, noxious weeds, or organisms affecting plant life; cultivation of nonnative plants; special permit and security required.—

(1) The introduction into or release within this state of any plant pest, noxious weed, genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state as an injurious pest, parasite, or predator of other organisms, or any arthropod, is prohibited, except under special permit issued by the department through the division, which shall be the sole issuing agency for such special permits.

(2) Each application for a special permit shall be accompanied by a fee in an amount determined by the department, through its rulemaking authority, not to exceed $50. The department may waive this fee by rule for governmental agencies.

(3) Except for research projects approved by the department, no permit for any organism shall be issued unless the department has determined that the parasite, predator, or biological control agent is specific to a target organism or plant and not likely to become a pest of plants or other beneficial organisms. The department may rely on findings of the Department of Environmental Protection, the United States Department of Agriculture, and other agencies in making any determination about organisms used for biological control.

(4) A person may not cultivate a nonnative plant, algae, or blue green algae, including a genetically engineered plant,

algae, or blue green algae, ~~or a plant that has been introduced, for purposes of fuel production or purposes other than agriculture~~ in plantings greater in size than 2 contiguous acres, except under a special permit issued by the department through the division, which is the sole agency responsible for issuing such special permits. Such a permit shall not be required if the department determines, after consulting ~~in conjunction~~ with the Institute of Food and Agricultural Sciences at the University of Florida, that based on experience or research data, the nonnative plant, algae, or blue green algae, does not pose a known threat of becoming an ~~is not~~ invasive species or a pest of plants or native fauna under Florida conditions and subsequently exempts the plant by rule.

(a)1. Each application for a special permit must be accompanied by a fee as described in subsection (2) and proof that the applicant has obtained, on a form approved by the department, a bond ~~in the form approved by the department and~~ issued by a surety company admitted to do business in this state or a certificate of deposit, or other type of security adopted by rule of the Department which provides a financial assurance of cost recovery for the removal of a planting. The application must include, on a form provided by the department, the name of the applicant and the applicant's address or the address of the applicant's principal place of business; a statement completely identifying the nonnative plant to be cultivated; and a statement of the estimated cost of removing and destroying the plant that is the subject of the special permit and the basis for calculating or determining that estimate. If the applicant

is a corporation, partnership, or other business entity, the applicant must also provide in the application the name and address of each officer, partner, or managing agent. The applicant shall notify the department within 10 business days of any change of address or change in the principal place of business. The department shall mail all notices to the applicant's last known address.

2. As used in this subsection, the term "certificate of deposit" means a certificate of deposit at any recognized financial institution doing business in the United States. The department may not accept a certificate of deposit in connection with the issuance of a special permit unless the issuing institution is properly insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) Upon obtaining a permit, the permitholder may annually cultivate and maintain the nonnative plants as authorized by the special permit. If the permitholder ceases to maintain or cultivate the plants authorized by the special permit, if the permit expires, or if the permitholder ceases to abide by the conditions of the special permit, the permitholder shall immediately remove and destroy the plants that are subject to the permit, if any remain. The permitholder shall notify the department of the removal and destruction of the plants within 10 days after such event.

(c) If the department:

1. Determines that the permitholder is no longer maintaining or cultivating the plants subject to the special

permit and has not removed and destroyed the plants authorized by the special permit;

2. Determines that the continued maintenance or cultivation of the plants presents an imminent danger to public health, safety, or welfare;

3. Determines that the permitholder has exceeded the conditions of the authorized special permit; or

4. Receives a notice of cancellation of the surety bond,

the department may issue an immediate final order, which shall be immediately appealable or enjoinable as provided by chapter 120, directing the permitholder to immediately remove and destroy the plants authorized to be cultivated under the special permit. A copy of the immediate final order shall be mailed to the permitholder and to the surety company or financial institution that has provided security for the special permit, if applicable.

(d) If, upon issuance by the department of an immediate final order to the permitholder, the permitholder fails to remove and destroy the plants subject to the special permit within 60 days after issuance of the order, or such shorter period as is designated in the order as public health, safety, or welfare requires, the department may enter the cultivated acreage and remove and destroy the plants that are the subject of the special permit. If the permitholder makes a written request to the department for an extension of time to remove and destroy the plants that demonstrates specific facts showing why the plants could not reasonably be removed and destroyed in the

applicable timeframe, the department may extend the time for removing and destroying plants subject to a special permit. The reasonable costs and expenses incurred by the department for removing and destroying plants subject to a special permit shall be reimbursed to the department by the permitholder within 21 days after the date the permitholder and the surety company or financial institution are served a copy of the department's invoice for the costs and expenses incurred by the department to remove and destroy the cultivated plants, along with a notice of administrative rights, unless the permitholder or the surety company or financial institution object to the reasonableness of the invoice. In the event of an objection, the permitholder or surety company or financial institution is entitled to an administrative proceeding as provided by chapter 120. Upon entry of a final order determining the reasonableness of the incurred costs and expenses, the permitholder shall have 15 days following service of the final order to reimburse the department. Failure of the permitholder to timely reimburse the department for the incurred costs and expenses entitles the department to reimbursement from the applicable bond or certificate of deposit.

(e) Each permitholder shall maintain for each separate growing location a bond or a certificate of deposit in an amount determined by the department, but not more ~~less~~ than 150 percent of the estimated cost of removing and destroying the cultivated plants. The bond or certificate of deposit may not exceed $5,000 per acre, unless a higher amount is determined by the department to be necessary to protect the public health, safety, and

welfare or unless an exemption is granted by the department based on conditions specified in the application which would preclude the department from incurring the cost of removing and destroying the cultivated plants and would prevent injury to the public health, safety, and welfare. The aggregate liability of the surety company or financial institution to all persons for all breaches of the conditions of the bond or certificate of deposit may not exceed the amount of the bond or certificate of deposit. The original bond or certificate of deposit required by this subsection shall be filed with the department. A surety company shall give the department 30 days' written notice of cancellation, by certified mail, in order to cancel a bond. Cancellation of a bond does not relieve a surety company of liability for paying to the department all costs and expenses incurred or to be incurred for removing and destroying the permitted plants covered by an immediate final order authorized under paragraph (c). A bond or certificate of deposit must be provided or assigned in the exact name in which an applicant applies for a special permit. The penal sum of the bond or certificate of deposit to be furnished to the department by a permitholder in the amount specified in this paragraph must guarantee payment of the costs and expenses incurred or to be incurred by the department for removing and destroying the plants cultivated under the issued special permit. The bond or certificate of deposit assignment or agreement must be upon a form prescribed or approved by the department and must be conditioned to secure the faithful accounting for and payment of all costs and expenses incurred by the department for removing

and destroying all plants cultivated under the special permit. The bond or certificate of deposit assignment or agreement must include terms binding the instrument to the Commissioner of Agriculture. Such certificate of deposit shall be presented with an assignment of the permitholder's rights in the certificate in favor of the Commissioner of Agriculture on a form prescribed by the department and with a letter from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. Such assignment is irrevocable while a special permit is in effect and for an additional period of 6 months after termination of the special permit if operations to remove and destroy the permitted plants are not continuing and if the department's invoice remains unpaid by the permitholder under the issued immediate final order. If operations to remove and destroy the plants are pending, the assignment remains in effect until all plants are removed and destroyed and the department's invoice has been paid. The bond or certificate of deposit may be released by the assignee of the surety company or financial institution to the permitholder, or to the permitholder's successors, assignee, or heirs, if operations to remove and destroy the permitted plants are not pending and no invoice remains unpaid at the conclusion of 6 months after the last effective date of the special permit. The department may not accept a certificate of deposit that contains any provision that would give to any person any prior rights or claim on the proceeds or principal of such certificate of deposit. The department shall determine by rule whether an annual bond or

certificate of deposit will be required. The amount of such bond or certificate of deposit shall be increased, upon order of the department, at any time if the department finds such increase to be warranted by the cultivating operations of the permitholder. In the same manner, the amount of such bond or certificate of deposit may be adjusted downward or removed ~~decreased~~ when a decrease in the cultivating operations of the permitholder occurs or research or practical field knowledge and observation indicates low risk of invasiveness by the nonnative species ~~the cultivating operations warrants such decrease~~. Factors that may be considered for change include multiple years or cycles of successful large scale contained cultivation, no observation of plant, algae, or blue green algae, escape from managed areas or science-based evidence that established to approved adjusted cultivation practices will provide a similar level of containment of the nonnative plant, algae, or blue green algae. This paragraph applies to any bond or certificate of deposit, regardless of the anniversary date of its issuance, expiration, or renewal.

(f) In order to carry out the purposes of this subsection, the department or its agents may require from any permitholder verified statements of the cultivated acreage subject to the special permit and may review the permitholder's business or cultivation records at her or his place of business during normal business hours in order to determine the acreage cultivated. The failure of a permitholder to furnish such statement, to make such records available, or to make and deliver a new or additional bond or certificate of deposit is

cause for suspension of the special permit. If the department finds such failure to be willful, the special permit may be revoked.

TAB 11 – PSC Interconnection and Net Metering Rule Evaluation

Task the PSC to evaluate its current interconnection and net metering rules.

Section 1. The Florida Public Service Commission (PSC) shall evaluate and prepare a report on its current interconnection and net metering rules and determine whether they remain in the public interest and create benefits without undue burden on the customer. The rate impacts for all customers, the capacity size limit, and the effect on grid reliability shall be specifically addressed in the report. The PSC shall submit the report to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than January 31, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V