



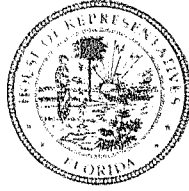
Energy & Utilities Subcommittee

MEETING PACKET

**Monday, February 6, 2012
212 Knott Building
3:30 PM – 5:30 PM**

**Dean Cannon
Speaker**

**Scott Plakon
Chair**



The Florida House of Representatives

State Affairs Committee

Energy & Utilities Subcommittee

Dean Cannon
Speaker

Scott Plakon
Chair

AGENDA

February 6, 2012

3:30 p.m. - 5:30 p.m.

Webster Hall, 212 Knott Building

Opening Remarks by Chair Plakon

Consideration of the following Proposed Committee Bill:

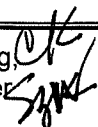

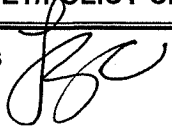
PCB ENUS 12-02 relating Energy

Closing Remarks by Chair Plakon

Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENUS 12-02 Energy
SPONSOR(S): Energy & Utilities Subcommittee
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2094 (c)

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

SUMMARY ANALYSIS

In an effort to establish a framework by which to encourage the appropriate development of renewable energy projects in Florida, the bill addresses the following:

- Revises the ten-year site plan process to specifically require electric utilities to provide information concerning actual and planned renewable energy production.
- Reinstates the sales tax exemption for equipment, machinery, and other materials for renewable energy technologies; the renewable energy technologies investment tax credit; and the renewable energy production credit.
- Clarifies that certain renewable energy producers not licensed as electric utilities are qualified to receive a tax refund.
- Requires the Department of Economic Opportunity to analyze and evaluate the economic benefits for certain renewable energy projects prior to a public interest determination by the Public Service Commission (PSC).
- Authorizes a utility to petition the PSC for a determination that a proposed renewable energy facility is in the public interest and provides a list of criteria for the PSC to consider in making that determination. Allows for cost recovery of reasonable and prudent costs incurred by a utility for an approved project. Requires the PSC to adopt rules to establish a public interest determination process, including competitive bidding. Provides an effective date of July 1, 2013 for the rules to take effect.
- Requires the PSC to consider the need to improve the balance of power plant fuel diversity and supply reliability within the state and within the generation portfolio of the applicant when considering the need for a proposed power plant larger than 75 megawatts.
- Streamlines the permitting process for feedstock crops for biofuels and avoids unnecessary financial assurance requirements.
- Requires the Department of Agriculture and Consumer Service (DACs) to conduct a statewide forest inventory analysis.

In addition, the bill addresses the following issues:

- Authorizes DACs to establish a website regarding cost savings associated with energy efficiency and conservation measures.
- Provides that the rates, terms and conditions of electric vehicle charging services by a non-utility are not subject to regulation by the PSC. Requires DACs to adopt rules related to sales at electric vehicle charging stations (labeling, price posting, methods of sale, etc.). Directs the PSC to conduct a study on the potential effects of electric vehicle charging stations on both energy consumption and the electric grid.
- Requires the PSC, in consultation with DACs, to contract for a study to evaluate the effectiveness of the Florida Energy Efficiency and Conservation Act, subject to a specific appropriation.
- Requires coordination between the Department of Management Services and the DACs in further developing a state energy management plan for state buildings over 5,000 square feet.
- Establishes the Office of Public Counsel within the Financial Services Commission (FSC). Provides for appointment and removal of the Public Counsel by the FSC. Provides for a type two transfer of the Office of Public Counsel from the legislature to the FSC.

The Revenue Estimating Conference estimates that the sales tax exemption for renewable energy technologies will result in a negative fiscal impact of \$.8 million on state government and \$.2 million on local governments per fiscal year for FY 2012-2013 through FY 2015-2016; and the renewable energy technologies investment tax credit and the renewable energy production credit will result in a negative fiscal impact on state government of \$2.5 million for FY 2012-2013, \$11.3 million for FY 2013-2014, \$15 million for FY 2014-2015, and \$15 million for FY 2015-2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb02.ENUS.DOCX

DATE: 2/4/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Office of Energy, Department of Agriculture and Consumer Services

Background and Creation

In response to the energy crisis in the 1970s, the State Energy Office was established by the Legislature in 1975. Prior to becoming a part of the Department of Agriculture and Consumer Services, it has been housed in the Department of Administration, the Department of Community Affairs, the Department of Environmental Protection, and the Executive Office of the Governor. In 2006, the Legislature established the Florida Energy Commission, as an arm of the Legislature, to develop recommendations for legislation to establish a state energy policy.¹

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

In 2008, the Legislature established the Florida Energy and Climate Commission (Commission or FECC) as the state entity for recommending, implementing, and coordinating Florida's energy policy and for coordinating all federal energy programs delegated to the state. The measure, in effect, merged the Department of Environmental Protection's Florida Energy Office with the Legislature's Florida Energy Commission and administratively placed the new entity within the Executive Office of the Governor. In 2009, the Senate failed to confirm the membership of the Commission.

In 2011, the Legislature abolished the Florida Energy and Climate Commission and transferred all of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the FECC from the Executive Office of the Governor to the Department of Agriculture and Consumer Services.

Among its responsibilities, the Department of Agriculture and Consumer Services' Office of Energy administers tax incentive programs; administers the provisions of the Florida Energy and Climate Protection Act; works cooperatively with other state entities regarding energy-related matters; and provides energy policy recommendations to the Legislature.

2012 Policy Recommendations to the Legislature

On January 12, 2012, Commissioner of Agriculture Adam Putnam presented the following policy recommendations to the House Energy and Utilities Subcommittee:

Infrastructure Investment:

Proposal 1 — Reinststate 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.

¹ Former s. 377.901(5), F.S.
STORAGE NAME: pcb02.ENUS
DATE: 2/4/2012

- 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.

Ten-Year Site Plans

Present Situation

Section 186.801, F.S., requires each electric utility in the state to submit, at least once every 2 years, a Ten-Year Site Plan that provides an estimate of the utility's power-generating needs and the general location of its proposed power plant sites. As a matter of practice, the Public Service Commission (PSC) requires each utility to submit a plan on an annual basis. Upon preliminary study of a plan, the PSC must classify each plan as "suitable" or "unsuitable." However, it is recognized that Ten-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 PSC. In its preliminary study, the PSC must review:

- The need, including the need as determined by the commission, for electrical power in the area to be served.
- The effect on fuel diversity within the state.
- The anticipated environmental impact of each proposed electrical power plant site.
- Possible alternatives to the proposed plan.
- 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.
- The extent to which the plan is consistent with the state comprehensive plan.
- The plan with respect to the information of the state on energy availability and consumption.

Effect of Proposed Changes

The bill adds three items to the list of matters that the PSC must review when conducting its preliminary study of a utility's Ten-Year Site Plan. These items are:

- The amount of renewable energy resources the utility produces or purchases.
- The amount of renewable energy resources the utility plans to produce or purchase over the 10-year planning horizon and the means by which such production or purchases will be achieved.
- The utility's indication of how the production and purchase of renewable energy resources affect the utility's present and future capacity and energy needs.

The addition of these items will provide decision-makers with annual information on the current and long-term outlook for new renewable energy generation in Florida's generation mix. These changes do not require utilities to increase their production or purchase of renewable energy.

Sales and Use Tax Exemption for Renewable Energy Technologies

Present Situation

In 2006, the Legislature authorized a sales tax exemption,² in the form of a tax refund, for renewable energy technologies in Florida, occurring between July 1, 2006, and June 30, 2010. Taxpayers applying for the exemptions were required to submit an application to the Energy Office³ to determine eligibility before submitting a sales tax refund claim to the Department of Revenue. The exemption applied to the following items:

- Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of \$2 million in taxes each state fiscal year for all taxpayers.
- Commercial stationary hydrogen fuel cells, up to a limit of \$1 million in taxes each state fiscal year for all taxpayers.
- Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-100), including fueling infrastructure, transportation, and storage, up to a limit of \$1 million in taxes each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualified for the exemption.

The sales tax exemptions for hydrogen-powered vehicles and hydrogen fuel cells were not well subscribed to during the duration of the program; however, the sales tax exemption for materials used in the distribution of biodiesel and ethanol made gains in use each year, reaching 100 percent of the funds being expended by the last year of the program. The program expired on July 1, 2010.

Effect of Proposed Changes

The bill reinstates the biofuel portion of the sales and use tax exemption for another four years (FY 2012-2013 through FY 2015-2016) and expands it to include materials used in the distribution of other renewable fuels, up to a limit of \$1 million in taxes each state fiscal year for all taxpayers.

The bill defines "renewable fuel" as a fuel produced from biomass that is used to replace or reduce the quantity of fossil fuel present in motor fuel or diesel fuel. "Biomass" means biomass as defined in s. 366.91, F.S.,⁴ "motor fuel" means motor fuel as defined in s. 206.01, F.S.,⁵ and "diesel fuel" means diesel fuel as defined in s. 206.86, F.S.⁶

² See former s. 212.08(7)(ccc), F.S.

³ When the legislation was passed, the Energy Office was in the Department of Environmental Protection. Subsequently, in 2008, the office was moved to the Executive Office of the Governor, under the Florida Energy and Climate Commission.

⁴ Section 366.91(2)(a), F.S., defines "biomass" as "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."

⁵ Section 206.01(9), F.S., defines "motor fuel" as "all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle."

⁶ Section 206.86, F.S., defines "diesel fuel" as "all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle."

⁶ Section 220.192(1)(c), F.S.

The Department of Agriculture and Consumer Services and the Department of Revenue are to jointly administer the program, which expires July 1, 2016.

Renewable Energy Technologies Investment Tax Credit

Present Situation

In 2006, the Legislature created s. 220.192, F.S., which provided for a credit against either the corporate income tax or the franchise tax to be granted in an amount equal to the "eligible costs." "Eligible costs" were defined as 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, in connection with an investment in the following:

- 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, up to a limit of \$3 million per state fiscal year for all taxpayers.
- 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, 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.
- Production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state [gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualified], up to a limit of \$6.5 million per state fiscal year for all taxpayers.⁷

Hydrogen-powered vehicles and hydrogen vehicle fueling station tax credits were not claimed during the first three fiscal years that the program was in existence, but 100 percent of the funds were expended during the last year of the program. Commercial stationary hydrogen fuel cell credits were not claimed during the first two years of the program; however, 100 percent of the funds were expended during the last two years of the program. Production, storage, and distribution of biodiesel and ethanol credits were issued for the first three fiscal years with varying balances, and 100 percent of the funds were expended the last year of the program.

The credit could be used for tax years beginning on or after January 1, 2007. The Energy Office⁶ and the Department of Revenue jointly administered the program, which expired on June 30, 2010.

Effect of Proposed Changes

The bill reinstates the biofuel portion of the Renewable Energy Technologies Investment Tax Credit for another four years, and expands it to include materials used in the distribution of other renewable fuels, up to a limit of \$10 million in taxes each state fiscal year for all taxpayers. The credit is capped at \$1 million per taxpayer per fiscal year.

The bill defines "renewable fuel" as a fuel produced from biomass that is used to replace or reduce the quantity of fossil fuel present in motor fuel or diesel fuel. "Biomass" means biomass as defined in s. 366.91, F.S.,⁹ "motor fuel" means motor fuel as defined in s. 206.01, F.S.,¹⁰ and "diesel fuel" means diesel fuel as defined in s. 206.86, F.S.¹¹

⁶ When the legislation was passed, the Energy Office was in the Department of Environmental Protection. Subsequently, in 2008, the
⁷ Section 220.192(1)(c), F.S.

⁸ When the legislation was passed, the Energy Office was in the Department of Environmental Protection. Subsequently, in 2008, the office was moved to the Executive Office of the Governor, under the Florida Energy and Climate Commission.

⁹ Section 366.91(2)(a), F.S., defines "biomass" as "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."

The credit can be used for tax years beginning on or after January 1, 2013, and will be granted in an amount equal to the eligible costs (seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs in connection with an investment in the production, storage, and distribution of biodiesel, ethanol, and other renewable fuel in the state, including the costs of constructing, installing, and equipping such technologies in the state) incurred between July 1, 2012, and June 30, 2016. In the event of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used until December 31, 2018. The Department of Agriculture and Consumer Services and the Department of Revenue are to jointly administer the program.

Florida Renewable Energy Production Credit

Present Situation

In 2006, the Legislature created s. 220.193, F.S., which was designed to encourage the development and expansion of facilities that produce renewable energy in Florida. The credit was available to new renewable energy facilities that were operationally placed in service after May 1, 2006, or expanded renewable energy facilities that increased electrical production and sale by more than 5 percent over what they had produced during 2005. The tax credit was based on the taxpayer's production and sale of electricity. The program applied to electricity production and sales made between January 1, 2007, and June 30, 2010.

The tax credit was equal to \$0.01 for each kilowatt-hour of electricity produced and sold or used during a given tax year. The program was capped at \$5 million per state fiscal year for all taxpayers. The production tax credits were utilized every fiscal year of the program's duration. The program was administered by the Department of Revenue and expired June 30, 2010.

Effect of Proposed Changes

The bill reinstates the Florida Renewable Energy Production Credit for electricity produced and sold¹² on or after January 1, 2013, through June 30, 2016. The tax credit is equal to \$0.01 for each kilowatt-hour of electricity produced and sold or used during a given tax year up to a limit of \$5 million in taxes each state fiscal year for all taxpayers, and capped at \$500,000 per taxpayer per fiscal year. In the event of insufficient tax liability on the part of the corporation, the unused amount may be carried forward for a period not to exceed 5 years. The Department of Revenue is directed to administer the program. This section of the bill takes effect upon becoming law and applies to tax years beginning on and after January 1, 2013.

¹⁰ Section 206.01(9), F.S., defines "motor fuel" as "all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle."

¹¹ Section 206.86, F.S., defines "diesel fuel" as "all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle."

¹² The corporate renewable energy production tax credit may be earned both for electricity *sold* and electricity *used* by the producer when the producer would have otherwise been required to purchase the electricity.

Energy Management in State Buildings

Present Situation

Section 255.257, F.S., requires each state agency to collect data on energy consumption and cost for those state-owned facilities and metered state-leased facilities¹³ that are 5,000 net square feet or more. The data is to be used to determine the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. Collected data must be reported annually to the Department of Management Services (DMS or department) in a format prescribed by DMS. Each state agency, the Public Service Commission, the Department of Military Affairs, and the judicial branch are required to appoint a coordinator to implement the energy management program agreed upon by that entity.¹⁴ According to the department, these coordinators are the energy liaison for their respective entities.

In accordance with s. 255.257(3), F.S., the department is required to develop a state energy management plan consisting of, but not limited to, the following elements:

- Data-gathering requirements;
- Building energy audit procedures;
- Uniform data analysis procedures;
- Employee energy education program measures;
- Energy consumption reduction techniques;
- Training program for state agency energy management coordinators; and
- Guidelines for building managers.

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

The department released the *State Energy Management Plan* (plan) in February 2010. The first annual agency energy consumption and cost data reports are to be submitted in September 2012. Each element required under subsection (3) is a chapter within the plan. The following is a description of the components within each element of the plan:¹⁵

1. Data Gathering Requirements / Sub-Metering Requirements - This plan establishes the following two categories of energy data gathering requirements:
 - Utility bill data – consumption, peak demand, and cost data via monthly bill statements from the utility provider.
 - Sub-metered data – consumption and real-time demand data from metering devices (“smart meters” in most cases) deployed by the agency.

In order to fulfill the sub-metered data reporting requirements, agencies will be required to install sub-meters for total building electrical consumption and demand at all state-owned and metered state-leased facilities larger than 5,000 net square feet. Where a building has particularly large energy consuming systems such as Heating, Ventilation & Air Conditioning (HVAC) or water heaters, additional sub-metering requirements may apply. This plan also outlines acceptable sub-metering schemes for all types of energy-consuming systems found in state buildings.

¹³ The term “metered state-leased facilities” does not include “full-service state-leased facilities” whereby the charge for utilities is factored into the rent.

¹⁴ Section 255.257(2), F.S.

¹⁵ *State Energy Management Plan*, Executive Summary, February 10, 2010, pp. 1-3.

2. Reporting System -This plan introduces a utility reporting system that has been designed to accomplish the following goals simultaneously:
 - Provide accurate utility records for the agency.
 - Meet the reporting requirements of this plan.
 - Meet the previous two goals while only requiring energy consumption and cost data to be entered once.
 - Utilize a generic and common format (Microsoft Excel®).

Annual submission to DMS of the reporting forms presented in the plan is required. The reporting system consolidates energy consumption and cost data in a single format that automatically generates the reporting forms required in this plan. The reporting system has been developed to simultaneously meet the utility recordkeeping and energy management goals of state agencies. The reporting system will require some initial setup. Some basic/intermediate Microsoft Excel® training may be required. The result of such setup and training procedures will ultimately be a more thorough, yet necessary, understanding of the mechanics involved in effective energy management.

3. Uniform Data Analysis Procedures -This plan summarizes basic data analysis procedures for energy consumption data and, more importantly, energy demand data. The energy demand data required in the plan will be used to identify energy-related behaviors such as equipment schedules (start/stop times), occupancy schedules, and peak load occurrences so that energy usage can be managed optimally and very likely reduced.
4. Building Energy Audit Procedures - This plan provides recommended procedures for conducting a thorough energy audit in a state building. Energy audits are a vital part of an effective energy management strategy.
5. Employee Energy Education Program Measures - These measures will be developed in the future based on input from agency energy management coordinators.
6. Techniques to Reduce Energy Consumption - The energy reduction techniques presented in this plan go beyond day-to-day strategies to control energy consumption and costs. The techniques presented pertain to operations and renovations in existing buildings. Agencies in the position of replacing energy-consuming equipment through either fixed capital outlay or performance contracting methods should consult these techniques. Many of the techniques presented address the urgency of considering the true relationship between energy efficiency and long-term costs when energy-related decisions are at hand.
7. Training Requirements - The training requirements of this plan center around the long-term goal of developing "certified energy managers" (CEM) by the Association of Energy Engineers. Qualified energy managers are essential to the goal of effectively reducing energy consumption and costs.
8. Guidelines for Building Managers - The guidelines presented in this plan are general in nature and are intended to provide an account of the daily and weekly activities that can reduce building energy consumption. Building managers are encouraged to take an active role in energy conservation and the agencies should include them in all such efforts.

Effect of Proposed Changes

The bill directs DMS in coordination with the Department of Agriculture and Consumer Services to further develop the *State Energy Management Plan*. The bill also expands the element of "uniform data analysis procedures" to include uniform reporting procedures.

Tax Refund Program for Qualified Target Industry Businesses

Present Situation

Section 288.106, F.S., which creates the tax refund program for qualified target industry businesses, provides legislative findings 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.” Further, the section provides 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.”

Section 288.106(3), F.S., provides for a tax refund to a qualified target industry business for the amount of eligible taxes certified by the department that were paid by the business. The amount of the refund is \$3,000 multiplied by the number of jobs created or \$6,000 multiplied by the number of jobs if the project is located in a rural community or an enterprise zone.

A qualified target industry business gets additional tax refund payments of:

- \$1,000 multiplied by the number of jobs if the 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 the jobs pay an annual average wage of at least 200 percent of the average private sector wage in the area;
- \$1,000 multiplied by the number of jobs if the local financial support is equal to that of the state’s incentive award; and
- \$2,000 multiplied by the number of jobs if the business falls within one of the designated high-impact sectors or 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.

“Target industry business”¹⁶ is defined as 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 of Economic Opportunity in consultation with Enterprise Florida, Inc.:

- Future growth.¹⁷
- Stability.¹⁸
- High wage.¹⁹
- Market and resource independent.²⁰
- Industrial base diversification and strengthening.²¹
- Positive economic impact.²²

¹⁶ By January 1 of every 3rd year, beginning January 1, 2011, the Department of Economic Opportunity, 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ The industry should pay relatively high wages compared to statewide or area averages.

²⁰ 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.

²¹ 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.

The term “target industry business” does not include the following:

- Any business engaged in retail industry activities;
- Any electrical utility company;
- 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.²³

The statute does not specify that the term “target industry business” includes renewable energy businesses; however, it does imply that they are included in that definition, whereby the “Market and Resource Independent” criterion includes a requirement that, “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.**”²⁴

The definition goes on, however, to specifically exclude “any electrical utility company.” Reportedly, this exclusionary language has been interpreted to include any business that sells electricity, even to a utility at wholesale. This interpretation prevents a renewable energy producer from taking advantage of this tax refund in conjunction with either s. 366.051, F.S., (cogeneration; small power production) or s. 366.91(3) or (4), F.S., (standard offer purchase contract).

Effect of Proposed Changes

The bill amends the tax refund program for qualified target industry businesses, by clarifying that an electrical utility company that is excluded from the definition of “target industry business” is one that meets the definition of an “electrical utility” in s. 366.02(2), F.S. That subsection provides that an “electric utility” means “any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.”

This will allow renewable energy producers who only sell electricity to a utility at wholesale to be eligible for the tax refund.

Evaluation of Economic Benefits of New Renewable Energy Projects

Present Situation

In 2011, the Legislature created the Department of Economic Opportunity (DEO) “to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.”²⁵ To accomplish this purpose, the DEO is provided the following duties:

- Facilitate the direct involvement of the Governor and the Lieutenant Governor in economic development and workforce development projects designed to create, expand, and retain businesses in this state, to recruit business from around the world, and to facilitate other job-creating efforts.

²² 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.

²³ Section 288.106(2)(q), F.S.

²⁴ Section 288.106(2)(q)4., F.S.

²⁵ Section 1, ch. 2011-142, Laws of Florida.

- Recruit new businesses to this state and promote the expansion of existing businesses by expediting permitting and location decisions, worker placement and training, and incentive awards.
- Promote viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities.
- Ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies.
- Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; commercialization of products, services, or ideas developed in public universities or other public institutions; and the development and promotion of professional and amateur sporting events.²⁶

Four divisions are created by statute within the DEO, including the Division of Strategic Business Development (the division).²⁷ Among other things, this division is responsible for analyzing and evaluating business prospects identified by the Governor, the executive director of the department, and Enterprise Florida, Inc.²⁸

Effect of Proposed Changes

The bill requires the Department of Economic Opportunity, through its Division of Strategic Business Development, to “[i]ndependently analyze and evaluate the regional and statewide economic benefits associated with a renewable energy project submitted to the Public Service Commission” for review under the public interest determination process established by the bill, which is discussed in detail below. Under the public interest determination process, the Public Service Commission (PSC) must consider, among other things, the regional and statewide economic benefits associated with a proposed renewable energy project. The DEO’s analysis is used to help guide the PSC’s consideration of the potential economic impacts of a project.

Renewable Energy Policy / Public Interest Determination Process

Present Situation

Section 366.91(3), F.S., requires each investor-owned electric utility in the state to continuously offer a purchase contract to producers of renewable energy, though the utility is not permitted to pay more under the contract than the incremental costs to the utility if it had generated the power itself or purchased the power from another source (i.e., the utility’s “full avoided costs”). To implement this provision, the Public Service Commission (PSC) requires that each utility make available a separate standard offer contract based on the next planned fossil fuel generating plant of each technology type identified in the utility’s Ten-Year Site Plan.²⁹ Currently, natural gas power plants are the only types of fossil-fuel power plants identified in the Ten-Year Site Plans filed by the state’s investor-owned utilities. Thus, the utilities’ full avoided costs are based on the costs of new natural gas power plants. Because the costs to produce renewable energy generally exceed the costs associated with new natural gas power plants, payments for renewable energy based on a utility’s full avoided costs are often insufficient to support the development of many renewable energy projects.

As an alternative to the standard offer contracts required by s. 366.91(3), F.S., the PSC encourages utilities and renewable energy developers to negotiate contracts for the purchase of capacity and

²⁶ Section 20.60(4), F.S.

²⁷ Section 20.60(3), F.S.

²⁸ Section 20.60(5)(a), F.S.

²⁹ Rule 25-17.250(1), F.A.C.

energy, where those contracts would allow the utility to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability, and energy security.³⁰ Still, PSC rules provide that these negotiated contracts may be deemed prudent only if the costs to the utility do not exceed its full avoided costs.³¹

Current law does not provide a dedicated, explicit process for determining the prudence of a utility's investment in a renewable energy power plant less than 75 megawatts in capacity or a utility's decision to enter into a contract to purchase renewable energy at a price above its full avoided costs, prior to the utility making a commitment to such an investment.³² The PSC will permit the utility to recover its investment in such projects only if the PSC finds that the funds were prudently invested.³³ This determination is largely based on whether the project is the least-cost alternative to supply power needed by the utility to serve its ratepayers, though the PSC is not prohibited from considering other factors.

A utility will likely not invest in a new renewable energy project, such as a renewable energy facility or a renewable energy purchased power agreement, absent some certainty that it will be able to recover the costs of the project. In many cases, a renewable energy facility or purchase will not be the least-cost alternative available, and in some instances the facility may not make a significant contribution to electrical system reliability as compared to other resources. Still, the renewable energy facility or purchase may yield other benefits to the utility and/or the state. There is currently no clear statutory direction for the PSC to weigh these potential benefits in a prudence determination for renewable energy power plants less than 75 megawatts in capacity or utility purchases of renewable energy at a price above the utility's full avoided costs.

When determining the need for an electrical power plant with a capacity of 75 megawatts or higher, the PSC must consider, among other things, whether the proposed plant is the most cost-effective alternative available.³⁴ To assist it in evaluating this factor, the PSC requires each investor-owned electric utility, prior to filing a petition for determination of need, to evaluate supply-side alternatives to the proposed power plant by issuing a Request for Proposals (RFP).³⁵ The PSC's rule requires notice of the RFP by publication and specifies the minimum information required in the notice as well as the minimum information required in the RFP document. The rule establishes other procedural guidelines for the RFP process and for the evaluation of proposals received.³⁶

In 2008, the Legislature directed the PSC to adopt rules for a renewable portfolio standard (RPS) to require each investor-owned electric utility to supply renewable energy to its customers by producing or

³⁰ Rule 25-17.240(1), F.A.C.

³¹ See Rule 25-17.240, F.A.C., which states:

Negotiated contracts will be considered prudent for cost recovery purposes if it is demonstrated by the investor-owned utility that the purchase of firm capacity and energy from the renewable generating facility pursuant to the rates, terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility and provide fuel diversity, fuel price stability, and energy security at a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the renewable generating facility under the contract.

(Emphasis added.)

³² Nothing in current law explicitly prohibits a utility from requesting that the PSC make a determination as to the prudence of a proposed new plant or negotiated power purchase prior to the utility's commitment. Utilities have included provisions in some purchased power contracts to make the contracts contingent upon PSC approval and have sought a prudence determination from the PSC prior to the contract becoming effective. Further, a utility could seek approval through a limited proceeding pursuant to s. 366.076, F.S., though the PSC could expand the scope of the proceeding to include other matters.

³³ See s. 366.06(1), F.S., which states, in pertinent part:

The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public . . .

(Emphasis added.)

³⁴ Section 403.519(3), F.S.

³⁵ Rule 25-22.082, F.A.C.

³⁶ *Id.*

purchasing the energy or by purchasing renewable energy credits.³⁷ The law, codified within section 366.92, F.S., provided that the PSC's rule could not be implemented until ratified by the Legislature. The commission presented a draft RPS rule for legislative consideration in early 2009. The Legislature has not ratified the draft rule.

Effect of Proposed Changes

The bill establishes a dedicated framework for the PSC to determine that a proposed renewable energy project is prudent and in the public interest. The bill defines "renewable energy project" to include the construction of a new renewable energy generating facility, the conversion of an existing fossil fuel generating facility to a renewable facility, or a contract to purchase renewable energy. Renewable energy facilities that require a determination of need pursuant to existing law³⁸ are not eligible under the process established in the bill. Thus, renewable energy generating facilities of 75 megawatts in capacity or higher would not be eligible and would continue to be reviewed by the PSC through the existing need determination process.

The bill provides that, in order to determine that a project is in the public interest, the PSC must find that the project provides an overall net benefit to the state. In making this determination, the PSC is required to consider the following seven factors:

- The estimated cost and estimated rate impacts of the project.
- The impact of the project on the reliability and integrity of the utility's system and the statewide electric grid.
- The extent to which the project strengthens fuel supply reliability to the utility and the state.
- The extent to which the project promotes rate stability by reducing the risk of fuel cost volatility.
- The extent to which the project retains energy expenditures in the state or regional economy.
- The extent to which the project reduces the utility's regulatory costs associated with adverse environmental impacts.
- The regional and statewide economic benefits associated with the project, including independent analysis of these benefits by the Department of Economic Opportunity.

Under current practice, the PSC typically would determine the prudence of a new electric generation facility or purchase based primarily on whether the project is the least-cost alternative to supply power needed by the utility to serve its ratepayers. The criteria set forth in the bill require the PSC to continue to look at the estimated cost and rate impacts of a project and the impacts of a project on system reliability and integrity. The bill expands the PSC's review to include other factors that the PSC must explicitly consider in making a public interest determination, including regional and statewide economic benefits. The PSC historically has not been given the statutory responsibility or duty to conduct this type of economic analysis. Thus, the bill calls upon the Department of Economic Opportunity (DEO) to provide an independent analysis of these economic benefits for the PSC to consider in its review.

The bill allows the utility to select the type and technology of the renewable energy resource that it elects to use. The bill requires that a proposed renewable energy project be selected through a competitive bidding process, based on the utility's choice of technology. This process is intended to allow market forces to help shape projects submitted for review. As a result, this process should provide the PSC with some assurance that it is presented with the best alternative based on the type and technology of the renewable energy resource selected by the utility.

If the PSC determines through its review that a renewable energy project is in the public interest, the bill provides that all reasonable and prudent costs incurred for the project are recoverable through the utility's environmental cost recovery charges.³⁹ The bill specifies the types of costs recoverable for

³⁷ Chapter 2008-227, s. 42, L.O.F.

³⁸ A determination of need is required for any steam or solar electrical generating facility, except for such facilities with a capacity of less than 75 megawatts. Sections 403.503(14) and 403.519, F.S.

³⁹ Section 366.8255, F.S., establishes a mechanism for a utility to recover specified environmental compliance costs through a charge separate from the utility's base rates. This charge is referred to as the environmental cost recovery charge.

each type of project defined by the bill as a "renewable energy project," i.e., new construction, conversion of an existing fossil-fuel plant, and a purchase contract.

The bill requires the PSC to adopt rules to implement the public interest determination process as follows:

- Provide a process for competitive bidding of a renewable energy project based on the type and technology of the renewable energy resource that the utility elects to use.
- Provide minimum requirements and information that a utility must include in a request for proposals for a new renewable energy project and other information related to the request for proposal and competitive bidding processes.
- Establish minimum requirements and information that a utility must include in a petition for a public interest determination for a renewable energy project.
- Provide for recovery through the environmental cost recovery clause of all reasonable and prudent costs incurred by a utility for a renewable energy project that the commission determines to be in the public interest.
- Establish a mechanism for the sharing of 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, and received by a utility by virtue of the production or purchase of renewable energy found to be in the public interest.⁴⁰
- Require a utility to report to the commission, on an annual basis, the status of the project, the economic impacts of the project on the region and the state, the amount and type of fuel displaced by the project, operational statistics, and any other information deemed relevant by the commission.
- Require a seller of renewable energy, under a purchased power agreement approved pursuant to the public interest determination process, to surrender to the utility all renewable attributes of the renewable energy purchased.

The bill provides that rules promulgated by the PSC to implement the public interest determination process shall not take effect prior to July 1, 2013.

The bill also establishes procedural guidelines for the public interest determination process. The bill requires the PSC, through its staff, to determine within 7 days whether a petition for a public interest determination is complete. If the PSC finds that the petition is not complete, it must notify the petitioner and provide an opportunity to correct any deficiency. When the petition is deemed complete, the PSC must forward a copy of the petition to the DEO within 3 days. The DEO may request additional information it deems necessary to complete its review. Within 45 days of receipt of the petition, the DEO must complete its analysis and evaluation and submit a report reflecting its findings to the PSC. The bill recognizes the rights of parties to the PSC's public interest determination proceeding to present their own evidence relating to the regional and statewide economic impacts of a proposed project. The bill requires the PSC to issue a final order within 180 days of receipt of the petition.

The bill specifies that the creation of the public interest determination process may not be construed to serve as a basis for renegotiating or repricing an existing contract. Further, the bill specifies that it may not be construed to apply to purchases required pursuant to s. 366.051 or 366.91, F.S. Thus, contracts entered into pursuant to these sections, which require pricing at or below the utility's full avoided cost, may not be made subject to the public interest determination process set forth in the bill.

The bill repeals the provisions of section 366.92, F.S., that require the PSC to prepare a draft RPS rule and present it for legislative consideration.

⁴⁰ The bill provides that a utility may retain from these revenues no more than the amount deemed reasonable by the commission to cover the utility's transaction costs associated with the credit or other mechanism, plus 5 percent of the remaining revenues. The bill provides that the remainder of the revenues shall be credited to the utility's ratepayers.

Electric Vehicle Charging Stations

Present Situation

Many local governments and commercial businesses are looking at installing electric vehicle charging stations with the intent to provide the service of electric vehicle charging for retail. The Florida Supreme Court has found that 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.⁴¹ A “public utility” is defined in s. 366.02(1), F.S., as “Every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state... .”

Public electric vehicle charging is an emerging service which is for the most part unregulated, with the exception of building codes for installation of the stations. Article 625 of the National Electric Code (NEC), 2011 edition, provides requirements for the construction and installation of electric vehicle charging systems. The state’s 2008 Florida Building Code contains basic electric vehicle charging systems requirements, adopted from the NEC prior to 2011. The Florida Building Commission plans to adopt the 2011 NEC as part of the 2013 Florida Building Code, with an expected effective date of March 2014.

There are many vehicle charging business models being implemented across the state, with varying levels of consistency. Some charging stations utilize a subscription mode whereby the user pays monthly for the service, similar to a cable service, and has access to a network of stations across the state. Some utilize a “pay as you go” model whereby the user pays an amount per kWh (kilowatt-hour) for usage. Other stations provide the service for free. Labeling and signage also varies across the state, as do policies for parking a non-electric vehicle in a parking space designed and specifically designated for charging an electric vehicle.

Estimates vary as to the number of electric vehicle charging stations that have been built or are being built in the state. Reportedly, there are anywhere from 100 to 300 in existence and up to approximately 500 targeted over the next six months. The explanation for this influx of charging stations partially stems from federal funding for electric vehicles. In March 2009, as part of the American Recovery and Reinvestment Act, the U.S. Department of Energy announced the following solicitations:

- Up to \$2 billion in federal funding for competitively awarded cost-shared agreements for manufacturing of advanced batteries and related drive components (Recovery Act – Electric Drive Vehicle Battery and Component Manufacturing Initiative); and
- Up to \$400 million for transportation electrification demonstration and deployment projects (Recovery Act – Transportation Electrification).⁴²

In August 2009, the U.S. Department of Energy awarded 48 grants to 25 states for projects in the following areas:

- \$1.5 billion in grants to U.S.-based manufacturers to produce batteries and their components and to expand battery recycling capacity;
- \$500 million in grants to U.S.-based manufacturers to produce electric drive components for vehicles, including electric motors, power electronics, and other drive train components; and
- \$400 million in grants to purchase thousands of plug-in hybrid and all-electric vehicles for test demonstrations in several dozen locations; to deploy them and evaluate their performance, to install electric charging infrastructure; and to provide education and workforce training to support the transition to advanced electric transportation systems.⁴³

⁴¹ PW Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988).

⁴² U.S. Department of Energy website: http://apps1.eere.energy.gov/news/daily.cfm/hp_news_id=159.

⁴³ 1st-in-hybrid.com website: <http://1st-in-hybrid.com/obama-and-the-next-generation-of-batteries-and-electric-vehicles/>.

Some of the awards affecting Florida include the following;

- Saft America, Inc. - Awarded \$95.5 million for the production of lithium-ion cells, modules, and battery packs for industrial and agricultural vehicles and defense application markets in Jacksonville.
- Coulomb's ChargePoint America program - Awarded \$37 million to provide nearly 5,000 charging stations to program participants in Austin, Texas; Detroit, Michigan; Los Angeles, California; New York City, New York; Orlando, Florida; Sacramento, California; the San Jose/San Francisco Bay Area; Bellevue/Redmond, Washington; and Washington, D.C. The company has a partnership with Ford, Chevrolet, and Smart USA.

Effect of Proposed Changes

The bill provides a legislative finding that the provision of electric vehicle charging to the public by a non-utility is a service and not the retail sale of electricity. Specifically, that rates, terms and conditions of electric vehicle charging services by a non-utility are not subject to regulation by the Public Service Commission.

It directs the Department of Agriculture and Consumer Services to adopt 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.

The bill also prohibits the stopping, standing, or parking of a vehicle that is not capable of using an electrical recharging station within any parking space specifically designated for charging an electric vehicle and provides that doing so may result in a charge of a noncriminal traffic infraction, the penalty and corresponding amount of which may be determined by local government ordinance.

Determination of Need for New Power Plants (over 75 MW)

Present Situation

The Florida Electrical Power Plant Siting Act (Siting Act), establishes a centrally coordinated process for the review of permit applications for electrical power plants.⁴⁴ The Department of Environmental Protection administers the process, and several affected agencies provide input in the certification proceeding concerning matters within their respective jurisdictions. Current law requires certification under the Siting Act for any steam or solar electrical generating facility, except for such facilities with a capacity of less than 75 megawatts.⁴⁵

Section 403.519, F.S., requires that an applicant seeking approval of an electrical power plant that is subject to the Siting Act must obtain a determination of need for the plant from the Public Service Commission (PSC). In making its determination, the PSC must take into account the following factors:

- The need for electric system reliability and integrity.
- The need for adequate electricity at a reasonable cost.
- The need for fuel diversity and supply reliability.
- Whether the proposed plant is the most cost-effective alternative available.
- Whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

The PSC must also expressly consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the proposed plant. The PSC may consider any other matters within its jurisdiction that it deems relevant.

⁴⁴ Section 403.502, F.S.

⁴⁵ Section 403.503(14), F.S.

In its *Review of the 2011 Ten-Year Site Plans for Florida's Electric Utilities*, the PSC addressed the issue of fuel diversity in the state, noting:

Because a balanced fuel supply can enhance system reliability and significantly mitigate the effects of volatile fuel price fluctuations, it is important that utilities have the greatest possible level of flexibility in their generation fuel source mix. Although the Commission has cited the growing lack of fuel diversity within the State of Florida as a major strategic concern for the past several years, the continuing trend of an increasing reliance on natural gas-fired generation is likely to persist into the foreseeable future. In previous Ten-Year Site Plans, Florida's utilities responded to fuel diversity concerns through the inclusion of multiple coal-fired power plants. Due to a combination of fuel cost uncertainties, high capital costs, and uncertainties regarding potential environmental costs related to possible carbon emission regulations, more than 4,000 MW of coal-fired generation has been canceled. In 2007 and 2008, the Commission approved the need for approximately 5,000 MW of new nuclear generation. However, over the course of the past two planning cycles, all of the new nuclear units have been delayed beyond the current ten-year planning horizon.

Currently, more than 50 percent of the electric power in Florida is generated by natural gas. The fact that the price of natural gas is expected to remain relatively low throughout the planning horizon is a major contributor to the forecast that natural gas will generate more than 55 percent of the electric energy in Florida by the year 2020.⁴⁶

Effect of Proposed Changes

The bill revises the current requirement that the PSC consider the need for fuel diversity and supply reliability when making a determination of need to require it to consider "the need to improve the balance of power plant fuel diversity and supply reliability" both within the state and within the applicant's portfolio of generating resources. Because each electric utility in the state relies on a different mix of generation resources, the bill's impact on the PSC's review of a proposed plant will vary to some extent based on the utility proposing the plant.

Permitting Process for Cultivation of Nonnative Plants

Present Situation

Section 581.083, F.S., prohibits 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, except under special permit issued by the Department of Agriculture and Consumer Services (DACS or the department).

A person may not cultivate a nonnative plant, including a genetically engineered plant 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. This permit may not be required if the department determines, in conjunction with the Institute of Food and Agricultural Sciences at the University of Florida, that the plant is not invasive and subsequently exempts the plant by rule.⁴⁷

Each application for a special permit must be accompanied by a fee and proof that the applicant has obtained a bond in the form approved by the department and issued by a surety company admitted to

⁴⁶ *Review of the 2011 Ten-Year Site Plans for Florida's Electric Utilities*, Florida Public Service Commission, November 2011, p. 4.

⁴⁷ Section 581.083(4), F.S.

do business in this state or a certificate of deposit.⁴⁸ 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.⁴⁹ 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 must notify DACS of the removal and destruction of the plants within 10 days after such event.⁵⁰

Each permitholder must maintain for each separate growing location a bond or a certificate of deposit in an amount determined by the department, but not less than 150 percent of the estimated cost of removing and destroying the cultivated plants. The amount of the bond or certificate of deposit may be increased or decreased, upon order of the department, at any time if the department finds such change to be warranted by the cultivating operations of the permitholder.⁵¹

Effect of Proposed Changes

The bill amends the permitting process for cultivation of nonnative plants. The bill adds algae and blue green algae to the list of plants a person may not cultivate in plantings greater in size than 2 contiguous acres without a special permit issued by DACS, and removes language referring to cultivating such plants "for purposes of fuel production or purposes other than agriculture."

The bill allows the department to exempt a plant from the permit requirement by rule if, based on experience or research data, the department, after consultation with – not "in conjunction with" as in current law – the Institute of Food and Agricultural Sciences at the University of Florida, determines that the nonnative plant, algae, or blue green algae, does not pose a known threat of becoming an invasive species or a pest of plants or native fauna under Florida conditions. The bill explicitly exempts from the permit requirement any plant or group of plants that, based on experience or research data, does not pose a known threat of becoming an invasive species and is commonly grown in Florida for purposes of human food consumption or for commercial feed, feedstuff, forage for livestock, nursery stock, or silviculture.

The bill allows, in addition to a bond or a certificate of deposit, any other type of security adopted by rule that would provide financial assurance of cost recovery for the removal of a planting. The bill decreases the bond requirement from "not less than 150 percent of the estimated cost" to "not more than 150 percent of the estimated cost."

The bill authorizes the decreasing or removal of a bond or certificate of deposit 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 bill includes factors that may be considered when applying a decrease or removal of a bond or certificate of deposit.

⁴⁸ Section 581.083(4)(a)1. and 2., F.S.

⁴⁹ *Id.*

⁵⁰ Section 581.083(4)(b), F.S.

⁵¹ Section 581.083(4)(e), F.S.

Transfer of Public Counsel

Present Situation

The Office of Public Counsel was created by the Legislature in 1974, as an office of the Legislature. The Public Counsel represents the general public of Florida in proceedings before the PSC and in proceedings before counties that have elected to regulate private water and wastewater companies.⁵² The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court.⁵³ The Public Counsel must perform his or her duties independently.⁵⁴

To perform its duties, the Public Counsel is granted the following specific powers in s. 350.0611, F.S.:

- To appear in, or petition to initiate, proceedings before the PSC or counties and advocate any position which he or she deems to be in the public interest, and to conduct discovery in such proceedings.
- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in such proceedings.
- To seek review of any determination, finding, or order of the commission or the counties in any proceeding in which he or she has participated as a party.
- To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions.
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission.

In a September 20, 2011, presentation to the Energy & Utilities Subcommittee, the Public Counsel provided examples of the types of cases that his office handles. These cases include proceedings involving utility base rates, charges for the recovery of nuclear power plant development costs, and other types of cost-recovery and pass-through charges for electric, natural gas, water, and wastewater utilities. The Office of Public Counsel also administers a portion of the Lifeline program that provides credits from the federal Universal Service Fund to certain low-income customers for local phone service.⁵⁵

In 2005, the Legislature created the Committee on Public Service Commission Oversight in s. 350.012, F.S. The committee, comprised of 12 members (6 Senate members appointed by the President of the Senate and 6 House members appointed by the Speaker of the House of Representatives), was created to appoint a public counsel and to screen persons nominated by the PSC Nominating Council for the Governor's consideration for appointment.⁵⁶

In 2008, the Legislature removed the committee's role in the public service commissioner selection process. The committee was renamed the Committee on Public Counsel Oversight.⁵⁷ The committee's primary duty is to appoint a Public Counsel, though it also may file a complaint with the Commission on Ethics alleging a violation of Chapter 350, F.S., by a commissioner, former commissioner, former commission employee, or member of the Public Service Commission Nominating Council.⁵⁸ The Public Counsel serves at the pleasure of the Committee on Public Counsel Oversight, subject to biennial reconfirmation by the committee.⁵⁹ The current Public Counsel was appointed in 2007 but has not yet been reconfirmed by the committee.

⁵² Section 350.0611, F.S.

⁵³ Section 350.061(1), F.S.

⁵⁴ *Id.*

⁵⁵ Section 364.10(3), F.S.

⁵⁶ Chapter 2005-132, L.O.F.

⁵⁷ Chapter 2008-227, L.O.F.

⁵⁸ Section 350.012, F.S.

⁵⁹ Section 350.061(1), F.S.

The Financial Services Commission (FSC) is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. These members serve as the agency head of the FSC. The FSC is a separate budget entity. Though it is created within the Department of Financial Services, the FSC is not subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.⁶⁰

The FSC is structured into two office: the Office of Insurance Regulation and the Office of Financial Regulation. The FSC may establish by rule any additional organizational structure of the offices. The FSC members serve as the agency head for purposes of rulemaking by the FSC and the offices, and each office director is the agency head for purposes of final agency action within his or her office's respective regulatory jurisdiction.⁶¹

The FSC appoints and removes directors of each office by a majority vote consisting of at least three affirmative votes, provide that both the Governor and the Chief Financial Officer are on the prevailing side. Current law sets minimum qualifications for each director.⁶²

Effect of Proposed Changes

The bill transfers the Office of Public Counsel from the Legislature to the Financial Services Commission.

To effect this transfer, the bill creates a third office within the FSC entitled "The Office of Public Counsel." The bill maintains the current responsibilities of the Public Counsel and continues to provide for the Public Counsel's independent performance of his or her duties. To help maintain this independence, the bill exempts the Office of Public Counsel from the FSC's authority to restructure the organization of offices operating within the FSC. Because the Public Counsel does not promulgate rules, the FSC's role as agency head for rulemaking purposes should not affect the Office of Public Counsel's operations.

The bill provides that the Public Counsel shall be appointed by, and serve at the pleasure of, the Financial Services Commission. The FSC shall appoint and may remove the Public Counsel by a majority vote consisting of at least three affirmative votes. Appointment is subject to confirmation by the Senate. The bill provides that the appointee shall perform the functions of the office until the Senate has confirmed the appointment. The bill provides for the appointment of an interim Public Counsel in the event of a vacancy.

The bill authorizes the Public Counsel to employ clerical, technical, and professional personnel that the Public Counsel deems to be reasonably necessary for the performance of the duties of the office and to supervise, direct, and set the compensation for all personnel of the office. The bill also authorizes the Public Counsel to retain the services of additional attorneys or experts, including expert witnesses and other technical personnel. The bill provides that the Public Counsel is responsible for preparing the budget for the office and submitting the budget to the FSC. The bill requires the FSC to set the salary of the Public Counsel and to allocate the salaries and expenses of the office from moneys appropriated by the Legislature.

The bill transfers the Office of Public Counsel from the legislative branch to the Financial Services Commission as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel was \$2.5 million and 16.5 full time positions from the General Revenue Fund for the 2010-2011 fiscal year.

⁶⁰ Section 20.121(3), F.S.

⁶¹ *Id.*

⁶² *Id.*

Forestry Inventory Analysis

Present Situation

Woody biomass from forest materials is a renewable, low-carbon feedstock and has become a popular contributor to renewable energy supplies in the state. Florida is made up of approximately 16.9 million acres of timberland, ninety-four percent of which is considered available for timber production.⁶³

In 2008, the Legislature directed the Department of Agriculture and Consumer Services (DACS or department), in conjunction with the Department of Environmental Protection, to conduct an economic impact analysis on the effects of granting financial incentives to energy producers who use woody biomass as fuel, including an analysis of the effects on wood supply and prices and impacts on current markets and forest sustainability.

The Division of Forestry within DACS contracted with the University of Florida to conduct the necessary analyses. The analyses indicated that a "significant amount of renewable energy can be developed through the utilization of woody biomass, while still keeping the forest resources of Florida sustainable and current forest industries strong. The key to this success is...to better utilize urban wood waste, logging debris and understory vegetation, and support the development of short rotation energy crops as renewable energy demands increase."⁶⁴ Although this report provided valuable analysis on the utilization and economic impacts of forest feedstocks, it did not address the identification of available forestry biomass in Florida.

According to DACS, the current state of forest inventory data is not comprehensive enough to be able to determine whether new wood-using facilities can be sustainably supplied in certain locations. More reliable information is necessary to determine the viability of biomass facilities, based on their proposed location, while also ensuring forest sustainability.⁶⁵

Effect of Proposed Changes

The bill directs DACS to conduct a comprehensive statewide forest inventory analysis and study, utilizing a Geographic Information System,⁶⁶ to do the following:

- Identify where available biomass is located,
- Determine the available biomass resources, and
- Ensure forest sustainability within the state.

The department must submit the results of the study to the Governor, the Senate President, and the Speaker of the House of Representatives no later than July 1, 2013.

Clearinghouse for Consumer Information

Present Situation

Presently, a variety of information is available on the Public Service Commission (PSC) website to help consumers save energy. According to the PSC, during the 2011 calendar year, more than 309,472 people accessed the PSC Web site consumer pages and the PSC's web Energy Conservation House

⁶³ *Woody Biomass Economic Study*, Department of Agriculture and Consumer Services, Department of Environmental Protection, and the University of Florida, March 1, 2010, p. 3.

⁶⁴ Correspondence from Commissioner of Agriculture Charles Bronson to Speaker of the House of Representatives Larry Cretul, March 1, 2010, (cover letter for *Woody Biomass Economic Study*).

⁶⁵ Email correspondence from DACS staff, January 31, 2012.

⁶⁶ A Geographic Information System (GIS) integrates hardware, software, and data for capturing, managing, analyzing, and displaying all forms of geographically referenced information.

had more than 58,401 visitors last year.⁶⁷ The interactive graphic house provides hyperlinks to access conservation information and tips geared for homes, with the goal of helping consumers discover ways to reduce their monthly utility bills.

The PSC also produces a quarterly *Consumer Connection E-Newsletter* which features current energy and water conservation topics and consumer tips, using text and video. This year, the *Consumer Connection E-Newsletter* was "tweeted" for the first time by the PSC and is also available on the PSC website.⁶⁸

Energy Star has a website whereby consumers can research appliances to determine how best to invest in energy-efficiency and conservation. ENERGY STAR is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that rates energy efficient products and practices.

There is, however, no singular "one-stop-shop" on-line source of information for Florida consumers who want to achieve energy-efficiency and conservation.

Effect of Proposed Changes

The bill directs DACS, in consultation with the PSC, the Florida Building Commission, and the Florida Energy Systems Consortium,⁶⁹ to develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures. The department is required to post the information on its website by July 1, 2013.

Electric Vehicle Charging Station Study

Present Situation

Electric vehicle charging stations are expanding across the state. As discussed in the *Electric Vehicle Charging Stations* section of this analysis, there are many business models being implemented with varying levels of consistency. Some charging stations utilize a subscription mode whereby the user pays monthly for the service, similar to a cable service, and has access to a network of stations across the state. Some utilize a "pay as you go" model whereby the user pays an amount per kWh (kilowatt-hour) for usage. Other stations provide the service for free.

Estimates vary as to the number of electric vehicle charging stations that have been built or are being built in the state. Reportedly, there are anywhere from 100 to 300 in existence and up to approximately 500 targeted over the next six months. Figures are not readily available on the number of privately-owned home charging stations nor does there appear to be a clear picture of whether the interest in public charging is widespread.

A quantifiable projection of the effect these charging stations (public and privately-owned) might have on energy consumption, and as a result on Florida's electric grid, has not been established due to the undetermined number of charging stations being built in Florida. With the escalated implementation of projects resulting from the transportation electrification demonstration and deployment awards (discussed in the *Electric Vehicle Charging Stations* section of this analysis), a clearer picture is emerging of the number of stations that may be installed in the next six months to a year.

⁶⁷ *Annual Report on Activities Pursuant to the Florida Energy Efficiency and Conservation Act (Draft)*, Public Service Commission, February 2012, p. 24.

⁶⁸ *Id.*

⁶⁹ The Legislature created the Florida Energy Systems Consortium in 2008 to "promote collaboration among experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state." It is composed of the 11 state universities and is housed at the University of Florida. See s. 1004.648, F.S.

Effect of Proposed Changes

The bill directs the Public Service Commission (PSC) to conduct a study of the potential effects of public charging stations and privately-owned electric vehicle charging on both energy consumption and the impact on the electric grid in the state. The bill also directs the PSC to investigate the feasibility of using off-grid solar photovoltaic power as a source of electricity for the electric vehicle charging stations. The results of the study are to be presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012.

Study of the Florida Energy Efficiency and Conservation Act (FEECA)

Present Situation

In 1980, the Legislature adopted the Florida Energy Efficiency and Conservation Act (FEECA).⁷⁰ In section 366.81, F.S., the Legislature summarizes its intent by expressing the following findings with respect to FEECA:

The Legislature . . . finds and declares that [the provisions of FEECA] are to be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; encouraging further development of demand-side renewable energy systems; and conserving expensive resources, particularly petroleum fuels.

The provisions of FEECA address two major topics:

- (1) Energy efficiency and conservation; and
- (2) The addition of new electrical power plants.

Energy Efficiency and Conservation

With respect to energy efficiency and conservation, s. 366.82(2), F.S., requires the Public Service Commission (PSC) to set appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems. The PSC expresses these as annual electric peak demand and energy savings over a ten-year period. The PSC may also allow efficiency investments across generation, transmission, and distribution systems. The PSC must adopt goals for each of seven electric utilities - Florida Power & Light Company, Progress Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, Florida Public Utilities Company, Orlando Utilities Commission, and JEA. Based on legislative changes to FEECA in 2008, the PSC, in developing goals, must evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems and must consider:

- The costs and benefits to customers participating in each identified measure.
- The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.
- The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.
- The costs imposed by state and federal regulations on the emission of greenhouse gases.⁷¹

Following the adoption of goals, the commission must require each utility to develop plans and programs to meet the overall goals within its service area. Utility programs may include variations in

⁷⁰ Chapter 80-65, s. 5, L.O.F.

⁷¹ Section 366.82(3), F.S.

rate design, load control, cogeneration, residential energy conservation subsidies, or any other measures within the PSC's jurisdiction which it finds likely to be effective.⁷²

The 2008 amendments to FEECA authorized the PSC to establish financial rewards and penalties for exceeding or failing to meet these goals. For those utilities subject to the PSC's ratesetting authority (Florida Power & Light Company, Progress Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, Florida Public Utilities Company), the PSC may authorize a financial reward to a utility that exceeds its goals and may authorize a financial penalty upon a utility that fails to meet its goals.⁷³ The PSC is also authorized to allow a utility an additional return on equity of up to 50 basis points if it exceeds 20 percent of its annual load-growth through energy efficiency and conservation measures.⁷⁴

Also under FEECA, the commission must require each utility to offer, or to contract to offer, energy audits to its residential customers.⁷⁵

The PSC last set energy efficiency and conservation goals for the seven "FEECA utilities" in 2009.⁷⁶ In its order, the PSC determined that each utility had performed an adequate analysis of available demand-side conservation and efficiency measures, including demand-side renewable energy systems. Without evaluating the full technical potential of supply-side conservation and efficiency measures, as required by the 2008 amendments to FEECA, the PSC determined that supply-side conservation and efficiency measures would be best addressed in a separate proceeding because they required different analytical methods. It is not clear that such measures have been addressed since the PSC reached this conclusion.

To arrive at goals for each investor-owned electric utility, the PSC, in considering the factors set forth in FEECA, as amended in 2008, utilized a test that made more demand-side conservation and efficiency measures appear cost-effective than would otherwise have been deemed cost-effective using tests historically applied by the PSC. This resulted in significantly higher goals for the investor-owned utilities. Each of the utilities submitted plans and programs to meet these new goals. After revisions, the PSC approved plans and programs for Gulf Power Company and Tampa Electric Company to meet the new goals. Based on concerns about customer rate impacts, the PSC retained the new goals for Florida Power & Light Company and Progress Energy Florida, but allowed these two utilities to continue utilizing their existing plans and programs.

In its 2009 order, the PSC determined that it was unnecessary to establish incentives at that time. The PSC determined that it would be in a better position to determine whether incentives are needed based on the utilities' experience in reaching the new goals.

To address FEECA's direction to establish demand-side renewable energy systems, the PSC directed each of the investor-owned utilities to establish pilot programs focused on encouraging solar water heating and solar photovoltaic technologies.

As noted above, the PSC did not evaluate supply-side conservation and efficiency measures, and it concluded that it was not appropriate to set goals for efficiency improvements in generation, transmission, and distribution, because those matters are continually reviewed through the utilities' planning processes.

Power Plant Determination of Need

Section 403.519, F.S., requires that an applicant seeking approval of an electrical power plant that is subject to the Siting Act must obtain a determination of need for the plant from the PSC. In making its determination, the PSC must take into account the following factors:

⁷² Section 366.82(7), F.S.

⁷³ Section 366.82(8), F.S.

⁷⁴ Section 366.82(9), F.S.

⁷⁵ Section 366.82(11), F.S.

⁷⁶ Order No. PSC-09-0855-FOF-EG, issued December 30, 2009.

- The need for electric system reliability and integrity.
- The need for adequate electricity at a reasonable cost.
- The need for fuel diversity and supply reliability.
- Whether the proposed plant is the most cost-effective alternative available.
- Whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

The PSC must also expressly consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the proposed plant. The PSC may consider any other matters within its jurisdiction that it deems relevant.

Effect of Proposed Changes

The bill requires the PSC, in consultation with the Department of Agriculture and Consumer Services, and subject to a specific appropriation, to contract for an independent evaluation of the effectiveness of FEECA in achieving the statutory objectives set forth in s. 366.81, F.S., which include the following: reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; encouraging further development of demand-side renewable energy systems; and conserving expensive resources, particularly petroleum fuels.

The bill requires that the evaluation include an assessment of:

- The effectiveness of the act in accomplishing statutory objectives in a cost-effective manner, taking into account short-term and long-term costs and benefits.
- The models and methods used to establish conservation goals and programs to meet those goals.
- The strengths and weaknesses of the act relative to alternative methods available to achieve the statutory objectives.
- The coordination between the goal-setting process in section 366.82, F.S., and the determination of need process in s. 403.519, F.S., including the manner in which supply-side conservation and efficiency measures are addressed.
- The potential for time-based rates and advanced metering technology, or other mechanisms, to allow customers to manage their energy consumption and allow for peak load shaving.

The findings and recommendations of the evaluation must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31, 2013.

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends 186.801, F.S., requires utilities' 10-year site plans to address existing and proposed renewable energy production and purchases.

Section 2. Amends s. 220.08, F.S.; provides definitions for the terms "biodiesel," "ethanol," and "renewable fuel"; provides for tax exemptions in the form of a rebate for the sale or use of certain equipment, machinery, and other materials for renewable energy technologies; provides eligibility requirements and tax credit limits; authorizes the Department of Revenue and the Department of Agriculture and Consumer Services to adopt rules; directs the Department of Agriculture and Consumer Services to determine and publish certain information relating to exemptions; provides for expiration of the exemption.

Section 3. Amends s. 220.192, F.S.; provides definitions; reestablishes a corporate tax credit for certain costs related to renewable energy technologies; provides eligibility requirements and credit limits; provides rule-making authority to the Department of Revenue and the Department of Agriculture

and Consumer Services; directs the Department of Agriculture and Consumer Services to determine and publish certain information; provides for expiration of the tax credit.

Section 4. Amends s. 220.193, F.S.; reestablishes a corporate tax credit for renewable energy production; provides definitions; provides a tax credit for the production and sale of renewable energy; provides for the use and transfer of the tax credit; provides rule-making authority to the Department of Revenue; provides for expiration of the tax credit.

Section 5. Amends s. 255.257, F.S.; directs the Department of Management Services in coordination with the Department of Agriculture and Consumer Services to further develop the state energy management plan.

Section 6. Amends s. 288.106, F.S.; further clarifies the definition of "target industry business" for purposes of the tax refund program for qualified target industry businesses.

Section 7. Amends s. 20.60, F.S.; requires the Department of Economic Opportunity to analyze and evaluate economic benefits for certain renewable energy projects.

Section 8. Amends s. 366.92, F.S.; provides definitions; authorizes a utility to petition the commission to determine that a proposed renewable energy facility is in the public interest; provides a standard of review; providing for cost recovery for reasonable and prudent cost incurred by a utility for a financing project; requires the Public Service Commission to adopt rules to establish a public interest determination process for renewable energy projects; establishes procedural guidelines for public interest determination.

Section 9. Creates s. 366.94, F.S., provides legislative intent relating to electric vehicle charging stations; provides that the rates, terms and conditions of electric vehicle charging services by a non-utility are not subject to regulation by the Public Service Commission; provides rule-making authority to the Department of Agriculture and Consumer Services; prohibits parking in spaces specifically designated for charging an electric vehicle under specific circumstances; provides penalties.

Section 10. Amends s. 403.519, F.S.; requires the Public Service Commission to make a need determination for electrical power to place greater emphasis on fuel diversity.

Section 11. Amends s. 581.083, F.S.; prohibits the cultivation of certain algae in plantings greater in size than 2 contiguous acres; provides exceptions; provides for exemption from special permitting requirements by rule; revises certain bonding requirements.

Section 12. Amends s. 20.121, F.S.; establishes the Office of Public Counsel within the Financial Services Commission.

Section 13. Amends s. 350.061, F.S.; provides for appointment and removal of the Public Counsel by the Financial Services Commission.

Section 14. Amends s. 350.0613, F.S.; establishes the authority of the Public Counsel to employ personnel, set compensation, retain experts, and prepare a budget.

Section 15. Amends s. 350.0614, F.S.; authorizes the Financial Services Commission to set the salary of the Public Counsel and allocate salaries and expenses for the office.

Section 16. Provides for a type two transfer of the Office of Public Counsel from the legislature to the Financial Services Commission.

Section 17. Requires the Department of Agriculture and Consumer Services to conduct a statewide forest inventory analysis.

Section 18. Requires the Department of Agriculture and Consumer Services, in consultation with other state agencies, to develop a clearinghouse of information regarding cost savings associated with energy efficiency and conservation measures; requires such information to be posted on its website.

Section 19. Directs the Public Service Commission to conduct a study on the potential effects of electric vehicle charging stations on both energy consumption and the electric grid.

Section 20. Requires the Public Service Commission, in consultation with the Department of Agriculture and Consumer Services, to contract for an independent evaluation of the effectiveness of the Florida Energy Efficiency and Conservation Act.

Section 21. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Sales and Use Tax Exemption for Renewable Energy Technologies

The Revenue Estimating Conference estimated the following negative impacts for the Sales and Use Tax Exemption for Renewable Energy Technologies on state revenues:

Impact	FY 2012-2013 Cash	FY 2012-2013 Annualized	FY 2013-2014 Cash	FY 2014-2015 Cash	FY 2015-2016 Cash
Total State Impact	(\$.8 m)	(\$.8 m)	(\$.8 m)	(\$.8 m)	(\$.8 m)

Renewable Energy Technologies Investment Tax Credit and the Florida Renewable Energy Production Credit

The Revenue Estimating Conference has estimated the following negative impacts for the Renewable Energy Technologies Investment Tax Credit and the Florida Renewable Energy Production Credit on state revenues:

Impact	FY 2012-2013 Cash	FY 2012-2013 Annualized	FY 2013-2014 Cash	FY 2014-2015 Cash	FY 2015-2016 Cash
Total State Impact	(\$2.5 m)	(\$15 m)	(\$.11.3 m)	(\$15 m)	(\$15 m)

2. Expenditures:

Evaluation of Economic Benefits of New Renewable Energy Projects

The bill requires the Department of Economic Opportunity to analyze and evaluate the regional and statewide economic benefits of renewable energy projects submitted to the Public Service Commission for a public interest determination. The resources required to satisfy this duty is indeterminate as it will depend upon the number and frequency of petitions for public interest determination filed with the PSC. Presumably, application fees associated with the public interest determination process would be set to cover these costs.

Public Interest Determination for New Renewable Energy Projects

The bill requires the Public Service Commission to adopt rules to implement a public interest determination process for new renewable energy projects and to process petitions for public interest determinations. The PSC will be required to dedicate resources to this rulemaking process. The resources required to satisfy the responsibility to process petitions is indeterminate as it will depend upon the number and frequency of petitions for public interest determination filed with the PSC.

Presumably, application fees associated with the public interest determination process would be set to cover these costs.

Study of the Florida Energy Efficiency and Conservation Act

Subject to a specific appropriation, the bill requires the PSC, in consultation with the Department of Agriculture and Consumer Service, to contract for an independent evaluation of the effectiveness of the Florida Energy Efficiency and Conservation Act in achieving its statutory objectives.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Sales and Use Tax Exemption for Renewable Energy Technologies

The Revenue Estimating Conference estimated the following revenue impacts for the Sales and Use Tax Exemption for Renewable Energy Technologies on state and local governments:

FY 2012-2013 Cash	FY 2012-2013 Annualized	FY 2013-2014 Cash	FY 2014-2015 Cash	FY 2015-2016 Cash
(\$.2 m)	(\$.2 m)	(\$.2 m)	(\$.2 m)	(\$.2 m)

The Revenue Estimating Conference has determined that there is no fiscal impact on local governments for the Renewable Energy Technologies Investment Tax Credits and the Florida Renewable Energy Production Credits.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Public Interest Determination for New Renewable Energy Projects

As noted in the Effect of Proposed Changes section of this analysis, the PSC currently encourages utilities and renewable energy developers to negotiate contracts for the purchase of capacity and energy, where those contracts would allow the utility to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability, and energy security. However, the PSC's rules provide that these negotiated contracts may be deemed prudent only if the costs to the utility, which are passed on to its ratepayers, do not exceed its full avoided costs.

As also noted in the Effect of Proposed Changes section of this analysis, the Florida Electrical Power Plant Siting Act requires the PSC to consider, among other things, the need for fuel diversity and supply reliability in making a determination of need for a new power plant. However, this directive has had limited impact on the development of new renewable energy power plants under the determination of need process.

The bill establishes a dedicated framework for the PSC to determine if a proposed renewable energy project is prudent and in the public interest. The bill defines "renewable energy project" to include the construction of a new renewable energy generating facility, the conversion of an existing fossil fuel generating facility to a renewable facility, or a contract to purchase renewable energy. To the extent that this framework results in the addition of new renewable energy facilities in Florida that otherwise would not have been developed, the bill may spur new investment in the state and jobs in the development, operation, and maintenance of the new facilities.

Before any new renewable energy facility is approved, the PSC must determine that the project provides an overall net benefit to the state, taking into account a number of factors, including the costs

and benefits of the project. If the PSC determines through its review that a renewable energy project is in the public interest, the bill provides that all reasonable and prudent costs incurred for the project are recoverable through the utility's environmental cost recovery charges, which are applied to all customers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is estimated to be insignificant and an exemption applies.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services rule-making authority for the following provisions:

- Sales and Use Tax Exemption for Renewable Energy Technologies in s. 212.08(7)(hhh), F.S.
- Renewable Energy Technologies Investment Tax Credit in s. 220.192, F.S.
- Florida Renewable Energy Production Credit in s. 220.193, F.S.
- Electric Vehicle Charging Stations in s. 366.94, F.S.
- Permitting and Security of Nonnative Plants in s. 581.083, F.S.

The bill gives the Department of Revenue rule-making authority for the following provisions:

- Renewable Energy Technologies Investment Tax Credit in s. 220.192, F.S.
- Florida Renewable Energy Production Credit in s. 220.193, F.S.

The bill requires the Public Service Commission to adopt rules to implement a public interest determination process for new renewable energy projects.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

PCB ENUS 12-02

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to energy; amending s. 186.801, F.S.;
 3 requiring utilities' 10-year site plans to address
 4 existing and proposed renewable energy production and
 5 purchases; amending s. 220.08, F.S.; providing
 6 definitions for the terms "biodiesel," "ethanol," and
 7 "renewable fuel"; providing for tax exemptions in the
 8 form of a rebate for the sale or use of certain
 9 equipment, machinery, and other materials for
 10 renewable energy technologies; providing eligibility
 11 requirements and tax credit limits; authorizing the
 12 Department of Revenue and the Department of
 13 Agriculture and Consumer Services to adopt rules;
 14 directing the Department of Agriculture and Consumer
 15 Services to determine and publish certain information
 16 relating to exemptions; providing for expiration of
 17 the exemption; amending s. 220.192, F.S.; providing
 18 definitions; reestablishing a corporate tax credit for
 19 certain costs related to renewable energy
 20 technologies; providing eligibility requirements and
 21 credit limits; providing rule-making authority to the
 22 Department of Revenue and the Department of
 23 Agriculture and Consumer Services; directing the
 24 Department of Agriculture and Consumer Services to
 25 determine and publish certain information; providing
 26 for expiration of the tax credit; amending s. 220.193,
 27 F.S.; reestablishing a corporate tax credit for
 28 renewable energy production; providing definitions;

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ORIGINAL

YEAR

29 providing a tax credit for the production and sale of
 30 renewable energy; providing for the use and transfer
 31 of the tax credit; providing rule-making authority to
 32 the Department of Revenue; providing for expiration of
 33 the tax credit; amending s. 255.257, F.S.; directing
 34 the Department of Management Services in coordination
 35 with the Department of Agriculture and Consumer
 36 Services to further develop the state energy
 37 management plan; amending s. 288.106, F.S.; further
 38 clarifying the definition of "target industry
 39 business" for purposes of the tax refund program for
 40 qualified target industry businesses; amending s.
 41 20.60, F.S.; requiring the Department of Economic
 42 Opportunity to analyze and evaluate economic benefits
 43 for certain renewable energy projects; amending s.
 44 366.92, F.S.; providing definitions; authorizing a
 45 utility to petition the commission to determine that a
 46 proposed renewable energy facility is in the public
 47 interest; providing a standard of review; providing
 48 for cost recovery for reasonable and prudent cost
 49 incurred by a utility for a financing project;
 50 requiring the Public Service Commission to adopt rules
 51 to establish a public interest determination process
 52 for renewable energy projects; establishing procedural
 53 guidelines for public interest determination; creating
 54 s. 366.94, F.S., relating to electric vehicle charging
 55 stations; providing legislative intent; providing that
 56 the rates, terms and conditions of electric vehicle

PCB ENUS 12-02

ORIGINAL

YEAR

57 charging services by a non-utility are not subject to
 58 regulation by the Public Service Commission; providing
 59 rule-making authority to the Department of Agriculture
 60 and Consumer Services; prohibiting parking in spaces
 61 specifically designated for charging an electric
 62 vehicle under specific circumstances; providing
 63 penalties; amending s. 403.519, F.S.; requiring the
 64 Public Service Commission to make a need determination
 65 for electrical power to place greater emphasis on fuel
 66 diversity; amending s. 581.083, F.S.; prohibiting the
 67 cultivation of certain algae in plantings greater in
 68 size than 2 contiguous acres; providing exceptions;
 69 providing for exemption from special permitting
 70 requirements by rule; revising certain bonding
 71 requirements; amending s. 20.121, F.S.; establishing
 72 the Office of Public Counsel within the Financial
 73 Services Commission; amending s. 350.061, F.S.;
 74 providing for appointment and removal of the Public
 75 Counsel by the Financial Services Commission; amending
 76 s. 350.0613, F.S.; establishing the authority of the
 77 Public Counsel to employ personnel, set compensation,
 78 retain experts, and prepare a budget; amending s.
 79 350.0614, F.S.; authorizing the Financial Services
 80 Commission to set the salary of the Public Counsel and
 81 allocate salaries and expenses for the office;
 82 providing for a type two transfer of the Office of
 83 Public Counsel from the legislature to the Financial
 84 Services Commission; requiring the Department of

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ORIGINAL

YEAR

85 Agriculture and Consumer Services to conduct a
 86 statewide forest inventory analysis; requiring the
 87 Department of Agriculture and Consumer Services, in
 88 consultation with other state agencies, to develop a
 89 clearinghouse of information regarding cost savings
 90 associated with energy efficiency and conservation
 91 measures; requiring such information to be posted on
 92 its website; directing the Public Service Commission
 93 to conduct a study on the potential effects of
 94 electric vehicle charging stations on both energy
 95 consumption and the electric grid; requiring the
 96 Public Service Commission, in consultation with the
 97 Department of Agriculture and Consumer Services, to
 98 contract for an independent evaluation of the
 99 effectiveness of the Florida Energy Efficiency and
 100 Conservation Act; providing an effective date.

101

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

103

104 Section 1. Subsection (2) of section 186.801, Florida
 105 Statutes, is amended to read:

106 186.801 Ten-year site plans.—

107 (2) Within 9 months after the receipt of the proposed
 108 plan, the commission shall make a preliminary study of such plan
 109 and classify it as "suitable" or "unsuitable." The commission
 110 may suggest alternatives to the plan. All findings of the
 111 commission shall be made available to the Department of
 112 Environmental Protection for its consideration at any subsequent

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113 | electrical power plant site certification proceedings. It is
 114 | recognized that 10-year site plans submitted by an electric
 115 | utility are tentative information for planning purposes only and
 116 | may be amended at any time at the discretion of the utility upon
 117 | written notification to the commission. A complete application
 118 | for certification of an electrical power plant site under
 119 | chapter 403, when such site is not designated in the current 10-
 120 | year site plan of the applicant, shall constitute an amendment
 121 | to the 10-year site plan. In its preliminary study of each 10-
 122 | year site plan, the commission shall consider such plan as a
 123 | planning document and shall review:

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

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

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

129 | (d) Possible alternatives to the proposed plan.

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

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

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

139 | (h) The amount of renewable energy resources the utility
 140 | produces or purchases.

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141 (i) The amount of renewable energy resources the utility
 142 plans to produce or purchase over the 10-year planning horizon
 143 and the means by which such production or purchases will be
 144 achieved.

145 (j) The utility's indication of how the production and
 146 purchase of renewable energy resources affect the utility's
 147 present and future capacity and energy needs.

148 Section 2. Paragraph (hhh) is added to subsection (7) of
 149 section 212.08, Florida Statutes, to read:

150 212.08 Sales, rental, use, consumption, distribution, and
 151 storage tax; specified exemptions.—The sale at retail, the
 152 rental, the use, the consumption, the distribution, and the
 153 storage to be used or consumed in this state of the following
 154 are hereby specifically exempt from the tax imposed by this
 155 chapter.

156 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 157 entity by this chapter do not inure to any transaction that is
 158 otherwise taxable under this chapter when payment is made by a
 159 representative or employee of the entity by any means,
 160 including, but not limited to, cash, check, or credit card, even
 161 when that representative or employee is subsequently reimbursed
 162 by the entity. In addition, exemptions provided to any entity by
 163 this subsection do not inure to any transaction that is
 164 otherwise taxable under this chapter unless the entity has
 165 obtained a sales tax exemption certificate from the department
 166 or the entity obtains or provides other documentation as
 167 required by the department. Eligible purchases or leases made
 168 with such a certificate must be in strict compliance with this

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169 subsection and departmental rules, and any person who makes an
 170 exempt purchase with a certificate that is not in strict
 171 compliance with this subsection and the rules is liable for and
 172 shall pay the tax. The department may adopt rules to administer
 173 this subsection.

174 (hhh) Equipment, machinery, and other materials for
 175 renewable energy technologies.-

176 1. As used in this paragraph, the term:

177 a. "Biodiesel" means the mono-alkyl esters of long-chain
 178 fatty acids derived from plant or animal matter for use as a
 179 source of energy and meeting the specifications for biodiesel
 180 and biodiesel blends with petroleum products as adopted by rule
 181 of the Department of Agriculture and Consumer Services.

182 Biodiesel may refer to biodiesel blends designated BXX, where XX
 183 represents the volume percentage of biodiesel fuel in the blend.

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

191 c. "Renewable fuel" means a fuel produced from biomass that
 192 is used to replace or reduce the quantity of fossil fuel present
 193 in motor fuel or diesel fuel. "Biomass" means biomass as defined
 194 in s. 366.91, "motor fuel" means motor fuel as defined in s.
 195 206.01, and "diesel fuel" means diesel fuel as defined in s.
 196 206.86.

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197 2. The sale or use of the following in the state is exempt
 198 from the tax imposed by this chapter: Materials used in the
 199 distribution of biodiesel (B10-B100), ethanol (E10-E100), and
 200 other renewable fuels, including fueling infrastructure,
 201 transportation, and storage, up to a limit of \$1 million in tax
 202 each state fiscal year for all taxpayers. Gasoline fueling
 203 station pump retrofits for biodiesel (B10-B100), ethanol (E10-
 204 E100), and other renewable fuel distribution qualify for the
 205 exemption provided in this section.

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

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

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

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

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

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

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

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

244 d. Each certified applicant shall be responsible for
 245 applying for the refund and forwarding the certification that
 246 the applicant is eligible to the Department of Revenue within 6
 247 months after certification by the Department of Agriculture and
 248 Consumer Services.

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

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

262 g. The Department of Agriculture and Consumer Services
 263 shall be responsible for ensuring that the total amount of the
 264 exemptions authorized do not exceed the limits specified in
 265 subparagraph 2.

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

275 6. This paragraph expires July 1, 2016.

276 Section 3. Section 220.192, Florida Statutes, is amended
 277 to read:

278 220.192 Renewable energy technologies investment tax
 279 credit.-

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

281 (a) "Biodiesel" means biodiesel as defined in ~~former s.~~
 282 212.08 (7) (hhh) ~~(ccc)~~.

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

287 (c) "Eligible costs" means ~~+~~ seventy-five percent of all
 288 capital costs, operation and maintenance costs, and research and
 289 development costs incurred between July 1, 2012 ~~2006~~, and June
 290 30, 2016 ~~2010~~, not to exceed \$1 million per state fiscal year
 291 for each taxpayer and up to a limit of \$10 ~~\$6.5~~ million per
 292 state fiscal year for all taxpayers, in connection with an
 293 investment in the production, storage, and distribution of
 294 biodiesel (B10-B100), ~~and~~ ethanol (E10-E100), and other
 295 renewable fuel in the state, including the costs of
 296 constructing, installing, and equipping such technologies in the
 297 state. Gasoline fueling station pump retrofits for biodiesel
 298 (B10-B100), and ethanol (E10-E100), and other renewable fuel
 299 distribution qualify as an eligible cost under this section
 300 subparagraph.

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

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308 ~~equipping such technologies in the state.~~
 309 2. ~~Seventy five percent of all capital costs, operation~~
 310 ~~and maintenance costs, and research and development costs~~
 311 ~~incurred between July 1, 2006, and June 30, 2010, up to a limit~~
 312 ~~of \$1.5 million per state fiscal year for all taxpayers, and~~
 313 ~~limited to a maximum of \$12,000 per fuel cell, in connection~~
 314 ~~with an investment in commercial stationary hydrogen fuel cells~~
 315 ~~in the state, including, but not limited to, the costs of~~
 316 ~~constructing, installing, and equipping such technologies in the~~
 317 ~~state.~~
 318 3.
 319 (d) "Ethanol" means ethanol as defined in ~~former s.~~
 320 ~~212.08(7) (hhh) (eee).~~
 321 (e) "Renewable fuel" means a fuel produced from biomass
 322 that is used to replace or reduce the quantity of fossil fuel
 323 present in motor fuel or diesel fuel. "Biomass" means biomass as
 324 defined in s. 366.91, "motor fuel" means motor fuel as defined
 325 in s. 206.01, and "diesel fuel" means diesel fuel as defined in
 326 s. 206.86. "Hydrogen fuel cell" means hydrogen fuel cell as
 327 ~~defined in former s. 212.08(7) (eee).~~
 328 (f) "Taxpayer" includes a corporation as defined in
 329 paragraph (b) or s. 220.03.
 330 (2) TAX CREDIT.—For tax years beginning on or after
 331 January 1, 2013 ~~2007~~, a credit against the tax imposed by this
 332 chapter shall be granted in an amount equal to the eligible
 333 costs. Credits may be used in tax years beginning January 1,
 334 2013 ~~2007~~, and ending December 31, 2016 ~~2010~~, after which the
 335 credit shall expire. If the credit is not fully used in any one

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336 tax year because of insufficient tax liability on the part of
 337 the corporation, the unused amount may be carried forward and
 338 used in tax years beginning January 1, 2013 ~~2007~~, and ending
 339 December 31, 2018 ~~2012~~, after which the credit carryover expires
 340 and may not be used. A taxpayer that files a consolidated return
 341 in this state as a member of an affiliated group under s.
 342 220.131(1) may be allowed the credit on a consolidated return
 343 basis up to the amount of tax imposed upon the consolidated
 344 group. Any eligible cost for which a credit is claimed and which
 345 is deducted or otherwise reduces federal taxable income shall be
 346 added back in computing adjusted federal income under s. 220.13.

347 (3) CORPORATE APPLICATION PROCESS.—Any corporation wishing
 348 to obtain tax credits available under this section must submit
 349 to the Department of Agriculture and Consumer Services an
 350 application for tax credit that includes a complete description
 351 of all eligible costs for which the corporation is seeking a
 352 credit and a description of the total amount of credits sought.
 353 The Department of Agriculture and Consumer Services shall make a
 354 determination on the eligibility of the applicant for the
 355 credits sought and certify the determination to the applicant
 356 and the Department of Revenue. The corporation must attach the
 357 Department of Agriculture and Consumer Services' certification
 358 to the tax return on which the credit is claimed. The Department
 359 of Agriculture and Consumer Services is responsible for ensuring
 360 that the corporate income tax credits granted in each fiscal
 361 year do not exceed the limits provided for in this section. The
 362 Department of Agriculture and Consumer Services may adopt the
 363 necessary rules and forms for the application process.

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364 (4) TAXPAYER APPLICATION PROCESS.—To claim a credit under
 365 this section, each taxpayer must apply to the Department of
 366 Agriculture and Consumer Services for an allocation of each type
 367 of annual credit by the date established by the Department of
 368 Agriculture and Consumer Services. The application form adopted
 369 by rule of the Department of Agriculture and Consumer Services
 370 must include an affidavit from each taxpayer certifying that all
 371 information contained in the application, including all records
 372 of eligible costs claimed as the basis for the tax credit, are
 373 true and correct. Approval of the credits under this section is
 374 on a first-come, first-served basis, based upon the date
 375 complete applications are received by the Department of
 376 Agriculture and Consumer Services. A taxpayer must submit only
 377 one complete application based upon eligible costs incurred
 378 within a particular state fiscal year. Incomplete placeholder
 379 applications will not be accepted and will not secure a place in
 380 the first-come, first-served application line. If a taxpayer
 381 does not receive a tax credit allocation due to the exhaustion
 382 of the annual tax credit authorizations, then such taxpayer may
 383 reapply in the following year for those eligible costs and will
 384 have priority over other applicants for the allocation of
 385 credits.

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

388 (a) In addition to its existing audit and investigation
 389 authority, the Department of Revenue may perform any additional
 390 financial and technical audits and investigations, including
 391 examining the accounts, books, and records of the tax credit

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392 applicant, which are necessary to verify the eligible costs
 393 included in the tax credit return and to ensure compliance with
 394 this section. The Department of Agriculture and Consumer
 395 Services shall provide technical assistance when requested by
 396 the Department of Revenue on any technical audits or
 397 examinations performed pursuant to this section.

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

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

418 (d) The taxpayer shall file with the Department of Revenue
 419 an amended return or such other report as the Department of

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

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

435 (6) TRANSFERABILITY OF CREDIT.—

436 (a) For tax years beginning on or after January 1, 2014
 437 ~~2009~~, any corporation or subsequent transferee allowed a tax
 438 credit under this section may transfer the credit, in whole or
 439 in part, to any taxpayer by written agreement without
 440 transferring any ownership interest in the property generating
 441 the credit or any interest in the entity owning such property.
 442 The transferee is entitled to apply the credits against the tax
 443 with the same effect as if the transferee had incurred the
 444 eligible costs.

445 (b) To perfect the transfer, the transferor shall provide
 446 the Department of Revenue with a written transfer statement
 447 notifying the Department of Revenue of the transferor's intent

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448 to transfer the tax credits to the transferee; the date the
 449 transfer is effective; the transferee's name, address, and
 450 federal taxpayer identification number; the tax period; and the
 451 amount of tax credits to be transferred. The Department of
 452 Revenue shall, upon receipt of a transfer statement conforming
 453 to the requirements of this section, provide the transferee with
 454 a certificate reflecting the tax credit amounts transferred. A
 455 copy of the certificate must be attached to each tax return for
 456 which the transferee seeks to apply such tax credits.

457 (c) A tax credit authorized under this section that is
 458 held by a corporation and not transferred under this subsection
 459 shall be passed through to the taxpayers designated as partners,
 460 members, or owners, respectively, in the manner agreed to by
 461 such persons regardless of whether such partners, members, or
 462 owners are allocated or allowed any portion of the federal
 463 energy tax credit for the eligible costs. A corporation that
 464 passes the credit through to a partner, member, or owner must
 465 comply with the notification requirements described in paragraph
 466 (b). The partner, member, or owner must attach a copy of the
 467 certificate to each tax return on which the partner, member, or
 468 owner claims any portion of the credit.

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

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

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476 procedures required to administer this section.

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

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

486 Section 4. Section 220.193, Florida Statutes, is amended
 487 to read:

488 220.193 Florida renewable energy production credit.—

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

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

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

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

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

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

502 (e) "New facility" shall mean a Florida renewable energy
 503 facility that is operationally placed in service after May 1,

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504 2012 ~~2006~~.

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

508 (g) "Taxpayer" includes a general partnership, limited
509 partnership, limited liability company, trust, or other
510 artificial entity in which a corporation, as defined in s.
511 220.03(1)(e), owns an interest and is taxed as a partnership or
512 is disregarded as a separate entity from the corporation under
513 this chapter.

514 (3) An annual credit against the tax imposed by this
515 section shall be allowed to a taxpayer, based on the taxpayer's
516 production and sale of electricity from a new or expanded
517 Florida renewable energy facility. For a new facility, the
518 credit shall be based on the taxpayer's sale of the facility's
519 entire electrical production. For an expanded facility, the
520 credit shall be based on the increases in the facility's
521 electrical production that are achieved after May 1, 2012 ~~2006~~.

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

525 (b) The credit may be claimed for electricity produced and
526 sold on or after January 1, 2013 ~~2007~~. Beginning in 2014 ~~2008~~
527 and continuing until 2017 ~~2011~~, each taxpayer claiming a credit
528 under this section must first apply to the department by
529 February 1 of each year for an allocation of available credit.
530 The department, in consultation with the commission, shall
531 develop an application form. The application form shall, at a

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532 | minimum, require a sworn affidavit from each taxpayer certifying
 533 | the increase in production and sales that form the basis of the
 534 | application and certifying that all information contained in the
 535 | application is true and correct.

536 | (c) If the amount of credits applied for each year exceeds
 537 | \$5 million, the department shall award to each applicant a
 538 | prorated amount based on each applicant's increased production
 539 | and sales and the increased production and sales of all
 540 | applicants.

541 | (d) If the credit granted pursuant to this section is not
 542 | fully used in one year because of insufficient tax liability on
 543 | the part of the taxpayer, the unused amount may be carried
 544 | forward for a period not to exceed 5 years. The carryover credit
 545 | may be used in a subsequent year when the tax imposed by this
 546 | chapter for such year exceeds the credit for such year, after
 547 | applying the other credits and unused credit carryovers in the
 548 | order provided in s. 220.02(8).

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

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

557 | 2. The entity or its surviving or acquiring entity as
 558 | described in subparagraph 1. may transfer any unused credit in
 559 | whole or in units of no less than 25 percent of the remaining

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560 credit. The entity acquiring such credit may use it in the same
 561 manner and with the same limitations under this section. Such
 562 transferred credits may not be transferred again although they
 563 may succeed to a surviving or acquiring entity subject to the
 564 same conditions and limitations as described in this section.

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

573 (g) Notwithstanding any other provision of this section,
 574 credits for the production and sale of electricity from a new or
 575 expanded Florida renewable energy facility may be earned between
 576 January 1, 2013 ~~2007~~, and June 30, 2016 ~~2010~~. The amount of tax
 577 credits which may be granted to each taxpayer under this section
 578 is limited to \$500,000 per state fiscal year. The combined total
 579 amount of tax credits which may be granted for all taxpayers
 580 under this section is limited to \$5 million per state fiscal
 581 year.

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

587 (i) A taxpayer claiming credit under this section may not

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588 claim a credit under s. 220.192. A taxpayer claiming credit
 589 under s. 220.192 may not claim a credit under this section.

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

601 (k) A taxpayer's use of the credit granted pursuant to
 602 this section does not reduce the amount of any credit available
 603 to such taxpayer under s. 220.186.

604 (4) The department may adopt rules to implement and
 605 administer this section, including rules prescribing forms, the
 606 documentation needed to substantiate a claim for the tax credit,
 607 and the specific procedures and guidelines for claiming the
 608 credit.

609 (5) This section shall take effect upon becoming law and
 610 shall apply to tax years beginning on and after January 1, 2013
 611 ~~2007~~.

612 Section 5. Subsection (3) of section 255.257, Florida
 613 Statutes, is amended to read:

614 255.257 Energy management; buildings occupied by state
 615 agencies.—

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616 (3) CONTENTS OF THE STATE ENERGY MANAGEMENT PLAN.—The
 617 Department of Management Services in coordination with the
 618 Department of Agriculture and Consumer Services shall further
 619 develop the a state energy management plan consisting of, but
 620 not limited to, the following elements:

- 621 (a) Data-gathering requirements;
- 622 (b) Building energy audit procedures;
- 623 (c) Uniform data analysis and reporting procedures;
- 624 (d) Employee energy education program measures;
- 625 (e) Energy consumption reduction techniques;
- 626 (f) Training program for state agency energy management
 627 coordinators; and
- 628 (g) Guidelines for building managers.

629
 630 The plan shall include a description of actions that state
 631 agencies shall take to reduce consumption of electricity and
 632 nonrenewable energy sources used for space heating and cooling,
 633 ventilation, lighting, water heating, and transportation.

634 Section 6. Paragraph (q) of subsection (2) of section
 635 288.106, Florida Statutes, is amended to read:

636 288.106 Tax refund program for qualified target industry
 637 businesses.—

638 (1) LEGISLATIVE FINDINGS AND DECLARATIONS.—The Legislature
 639 finds that retaining and expanding existing businesses in the
 640 state, encouraging the creation of new businesses in the state,
 641 attracting new businesses from outside the state, and generally
 642 providing conditions favorable for the growth of target
 643 industries creates high-quality, high-wage employment

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644 opportunities for residents of the state and strengthens the
 645 state's economic foundation. The Legislature also finds that
 646 incentives narrowly focused in application and scope tend to be
 647 more effective in achieving the state's economic development
 648 goals. The Legislature further finds that higher-wage jobs
 649 reduce the state's share of hidden costs, such as public
 650 assistance and subsidized health care associated with low-wage
 651 jobs. Therefore, the Legislature declares that it is the policy
 652 of the state to encourage the growth of higher-wage jobs and a
 653 diverse economic base by providing state tax refunds to
 654 qualified target industry businesses that originate or expand in
 655 the state or that relocate to the state.

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

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

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

669 2. Stability.—The industry should not be subject to
 670 periodic layoffs, whether due to seasonality or sensitivity to
 671 volatile economic variables such as weather. The industry should

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672 also be relatively resistant to recession, so that the demand
 673 for products of this industry is not typically subject to
 674 decline during an economic downturn.

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

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

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

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

696

697 The term does not include any business engaged in retail
 698 industry activities; any electrical utility company as defined
 699 in s. 366.02(2); any phosphate or other solid minerals

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700 severance, mining, or processing operation; any oil or gas
 701 exploration or production operation; or any business subject to
 702 regulation by the Division of Hotels and Restaurants of the
 703 Department of Business and Professional Regulation. Any business
 704 within NAICS code 5611 or 5614, office administrative services
 705 and business support services, respectively, may be considered a
 706 target industry business only after the local governing body and
 707 Enterprise Florida, Inc., make a determination that the
 708 community where the business may locate has conditions affecting
 709 the fiscal and economic viability of the local community or
 710 area, including but not limited to, factors such as low per
 711 capita income, high unemployment, high underemployment, and a
 712 lack of year-round stable employment opportunities, and such
 713 conditions may be improved by the location of such a business to
 714 the community. By January 1 of every 3rd year, beginning January
 715 1, 2011, the department, in consultation with Enterprise
 716 Florida, Inc., economic development organizations, the State
 717 University System, local governments, employee and employer
 718 organizations, market analysts, and economists, shall review
 719 and, as appropriate, revise the list of such target industries
 720 and submit the list to the Governor, the President of the
 721 Senate, and the Speaker of the House of Representatives.

722 Section 7. Paragraph (a) of subsection (5) of section
 723 20.60, Florida Statutes, is amended to read:

724 20.60 Department of Economic Opportunity; creation; powers
 725 and duties.—

726 (5) The divisions within the department have specific
 727 responsibilities to achieve the duties, responsibilities, and

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728 | goals of the department. Specifically:

729 | (a) The Division of Strategic Business Development shall:

730 | 1. Analyze and evaluate business prospects identified by
731 | the Governor, the executive director of the department, and
732 | Enterprise Florida, Inc.

733 | 2. Independently analyze and evaluate the regional and
734 | statewide economic benefits associated with a renewable energy
735 | project submitted to the Public Service Commission for a public
736 | interest determination and provided to the department for review
737 | pursuant to s. 366.92.

738 | ~~3.2.~~ Administer certain tax refund, tax credit, and grant
739 | programs created in law. Notwithstanding any other provision of
740 | law, the department may expend interest earned from the
741 | investment of program funds deposited in the Grants and
742 | Donations Trust Fund to contract for the administration of those
743 | programs, or portions of the programs, assigned to the
744 | department by law, by the appropriations process, or by the
745 | Governor. Such expenditures shall be subject to review under
746 | chapter 216.

747 | ~~4.3.~~ Develop measurement protocols for the state incentive
748 | programs and for the contracted entities which will be used to
749 | determine their performance and competitive value to the state.
750 | Performance measures, benchmarks, and sanctions must be
751 | developed in consultation with the legislative appropriations
752 | committees and the appropriate substantive committees, and are
753 | subject to the review and approval process provided in s.
754 | 216.177. The approved performance measures, standards, and
755 | sanctions shall be included and made a part of the strategic

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756 plan for contracts entered into for delivery of programs
 757 authorized by this section.

758 5.4. Develop a 5-year statewide strategic plan. The
 759 strategic plan must include, but need not be limited to:

760 a. Strategies for the promotion of business formation,
 761 expansion, recruitment, and retention through aggressive
 762 marketing, international development, and export assistance,
 763 which lead to more and better jobs and higher wages for all
 764 geographic regions, disadvantaged communities, and populations
 765 of the state, including rural areas, minority businesses, and
 766 urban core areas.

767 b. The development of realistic policies and programs to
 768 further the economic diversity of the state, its regions, and
 769 their associated industrial clusters.

770 c. Specific provisions for the stimulation of economic
 771 development and job creation in rural areas and midsize cities
 772 and counties of the state, including strategies for rural
 773 marketing and the development of infrastructure in rural areas.

774 d. Provisions for the promotion of the successful long-
 775 term economic development of the state with increased emphasis
 776 in market research and information.

777 e. Plans for the generation of foreign investment in the
 778 state which create jobs paying above-average wages and which
 779 result in reverse investment in the state, including programs
 780 that establish viable overseas markets, assist in meeting the
 781 financing requirements of export-ready firms, broaden
 782 opportunities for international joint venture relationships, use
 783 the resources of academic and other institutions, coordinate

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784 trade assistance and facilitation services, and facilitate
 785 availability of and access to education and training programs
 786 that assure requisite skills and competencies necessary to
 787 compete successfully in the global marketplace.

788 f. The identification of business sectors that are of
 789 current or future importance to the state's economy and to the
 790 state's global business image, and development of specific
 791 strategies to promote the development of such sectors.

792 g. Strategies for talent development necessary in the
 793 state to encourage economic development growth, taking into
 794 account factors such as the state's talent supply chain,
 795 education and training opportunities, and available workforce.

796 5. Update the strategic plan every 5 years.

797 6. Involve Enterprise Florida, Inc.; Workforce Florida,
 798 Inc.; local governments; the general public; local and regional
 799 economic development organizations; other local, state, and
 800 federal economic, international, and workforce development
 801 entities; the business community; and educational institutions
 802 to assist with the strategic plan.

803 Section 8. Subsections (2) through (7) of section 366.92,
 804 Florida Statutes, are amended to read:

805 366.92 Florida renewable energy policy.-

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

807 (a) "Department" means the Department of Economic
 808 Opportunity ~~"Florida renewable energy resources"~~ means renewable
 809 energy, as defined in s. 377.803, that is produced in Florida.

810 ~~(b) "Provider" means a "utility" as defined in s.~~
 811 ~~366.8255(1)(a).~~

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812 ~~(b)(e)~~ "Renewable energy" means renewable energy as
 813 defined in s. 366.91(2)(d) that is produced in the state.

814 (c) "Renewable energy project" means the construction of a
 815 new renewable energy generating facility, the conversion of an
 816 existing fossil fuel generating facility to a renewable energy
 817 generating facility, or a contract for the purchase of renewable
 818 energy from a non-utility generating facility.

819 (d) "Utility" means an electric utility as defined in s.
 820 366.8255 "Renewable energy credit" or "REC" means a product that
 821 ~~represents the unbundled, separable, renewable attribute of~~
 822 ~~renewable energy produced in Florida and is equivalent to 1~~
 823 ~~megawatt-hour of electricity generated by a source of renewable~~
 824 ~~energy located in Florida.~~

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

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

838 ~~(a) In developing the rule, the commission shall evaluate~~
 839 ~~the current and forecasted levelized cost in cents per kilowatt~~

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840 ~~hour through 2020 and current and forecasted installed capacity~~
 841 ~~in kilowatts for each renewable energy generation method through~~
 842 ~~2020.~~

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

844 ~~1. Shall include methods of managing the cost of~~
 845 ~~compliance with the renewable portfolio standard, whether~~
 846 ~~through direct supply or procurement of renewable power or~~
 847 ~~through the purchase of renewable energy credits. The commission~~
 848 ~~shall have rulemaking authority for providing annual cost~~
 849 ~~recovery and incentive-based adjustments to authorized rates of~~
 850 ~~return on common equity to providers to incentivize renewable~~
 851 ~~energy. Notwithstanding s. 366.91(3) and (4), upon the~~
 852 ~~ratification of the rules developed pursuant to this subsection,~~
 853 ~~the commission may approve projects and power sales agreements~~
 854 ~~with renewable power producers and the sale of renewable energy~~
 855 ~~credits needed to comply with the renewable portfolio standard.~~
 856 ~~In the event of any conflict, this subparagraph shall supersede~~
 857 ~~s. 366.91(3) and (4). However, nothing in this section shall~~
 858 ~~alter the obligation of each public utility to continuously~~
 859 ~~offer a purchase contract to producers of renewable energy.~~

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

867 ~~3. May provide added weight to energy provided by wind and~~

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868 ~~solar photovoltaic over other forms of renewable energy, whether~~
 869 ~~directly supplied or procured or indirectly obtained through the~~
 870 ~~purchase of renewable energy credits.~~

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

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

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

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

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

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

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896 ~~comply with the renewable portfolio standard in the upcoming~~
 897 ~~year.~~

898 ~~(4) In order to demonstrate the feasibility and viability~~
 899 ~~of clean energy systems, the commission shall provide for full~~
 900 ~~cost recovery under the environmental cost-recovery clause of~~
 901 ~~all reasonable and prudent costs incurred by a provider for~~
 902 ~~renewable energy projects that are zero greenhouse gas emitting~~
 903 ~~at the point of generation, up to a total of 110 megawatts~~
 904 ~~statewide, and for which the provider has secured necessary~~
 905 ~~land, zoning permits, and transmission rights within the state.~~
 906 ~~Such costs shall be deemed reasonable and prudent for purposes~~
 907 ~~of cost recovery so long as the provider has used reasonable and~~
 908 ~~customary industry practices in the design, procurement, and~~
 909 ~~construction of the project in a cost-effective manner~~
 910 ~~appropriate to the location of the facility. The provider shall~~
 911 ~~report to the commission as part of the cost-recovery~~
 912 ~~proceedings the construction costs, in-service costs, operating~~
 913 ~~and maintenance costs, hourly energy production of the renewable~~
 914 ~~energy project, and any other information deemed relevant by the~~
 915 ~~commission. Any provider constructing a clean energy facility~~
 916 ~~pursuant to this section shall file for cost recovery no later~~
 917 ~~than July 1, 2009.~~

918 (3) (a) A utility may petition the commission to determine
 919 that a proposed renewable energy project, selected as a result
 920 of competitive bidding, is in the public interest.
 921 Notwithstanding s. 366.91(3) and (4), the commission shall
 922 determine that a proposed project is in the public interest if
 923 the commission finds that the project provides an overall net

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924 benefit to the state. A public interest determination is
 925 available only for those renewable energy projects that are
 926 exempt from the requirement to obtain a determination of need
 927 pursuant to s. 403.519.

928 (b) In evaluating whether a renewable energy project,
 929 selected as a result of competitive bidding and proposed by a
 930 utility for consideration, is prudent and in the public
 931 interest, the commission shall consider:

932 1. The estimated cost and estimated rate impacts of the
 933 project;

934 2. The impact of the project on the reliability and
 935 integrity of the utility's system and the statewide electric
 936 grid;

937 3. The extent to which the project strengthens fuel supply
 938 reliability to the utility and the state;

939 4. The extent to which the project promotes rate
 940 stability by reducing the risk of fuel cost volatility;

941 5. The extent to which the project retains energy
 942 expenditures in the state or regional economy;

943 6. The extent to which the project reduces the utility's
 944 regulatory costs associated with adverse environmental impacts;
 945 and

946 7. The regional and statewide economic benefits associated
 947 with the project, including independent analysis of these
 948 benefits by the department.

949 (c) The commission shall approve for recovery through the
 950 environmental cost recovery clause all reasonable and prudent
 951 costs incurred by a utility for a renewable energy project that

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952 the commission determines to be in the public interest. For a
 953 new renewable energy generating facility, recoverable costs
 954 include, but are not limited to, the siting, licensing,
 955 engineering, design, permitting, construction, operation, and
 956 maintenance of such facilities, including any applicable taxes
 957 and a return based on the utility's last authorized rate of
 958 return. For conversion of an existing fossil fuel generating
 959 facility to a renewable energy generating facility, recoverable
 960 costs include reasonable and prudent conversion costs, including
 961 the costs of retirement of the fossil fuel plant that exceed any
 962 amounts accrued by the provider for such purposes through rates
 963 previously set by the commission. For purchase of renewable
 964 energy from a non-utility generating facility, recoverable costs
 965 include the reasonable and prudent costs associated with the
 966 purchase.

967 (4) The commission shall adopt rules to implement a public
 968 interest determination process by which it will determine
 969 whether a renewable energy project, proposed by a utility for
 970 purposes of supplying electrical energy to its retail customers,
 971 provides an overall net benefit to the state pursuant to the
 972 criteria in subsection (3). The commission's rules shall:

973 (a) Provide a process for competitive bidding of a
 974 renewable energy project based on the type and technology of the
 975 renewable energy resource that the utility elects to use.

976 (b) Provide minimum requirements and information that a
 977 utility must include in a request for proposals for a new
 978 renewable energy project and other information related to the
 979 request for proposal and competitive bidding processes.

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980 (c) Establish minimum requirements and information that a
 981 utility must include in a petition for a public interest
 982 determination for a renewable energy project.

983 (d) Provide for recovery through the environmental cost
 984 recovery clause of all reasonable and prudent costs incurred by
 985 a utility for a renewable energy project that the commission
 986 determines to be in the public interest pursuant to subsection
 987 (3).

988 (e) Establish a mechanism for the sharing of revenues
 989 derived from any renewable energy credit, carbon credit, or
 990 other mechanism that attributes value to the production of
 991 renewable energy, either existing or hereafter devised, and
 992 received by a utility by virtue of the production or purchase of
 993 renewable energy found to be in the public interest pursuant to
 994 subsection (3). The utility shall be entitled to retain from
 995 these revenues no more than the amount deemed reasonable by the
 996 commission to cover the utility's transaction costs associated
 997 with the credit or other mechanism, plus 5 percent of the
 998 remaining revenues. The remainder of the revenues shall be
 999 credited to the utility's ratepayers.

1000 (f) Require a utility to report to the commission on an
 1001 annual basis, with respect to any renewable energy project that
 1002 the commission determines to be in the public interest, the
 1003 status of the project, the economic impacts of the project on
 1004 the region and the state, the amount and type of fuel displaced
 1005 by the project, operational statistics, and any other
 1006 information deemed relevant by the commission.

1007 (g) Require a seller of renewable energy, under a

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1008 purchased power agreement approved pursuant to the commission's
 1009 rules and this subsection, to surrender to the utility all
 1010 renewable attributes of the renewable energy purchased.

1011
 1012 Agency rules promulgated under the authority of this section
 1013 shall not take effect prior to July 1, 2013.

1014 (5) (a) Upon receipt of a petition for a public interest
 1015 determination pursuant to subsection (3), the commission,
 1016 through administrative review by its staff, shall determine
 1017 within 7 days whether the petition is complete. If the
 1018 commission finds that the petition is not complete, it shall
 1019 notify the petitioner of all deficiencies and provide the
 1020 petitioner an opportunity to correct the deficiencies through an
 1021 amended or supplemental filing.

1022 (b) When the commission determines that a petition is
 1023 complete, the commission shall notify the department and forward
 1024 a copy of the petition to the department within 3 days. Upon
 1025 receipt and review of the petition, the department may request
 1026 any additional information it deems necessary to complete its
 1027 review of the petition pursuant to s. 20.60(5)(a).

1028 (c) Within 45 days of receipt of the complete petition,
 1029 the department shall complete its analysis and evaluation and
 1030 submit a report reflecting its findings to the commission for
 1031 consideration in the commission's public interest determination
 1032 proceeding. The department's report is not subject to the
 1033 provisions of ch. 120.569 and 120.57. Any party to the
 1034 commission's public interest determination proceeding may
 1035 present evidence to the commission concerning the regional and

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1036 statewide economic benefits associated with the project.
 1037 (d) The commission shall issue a final order within 180
 1038 days of receipt of a complete petition for a public interest
 1039 determination filed pursuant to subsection (3).
 1040 (6)(5) Each municipal electric utility and rural electric
 1041 cooperative shall develop standards for the promotion,
 1042 encouragement, and expansion of the use of renewable energy
 1043 resources and energy conservation and efficiency measures. On or
 1044 before April 1, 2009, and annually thereafter, each municipal
 1045 electric utility and electric cooperative shall submit to the
 1046 commission a report that identifies such standards.
 1047 (7)(6) Nothing in This section and any action taken under
 1048 this section may not shall be construed to impede or impair the
 1049 terms and conditions of, or serve as a basis for renegotiating
 1050 or repricing an, existing contract contracts. This section may
 1051 not be construed to apply to purchases required pursuant to s.
 1052 366.051 or 366.91.
 1053 (8)(7) The commission may adopt rules to administer and
 1054 implement the provisions of this section.
 1055 Section 9. Section 366.94, Florida Statutes, is created to
 1056 read:
 1057 366.94 Electric Vehicle Charging Stations.--
 1058 (1) The Legislature finds that the provision of electric
 1059 vehicle charging to the public by a non-utility is a service and
 1060 not the retail sale of electricity. The rates, terms and
 1061 conditions of electric vehicle charging services by a non-
 1062 utility are not subject to regulation under this chapter.
 1063 Nothing in this section affects the ability of individuals,

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1064 businesses or government entities to acquire install and/or
 1065 utilize an electric vehicle charger for their own use for their
 1066 own vehicles.

1067 (2) The Department of Agriculture and Consumer Services
 1068 shall develop rules to provide definitions, methods of sale,
 1069 labeling requirements and price posting requirements for
 1070 electric vehicle charging stations to allow for consistency for
 1071 consumers and the industry.

1072 (3) Parking spaces for electric vehicle charging stations.-

1073 (a) It is unlawful for a person to stop, stand, or park a
 1074 vehicle that is not capable of using an electrical recharging
 1075 station within any parking space specifically designated for
 1076 charging an electric vehicle.

1077 (b) If a law enforcement officer finds a motor vehicle in
 1078 violation of this section, the officer or specialist shall
 1079 charge the operator or other person in charge of the vehicle in
 1080 violation with a noncriminal traffic infraction, punishable as
 1081 provided in s. 316.008(4) or s. 318.18.

1082 Section 10. Subsection (3) of section 403.519, Florida
 1083 Statutes, is amended to read:

1084 403.519 Exclusive forum for determination of need.-

1085 (3) The commission shall be the sole forum for the
 1086 determination of this matter, which accordingly shall not be
 1087 raised in any other forum or in the review of proceedings in
 1088 such other forum. In making its determination, the commission
 1089 shall take into account the need for electric system reliability
 1090 and integrity, the need for adequate electricity at a reasonable
 1091 cost, the need ~~for~~ to improve the balance of power plant fuel

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1092 diversity and supply reliability within the state and within the
 1093 generation portfolio of the applicant, whether the proposed
 1094 plant is the most cost-effective alternative available, and
 1095 whether renewable energy sources and technologies, as well as
 1096 conservation measures, are utilized to the extent reasonably
 1097 available. The commission shall also expressly consider the
 1098 conservation measures taken by or reasonably available to the
 1099 applicant or its members which might mitigate the need for the
 1100 proposed plant and other matters within its jurisdiction which
 1101 it deems relevant. The commission's determination of need for an
 1102 electrical power plant shall create a presumption of public need
 1103 and necessity and shall serve as the commission's report
 1104 required by s. 403.507(4). An order entered pursuant to this
 1105 section constitutes final agency action.

1106 Section 11. Subsection (4) of section 581.083, Florida
 1107 Statutes, is amended to read:

1108 581.083 Introduction or release of plant pests, noxious
 1109 weeds, or organisms affecting plant life; cultivation of
 1110 nonnative plants; special permit and security required.—

1111 (4) A person may not cultivate a nonnative plant, algae,
 1112 or blue green algae, including a genetically engineered plant,
 1113 algae, or blue green algae, ~~or a plant that has been introduced,~~
 1114 ~~for purposes of fuel production or purposes other than~~
 1115 ~~agriculture~~ in plantings greater in size than 2 contiguous
 1116 acres, except under a special permit issued by the department
 1117 through the division, which is the sole agency responsible for
 1118 issuing such special permits. Such a permit shall not be
 1119 required if the department determines, after consulting ~~in~~

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1120 ~~conjunction~~ with the Institute of Food and Agricultural Sciences
 1121 at the University of Florida, that based on experience or
 1122 research data, the nonnative plant, algae, or blue green algae,
 1123 does not pose a known threat of becoming an ~~is not~~ invasive
 1124 species or a pest of plants or native fauna under Florida
 1125 conditions and subsequently exempts the plant by rule. A permit
 1126 shall not be required for any plant or group of plants that,
 1127 based on experience or research data, does not pose a known
 1128 threat of becoming an invasive species and is commonly grown in
 1129 Florida for the purposes of human food consumption or for
 1130 commercial feed, feedstuff, forage for livestock, nursery stock,
 1131 or silviculture.

1132 (a)1. Each application for a special permit must be
 1133 accompanied by a fee as described in subsection (2) and proof
 1134 that the applicant has obtained, on a form approved by the
 1135 department, ~~a bond in the form approved by the department and~~
 1136 ~~issued by a surety company admitted to do business in this state~~
 1137 ~~or a certificate of deposit,~~ or other type of security adopted
 1138 by rule of the department which provides a financial assurance
 1139 of cost recovery for the removal of a planting. The application
 1140 must include, on a form provided by the department, the name of
 1141 the applicant and the applicant's address or the address of the
 1142 applicant's principal place of business; a statement completely
 1143 identifying the nonnative plant to be cultivated; and a
 1144 statement of the estimated cost of removing and destroying the
 1145 plant that is the subject of the special permit and the basis
 1146 for calculating or determining that estimate. If the applicant
 1147 is a corporation, partnership, or other business entity, the

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1148 applicant must also provide in the application the name and
 1149 address of each officer, partner, or managing agent. The
 1150 applicant shall notify the department within 10 business days of
 1151 any change of address or change in the principal place of
 1152 business. The department shall mail all notices to the
 1153 applicant's last known address.

1154 2. As used in this subsection, the term "certificate of
 1155 deposit" means a certificate of deposit at any recognized
 1156 financial institution doing business in the United States. The
 1157 department may not accept a certificate of deposit in connection
 1158 with the issuance of a special permit unless the issuing
 1159 institution is properly insured by the Federal Deposit Insurance
 1160 Corporation or the Federal Savings and Loan Insurance
 1161 Corporation.

1162 (b) Upon obtaining a permit, the permitholder may annually
 1163 cultivate and maintain the nonnative plants as authorized by the
 1164 special permit. If the permitholder ceases to maintain or
 1165 cultivate the plants authorized by the special permit, if the
 1166 permit expires, or if the permitholder ceases to abide by the
 1167 conditions of the special permit, the permitholder shall
 1168 immediately remove and destroy the plants that are subject to
 1169 the permit, if any remain. The permitholder shall notify the
 1170 department of the removal and destruction of the plants within
 1171 10 days after such event.

1172 (c) If the department:

1173 1. Determines that the permitholder is no longer
 1174 maintaining or cultivating the plants subject to the special
 1175 permit and has not removed and destroyed the plants authorized

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1176 by the special permit;
 1177 2. Determines that the continued maintenance or
 1178 cultivation of the plants presents an imminent danger to public
 1179 health, safety, or welfare;
 1180 3. Determines that the permitholder has exceeded the
 1181 conditions of the authorized special permit; or
 1182 4. Receives a notice of cancellation of the surety bond,
 1183 the department may issue an immediate final order, which shall
 1184 be immediately appealable or enjoicable as provided by chapter
 1185 120, directing the permitholder to immediately remove and
 1186 destroy the plants authorized to be cultivated under the special
 1187 permit. A copy of the immediate final order shall be mailed to
 1188 the permitholder and to the surety company or financial
 1189 institution that has provided security for the special permit,
 1190 if applicable.
 1191 (d) If, upon issuance by the department of an immediate
 1192 final order to the permitholder, the permitholder fails to
 1193 remove and destroy the plants subject to the special permit
 1194 within 60 days after issuance of the order, or such shorter
 1195 period as is designated in the order as public health, safety,
 1196 or welfare requires, the department may enter the cultivated
 1197 acreage and remove and destroy the plants that are the subject
 1198 of the special permit. If the permitholder makes a written
 1199 request to the department for an extension of time to remove and
 1200 destroy the plants that demonstrates specific facts showing why
 1201 the plants could not reasonably be removed and destroyed in the
 1202 applicable timeframe, the department may extend the time for
 1203 removing and destroying plants subject to a special permit. The

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1204 reasonable costs and expenses incurred by the department for
 1205 removing and destroying plants subject to a special permit shall
 1206 be reimbursed to the department by the permitholder within 21
 1207 days after the date the permitholder and the surety company or
 1208 financial institution are served a copy of the department's
 1209 invoice for the costs and expenses incurred by the department to
 1210 remove and destroy the cultivated plants, along with a notice of
 1211 administrative rights, unless the permitholder or the surety
 1212 company or financial institution object to the reasonableness of
 1213 the invoice. In the event of an objection, the permitholder or
 1214 surety company or financial institution is entitled to an
 1215 administrative proceeding as provided by chapter 120. Upon entry
 1216 of a final order determining the reasonableness of the incurred
 1217 costs and expenses, the permitholder shall have 15 days
 1218 following service of the final order to reimburse the
 1219 department. Failure of the permitholder to timely reimburse the
 1220 department for the incurred costs and expenses entitles the
 1221 department to reimbursement from the applicable bond or
 1222 certificate of deposit.

1223 (e) Each permitholder shall maintain for each separate
 1224 growing location a bond or a certificate of deposit in an amount
 1225 determined by the department, but not more ~~less~~ than 150 percent
 1226 of the estimated cost of removing and destroying the cultivated
 1227 plants. The bond or certificate of deposit may not exceed \$5,000
 1228 per acre, unless a higher amount is determined by the department
 1229 to be necessary to protect the public health, safety, and
 1230 welfare or unless an exemption is granted by the department
 1231 based on conditions specified in the application which would

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1232 preclude the department from incurring the cost of removing and
 1233 destroying the cultivated plants and would prevent injury to the
 1234 public health, safety, and welfare. The aggregate liability of
 1235 the surety company or financial institution to all persons for
 1236 all breaches of the conditions of the bond or certificate of
 1237 deposit may not exceed the amount of the bond or certificate of
 1238 deposit. The original bond or certificate of deposit required by
 1239 this subsection shall be filed with the department. A surety
 1240 company shall give the department 30 days' written notice of
 1241 cancellation, by certified mail, in order to cancel a bond.
 1242 Cancellation of a bond does not relieve a surety company of
 1243 liability for paying to the department all costs and expenses
 1244 incurred or to be incurred for removing and destroying the
 1245 permitted plants covered by an immediate final order authorized
 1246 under paragraph (c). A bond or certificate of deposit must be
 1247 provided or assigned in the exact name in which an applicant
 1248 applies for a special permit. The penal sum of the bond or
 1249 certificate of deposit to be furnished to the department by a
 1250 permitholder in the amount specified in this paragraph must
 1251 guarantee payment of the costs and expenses incurred or to be
 1252 incurred by the department for removing and destroying the
 1253 plants cultivated under the issued special permit. The bond or
 1254 certificate of deposit assignment or agreement must be upon a
 1255 form prescribed or approved by the department and must be
 1256 conditioned to secure the faithful accounting for and payment of
 1257 all costs and expenses incurred by the department for removing
 1258 and destroying all plants cultivated under the special permit.
 1259 The bond or certificate of deposit assignment or agreement must

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1260 include terms binding the instrument to the Commissioner of
 1261 Agriculture. Such certificate of deposit shall be presented with
 1262 an assignment of the permitholder's rights in the certificate in
 1263 favor of the Commissioner of Agriculture on a form prescribed by
 1264 the department and with a letter from the issuing institution
 1265 acknowledging that the assignment has been properly recorded on
 1266 the books of the issuing institution and will be honored by the
 1267 issuing institution. Such assignment is irrevocable while a
 1268 special permit is in effect and for an additional period of 6
 1269 months after termination of the special permit if operations to
 1270 remove and destroy the permitted plants are not continuing and
 1271 if the department's invoice remains unpaid by the permitholder
 1272 under the issued immediate final order. If operations to remove
 1273 and destroy the plants are pending, the assignment remains in
 1274 effect until all plants are removed and destroyed and the
 1275 department's invoice has been paid. The bond or certificate of
 1276 deposit may be released by the assignee of the surety company or
 1277 financial institution to the permitholder, or to the
 1278 permitholder's successors, assignee, or heirs, if operations to
 1279 remove and destroy the permitted plants are not pending and no
 1280 invoice remains unpaid at the conclusion of 6 months after the
 1281 last effective date of the special permit. The department may
 1282 not accept a certificate of deposit that contains any provision
 1283 that would give to any person any prior rights or claim on the
 1284 proceeds or principal of such certificate of deposit. The
 1285 department shall determine by rule whether an annual bond or
 1286 certificate of deposit will be required. The amount of such bond
 1287 or certificate of deposit shall be increased, upon order of the

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1288 department, at any time if the department finds such increase to
 1289 be warranted by the cultivating operations of the permitholder.
 1290 In the same manner, the amount of such bond or certificate of
 1291 deposit may be adjusted downward or removed ~~decreased~~ when a
 1292 decrease in the cultivating operations of the permitholder
 1293 occurs or when research or practical field knowledge and
 1294 observations indicate low risk of invasiveness by the nonnative
 1295 species ~~the cultivating operations warrants such decrease.~~
 1296 Factors that may be considered for change include multiple years
 1297 or cycles of successful large-scale contained cultivation, no
 1298 observation of plant, algae, or blue-green algae escape from
 1299 managed areas, or science-based evidence that established or
 1300 approved adjusted cultivation practices will provide a similar
 1301 level of containment of the nonnative plant, algae, or blue-
 1302 green algae. This paragraph applies to any bond or certificate
 1303 of deposit, regardless of the anniversary date of its issuance,
 1304 expiration, or renewal.

1305 (f) In order to carry out the purposes of this subsection,
 1306 the department or its agents may require from any permitholder
 1307 verified statements of the cultivated acreage subject to the
 1308 special permit and may review the permitholder's business or
 1309 cultivation records at her or his place of business during
 1310 normal business hours in order to determine the acreage
 1311 cultivated. The failure of a permitholder to furnish such
 1312 statement, to make such records available, or to make and
 1313 deliver a new or additional bond or certificate of deposit is
 1314 cause for suspension of the special permit. If the department

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1315 finds such failure to be willful, the special permit may be
 1316 revoked.

1317 Section 12. Subsection (3) of section 20.121, Florida
 1318 Statutes, is amended to read:

1319 20.121 Department of Financial Services.—There is created
 1320 a Department of Financial Services.

1321 (3) FINANCIAL SERVICES COMMISSION.—Effective January 7,
 1322 2003, there is created within the Department of Financial
 1323 Services the Financial Services Commission, composed of the
 1324 Governor, the Attorney General, the Chief Financial Officer, and
 1325 the Commissioner of Agriculture, which shall for purposes of
 1326 this section be referred to as the commission. Commission
 1327 members shall serve as agency head of the Financial Services
 1328 Commission. The commission shall be a separate budget entity and
 1329 shall be exempt from the provisions of s. 20.052. Commission
 1330 action shall be by majority vote consisting of at least three
 1331 affirmative votes. The commission shall not be subject to
 1332 control, supervision, or direction by the Department of
 1333 Financial Services in any manner, including purchasing,
 1334 transactions involving real or personal property, personnel, or
 1335 budgetary matters.

1336 (a) Structure.—The major structural unit of the commission
 1337 is the office. Each office shall be headed by a director. The
 1338 following offices are established:

1339 1. The Office of Insurance Regulation, which shall be
 1340 responsible for all activities concerning insurers and other
 1341 risk bearing entities, including licensing, rates, policy forms,
 1342 market conduct, claims, issuance of certificates of authority,

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1343 solvency, viatical settlements, premium financing, and
 1344 administrative supervision, as provided under the insurance code
 1345 or chapter 636. The head of the Office of Insurance Regulation
 1346 is the Director of the Office of Insurance Regulation, who may
 1347 also be known as the Commissioner of Insurance Regulation.

1348 2. The Office of Financial Regulation, which shall be
 1349 responsible for all activities of the Financial Services
 1350 Commission relating to the regulation of banks, credit unions,
 1351 other financial institutions, finance companies, and the
 1352 securities industry. The head of the office is the Director of
 1353 the Office of Financial Regulation, who may also be known as the
 1354 Commissioner of Financial Regulation. The Office of Financial
 1355 Regulation shall include a Bureau of Financial Investigations,
 1356 which shall function as a criminal justice agency for purposes
 1357 of ss. 943.045-943.08 and shall have a separate budget. The
 1358 bureau may conduct investigations within or outside this state
 1359 as the bureau deems necessary to aid in the enforcement of this
 1360 section. If, during an investigation, the office has reason to
 1361 believe that any criminal law of this state has or may have been
 1362 violated, the office shall refer any records tending to show
 1363 such violation to state or federal law enforcement or
 1364 prosecutorial agencies and shall provide investigative
 1365 assistance to those agencies as required.

1366 3. The Office of Public Counsel, the responsibilities of
 1367 which are set forth in chapter 350. The Public Counsel shall
 1368 perform his or her duties independently.

1369 (b) Organization.—The commission shall establish by rule
 1370 any additional organizational structure of the offices other

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1371 than the Office of Public Counsel. It is the intent of the
 1372 Legislature to provide the commission with the flexibility to
 1373 organize the offices, other than the Office of Public Counsel
 1374 which shall remain independent, in any manner they determine
 1375 appropriate to promote both efficiency and accountability.

1376 (c) Powers.—Commission members shall serve as the agency
 1377 head for purposes of rulemaking under ss. 120.536-120.565 by the
 1378 commission and all subunits of the commission. Each director is
 1379 agency head for purposes of final agency action under chapter
 1380 120 for all areas within the regulatory authority delegated to
 1381 the director's office.

1382 (d) Appointment and qualifications of directors.—The
 1383 Public Counsel shall be appointed pursuant to s. 350.061 and is
 1384 subject to the qualifications provided therein. The commission
 1385 shall appoint or remove the each director of the Office of
 1386 Insurance Regulation and the director of the Office of Financial
 1387 Regulation by a majority vote consisting of at least three
 1388 affirmative votes, with both the Governor and the Chief
 1389 Financial Officer on the prevailing side. The minimum
 1390 qualifications of the directors are as follows:

1391 1. Prior to appointment as director, the Director of the
 1392 Office of Insurance Regulation must have had, within the
 1393 previous 10 years, at least 5 years of responsible private
 1394 sector experience working full time in areas within the scope of
 1395 the subject matter jurisdiction of the Office of Insurance
 1396 Regulation or at least 5 years of experience as a senior
 1397 examiner or other senior employee of a state or federal agency
 1398 having regulatory responsibility over insurers or insurance

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1399 agencies.

1400 2. Prior to appointment as director, the Director of the
 1401 Office of Financial Regulation must have had, within the
 1402 previous 10 years, at least 5 years of responsible private
 1403 sector experience working full time in areas within the subject
 1404 matter jurisdiction of the Office of Financial Regulation or at
 1405 least 5 years of experience as a senior examiner or other senior
 1406 employee of a state or federal agency having regulatory
 1407 responsibility over financial institutions, finance companies,
 1408 or securities companies.

1409 (e) Administrative support.—The offices shall have a
 1410 sufficient number of attorneys, examiners, investigators, other
 1411 professional personnel to carry out their responsibilities and
 1412 administrative personnel as determined annually in the
 1413 appropriations process. The Department of Financial Services
 1414 shall provide administrative and information systems support to
 1415 the offices.

1416 (f) Records retention schedules.—The commission and the
 1417 offices may destroy general correspondence files and also any
 1418 other records that they deem no longer necessary to preserve in
 1419 accordance with retention schedules and destruction notices
 1420 established under rules of the Division of Library and
 1421 Information Services, records and information management
 1422 program, of the Department of State. Such schedules and notices
 1423 relating to financial records of the commission and offices
 1424 shall be subject to the approval of the Auditor General.

1425 (g) Records storage.—The commission and offices may
 1426 photograph, microphotograph, or reproduce on film such documents

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1427 and records as they may select, in such manner that each page
 1428 will be exposed in exact conformity with the original. After
 1429 reproduction and filing, original documents and records may be
 1430 destroyed in accordance with the provisions of paragraph (f).

1431 Section 13. Subsection (1) of section 350.061, Florida
 1432 Statutes, is amended to read:

1433 350.061 Public Counsel; appointment; vacancy of office;
 1434 oath; restrictions on Public Counsel and his or her employees.—

1435 (1) (a) The Financial Services Commission ~~committee~~
 1436 ~~designated by joint rule of the Legislature or by agreement~~
 1437 ~~between the President of the Senate and the Speaker of the House~~
 1438 ~~of Representatives as the Committee on Public Counsel Oversight~~
 1439 shall appoint a Public Counsel by majority vote, consisting of
 1440 at least three affirmative votes, to represent the general
 1441 public of Florida before the Florida Public Service Commission.
 1442 Appointment of the Public Counsel shall be subject to
 1443 confirmation by the Senate. Until such time as the Senate
 1444 confirms the appointment, the appointee shall perform the
 1445 functions of the office as provided by law.

1446 (b) The Public Counsel shall be an attorney admitted to
 1447 practice before the Florida Supreme Court and shall serve at the
 1448 pleasure of the Financial Services Commission ~~Committee on~~
 1449 ~~Public Counsel Oversight, subject to biennial reconfirmation by~~
 1450 ~~the committee.~~ The Public Counsel shall perform his or her
 1451 duties independently.

1452 (c) Vacancies in the office shall be filled in the same
 1453 manner as the original appointment. The Financial Services
 1454 Commission may remove the Public Counsel by majority vote,

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1455 consisting of at least three affirmative votes. In the event of
 1456 a vacancy, the Financial Services Commission may appoint an
 1457 interim Public Counsel to serve until such time as a new Public
 1458 Counsel is appointed.

1459 Section 14. Section 350.0613, Florida Statutes, is amended
 1460 to read:

1461 350.0613 Public Counsel; employees; budget; receipt of
 1462 pleadings.-

1463 (1) The Public Counsel is authorized to employ clerical,
 1464 technical, and professional personnel that the Public Counsel
 1465 deems to be reasonably necessary for the performance of the
 1466 duties of the office. The Public Counsel shall set the
 1467 compensation for all personnel of the office and shall be
 1468 responsible for the supervision and direction of all such
 1469 personnel. ~~The committee may authorize the Public Counsel to~~
 1470 ~~employ clerical and technical assistants whose qualifications,~~
 1471 ~~duties, and responsibilities the committee shall from time to~~
 1472 ~~time prescribe. The committee may from time to time authorize~~
 1473 ~~retention of~~ The Public Counsel may retain the services of
 1474 additional attorneys or experts to the extent that the best
 1475 interests of the people of the state will be better served
 1476 thereby, including the retention of expert witnesses and other
 1477 technical personnel for participation in contested proceedings
 1478 before the commission.

1479 (2) The Public Counsel is responsible for preparing the
 1480 budget for the office and shall submit the budget to the
 1481 Financial Services Commission.

1482 (3) The Public Service Commission ~~commission~~ shall furnish

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1483 the Public Counsel with copies of the initial pleadings in all
 1484 proceedings before the commission, and if the Public Counsel
 1485 intervenes as a party in any proceeding he or she shall be
 1486 served with copies of all subsequent pleadings, exhibits, and
 1487 prepared testimony, if used. Upon filing notice of intervention,
 1488 the Public Counsel shall serve all interested parties with
 1489 copies of such notice and all of his or her subsequent pleadings
 1490 and exhibits.

1491 Section 15. Section 350.0614, Florida Statutes, is amended
 1492 to read:

1493 350.0614 Public Counsel; compensation and expenses.—

1494 (1) The salary of the Public Counsel shall be set by the
 1495 Financial Services Commission. The salaries and expenses of the
 1496 Public Counsel and his or her employees shall be allocated by
 1497 the Financial Services Commission ~~committee~~ only from moneys
 1498 appropriated to the Public Counsel by the Legislature.

1499 ~~(2) The Legislature declares and determines that the~~
 1500 ~~Public Counsel is under the legislative branch of government~~
 1501 ~~within the intention of the legislation as expressed in chapter~~
 1502 ~~216, and no power shall be in the Executive Office of the~~
 1503 ~~Governor or its successor to release or withhold funds~~
 1504 ~~appropriated to it, but the same shall be available for~~
 1505 ~~expenditure as provided by law and the rules or decisions of the~~
 1506 ~~Committee on Public Counsel Oversight.~~

1507 ~~(3) Neither the Executive Office of the Governor nor the~~
 1508 ~~Department of Management Services or its successor shall have~~
 1509 ~~power to determine the number, or fix the compensation, of the~~
 1510 ~~employees of the Public Counsel or to exercise any manner of~~

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1511 ~~control over them.~~

1512 Section 16. (1) All powers, duties, functions, records,
 1513 offices, personnel, property, pending issues, and existing
 1514 contracts, administrative authority, administrative rules, and
 1515 unexpended balances of appropriations, allocations, and other
 1516 funds relating to the Office of Public Counsel pursuant to s.
 1517 350.061, Florida Statutes, are transferred by a type two
 1518 transfer, as defined in s. 20.06(2), Florida Statutes, from the
 1519 Legislature to the Financial Services Commission. The Office of
 1520 Public Counsel shall be funded from the General Revenue Fund.

1521 (2) Notwithstanding ss. 216.292 and 216.351, Florida
 1522 Statutes, upon approval by the Legislative Budget Commission,
 1523 the Executive Office of the Governor shall transfer funds and
 1524 positions between the Legislature and the Financial Services
 1525 Commission to implement this act.

1526 Section 17. The Department of Agriculture and Consumer
 1527 Services shall conduct a comprehensive statewide forest
 1528 inventory analysis and study, utilizing a Geographic Information
 1529 System, to identify where available biomass is located,
 1530 determine the available biomass resources, and ensure forest
 1531 sustainability within the state. The department shall submit the
 1532 results of the study to the Governor, the President of the
 1533 Senate, and the Speaker of the House of Representatives no later
 1534 than July 1, 2013.

1535 Section 18. The Department of Agriculture and Consumer
 1536 Services, in consultation with the Florida Public Service
 1537 Commission, the Florida Building Commission and the Florida
 1538 Energy Systems Consortium shall develop a clearinghouse of

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1539 information regarding cost savings associated with various
 1540 energy efficiency and conservation measures. The department
 1541 shall post the information on its website by July 1, 2013.

1542 Section 19. The Public Service Commission is directed to
 1543 conduct a study of the potential effects of public charging
 1544 stations and privately-owned electric vehicle charging on both
 1545 energy consumption and the impact on the electric grid in the
 1546 state. The Public Service Commission shall also investigate the
 1547 feasibility of using off-grid solar photovoltaic power as a
 1548 source of electricity for the electric vehicle charging
 1549 stations. The commission shall submit the results of the study
 1550 to the Governor, the President of the Senate, and the Speaker of
 1551 the House of Representatives no later than December 31, 2012.

1552 Section 20. Subject to a specific appropriation, the
 1553 Public Service Commission, in consultation with the Department
 1554 of Agriculture and Consumer Services, shall contract for an
 1555 independent evaluation of the effectiveness of the Florida
 1556 Energy Efficiency and Conservation Act in achieving the
 1557 statutory objectives of reducing and controlling the growth
 1558 rates of electric consumption and reducing the growth rates of
 1559 weather-sensitive peak demand; increasing the overall efficiency
 1560 and cost-effectiveness of electricity and natural gas production
 1561 and use; encouraging further development of demand-side
 1562 renewable energy systems; and conserving expensive resources,
 1563 particularly petroleum fuels.

- 1564 (1) The evaluation shall include an assessment of:
 1565 (a) The effectiveness of the act in accomplishing
 1566 statutory objectives in a cost-effective manner, taking into

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1567 account short-term and long-term costs and benefits;
 1568 (b) The models and methods used to establish conservation
 1569 goals and programs to meet those goals;
 1570 (c) The strengths and weaknesses of the act relative to
 1571 alternative methods available to achieve statutory objectives;
 1572 (d) The coordination between the goal-setting process in
 1573 s. 366.82 and the determination of need process in s. 403.519,
 1574 including the manner in which supply-side conservation and
 1575 efficiency measures are addressed;
 1576 (e) The potential for time-based rates and advanced
 1577 metering technology, or other mechanisms, to allow customers to
 1578 manage their energy consumption and allow for peak load shaving.
 1579 (2) The findings and recommendations of the evaluation
 1580 shall be submitted to the Governor, the President of the Senate,
 1581 and the Speaker of the House of Representatives no later than
 1582 January 31, 2013.
 1583 Section 21. This act shall take effect July 1, 2012.
 1584