

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation and Conservation Committee

BILL: CS/CS/SB 996

INTRODUCER: Environmental Preservation & Conservation Committee, Communications & Public Utilities Committee, Senator Bennett and others

SUBJECT: Energy

DATE: April 13, 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Fav/CS</b>
2.	Branning	Kiger	EP	<b>Fav/CS</b>
3.			FT	
4.			GA	
5.				
6.				

**I. Summary:**

The committee substitute :

- Creates the Florida Alternative Energy Development Corporation to promote development of alternative energy technologies in this state;
- Creates the Alternative Energy Incentive Program, a research and economic development grant program to be operated by the corporation;
- Transfers to the corporation existing authority for development of alternative and renewable energy, for making recommendations to the Legislature concerning energy policy, and for administering existing economic incentives for renewable energy;
- Increases the cap on the total amount of sales tax exemptions for materials used in the distribution of biodiesel and ethanol from \$1 million to \$2 million;
- Increases the yearly limit on the total amount of corporate income tax credits available for costs incurred in connection with an investment in the production, storage, and distribution of biodiesel or ethanol from \$6.5 million and \$13 million;
- Transfers the administration of the Solar Energy System Incentive Program from the Department of Environmental Protection (DEP) to the corporation;
- Creates a Renewable Portfolio Standard requiring that 50 percent of all new electricity provided by a public utility be from renewable energy, as defined;
- Creates the Florida Net Metering Conservation Act;
- Requires every wholesaler of diesel to a marina within this state must offer biodiesel for sale;
- Requires the (DEP) to develop greenhouse gas inventories;

- Authorizes the Public Service Commission (PSC) to review and approve or deny proposed sales and transfers of utility assets, including in the context of a proposed merger or acquisition of the utility;
- Creates a refund of a portion of the sales tax on qualified alternative motor vehicles;
- Revises the requirements relating to guaranteed energy-performance savings contracts;
- Includes integrated gasification combined cycle (IGCC) power plants in the new provisions relating to nuclear plants and the determination of need for a proposed plant, the exemption from the bid rule, and early cost recovery;
- Requires the Department of Community Affairs to review certain energy conservation standards;
- Provides a phase-in to require the purchase of hybrid, flex-fuel, biodiesel, or compressed natural gas vehicles purchased or leased with funds provided in the appropriations act; and
- Provides appropriations.

The committee substitute amends ss. 377.703, 212.08, 213.053, 220.192, 377.803, 377.804, 377.806, 366.91, 403.0874, 366.04, 255.252, 287.063, 287.064, 489.145, 366.93, 403.519, and 287.151, F.S.

The committee substitute creates ss. 288.10894, 288.10895, 366.915, 366.925, and 212.086, F.S.

## **II. Present Situation:**

In the 2006 Regular Session, the Legislature passed CS/CS/CS/SB 888, ch. 2006-230, Laws of Florida. This was a broad energy bill, containing provisions that created the Florida Energy Commission and economic incentives for alternative energy, including the following.

- The Renewable Energy Technologies Grants Program, created within the DEP to provide matching grants for demonstration, commercialization, research, and development projects relating to renewable technologies. The committee substitute defines renewable energy technology as any technology that generates or utilizes a renewable energy resource, defined to include electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power. As a part of this program, DEP is to work with the Department of Agriculture and Consumer Services to coordinate grants for bioenergy projects.
- The period from 12:01 a.m., October 5 through midnight October 11, 2006, was designated a tax holiday for sales tax on new energy-efficient products sold during that period and having a selling price of \$1,000 or less. The exemption is only for items purchased for personal use, and includes items like a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that meet certain criteria.
- A rebate program was created for purchasers of solar photovoltaic systems or solar thermal systems, including pool heaters. To be eligible, the systems must meet certain requirements. The maximum rebates are provided and vary depending on the type of system and its intended use.

- An exemption from sales tax was created for stated types of products relating to hydrogen-powered vehicles, commercial stationary hydrogen fuel cells, and materials used in distributing biodiesel and ethanol.
- An investment tax credit was created for costs related to investments in hydrogen-powered vehicles and hydrogen fueling stations; fuel cells; and biodiesel and ethanol.

### III. Effect of Proposed Changes:

**Section 1** creates s. 288.10894, F.S., to create the Florida Alternative Energy Development Corporation. This section provides legislative findings that it is in the public interest to promote alternative energy technologies in this state because the state is overly dependent on foreign oil and alternative energy and energy conservation technologies have the potential to decrease this dependency, to minimize volatility of fuel cost, and to improve environmental conditions. Additionally, in-state research, development, deployment, and use of these technologies can make the state a leader in new and innovative technologies and encourage investment and economic development in this state.

The Florida Alternative Energy Development Corporation is created as a public corporation, with the stated intent that it constitutes an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of promoting the development of alternative energy in Florida. The corporation is not governed by the corporations statutes and has only the powers given in this section. The corporation is subject to laws on administrative procedures (ch. 120, F.S.), public records and public meetings (ch. 119, F.S.), and public business (ch. 286, F.S.). Additionally, the corporation is a corporation primarily acting as an instrumentality of the state, within the meaning of the sovereign immunity statute (s. 768.28, F.S.).

The committee substitute defines the term “alternative energy” for this section to include: biomass; agricultural products and byproducts; municipal solid waste, including landfill injection, landfill mining, and landfill gas; solar thermal and solar photovoltaic energy; geothermal; ocean energy, including wave or thermal; hydrogen fuel; fuel cells; energy conservation, including building, equipment, and appliance efficiency technologies; enhancements to the transmission of electricity, including advanced transmission lines; distributed generation; ethanol, biodiesel, and similar synthetic fuels; and technologies relating to impacts of pollutants and greenhouse gases.

The corporation is designated as the principal organization in the state for promotion of alternative energy technology. Its goals are to minimize dependence on foreign oil, with the maximum overall benefit to the State of Florida, and, where possible, to minimize the impact of greenhouse gases. It is to accomplish these goals by consolidating in-state resources and activities into a unified forum to better coordinate, facilitate, and fund research, development, deployment and use of alternative energy technologies. To make better use of limited resources, the corporation is to focus on projects with near-term, in-state benefits. Specifically, the corporation is to:

- Bring together existing resources by assisting in the integration of state-government energy programs and developing an information exchange system to include certain specified items.
- Administer state-funded grants and capital outlays, including developing an application program to determine awards of those grants and outlays, and assist interested persons in obtaining additional funding for alternative energy technology projects.
- Explore the problems faced by those developing technology in Florida and determine where the problems lie, i.e., in research, development, obtaining start-up capital and financing, or finding buyers for the technology, and then assisting in resolving these problems.
- In cooperation with Enterprise Florida, Inc., promote the state as a location for businesses having operations related to alternative energy technologies.

The committee substitute provides specific intent that nothing in this section in any way changes the powers, duties, and responsibilities of the Public Service Commission or the powers, duties, and responsibilities assigned by the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, F.S.

The corporation is to be governed by a board of directors consisting of the following members:

- The Governor or the Governor's designee,
- The Commissioner of Agriculture, or his or her designee;
- The Chief Financial Officer, or his or her designee;
- The Attorney General, or his or her designee;
- One member appointed by the President of the Florida Senate;
- One member appointed by the Speaker of the Florida House of Representatives;
- The President of Enterprise Florida, Inc., or his or her designee;
- A representative from the State Board of Education, selected by the members of that board;
- The Chairperson of the Public Service Commission, or his or her designee;
- For one-term only, the current Chairman of the Florida Energy Commission and one other member of that commission, to be selected by the commission members; and
- Any additional board members selected by a consensus of all existing members of the governing board to assist the corporation in carrying out its functions and duties.

A board member's term of office may not exceed 4 years, and a member may not serve more than two consecutive terms.

The Governor is to serve as chairperson of the board. The members of the board must select a vice chairperson biennially, upon selection of any new members. The corporation's president shall keep a record of the proceedings of the board, act as custodian of all books, documents, and papers filed with the board, and keep the minutes of the board.

The board must meet at least once each year, upon the call of the chairperson, at the request of the vice chairperson, or at the request of a majority of the membership. A majority of the total

number of all directors constitutes a quorum. The board may take official action by a majority vote of the members present at any meeting at which a quorum is present.

Members of the board serve without compensation, but may be reimbursed for all reasonable, necessary, and actual expenses, as determined by the board. Each member of the board of directors who is not otherwise required to file a financial disclosure is required to do so.

The corporation's board of directors must appoint a corporate president and establish and adjust the president's compensation. The president is the chief administrative and operational officer of the board of directors and of the corporation, and is to direct and supervise other employees in accomplishing the goals and tasks set forth above. State officers, agencies, departments, boards, and commissions may provide services to the corporation within their respective functions as may be requested by the corporation. Upon request of the corporation, the Governor is hereby authorized to temporarily transfer to the corporation such officers and employees that may be deemed necessary from time to time to assist the corporation in carrying out its functions and duties under this act. Officers and employees so transferred shall not lose their career service, select exempt, or senior management status or rights.

The corporation is to receive its state funding through the Florida Alternative Energy Development Corporation Trust Fund<sup>1</sup> pursuant to general law. All of the members of the board of directors, the officers, and the employees of the corporation are responsible for the prudent use of all public and private funds within the corporation's control and must ensure that the use of such funds is in accordance with applicable laws, bylaws, and contractual requirements. In performing all of its functions, the corporation must take all possible steps to ensure the maximum benefit to the state.

By December 31 each year, the corporation must submit an annual report to the Governor, the Commissioner of Agriculture, the Chief Financial Officer, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives, containing:

- A detailed description of the corporation's activities and accomplishments for the year.
- A certified audit by an independent certified public accountant of resources and expenditures.
- A statement of the corporation's strategic priorities and an explanation of their use in guiding resource allocations.

**Section 2** creates s. 288.10895, F.S., to create the Alternative Energy Incentive Program, a research and economic development grant program to be operated by the corporation. The specific purpose of the program is to encourage economic development and research and development in Florida that will commercialize alternative energy innovations, and develop new alternative energy manufacturing, blending, power generation, and distribution facilities.

The following definitions are provided for purposes of this grant program.

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<sup>1</sup> This trust fund does not currently exist and there is currently no bill pending that would create this trust fund as required by Art. III, s. 19 of the State Constitution.

- “Alternative energy” means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: ethanol, biodiesel, biomass, biogas, waste heat, fuel cells, hydrogen, solar, hydro, wind, and geothermal.
- “Average private sector wage” means the statewide average wage in the private sector or the average of all private sector wages in the county or in the standard metropolitan area in which the project is located as determined by the Agency for Workforce Innovation.
- “Corporation” means the Florida Alternative Energy Development Corporation.
- “Jobs” means full-time equivalent positions, as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs.
- “Match” or “matching funds” means actual cash outlays contributed, including, but not limited to, cash outlays for wages, rental expenses, travel expenses, unrecovered indirect costs, and purchases of material and supplies, as a direct benefit to the project; or non-cash contributions necessary and reasonable for proper and efficient accomplishment of project objectives. The value of non-cash contributions shall be established using certain specified guidelines.
- “President” means the president of the Florida Alternative Energy Development Corporation.

Additionally, the following definitions are provided:

- “Business project” is the location to or expansion in this state of a business that manufactures, blends or distributes alternative energy, generates power for sale in this state from an alternative energy source, or develops new or expanded infrastructure in this state for the commercialization or distribution of alternative energy.
- “Research and development project” is basic and applied research conducted in this state in the sciences or engineering that relates to the development, manufacturing, blending, or use of new and existing alternative energy technologies. The term does not include market research, routine consumer product testing, sales research, research in the social sciences or psychology, non-technological activities, or technical services.

To qualify for consideration under the grant program, a business project or research and development project must, at a minimum, establish to the satisfaction of the corporation the following criteria.

- The project is located in this state.
- The jobs created by the project pay an estimated annual average wage that equals at least 130 percent of the average private sector wage. The average wage requirement may be waived if the corporation determines that the merits of the individual project or the specific circumstances warrant such action.
- The project must include matching funds provided by the applicant, the local community, in the case of a research and development project, a public or private university or research institution, or by other available sources. The match requirement may be waived if the corporation determines that the merits of the individual project or the specific circumstances warrant such action.

- The research and development project includes a plan for significant collaboration with a higher education institution in the state; and
- The research and development project includes a plan for the commercialization of the research through direct use by the applicant in the state or the transfer or licensing of new technology to Florida-based businesses that produce alternative energy for use or sale within the state. A business project or research and development project applicant must submit a written application to the corporation which must include certain specified items.

The corporation may negotiate the proposed amount of an award for any applicant meeting the requirements of this section, taking into consideration the amount of the incentive needed to cause the applicant to locate or expand in this state and any other relevant applicant impact and cost information. After completing the evaluation, the president is to recommend to the commission the approval or disapproval of an award, including in any approval any proposed performance conditions that the applicant must meet in order to obtain incentive funds and any other conditions that must be met before the receipt of any incentive funds. The commission must consult with the President of the Senate and the Speaker of the House of Representatives before giving approval for an award. Upon approval of an award, the Executive Office of the Governor is to release the funds.

Upon approval by the commission and release of the funds, the president is to issue a letter certifying the applicant as qualified for an award, and the corporation and the applicant must enter into an agreement setting forth the conditions for payment of grant funds, including, but not limited to, the total amount of funds awarded, the performance conditions that must be met to obtain the award or portions of the award, the methodology for validating performance, the schedule of payments, and sanctions for failure to meet performance conditions, including any clawback provisions.

The corporation must validate the performance of projects that have received a grant award at the conclusion of the grant award agreement, or its earlier termination. The corporation must, within 90 days, report the results of the grant award to the members of the corporation, the President of the Senate, and the Speaker of the House of Representatives.

**Section 3** amends s. 377.703, F.S., to delete current authority for the DEP to promote research and development of energy, plan for development of renewable energy resources, and create a state clearinghouse for gathering and indexing all information related to energy research in this state.

**Section 4** amends paragraph 212.08(7)(ccc), F.S., and adds a new subsection to that section. The committee substitute increases the cap on the amount of sales tax exemptions per state fiscal year for sales tax on materials used in the distribution of biodiesel and ethanol from \$1 million to \$2 million. The committee substitute also codifies a provision on a sales tax holiday for energy efficient products, to make the tax holiday permanent and avoid the need for annual legislation. The committee substitute provides that in October of each year, sales tax would not be collected during the 14-day period beginning at 12:01 a.m., on the first Saturday, on the sale of a new energy-efficient product having a selling price of \$1,500 or less per product during that period. The exemption would apply only when the energy-efficient product is purchased for

noncommercial home or personal use, not when the product is purchased for trade, business, or resale. As used in this section, the term "energy-efficient product" means a dishwasher, clothes washer, air conditioner, ceiling fan, compact florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency or by the United States Department of Energy as meeting or exceeding the requirements under the Energy Star Program of either agency. Purchases made under this subsection may not be made using a business or company credit or debit card or check. Any construction company, building contractor, or commercial business or entity that purchases or attempts to purchase the energy-efficient products as exempt under this section commits an unfair method of competition in violation of s. 501.204, F.S., punishable as provided in s. 501.2075, F.S. The committee substitute authorizes the Department of Revenue to adopt rules to administer this new subsection.

**Section 5** amends paragraph 212.08(7)(ccc), F.S., to transfer administration of the application for the sales tax refunds from the DEP to the corporation.

**Section 6** amends s. 213.053, F.S., to authorize the Department of Revenue to share information with the corporation relating to the sales tax refunds and exemptions and the corporate tax credit.

**Section 7** amends s. 220.192(1), F.S., to increase the yearly limit on the total amount of corporate income tax credits available to all taxpayers for costs incurred in connection with an investment in production, storage, and distribution of biodiesel or ethanol from \$6.5 million to \$13 million.

**Section 8** amends s. 220.192, F.S., to transfer the administration of the application for the credits from DEP to the Corporation.

**Section 9** amends s. 377.803, F.S., to revise definitions used in the Florida Renewable Energy Technologies and Energy Act to prepare to transfer administration of the Renewable Energy Technologies Grants Program from DEP to the corporation.

**Section 10** amends s. 377.804, F.S., to make this transfer. The transfer includes the biofuels grants currently administered by DEP in consultation with the Department of Agriculture and Consumer Services.

**Section 11** amends s. 377.806, F.S., to transfer administration of the Solar Energy System Incentives Program from DEP to the corporation. It also provides that the rebate is payable only to the end user of an eligible system and that rebates are limited to one per type of system per resident per fiscal year.

**Section 12** creates s. 366.915, F.S., to create the Renewable Portfolio Standard Act to establish a requirement that public utilities purchase a stated amount of renewable energy. The committee substitute states that it is in the public's interest to do so for the following purposes:

- Encourage investment in renewable energy resources to expand environmentally sustainable methods of generating electricity.
- Stimulate the economic growth of this state.
- Enhance the continued diversification of the fuel sources for electricity used in the state.

For purposes of the renewable portfolio standard, the following definitions are provided:

- “Biomass” means a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, agricultural and orchard crops, waste products from livestock and poultry operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.
- “Renewable energy” means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term also includes energy efficiency resources such as waste heat from sulfuric acid manufacturing operations and combined heat and power. It also includes nuclear and coal fuel when coal is used in a facility with potential carbon dioxide capturing technology.

Each public utility shall ensure that by 2015 and for each year thereafter, at least 50 percent of all new net energy for load, using 2006 as a base year, derives from renewable energy produced in Florida. If a public utility must procure renewable energy to satisfy the requirements of this section, the public utility must use a competitive procurement process, give priority to entities that produce renewable energy in Florida, and utilize sources of renewable energy that are not related to or affiliated with the public utility, except when and only to the extent that such entities collectively cannot produce enough renewable energy to satisfy the requirements of this section.

The Public Service Commission (PSC) is authorized to adopt rules to ensure that the procurement of renewable energy by public utilities is conducted in a fair and impartial manner, consistent with the goals set forth in this section. The PSC also may develop an accreditation process to ensure that any entities providing renewable energy in Florida satisfy the goals of this section.

**Section 13** amends s. 366.91, F.S., to conform the definition of “renewable energy” in the context of a public utility renewable energy purchase contract as these contracts likely will be used to acquire some of the energy required by the renewable portfolio standard.

**Section 14** creates s. 366.925, F.S., the “Florida Net Metering Conservation Act,” to require the PSC to develop rules requiring all public utilities to develop net metering programs under which they make available to customers meters that measure both energy production and consumption by the customer. The customer is to receive credit at the full retail rate for energy generated by eligible systems. If the customer's system generates more energy than the customer consumes during a billing cycle, the utility must pay the customer for the excess generation at its full avoided cost, as set forth in s. 366.051, F.S. The PSC must also develop rules setting the interconnection requirements and other standards renewable energy systems must meet to ensure public safety and reliability for customers to be eligible to participate in the net metering program.

**Section 15** requires that effective July 1, 2007, every wholesaler of diesel to a marina within this state must offer biodiesel for sale.

**Section 16** creates s. 403.0874, F.S., to require DEP to develop greenhouse gas inventories that account for annual greenhouse gases emitted to and removed from the atmosphere, and forecast gases emitted and removed, for all major greenhouse gases, for time periods determined sufficient by the department to provide for adequate analysis and planning. The DEP is to define, by rule, what greenhouse gases are to be included in each inventory, the criteria for defining major emitters, which emitters must report emissions, and what methodologies shall be used to estimate gases emitted and removed from those not required to report. The department is authorized to require all major emitters of defined greenhouse gases to report emissions according to methodologies and reporting systems approved by the department and established by rule, which may include the use of quality-assured data from continuous emissions monitoring systems.

**Section 17** amends s. 366.04, F.S., to authorize the PSC to review and to approve or deny proposed sales and transfers of utility assets, including in the context of a proposed merger or acquisition of the utility. The PSC is authorized to approve, deny, or condition mergers between a public utility and another entity. The term “assets” includes, but is not limited to, real assets, financial assets, construction work in progress, and allowances for funds used during construction. However, the commission may establish, by rule, minimum levels of value of asset transfer that shall be deemed immaterial because the amount involved would not adversely impact the utility and are therefore not subject to the provisions of this section. In the exercise of this jurisdiction, the commission has the following powers. In determining whether to allow a proposed sale, merger, or acquisition, the PSC is to determine whether the proposed transaction is in the public interest, and may consider whether the transaction will:

- Adversely affect the adequacy, efficiency, and reliability of electric service provided to the public utility’s end use customers;
- Result in increased cost of electric service provided to the public utility’s end use customers without offsetting benefits;
- Harm the financial condition of the public utility; and,
- Whether comparable economic savings can be achieved through other means, including no transaction, while avoiding the possible adverse consequences of the proposed transaction.

**Section 18** creates s. 212.086, F.S., the “Energy Efficient Vehicle Sales Tax Refund Program.” The committee substitute provides for a refund of a portion of the sales tax on qualified alternative motor vehicles, as defined by s. 30B of the Internal Revenue Code of 1986, which includes hybrid vehicles, alternative fuel vehicles, fuel cell vehicles, and advanced lean burning technology vehicles. The amount of the sales tax refund is to be computed on the sales price up to a maximum sales price of \$15,000. To obtain a refund, a purchaser of a qualified vehicle must file an application within 90 days after the purchase, and must include specified information. The Department of Revenue would approve refunds up to the maximum amount appropriated “based on the date of filing an application,” apparently first come, first served. If funds are insufficient to pay all refunds in a fiscal year, unpaid refund requests may be processed the following year, with priority over new applications. A taxpayer who receives a refund for a hydrogen powered vehicle pursuant to s. 212.08(7)(ccc), F.S., would not be allowed a refund provided by this exemption.

This sales tax refund provision is repealed on July 1, 2010.

**Section 19** appropriates an unspecified sum of money from the General Revenue Fund to the Department of Revenue's Administrative Trust Fund for FY 2007-2008 for the purpose of paying these sales tax refunds.

**Section 20** amends s. 255.252, F.S., to require each state agency to identify and compile a list of all state-owned buildings in its inventory which would be suitable for consideration for a guaranteed energy-performance savings contract pursuant to s. 489.145, F.S. The list would be submitted to the Department of Management Services (DMS) by December 31, 2007. The list of suitable buildings shall be developed from the list of state-owned facilities of more than 5,000 square feet in area for which the agency pays for expenses of utilities and other operating expenses as they relate to energy use. In consultation with each department secretary or director, by March 1, 2008, the DMS shall evaluate each agency's facilities found suitable for energy conservation projects, and shall develop an energy efficiency project schedule based on certain specified factors. The schedule shall provide the deadline for guaranteed energy-performance savings contract improvements to be made to the state-owned buildings.

**Section 21** amends s. 287.063, F.S., to provide that the payment term for a deferred-payment contract may not extend beyond the anticipated useful life of the equipment financed unless the contract provides for the replacement or the extension of the useful life of the equipment during the term of the loan.

**Section 22** amends s. 287.064, F.S., to provide that the repayment term for funds drawn under a master equipment financing agreement may not exceed 20 years for energy conservation measures excluding the costs of training, operation, and maintenance. The guaranteed energy performance savings contractor shall provide for the replacement or the extension of the useful life of the equipment during the term of the contract.

**Section 23** amends s. 489.145, F.S., to clarify that the policy of the state is to encourage agencies to invest in energy conservation measures to minimize energy consumption and maximize energy savings. A guaranteed energy performance savings contract may include allowable cost avoidance, the calculations for which include, but are not limited to, provable budgeted costs avoided and contained in a capital replacement plan and the current undepreciated value of replaced equipment subtracted from the replacement cost of the new equipment. Actual costs savings under a contract must meet or exceed the estimated cost savings provided in program approval. The Office of the Chief Financial Officer must review proposals for acquisition of energy conservation measures to ensure the most effective financing is being used.

For purposes of consolidated financing of deferred payment commodity contracts by a state agency, the annualized amount of any such contract must be supported from available recurring funds appropriated to the agency in an appropriation category which the Chief Financial Officer has determined is appropriate or which the Legislature has designated for payment of the obligation incurred under the contract.

The Office of the Chief Financial Officer may not approve any such contract which does not meet the requirements of this section.

**Sections 24 and 25** amend ss. 366.93 and 403.519, F.S., to include integrated gasification combined cycle (IGCC) power plants in the new provisions relating to nuclear plants and the determination of need for a proposed plant, the exemption from the bid rule, and early cost recovery.

The term “integrated gasification combined cycle power plant” for purposes of s. 366.93, F.S., is defined as an electrical power plant that uses synthesis gas produced by integrated gasification technology. Generally speaking, an IGCC power plant combines a power plant and a chemical plant. The power plant is a gas fueled combined cycle plant, much like a natural gas plant. The chemical plant produces a synthetic gas, typically by gasifying coal. This synthetic gas is then burned in the power plant similar to natural gas.

Section 403.519, F.S., relating to the determination of need for a proposed power plant is amended to provide that a utility proposing to build and operate an IGCC power plant would file a petition for determination of need with the Florida Public Service Commission (PSC or commission). The petition must contain:

- A description of the need for the generation capacity.
- A description of how the proposed IGCC power plant will enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.
- A description of and a nonbinding estimate of the cost of the IGCC power plant.
- The annualized base revenue requirement for the first 12 months of operation of the IGCC power plant.
- Information on whether there were any discussions with any electric utilities regarding ownership of a portion of the plant by such electric utilities.

In making its determination to either grant or deny the petition, the commission would be required to consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost. More specifically, the PSC would have to take into consideration matters within its jurisdiction which it deems relevant, including whether the IGCC power plant would:

- Provide needed base-load capacity.
- Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.
- Provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

The PSC would be required to hold a hearing within 90 days after the filing of the petition, and to issue an order granting or denying the petition within 135 days after the date of the filing of the petition. The commission would be the sole forum for the determination of need and the issues addressed in the petition, which could not be reviewed in any other forum, or in the review of proceedings in any other forum.

The utility proposing to build an IGCC power plant would be exempt from the bid rule, rule 25-22.082, Florida Administrative Code, which requires that a utility proposing to build a power plant request bids from other generators to provide the proposed power prior to petitioning for a determination of need.

The commission's determination of need for an IGCC power plant would create a presumption of public need and necessity. After a petition for determination of need for an IGCC power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant, would not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing, that certain costs were imprudently incurred. Proceeding with the construction of the IGCC power plant following an order by the commission approving the need for the IGCC power plant would not constitute evidence of imprudence. Imprudence would not include any cost increases due to events beyond the utility's control. Further, a utility's right to recover costs associated with an IGCC power plant could not be raised in any other forum or in the review of proceedings in such other forum. Costs incurred prior to commercial operation would be recovered pursuant to chapter 366, F.S.

Section 366.93, F.S., relating to advance cost recovery for pre-construction costs of an IGCC power plant is amended to require the PSC to establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of an IGCC power plant. The mechanisms must be designed to promote utility investment in IGCC power plants and allow for the recovery in rates of all prudently incurred costs, including but not limited to:

- Recovery through the capacity cost recovery clause of any preconstruction costs.
- Recovery through an incremental increase in the utility's capacity cost recovery clause rates of the carrying costs on the utility's projected construction cost balance associated with the IGCC power plant.

After a petition for determination of need is granted, the utility could petition the commission for cost recovery as permitted by this section and commission rules. After the petition is granted, and up until the IGCC plant is placed in commercial service, the utility would be required to report to the commission annually the budgeted and actual costs as compared to the estimated inservice cost of the IGCC power plant provided by the utility in its petition for a determination of need. When the IGCC power plant is placed in commercial service, the utility is to be allowed to increase its base rate charges by the projected annual revenue requirements of the IGCC power plant.

If the utility were to elect not to complete, or to be precluded from completing, construction of the IGCC power plant, the utility would be allowed to recover all prudent preconstruction and construction costs incurred following the commission's issuance of a final order granting a determination of need for the IGCC power plant. The utility would recover the costs through the capacity cost recovery clause over a period equal to the period during which the costs were incurred or 5 years, whichever is greater.

These provisions are contained in SB 1202.

**Section 26.** The Department of Community Affairs shall, on or before September 1, 2007, review and if warranted under Part VI of ch. 533, F.S., establish, by rule, new or updated energy conservation standards to improve the energy efficiency of certain specified products. If the department determines that new or updated standards are not so warranted, it shall, on or before September 1, 2007, provide a written report to the Governor and Legislature describing in detail the reason for its determination.

**Section 27.** Section 287.151, F.S., is amended to phase in a requirement that all new vehicles purchased by a state agency, university, or local government, through a state purchasing plan must be hybrid, flex-fuel, biodiesel, or compressed natural gas vehicles. The phase-in schedule is as follows:

- By July 1, 2008 – 25 percent
- By July 1, 2009 – 50 percent
- By July 1, 2010 – 75 percent
- By July 1, 2011 – 90 percent
- After July 1, 2011 – any new vehicle if the type of vehicle being purchased is available with such propulsion system and otherwise meets the requirements for the vehicle's intended use.

**Section 28** appropriates, for the 2007-2008 fiscal year, the sum of \$500,000 from the General Revenue Fund to the Florida Alternative Energy Trust Fund for the purpose of funding the activities of the Florida Alternative Energy Development Corporation for the 2007-2008 fiscal year.

**Section 29** appropriates, for the 2007-2008 fiscal year, the sum of \$40 million from the General Revenue Fund to the Florida Alternative Energy Trust Fund for purposes of funding the Alternative Energy Incentive Program.

**Section 30** appropriates, for the 2007-2008 fiscal year, the sum of \$15 million to the Florida Alternative Energy Trust Fund for the purpose of funding the Renewable Energy Technologies Grants Program.

**Section 31** appropriates, for the 2007-2008 fiscal year, the sum of \$2.5 million from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding commercial and consumer solar incentives authorized in s. 377.806, F.S.

**Section 32** appropriates, for the 2007-2008 fiscal year, the sum of \$65,763 from the General Revenue Fund to the Department of Revenue for the purpose of administering the energy-efficient products sales tax holiday.

**Section 33** provides that, except as otherwise provided, this act shall take effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This committee substitute does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII, State Constitution.

**B. Public Records/Open Meetings Issues:**

This committee substitute provides that the Florida Alternative Energy Development Corporation is not a department of the executive branch of state government within the scope and meaning of Art. IV, s. 6 of the state constitution. However, the corporation shall constitute an agency for the purposes of s. 120.52, F.S., and ch. 119, F.S., relating to public records. Any exemptions from the public records law must be addressed in a separate bill for that purpose (Art. I, s. 24 of the state constitution.)

Currently, there is not a bill introduced that would exempt the Florida Alternative Energy Development Corporation from any of the public records requirements of ch. 119, F.S. SB 2024 would create certain public records exemptions for the Florida Alternative Energy Technology Center.

**C. Trust Funds Restrictions:**

The committee substitute provides that the Florida Alternative Energy Development Corporation will receive funding through the Florida Alternative Energy Development Corporation Trust Fund pursuant to general law. This trust fund does not currently exist. Art. III, s. 19(f) of the state constitution provides that “(n)o trust fund of the State of Florida or other public body may be created by law without a three-fifths (3/5) vote of the membership of each house of the legislature in a separate bill for that purpose only.”

Currently, there is not a bill introduced that would create the Florida Alternative Energy Development Corporation Trust Fund. SB 2026 would create the Florida Alternative Electric Energy Trust Fund.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

The committee substitute provides for the following sales tax exemptions and rebates:

- Increases sales tax exemption limit from \$1 million to \$2 million for materials used in the distribution of biodiesel and ethanol.
- Creates a permanent tax-free week for the purchase of certain energy-efficient products.

- Creates the Energy Efficient Motor Vehicle Sales Tax Refund Program to refund the sales tax paid up to a maximum sales price of \$15,000.<sup>2</sup>

The committee substitute provides that the corporate income tax credit for renewable energy technologies costs is increased from \$6.5 million to \$13 million.

#### B. Private Sector Impact:

The committee substitute provides \$55 million for grants for projects on research, development, and deployment of renewable energy technologies. It also requires that public utilities provide a minimum of 50 percent of new sources of electricity from renewable resources and make net metering available to their customers. These incentives should provide a significant increase in the development of renewable energy in Florida. The additional financial incentives should increase use of solar and energy-efficient technologies.

Consumers purchasing specified energy-efficient products during the annual tax-free week would not have to pay the sales tax on those items.

The committee substitute provides an incentive to consumers to purchase qualified alternative motor vehicles by allowing for a rebate of the sales tax paid on such vehicles up to a maximum vehicle sale price of \$15,000. This provision is repealed July 1, 2010.

The committee substitute also increases the overall limit of sales tax exemption for materials used in the distribution of biodiesel and ethanol from \$1 million to \$2 million. This would allow more taxpayers to qualify and receive this sales tax exemption.

The committee substitute also increases the overall limit for a credit on the corporate income tax for eligible costs incurred in connection with an investment in the production, storage, and distribution of biodiesel and ethanol from \$6.5 million to \$13 million. This would allow more corporate taxpayers to qualify and receive this corporate income tax credit and would encourage the production of biodiesel and ethanol.

The committee substitute requires that effective July 1, 2007, every wholesaler of diesel to marinas must offer biodiesel also. The petroleum products distributors and wholesalers are concerned that they must offer a product that is not available in the supply that is needed.

#### C. Government Sector Impact:

The committee substitute makes the following appropriations for the 2007-2008 fiscal year:

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<sup>2</sup> The committee substitute provides that the sales tax rebate is only for alternative motor vehicles that have a maximum sales price of \$15,000. The intent may have been to allow the tax rebate on the *first* \$15,000 of the sales price since it is doubtful that such a vehicle can be purchased for \$15,000.

- i. The sum of \$500,000 from the General Revenue Fund to the Florida Alternative Energy Trust Fund<sup>3</sup> for the purpose of funding the activities of the Florida Alternative Energy Development Corporation for the 2007-2008 fiscal year;
- ii. The sum of \$40 million from the General Revenue Fund to the Florida Alternative Energy Trust Fund<sup>4</sup> for purposes of funding the Alternative Energy Incentive Program;
- iii. The sum of \$15 million to the Florida Alternative Energy Trust Fund<sup>5</sup> for the purpose of funding the Renewable Energy Technologies Grants program;
- iv. The sum of \$2.5 million from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding commercial and consumer solar incentives;
- v. The sum of \$65,763 from the General Revenue Fund to the Department of Revenue for the purpose of administering the energy-efficient products sales tax holiday; and
- vi. An unspecified amount from the General Revenue Fund to the Administrative Trust Fund of the Department of Revenue for paying the sales tax refunds on the purchase of certain energy efficient motor vehicles. The impact cannot yet be determined, however, the Revenue Estimating Conference estimates the hybrid vehicle sales data as shown below.

<b>State Impact</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>
<b>High</b>	(\$30.8m)	(\$38.4m)	(\$42.8m)
<b>Medium</b>	(\$28.0 m)	(\$34.9m)	(\$38.9m)
<b>Low</b>	(\$25.2m)	(\$31.4m)	(\$35.0m)

On April 6, 2007, the Revenue Estimating Conference adopted the proposed estimate of the impact of increasing the corporate income tax credit from \$6.5 million to \$13 million. That estimate was a negative \$6.5 million in each fiscal year through FY 2010-2011.

Also on April 6, 2007, the Revenue Estimating Conference adopted the proposed estimate of increasing the sales tax exemption for materials used in the distribution of biodiesel and ethanol from \$1 million annually to \$2 million, and the impact of the tax-free holiday for specified energy-efficient products. That estimate is expected to negatively impact state revenues by \$1.1 million annually through FY 2009-2010.

In 2006, the Department of Revenue issued a Tax Information Publication to dealers selling the energy-efficient products listed in this committee substitute for last year’s tax-free Energy Efficient Week at a cost of \$65,763. The committee substitute appropriates money to the department to cover this cost.

<sup>3</sup> This trust fund does not exist. The bill provides that the Florida Alternative Energy Development Corporation would receive funding from the Florida Alternative Energy Development Corporation Trust Fund, which also does not exist and there is no bill introduced to create the trust fund.

<sup>4</sup> This trust fund does not exist.

<sup>5</sup> Id.

**VI. Technical Deficiencies:**

On page 73, section 27, \$40 million is appropriated from the General Revenue Fund to the Florida Alternative Energy Trust Fund, which does not exist.

On page 73, section 28, \$15 million is appropriated from the General Revenue Fund to the Florida Alternative Energy Trust Fund for the Renewable Energy Technologies Grants Program. Again, the trust fund does not exist.

The activities of the Florida Alternative Energy Development Corporation are to be funded through the Florida Alternative Energy Development Corporation Trust Fund which does not exist and there is not a bill pending that would create this trust fund.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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