

By the Committee on Communications, Energy, and Public Utilities; and Senators Bennett and Smith

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1 A bill to be entitled
2 An act relating to renewable energy; amending s.
3 366.92, F.S.; revising legislative intent regarding
4 the state's renewable energy policy; deleting
5 provisions requiring that the Public Service
6 Commission adopt rules for a renewable portfolio
7 standard; requiring that the commission provide for
8 full cost recovery; requiring that each provider of
9 Florida renewable energy resources build such
10 resources, convert existing fossil fuel generation
11 plants to a renewable energy resource, or purchase
12 renewable energy; providing that each provider may
13 purchase or produce renewable energy having capacity
14 or energy costs in excess of the fully avoided cost
15 limitations; specifying such cost limitations;
16 providing for renewable attributes; providing
17 guidelines for cost recovery; amending s. 366.8255,
18 F.S.; revising the definition of the term
19 "environmental laws or regulations" to include any
20 federal or state law requiring an electric utility to
21 provide electricity from renewable energy; revising
22 the definition of the term "environmental compliance
23 costs" to conform to changes made by the act;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 366.92, Florida Statutes, is amended to
29 read:

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30 366.92 Florida renewable energy policy.—

31 (1) In order to stimulate the state's economy, encourage
32 businesses to invest in clean technologies, and foster research,
33 development, manufacturing, construction, and jobs in new and
34 renewable energy, it is the intent of the Legislature to promote
35 the development of renewable energy; protect the economic
36 viability of Florida's existing renewable energy facilities;
37 diversify the types of fuel used to generate electricity in
38 Florida; lessen Florida's dependence on natural gas and fuel oil
39 for the production of electricity; minimize the volatility of
40 fuel costs; encourage investment within the state; improve
41 environmental conditions; and, at the same time, minimize the
42 costs of renewable power supply to electric utilities and their
43 customers. It is the further intent of the Legislature that all
44 prudently incurred costs of renewable energy shall be
45 recoverable from electric utility customers through the
46 environmental cost recovery clause.

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

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

50 (b) "Provider" means a "utility" as defined in s.
51 366.8255(1) (a).

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

54 ~~(d) "Renewable energy credit" or "REC" means a product that~~
55 ~~represents the unbundled, separable, renewable attribute of~~
56 ~~renewable energy produced in Florida and is equivalent to 1~~
57 ~~megawatt-hour of electricity generated by a source of renewable~~
58 ~~energy located in Florida.~~

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59 ~~(c) "Renewable portfolio standard" or "RPS" means the~~
60 ~~minimum percentage of total annual retail electricity sales by a~~
61 ~~provider to consumers in Florida that shall be supplied by~~
62 ~~renewable energy produced in Florida.~~

63 ~~(3) The commission shall adopt rules for a renewable~~
64 ~~portfolio standard requiring each provider to supply renewable~~
65 ~~energy to its customers directly, by procuring, or through~~
66 ~~renewable energy credits. In developing the RPS rule, the~~
67 ~~commission shall consult the Department of Environmental~~
68 ~~Protection and the Florida Energy and Climate Commission. The~~
69 ~~rule shall not be implemented until ratified by the Legislature.~~
70 ~~The commission shall present a draft rule for legislative~~
71 ~~consideration by February 1, 2009.~~

72 ~~(a) In developing the rule, the commission shall evaluate~~
73 ~~the current and forecasted levelized cost in cents per kilowatt~~
74 ~~hour through 2020 and current and forecasted installed capacity~~
75 ~~in kilowatts for each renewable energy generation method through~~
76 ~~2020.~~

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

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

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88 ~~power producers and the sale of renewable energy credits needed~~
89 ~~to comply with the renewable portfolio standard. In the event of~~
90 ~~any conflict, this subparagraph shall supersede s. 366.91(3) and~~
91 ~~(4). However, nothing in this section shall alter the obligation~~
92 ~~of each public utility to continuously offer a purchase contract~~
93 ~~to producers of renewable energy.~~

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

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

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

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

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

113 ~~7. Shall include procedures to track and account for~~
114 ~~renewable energy credits, including ownership of renewable~~
115 ~~energy credits that are derived from a customer-owned renewable~~
116 ~~energy facility as a result of any action by a customer of an~~

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117 ~~electric power supplier that is independent of a program~~
118 ~~sponsored by the electric power supplier.~~

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

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

132 (3)-(4) In order to promote the development of Florida
133 renewable energy resources and the delivery of renewable energy
134 in the state, pending the adoption of final renewable energy
135 portfolio standards under federal or state law demonstrate the
136 feasibility and viability of clean energy systems, the
137 commission shall provide for full cost recovery under the
138 environmental cost-recovery clause of all reasonable and prudent
139 costs incurred by a provider of Florida renewable energy
140 resources for renewable energy projects that are zero greenhouse
141 gas emitting at the point of generation, up to a total of 110
142 megawatts statewide, and for which the provider has secured
143 necessary land, zoning permits, and transmission rights within
144 the state. Pursuant to this section, a provider may build
145 Florida renewable energy resources, convert existing fossil fuel

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146 generation plants to a Florida renewable energy resource, or
147 purchase renewable energy. Such providers shall recover all
148 reasonable and prudent costs associated with building Florida
149 renewable energy resources, converting existing fossil fuel
150 generation plants to a Florida renewable energy resource, or
151 purchasing renewable energy under the environmental cost-
152 recovery clause. Each provider has the sole discretion to
153 determine the type and technology of the Florida renewable
154 energy resources that it elects to build and determine whether
155 to self-build or contract for purchase power with a third party.
156 ~~Such costs shall be deemed reasonable and prudent for purposes~~
157 ~~of cost recovery so long as the provider has used reasonable and~~
158 ~~customary industry practices in the design, procurement, and~~
159 ~~construction of the project in a cost-effective manner~~
160 ~~appropriate to the location of the facility. The provider shall~~
161 ~~report to the commission as part of the cost recovery~~
162 ~~proceedings the construction costs, in-service costs, operating~~
163 ~~and maintenance costs, hourly energy production of the renewable~~
164 ~~energy project, and any other information deemed relevant by the~~
165 ~~commission. Any provider constructing a clean energy facility~~
166 ~~pursuant to this section shall file for cost recovery no later~~
167 ~~than July 1, 2009.~~

168 (4) Pending the adoption of a state or federal renewable
169 portfolio standard, each provider may purchase or produce
170 Florida renewable energy having capacity or energy costs in
171 excess of the fully avoided cost limitations in s. 366.051,
172 subject to the limitations and conditions specified in
173 paragraphs (a) and (b).

174 (a) The cost of producing or purchasing Florida renewable

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175 energy in any calendar year in excess of the fully avoided cost
176 limitations in s. 366.051 shall not exceed 2 percent in 2010 and
177 2011, 3 percent in 2012, or 4 percent in 2013 and thereafter of
178 the investor-owned utility's total revenue from retail sales of
179 electricity for the calendar year 2009. Pursuant to this
180 section, costs shall be computed using a methodology that
181 averages the revenue requirements of the renewable energy
182 resource or the purchases over their economic lives. Costs
183 incurred by a provider in 2010 for Florida renewable energy
184 resources for which construction is commenced or for renewable
185 energy purchased on or after the effective date of this act
186 shall be counted toward and included in the calculation of the
187 cost cap. Costs for renewable energy resources approved by the
188 commission for cost recovery through the environmental cost
189 recovery clause before the effective date of this act shall not
190 be subject to or included in the calculation of the cost cap.

191 (b) If a provider pays costs for purchased power above the
192 limitations set out in s. 366.051, the seller shall surrender to
193 the provider all renewable attributes of the energy being
194 purchased by the provider.

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

202 (6) All prudently incurred costs of renewable energy shall
203 be recoverable under s. 366.8255.

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204 (a) The costs incurred by a provider in connection with the
205 construction or conversion, operation, and maintenance of a
206 Florida renewable energy resource shall be deemed to be prudent
207 for purposes of cost recovery so long as the provider has used
208 reasonable and customary industry practices in the design,
209 procurement, and construction of the project in a cost-effective
210 manner appropriate for the type of Florida renewable energy
211 resource and appropriate to the location of the facility. The
212 provider shall report to the commission as part of the cost-
213 recovery proceedings the construction costs, in-service costs,
214 operating and maintenance costs, hourly energy production of the
215 renewable energy project, and any other information deemed
216 relevant by the commission.

217 (b) The commission shall allow full cost recovery over the
218 entire useful life of the Florida renewable energy resource of
219 the revenue requirements using traditional declining balance
220 amortization through the environmental cost-recovery clause of
221 all reasonable and prudent costs incurred by the provider
222 related to or resulting from activities under this section,
223 including, but not limited to, the following:

224 1. The siting, licensing, engineering, design, permitting,
225 construction, operation, and maintenance of Florida renewable
226 energy resources and associated transmission facilities by the
227 provider. Cost includes, but is not limited to, all capital
228 investments, including rate of return and any applicable taxes
229 and all expenses, including operation and maintenance expenses,
230 for the purposes stated in this subsection;

231 2. The reasonable and prudent costs associated with the
232 purchase of capacity and energy from new renewable energy

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233 resources; or

234 3. The reasonable and prudent costs for conversion of
235 existing fossil fuel generating plants to a Florida renewable
236 energy resource, including the costs of retirement of the fossil
237 fuel generation plant.

238 (c) Notwithstanding any other provision to the contrary,
239 the commission shall allow a provider to recover all reasonable
240 and prudent costs incurred to comply with a federal renewable
241 portfolio standard, including costs to purchase renewable energy
242 credits or alternative compliance payments.

243 (d) In addition to the full cost recovery for such
244 renewable energy projects, a return on equity of not less than
245 50 basis points above the top of the range of the provider's
246 last authorized rate of return on equity, approved by the
247 commission for energy projects, shall be approved and provided
248 for such renewable energy projects if a majority value of the
249 energy-producing components incorporated into such projects are
250 manufactured or assembled within this state.

251 (7)~~(6)~~ Nothing in this section or actions taken pursuant to
252 this section shall be construed to impede or impair terms and
253 conditions of existing contracts or be a basis for renegotiating
254 or repricing existing contracts.

255 (8) Nothing in this section impedes or impairs a provider's
256 full cost recovery of all reasonable and prudent costs incurred
257 for renewable energy projects approved by the commission as
258 eligible for cost recovery through the environmental cost-
259 recovery clause before the effective date of this act. Nothing
260 in this section requires a provider to build Florida renewable
261 energy resources, convert existing fossil fuel generation plants

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262 to a Florida renewable resource, or purchase renewable energy.
263 Furthermore a provider is not required to contract for
264 generation at a price above its avoided cost if doing so would
265 be inconsistent with or violate the Public Utility Regulatory
266 Policies Act of 1978, as amended.

267 (9)~~(7)~~ The Commission may adopt rules to administer and
268 implement the provisions of this section.

269 Section 2. Subsection (1) of section 366.8255, Florida
270 Statutes, is amended to read:

271 366.8255 Environmental cost recovery.—

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

273 (a) "Electric utility" or "utility" means any investor-
274 owned electric utility that owns, maintains, or operates an
275 electric generation, transmission, or distribution system within
276 the State of Florida and that is regulated under this chapter.

277 (b) "Commission" means the Florida Public Service
278 Commission.

279 (c) "Environmental laws or regulations" includes all
280 federal, state, or local statutes, administrative regulations,
281 orders, ordinances, resolutions, or other requirements that
282 apply to electric utilities and are designed to protect the
283 environment, including any federal or state law that requires an
284 electric utility to provide electricity from renewable energy.

285 (d) "Environmental compliance costs" includes all costs or
286 expenses incurred by an electric utility in complying with
287 environmental laws or regulations, including, but not limited
288 to:

289 1. Inservice capital investments, including the electric
290 utility's last authorized rate of return on equity thereon.

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- 291 2. Operation and maintenance expenses.
- 292 3. Fuel procurement costs.
- 293 4. Purchased power costs.
- 294 5. Emission allowance costs.
- 295 6. Direct taxes on environmental equipment.
- 296 7. Costs or expenses prudently incurred by an electric
- 297 utility pursuant to an agreement entered into on or after the
- 298 effective date of this act and prior to October 1, 2002, between
- 299 the electric utility and the Florida Department of Environmental
- 300 Protection or the United States Environmental Protection Agency
- 301 for the exclusive purpose of ensuring compliance with ozone
- 302 ambient air quality standards by an electrical generating
- 303 facility owned by the electric utility.
- 304 8. Costs or expenses prudently incurred for the
- 305 quantification, reporting, and third-party verification as
- 306 required for participation in greenhouse gas emission registries
- 307 for greenhouse gases as defined in s. 403.44.
- 308 9. Costs or expenses prudently incurred for scientific
- 309 research and geological assessments of carbon capture and
- 310 storage conducted in this state for the purpose of reducing an
- 311 electric utility's greenhouse gas emissions when such costs or
- 312 expenses are incurred in joint research projects with Florida
- 313 state government agencies and Florida state universities.
- 314 10. Costs or expenses prudently incurred to comply with any
- 315 environmental laws or regulations requiring that any portion of
- 316 the electric utility's energy sales, demand, or other measures
- 317 of the provision of electricity to its customers be derived from
- 318 renewable energy, however defined, either produced by the
- 319 electric utility itself or purchased from another source, or

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320 through credits purchased to comply in whole or in part with
321 such provisions, including costs or expenses associated with
322 setting up and participating in market or other mechanisms for
323 trading such renewable energy credits.

324 Section 3. This act shall take effect upon becoming a law.