

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7229 PCB EUP 10-06 Economic Incentives for Energy Initiatives

**SPONSOR(S):** Energy & Utilities Policy Committee and Precourt

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

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Energy & Utilities Policy Committee	10 Y, 1 N	Keating/Whittier	Collins
1)	Full Appropriations Council on Education & Economic Development		Delaney	Kramer
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

The bill revises existing statements of legislative intent with respect to Florida’s energy policy and the development of renewable energy and provides a set of incentive mechanisms to encourage the development of renewable and alternative energy resources. The bill:

- Streamlines the existing statement of legislative intent with respect to Florida’s energy policy by identifying and prioritizing the core goals of that policy;
- Extends the sunset date for sales and use tax exemptions for certain renewable energy technologies;
- Deletes the sales and use tax exemption for hydrogen-powered vehicles and hydrogen-fueling stations, and adds an exemption for natural gas vehicles, electric-powered automobiles, and their associated fueling stations;
- Extends the sunset date for corporate income tax credits for certain investments in renewable energy technologies; reduces the total credit available for production, storage, and distribution of biodiesel and ethanol costs from \$6.5 million to \$6 million per state fiscal year for all taxpayers; creates a new corporate investment tax credit for investments in solar energy systems up to a limit of \$500,000 per system and up to \$7.5 million per state fiscal year for all taxpayers; and extends the sunset date for renewable energy production tax credits;
- Amends the definitions of “renewable energy” and “biomass” to include additional energy resources;
- Requires public utilities to continuously purchase renewable energy from producers that meet specified operating requirements at a rate equal to 80 percent of the weighted average of firm service retail electric rates of the public utility, with the costs to the utility recoverable from its ratepayers; and grants the PSC authority to adopt rules to implement these provisions;
- Authorizes public utilities, subject to specified conditions, to recover the costs to produce or purchase up to 735 megawatts of renewable energy statewide, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, at any time, 2 percent of the utility’s total revenues from retail sales of electricity for calendar year 2009;
- Exempts from the definition of “public utility” a developer of a solar energy generation facility that is no larger than 2 megawatts and is located on the premises of a host consumer, other than a multi-family residential building, for purposes of sale to the host consumer for consumption only on the premises and specifically authorizes such sales; requires the PSC to adopt implementing rules and submit related reports;
- Exempts solar electrical generating facilities from the Florida Electrical Power Plant Siting Act; and
- Establishes a loan guarantee program for certain renewable energy projects and facilities.

Based on the maximum amount of tax credits available (an estimating conference has not met on this specific bill), extending the sales and use tax exemptions will have a recurring negative impact on state revenue of \$4 million each year for FY10-11, FY11-12, and FY12-13; the investment tax credits will have a recurring negative impact on state revenues of \$18 million each year for FY10-11, FY11-12, and FY12-13; and the production tax credits will have a recurring negative impact on state revenues of \$5 million each year for FY10-11, FY11-12, and FY12-13. **There have been no provisions made for the reduction in the tax revenues in the House allocations.** Provisions of the bill requiring public utilities to purchase renewable energy and allowing utilities to make discretionary production or purchases of renewable energy will result in an indeterminate increase in utility costs and rates. The loan guarantee program will require a 5 percent match from state funds. A potential source of funds (up to \$5 million) could come from reversions from several older terminated grants in the Florida Energy and Climate Commission.

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

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## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

#### **State Energy Policy Goals**

##### Present Situation

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

The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.<sup>1</sup>

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

It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.<sup>2</sup>

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

The Legislature finds that the state's energy security can be increased by lessening dependence on foreign oil; that the impacts of global climate change can be reduced through the reduction of greenhouse gas emissions; and that the implementation of alternative energy technologies can be a source of new jobs and employment opportunities for many Floridians. The Legislature further finds that the state is positioned at the front line against potential impacts of global climate change. Human and economic costs of those impacts can be averted by global actions and, where necessary, adapted to by

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<sup>1</sup> Chapter 2005-259, L.O.F.

<sup>2</sup> Chapter 2006-230, L.O.F.

a concerted effort to make Florida's communities more resilient and less vulnerable to these impacts. In focusing the government's policy and efforts to benefit and protect our state, its citizens, and its resources, the Legislature believes that a single government entity with a specific focus on energy and climate change is both desirable and advantageous. Further, the Legislature finds that energy infrastructure provides the foundation for secure and reliable access to the energy supplies and services on which Florida depends. Therefore, there is significant value to Florida consumers that comes from investment in Florida's energy infrastructure that increases system reliability, enhances energy independence and diversification, stabilizes energy costs, and reduces greenhouse gas emissions.<sup>3</sup>

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

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

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

#### Effect of Proposed Changes

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

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

While this statement of intent is set forth in broader terms, it appears to capture most, if not all, of the specific issues addressed in the existing intent language from s. 377.601, F.S.

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

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

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

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<sup>3</sup> Chapter 2008-227, L.O.F.

## **Sales and Use Tax Exemption for Renewable Energy Technologies**

### **Present Situation**

Section 212.08(7)(ccc), F.S., provides for a sales tax exemption for renewable energy technologies in Florida, occurring between July 1, 2006, and June 30, 2010. Taxpayers applying for these exemptions must submit a form to the Florida Energy and Climate Commission (FECC) to determine eligibility before submitting a sales tax refund claim to the Department of Revenue. The exemption applies 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.<sup>4</sup>
- 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 qualify for the exemption.

### **Effect of Proposed Changes**

The bill extends the sunset date for several of the exemptions to June 30, 2016. The bill removes the exemption for hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, as this program has not been utilized since its inception on July 1, 2006. The bill adds the following to the list of items for which the sales tax exemption applies up to a limit of \$2 million in taxes each state fiscal year for all taxpayers:

- Natural gas vehicles and compressed natural gas fueling stations. “Natural gas vehicles” means automobiles or other motor vehicles powered by natural gas or compressed natural gas.
- Electric-powered automobiles and electric fueling stations for automobiles. “Electric-powered automobiles” means automobiles powered solely by electricity which have been approved for highway travel by the federal government.

## **Renewable Energy Technologies Investment Tax Credit (Corporate)**

### **Present Situation**

Section 220.192, F.S., provides that, for tax years beginning on or after January 1, 2007, a credit against either the corporate income tax or the franchise tax will be granted in an amount equal to the “eligible costs.” “Eligible costs” are 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.

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<sup>4</sup> The sales tax exemption for hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, was not utilized in any of the four fiscal years that the program has been in existence.

- 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 qualify], up to a limit of \$6.5 million per state fiscal year for all taxpayers.

### Effect of Proposed Changes

The bill extends the sunset date to June 30, 2016, for all three corporate income tax credits under this section of statute. It reduces the exemption for production, storage, and distribution of biodiesel and ethanol costs from \$6.5 million to \$6 million per state per fiscal year. The bill also adds a fourth incentive for investments in solar energy systems. Specifically, eligible costs are defined as fifty percent of all capital costs incurred between July 1, 2010, and June 30, 2016, in connection with an investment in solar energy systems up to a limit of \$500,000 per system and up to \$7.5 million per state fiscal year for all taxpayers. The bill provides that if a credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used until December 31, 2021, after which the credit carryover expires.

The term “solar energy system” is defined as “equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that would normally require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.”

In 2008, the Legislature transferred from the Department of Environmental Protection to the Florida Energy and Climate Commission the responsibility of approving the applications for this program. This bill amends the statutes to reflect the appropriate entity.

### **Florida Renewable Energy Production Credit (Corporate)**

#### **Present Situation**

Section 220.193, F.S., provides for an incentive program designed to encourage the development and expansion of facilities that produce renewable energy in Florida. The credit is 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 that produced during 2005.

The tax credit is based on the taxpayer’s production and sale of electricity.<sup>5</sup> The program may be used for electricity production and sales made between January 1, 2007, and June 30, 2010.

- The corporate income tax credit is equal to \$0.01 for each kilowatt-hour of electricity produced and sold or used during a given tax year.
- The program is capped at \$5 million per state fiscal year for all taxpayers.

### Effect of Proposed Changes

The bill extends the sunset date for this production credit to June 30, 2016. Each taxpayer claiming a credit under this section must first apply to the Department of Revenue by February 1 of each year for an allocation of available credit. The bill extends the deadline for this from 2011 to 2017.

<sup>5</sup> 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.

## **Renewable Energy Definitions**

### **Present Situation**

For purposes of ss. 366.91 and 366.92, F.S., the term “renewable energy” is defined in s. 366.91(2)(d), F.S., as electrical energy produced from one or more of the following resources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, and waste heat from sulfuric acid manufacturing operations.

The term “biomass” is defined in s. 366.91(2)(a), F.S., 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.

### **Effect of Proposed Changes**

The bill amends the definition of the term “renewable energy” in s. 366.91(2)(d), F.S., to include electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration. The bill also amends the definition of the term “biomass” in s. 366.91(2)(a), F.S., to include a power source comprised of recycling byproducts. These changes would allow electrical power from these resources to be sold to a public utility under a standard offer contract, based on current law related to such contracts. Under the provisions of the bill discussed below, electrical power from these resources would be required to meet certain operating requirements to qualify for purchase by a public utility.

## **Required Purchases of Renewable Energy**

### **Present Situation**

Since 2005, public utilities have been required to continuously make available standard offer contracts for the purchase of renewable energy, with the costs of any purchases recoverable from the utility’s ratepayers.<sup>6</sup> The law limits the price paid by a utility for renewable energy to the utility’s full avoided costs, which are defined in s. 366.051, F.S., as the costs the utility would have incurred to produce the energy and/or capacity itself or purchase it from another source if not for the purchase of the renewable energy.<sup>7</sup> Capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility’s avoided unit, the renewable energy producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term.<sup>8</sup> These standard offer contracts have produced little new renewable energy.

### **Effect of Proposed Changes**

The bill eliminates the requirement that a standard offer contract be made continuously available and replaces it with a requirement that each public utility continuously offer to purchase renewable energy based on a new calculation of “full avoided cost” from producers that meet specified operating requirements. With respect to the calculation of full avoided cost, the bill provides a legislative finding that 80 percent of the weighted average of firm service retail electric rates of the public utility directly correlates with the utility’s avoided cost for acquiring renewable energy from producers that meet the specified operating requirements and that this method calculation is administratively efficient and transparent. The bill provides that renewable energy producers meeting the specified operating requirements are entitled to “full avoided cost” based on this calculation.

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<sup>6</sup> Section 366.91(3), F.S.

<sup>7</sup> This pricing scheme reflects limits established by federal law which have been in place since adoption of the Public Utilities Regulatory Policy Act in 1978.

<sup>8</sup> Section 366.91(3), F.S.

It is not clear whether this proxy method of calculating avoided cost is consistent with federal law. For purchases mandated by states, the Public Utility Regulatory Policies Act of 1978 (PURPA) limits prices to the “incremental cost of alternative energy,” which is defined as “the cost to the electric utility of the electric energy which, but for the purchase . . . such utility would generate or purchase from another source.”<sup>9</sup> The proxy method proposed by the bill is based on embedded utility costs rather than incremental costs not yet incurred. This proxy method has not previously been tested.

Under the bill, a renewable energy producer that meets one, or both, of two operating requirements is eligible to be paid “full avoided cost” based on the new calculation. First, a renewable energy producer that generates and delivers to the electric power grid a fixed amount of electrical capacity at a rate of production such that the amount of energy produced per 1 megawatt of fixed capacity is 7,000 megawatt hours or more per year is entitled to sell that fixed amount of capacity and energy to any public utility at the new “full avoided cost.” Certain producers of electrical energy from biomass resources may qualify for payments under this provision. Second, a renewable energy producer that generates electric energy using waste heat from sulfuric acid manufacturing operations, such that the amount of electrical energy produced at the site per 1 megawatt of system generating capacity is 5,500 megawatt hours or more per year, and that exports less than 50 percent of the total electric energy produced to the electric power grid, is entitled to sell any excess energy to any public utility at the new “full avoided cost,” but only up to an amount equal to the energy used to serve its own requirements. This provision appears to specifically apply to existing cogeneration facilities.

The bill provides that the costs of these purchases shall be recoverable from the ratepayers of the purchasing utility.

The bill removes the existing provision in the law which states that capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the renewable energy producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term.

The bill provides that action by the Public Service Commission pursuant to or associated with implementing these provisions shall not be deemed to be an action relating to rates or service of utilities providing electric service. Pursuant to s. 3(b)(2), Art. V of the State Constitution, any action of the PSC relating to rates or service of utilities providing electric service is appealed directly to the Florida Supreme Court.<sup>10</sup> Thus, this provision would require judicial review of PSC actions specifically related to these provisions of the bill to be heard in a lower court.<sup>11</sup>

To the extent that these provisions require utilities to pay renewable energy producers more than “full avoided cost” as it is currently calculated, the bill should result in additional renewable energy being produced and sold to utilities. The bill does not require, however, that the utility have a need for the capacity, energy, or both from the purchase of renewable energy under these provisions.

## **Recovery of Discretionary Utility Costs to Produce and Purchase Renewable Energy**

### **Present Situation**

In 2008, the Legislature authorized public utilities to construct up to 110 MW of renewable energy demonstration projects that emit no greenhouse gases at the point of generation and to recover the costs of such projects.<sup>12</sup> As a result, Florida Power & Light Company (FPL) has constructed or is in the process of constructing two solar photovoltaic projects, with a capacity of 25 MW and 10 MW respectively, and a hybrid solar thermal facility capable of producing 75 MW. FPL has received approval from the PSC to recover the costs of these projects.

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<sup>9</sup> 16 U.S.C. 824a-3(d).

<sup>10</sup> See also, Section 366.10, F.S.

<sup>11</sup> It appears that appeals of action taken by the PSC to implement these provisions of the bill would be made to a District Court of Appeal pursuant to s. 4, Art. V of the State Constitution, although some appeals of administrative action are taken to circuit court pursuant to s. 5, Art. V of the State Constitution.

<sup>12</sup> Chapter 2008-227, L.O.F.

Absent specific authority to recover the costs of renewable energy projects, including construction and purchases, public utilities will likely not invest in such projects due to the costs and/or capacity benefits of such projects relative to traditional generation resources. In reviewing the need for proposed electrical power plants, the PSC must consider, among other things, whether the proposed plant is the most cost-effective alternative available and the need for electrical system reliability and integrity.<sup>13</sup> In most cases, a renewable energy facility will not be the most cost-effective alternative available, and in some instances the facility may not make a significant contribution to electrical system reliability and integrity as compared to other resources. Even for renewable energy projects that do not require a determination of need from the PSC, the utility will be permitted to recover investment in such projects only if the PSC finds that the funds were prudently invested.<sup>14</sup>

### Effect of Proposed Changes

The bill authorizes public utilities to recover the costs to produce or purchase up to 735 megawatts of renewable energy statewide, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, at any time, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2009. The costs to be recovered must be computed using a method that averages the revenue requirements of the facility or purchase over its economic life. A utility's eligible costs will be recovered from its ratepayers through the existing environmental cost recovery clause established in s. 366.8255, F.S.

The bill authorizes public utilities to petition the PSC:

- Through 2011, for recovery of costs to produce or purchase up to a total of 300 megawatts of renewable energy statewide and an additional 15 megawatts of rooftop or pole-mounted solar energy applications;
- In 2012, for recovery of costs to produce or purchase up to an additional 200 megawatts of renewable energy statewide and an additional 10 megawatts of rooftop or pole-mounted solar energy applications; and
- In 2013, for recovery of costs to produce or purchase up to an additional 200 megawatts of renewable energy statewide and an additional 10 megawatts of rooftop or pole-mounted solar energy applications.

If a utility does not request approval to recover the costs of the total amount of capacity designated for one of these specific time periods, the remaining capacity for the applicable time period can be carried forward to the succeeding period but not beyond 2013.

The bill provides that each utility has the sole discretion to determine the type and technology of the renewable energy resources it intends to use and to determine whether to construct a facility itself, convert an existing fossil fuel facility, or contract for the purchase of renewable energy. The bill specifies the types of costs associated with each option that a utility may recover. The bill provides that costs shall be deemed prudent for purposes of cost recovery if the utility has used reasonable and customary industry practices in the design, procurement, and construction of the renewable energy project in a cost-effective manner for the type of renewable energy resource selected. If a majority value of the energy-producing components incorporated into a renewable energy project are manufactured or assembled in Florida, the utility is entitled to a rate of return on the project of not less than 50 basis points (.5%) above the top of the range of the utility's last authorized rate of return on equity approved by the PSC.

The bill limits cost recovery to new construction or conversion projects for which construction is commenced after the effective date of the bill and to purchases made after the effective date of the bill. The bill excludes from the cost cap calculation the costs of renewable energy projects approved for recovery prior to the effective date of the bill.

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<sup>13</sup> Section 403.519, F.S. Pursuant to this section, the PSC must also consider the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

<sup>14</sup> Section 366.06(1), F.S.

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

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

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

### **Limited Exception for Retail Sales of Electricity**

#### **Present Situation**

Current law provides that any entity that sells electricity to or for the public, including a sale to a single customer, is a “public utility” subject to the regulatory oversight of the PSC.<sup>15</sup>

#### **Effect of Proposed Changes**

The bill exempts from the definition of “public utility” a developer of a solar energy generation facility that is no larger than 2 megawatts and is located on the premises of a host consumer, other than a multi-family residential building, for purposes of sale to the host consumer for consumption only on the premises. The bill specifically authorizes such sales. The bill provides that the host consumer’s premises are limited to contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

The bill requires that the PSC adopt rules to implement this provision and requires the PSC to submit semiannual reports to the Legislature concerning implementation of this provision.

In *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988), the Florida Supreme Court held that the sale of electricity to even a single customer made the seller a “public utility” as defined in the law. As the court noted in that case, the effect of allowing non-utility electrical generation providers to serve customers in a utility’s monopoly service territory would be that revenue that otherwise would have gone to the regulated utilities would be diverted to unregulated producers. The court further noted that this revenue would have to be made up by the remaining utility customers because the utility’s fixed costs would not be reduced.

The bill attempts to address the concerns raised by the court by limiting the size of any non-utility facilities to 2 megawatts and requiring that the PSC adopt a mechanism to set rates that ensure the utility’s general body of ratepayers does not subsidize any redundant generating capacity necessary to serve the customer. The bill also requires the PSC to submit, at least every six months, a report to the Legislature concerning implementation of this provision and recommendations concerning continued implementation. The bill does not, however, establish a cap on the total amount of capacity eligible for non-utility providers to serve.

### **Exemption of Solar from Siting Act Certification**

#### **Present Situation**

The Florida Electrical Power Plant Siting Act (Siting Act), establishes a centrally coordinated process for the review of permit applications for electrical power plants.<sup>16</sup> The Department of Environmental Protection administers the process, and several affected agencies provide input in the certification proceeding concerning

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<sup>15</sup> *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988).

<sup>16</sup> Section 403.502, F.S.

matters within their respective jurisdictions. For purposes of certification under the Florida Electrical Power Plant Siting Act, current law defines “electrical power plant” as any steam or solar electrical generating facility, except for such facilities with a capacity of less than 75 megawatts.<sup>17</sup>

### Effect of Proposed Changes

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

Currently, none of the solar electrical generating facilities in Florida have required certification under the PPSA. Florida Power & Light Company currently is constructing a 75 megawatt solar thermal facility to provide steam to power an existing turbine at a natural gas power plant on the same site, but this facility is exempt from the PPSA. Other large solar “farm” facilities could be built with a capacity of 75 megawatts or greater. Such a project could impact a greater area of land than smaller capacity solar facilities exempted under the PPSA.<sup>18</sup> However, solar projects may not implicate as many matters within the jurisdiction of affected agencies as a fossil-fuel or nuclear plant may implicate, in particular environmental matters concerning emissions and water use.

### Loan Guarantee Program

#### Present Situation

#### **Florida Development Finance Corporation**

The Florida Development Finance Corporation (FDFC) was created in 1993 as a state authorized issuer of industrial revenue bonds. The FDFC is staffed by Enterprise Florida, Inc. (EFI), “as a public-private partnership responsible for leading Florida’s economic development...FDFC is heavily dependent on EFI for financial support in the form of in-kind services and financing operations during the periods of inadequate cash flows.” The FDFC operates through interlocal agreements with political subdivisions (cities, counties, and authorities). Currently, the FDFC has no direct statewide authority.

According to the FDFC Annual Report for the 2008-2009, the FDFC’s primary business is the issuance of tax exempt revenue bonds, which are permissible under the U.S. Internal Revenue Service’s private activity regulations. Those regulations, subject to a number of limitations and restrictions, allow small manufacturers and non-profit corporations to finance capital assets with tax exempt bond proceeds.

FDFC’s revenues are generated by fees charged for issuance of bonds, and the volume of bond issuance is directly impacted by general economic conditions including those conditions affecting manufacturers such as the demand for Florida manufactured goods, the amount of Florida factory utilization, and the age and efficiency of capital equipment utilized in production.<sup>19</sup>

The FDFC is governed by a Board of Directors composed of five members serving four-year terms, appointed by the Governor, and subject to confirmation by the Senate.

#### **Federal Department of Energy 1705 Guaranteed Loan Program**

The loan guarantee solicitation announcement from the U.S. Department of Energy (DOE) Loan Guarantee Program Office describes the 1705 guaranteed loan program as follows: Section 1705 of Title XVII of the Energy Policy Act of 2005, 22 U.S.C. 16511-16514 was created to authorize a new program for rapid deployment of renewable energy and electric power transmission projects. The primary purposes of the Recovery Act are job preservation and creation, infrastructure investment, energy efficiency and science,

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<sup>17</sup> Section 403.503(14), F.S.

<sup>18</sup> See, for example, “Solar farm to rise over 3 square miles in Ariz.” <http://www.msnbc.msn.com/id/23464740/> (280 megawatt solar farm covering 3 square miles).

<sup>19</sup> FDFC Annual Report for the 2008-2009, p. 5.

assistance to the unemployed, and State and local fiscal stabilization. The Section 1705 Program is designed to address the current economic conditions of the nation, in part, through renewable and transmission projects. The Recovery Act provides that approximately \$5,965,000,000 in appropriated funds be made available until expended to pay the credit subsidy costs of loan guarantees issued for certain renewable energy systems, electric transmission systems and leading edge biofuels projects. The face value of the debt guaranteed is limited to no more than eighty percent of total project costs and the borrower and other principals involved in the project must have made or will make a significant equity investment in the project.<sup>20</sup>

According to DOE's *Request for Information (RFI): DE-SOL-0001302 October 29, 2009*, DOE wants information on development finance organizations (DFOs) regarding any innovative and collaborative lending implementation mechanisms that utilize regional, local, or other partnerships. DFOs will be required to provide direct debt or guarantees of debt in an amount equal to at least five percent of the total project debt for the life of the project.

The FDFC filed a response to the RFI, to participate in DOE's program, on behalf of the Florida Finance Network, which was formed several years ago when the Florida Development Finance Corporation joined with Florida First Capital Finance Corporation and Florida Export Finance Corporation (two corporations that were created as government sponsored entities and later spun out as private corporations). Under this application, the Florida Finance Network would supply the core loan originating, underwriting, and servicing for the DOE program, with FDFC as the lead entity. This application was approved by DOE. Participation in the program depends upon the state funding the five percent loan guarantee requirement.

### Effect of Proposed Changes

The bill amends the FDFC statutory sections to allow for participation in the U.S. DOE 1705 Guaranteed Loan Program as a development finance organization. It changes the definition of the term "guaranty fund" from the "Revenue Bond Guaranty Reserve Account" to the "Energy, Technology, and Economic Development Guaranty Fund."

The bill authorizes the FDFC to issue bonds or other evidence of indebtedness for the purpose of financing capital projects which promote economic development within the state. Specifically, the FDFC is authorized to issue revenue bonds or other evidence of indebtedness under the section to:

- Finance the undertaking of any project within the state that promotes renewable energy as defined in ss. 377.803 or 366.91, F.S.;
- Finance the undertaking of any project within the state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009; or
- If permitted by federal law, finance "qualifying improvements to real property" projects within the state, pursuant to s. 163.08. (These are commonly referred to as Property-Assessed Clean Energy or PACE projects.)

The bill allows the FDFC to accept funds from the state, a county, or other public agency. The bill authorizes the FDFC to guarantee debt service payments for bonds or other indebtedness and limits these guarantees to no more than five percent of the total aggregate principal amount of bonds or other indebtedness relating to any one capital project. It authorizes use of the guaranty program in conjunction with any federal guaranty programs described in s. 406 of the American Recovery and Reinvestment Act of 2009, and requires that all policies, procedures, and regulations of the program that are used in conjunction with the federal program comply with the federal requirements. It deletes obsolete language relating to the State Transportation Trust Fund.

### Other Matters

The bill provides a severability clause.

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<sup>20</sup> Department of Energy website: <http://www.lgprogram.energy.gov/2009-CPLX-TRANS-sol.pdf>.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 377.601, F.S., relating to legislative intent.

**Section 2.** Amends s. 377.703, F.S., conforming cross-references.

**Section 3.** Amends s. 212.08, F.S., extending the expiration date of the sales and use tax exemption.

**Section 4.** Amends s. 220.192, F.S., extending the expiration date of the renewable energy technologies investment tax credit and creating a credit for investments in solar systems.

**Section 5.** Amends s. 220.193, F.S., extending the expiration date of the Florida renewable energy production credit.

**Section 6.** Amends s. 366.02, F.S., revising the definition of “public utility.”

**Section 7.** Creates s. 366.90, F.S., providing a statement of legislative intent.

**Section 8.** Amends s. 366.91, F.S., relating to renewable energy.

**Section 9.** Amends s. 366.92, F.S., relating to Florida renewable energy policy.

**Section 10.** Amends s. 403.503, F.S., revising the definition of “electrical power plant” for purposes of the Florida Electrical Power Plant Siting Act.

**Section 11.** Amends s. 288.9602, F.S., revising findings and declaration of necessity.

**Section 12.** Amends s. 288.9603, F.S., revising definitions.

**Section 13.** Amends s. 288.9604, F.S., revising the creation language for the “Florida Development Finance Corporation.”

**Section 14.** Amends s. 288.9605, F.S., revising corporation powers.

**Section 15.** Amends s. 288.9606, F.S., revising the authority for issuance of revenue bonds

**Section 16.** Amends s. 288.9607, F.S., authorizing guaranty of debt service payments; providing limitations.

**Section 17.** Amends s. 288.9608, F.S., creating the Energy, Technology, and Economic Development Guaranty Fund.

**Section 18.** Amends s. 288.9609, F.S., providing conforming provisions.

**Section 19.** Amends s. 288.9610, F.S., revising requirements for annual reports of the Florida Development Finance Corporation.

**Section 20.** Amends s. 206.46, F.S., removing a cross-reference in a State Transportation Trust Fund provision.

**Section 21.** Amends s. 215.47, F.S., removing a cross-reference in a State Transportation Trust Fund provision.

**Section 22.** Amends s. 339.08, F.S., removing a cross-reference in a State Transportation Trust Fund provision.

**Section 23.** Amends s. 339.135, F.S., removing a cross-reference in a State Transportation Trust Fund provision.

**Section 24.** Provides a severability clause.

**Section 25.** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

Impacts on revenues are not based on an estimating impact conference, rather they reflect the maximum amounts of tax credits available for each purpose.

#### 1. Revenues:

#### **Sales and Use Tax Exemption for Renewable Energy Technologies**

	<u>FY 2010-2011</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Hydrogen fuel cells	(\$1.0 million)	(\$1.0 million)	(\$1.0 million)
Biodiesel and ethanol	(\$1.0 million)	(\$1.0 million)	(\$1.0 million)
Natural gas and electric vehicles	(\$2.0 million)	(\$2.0 million)	(\$2.0 million)
<b>Total</b>	<b>(\$4.0 million)</b>	<b>(\$4.0 million)</b>	<b>(\$4.0 million)</b>

#### **Renewable Energy Technologies Investment Tax Credit (Corporate)**

	<u>FY 2010-2011</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Hydrogen vehicles	(\$3.0 million)	(\$3.0 million)	(\$3.0 million)
Hydrogen fuel cells	(\$1.5 million)	(\$1.5 million)	(\$1.5 million)
Biodiesel and ethanol	(\$6.0 million)	(\$6.0 million)	(\$6.0 million)
Solar systems	(\$7.5 million)	(\$7.5 million)	(\$7.5 million)
<b>Total</b>	<b>(\$18.0 million)</b>	<b>(\$18.0 million)</b>	<b>(\$18.0 million)</b>

#### **Florida Renewable Energy Production Credit (Corporate)**

	<u>FY 2010-2011</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Renewable Production	(\$5.0 million)	(\$5.0 million)	(\$5.0 million)
<b>Total</b>	<b>\$5.0 million</b>	<b>\$5.0 million</b>	<b>\$5.0 million</b>
<b>Grand Total</b>	<b>\$27.0 million</b>	<b>\$27.0 million</b>	<b>\$27.0 million</b>

Note: No provisions have been made in any allocations for this projected reduction in revenues.

#### **Limited Exception of Retail Sales of Electricity:**

To the extent sales occur under the exception for certain small solar providers as described in the body of the analysis, they will likely replace sales that otherwise would have been made by a public utility to the consumer.

Sales of electricity by public utilities are subject to the gross receipts tax at the rate of 2.5 percent.<sup>21</sup> The proceeds of the tax are used to fund the Public Education Capital Outlay and Debt Service Trust Fund

<sup>21</sup> Section 203.01(1), F.S.

(PECO).<sup>22</sup> It is not clear whether sales of electricity by solar energy generation developers to host consumers made pursuant to this provision of the bill will also be subject to the gross receipts tax.<sup>23</sup>

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

**Required Purchases of Renewable Energy**

The bill revises the definition of “full avoided cost” for purposes of sales made by entities that meet certain operating requirements. To the extent that these provisions of the bill require utilities to pay renewable energy producers more than “full avoided cost” as it is currently calculated, the bill should encourage investment in the production of additional renewable energy for sale to public utilities, which may create some private sector job growth. However, to the extent that these same provisions require utilities to pay renewable energy producers more than “full avoided cost” as it is currently calculated, the bill will increase utility costs which will be passed through to utility ratepayers. If utility costs and rates increase under this scenario, the calculation of “full avoided cost” will also increase because that calculation, under the bill, is based on a percentage of retail rates. While this may encourage additional investment in renewable energy, it would further increase utility costs and rates. Unless payments are fixed based on “full avoided cost” at the time of contract or are based on some other mechanism that eliminates the effects of rate increases caused by these purchases on future payments, payments to eligible renewable energy producers could escalate in a continuous loop.<sup>24</sup> Because the bill does not limit the amount of capacity and energy that a utility must purchase from entities that qualify for the new “full avoided cost” payment, the potential impact on utility costs and rates is limited only by the amount of renewable energy resources available that meet the operating requirements set forth in the bill.

It is not clear what rate impact these provisions would have compared to a scenario in which the utility produces or purchases electrical power to meet its capacity and energy needs. In addition, the bill does not require that the utility have a need for the capacity, energy, or both from the purchase of renewable energy under these provisions.

**Recovery of Discretionary Utility Costs to Produce and Purchase Renewable Energy**

The bill authorizes public utilities to recover the costs to produce or purchase up to 735 megawatts of renewable energy statewide, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, at any time, 2 percent of the utility’s total revenues from retail sales of electricity for calendar year 2009. The costs to be recovered must be computed using a method that averages the revenue requirements of the facility or purchase over its economic life. A utility’s

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<sup>22</sup> *Id.*

<sup>23</sup> Pursuant to s. 203.01(1)(h), F.S., electricity produced by small power producers is subject to the gross receipts tax. “Small power producer” is not defined in Florida law, but likely refers to a type of facility qualified under Federal law to be entitled to make sales of electricity to a public utility. Under Federal law (18 C.F.R. 292.203-292.204), a facility is a “small power producer” if it has a capacity of 80 megawatts or less and if at least 75% of the facility’s total energy input is from renewable energy resources. Sales from these types of facilities are made to public utilities for resale to retail consumers. It is unclear whether a sale from this type of facility directly to a retail consumer would be interpreted as subject to the gross receipts tax.

<sup>24</sup> The bill strikes existing references to a contract, so it is not clear if this issue can be resolved through contract language. The PSC may be able to address this issue through the rulemaking authority granted by the bill.

eligible costs will be recovered from its ratepayers through the existing environmental cost recovery clause established in s. 366.8255, F.S.

Based on revenue figures from annual reports provided to the PSC, the bill would allow each public utility to recover up to the following amounts to produce or purchase renewable energy in addition to any amounts that do not exceed each utility's avoided cost:

Florida Power & Light Company	\$225,200,000 (plus amounts that do not exceed avoided cost)
Progress Energy Florida	\$94,980,000 (plus amounts that do not exceed avoided cost)
Tampa Electric Company	\$43,040,000 (plus amounts that do not exceed avoided cost)
Gulf Power Company	\$23,420,000 (plus amounts that do not exceed avoided cost)

The rate impact to each utility's customers would depend on the amount of renewable energy the utility chooses to produce or purchase under the cost cap, the number of customers across which the utility can spread the costs, the manner in which costs are allocated among customers, and whether the renewable energy helps the utility avoid the need for electrical power that it otherwise would have produced or purchased.

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

#### **Limited Exception for Retail Sales of Electricity**

The bill exempts from the definition of "public utility" a developer of a solar energy generation facility that is no larger than 2 megawatts and is located on the premises of a host consumer, other than a multi-family residential building, for purposes of sale to the host consumer for consumption only on the premises. The bill specifically authorizes such sales. Thus, the bill should encourage investment in such solar generation facilities. As noted in the Effect of Proposed Changes section of this analysis, the bill attempts to limit the impact of lost revenues from customers who choose this option on the rates of remaining utility customers. The bill does not, however, establish a cap on the total amount of capacity eligible for non-utility providers to serve.

#### **Loan Guarantee Program**

Participation in the federal DOE guaranteed loan program could result in increased energy-related economic development in Florida.

#### D. FISCAL COMMENTS:

#### **Loan Guarantee Program**

To implement the provision, the state is required to appropriate funding to draw down a certain amount of federal funds, and the participation is contingent upon funding to guarantee five percent of the debt for a qualifying project. For example, according to the FECC, if \$5 million were appropriated, approximately \$80-\$100 million in federal funds would be accessible for loan guarantees. The staff of the FECC has identified a potential source of funds. The FECC is terminating several that were not, or unsuccessfully, implemented, which will free up General Revenue. The actual amount that will be available is unknown at this time, but the Florida Energy and Climate Commission has projected between \$4 and \$5.

### **III. COMMENTS**

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the PSC to establish requirements by rule relating to required purchases of renewable energy from entities meeting certain operating requirements.

The bill requires the PSC to adopt rules related to implementation of the limited exception for retail sales of electricity by non-utility solar developers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**