

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/CS/SB 1316

SPONSOR: Governmental Oversight & Productivity Committee, Natural Resources Committee,
Communication and Public Utilities Committee and Senator Bennett

SUBJECT: Renewable Energy

DATE: March 30, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	Branning	Kiger	NR	Fav/CS
3.	Rhea	Wilson	GO	Fav/CS
4.			ATD	
5.			AP	
6.				

I. Summary:

The bill creates the Florida Alternative Energy Technology Center, Inc. (Center), provides for its organization, purpose, and duties, and appropriates \$500,000 to fund the center. The bill also transfers the state energy program from the Department of Community Affairs to the Department of Environmental Protection.

The bill creates an as yet unnumbered section of the Florida Statutes.

II. Present Situation:

There is no entity similar to the Florida Alternative Energy Technology Center. Related research is conducted by state universities and by the Florida Solar Energy Center. The state energy program, provided for in s. 377.703, F.S., coordinates federal energy programs, promotes energy conservation in all energy use sectors throughout the state, and coordinates energy-related programs of state government.

On June 20, 2003, the Department of Community Affairs, through a Memorandum of Agreement (MOA), provided that the Department of Environmental Protection has responsibility for the supervision and administration of the Energy Program and its staff, with the exception of those matters that affect the salary rate and budget authority.

III. Effect of Proposed Changes:

Section 1. Provides legislative intent regarding the need for the Florida Alternative Energy Technology Center, Inc., and creates the center as a not-for-profit corporation. "Alternative energy technology" is defined to include, but is not limited to: hydrogen fuel; fuel cells;

distributed generation; biodiesel and similar synthetic fuels; thermo-depolymerization; biomass; agricultural products and byproducts; municipal solid waste, including landfill injection and landfill mining; landfill gas; solar thermal and solar photovoltaic energy; ocean energy, including wave or thermal; energy conservation, including appliance efficiency standards; distributed generation; enhancements to transmission of electricity, including advanced transmission lines; and environmental standards.

The Center is to be the principal alternative energy technology organization for the state and is to provide leadership for research and development on the production of, improvements in, or use of alternative energy technology in Florida. It is to have the following duties:

- establish a unified approach to research, development, and use of alternative energy technology, with the cooperation of the Governor, the Legislature, the Energy Office, the Statewide Board of Governors of the State University System, the Public Service Commission, and relevant businesses in the private sector;
- assist the Florida universities and the private sector in determining areas on which to focus research in alternative energy technology and to assist in coordinating research projects among the universities and relevant private sector entities;
- promote the state as a location for businesses having operations related to alternative energy technologies in cooperation with Enterprise Florida, Inc., and the state Energy Office;
- assist universities, other state entities, and private companies in raising funds from all available resources including federal, state, local, and private, for research and development concerning alternative energy technology and for projects which utilize alternative energy technology in Florida;
- collect and maintain information relating to: funding sources (public and private), research conducted or needed, and alternative energy technology businesses considering operations in Florida;
- make policy recommendations to Legislature, Governor, and state agencies and subdivisions.

Additionally, the Center may conduct research when the particular research is not or cannot be done by a state university, and allows the Center to involve universities or private companies in the research.

In performing these duties, the Center is required to ensure maximum benefit to the state and is required to act in the best interest of the state. As part thereof, the Center shall establish strategic priorities consistent with certain findings to guide funding allocations and ensure the best use of available resources.

The Center's board of directors includes the following members:

- A representative from the state energy program, selected by the Governor;
- A representative from the Enterprise Florida, Inc., selected by its board of directors;
- A representative from the Statewide Board of Governors of the State University System, selected by the members of that board;
- A representative from the Florida investor-owned electric utilities. The Governor shall select this member from a list of four persons provided by these utilities;

- A representative from the Florida municipal electric utilities and rural electric cooperatives. The Governor selects this representative from a list of four persons provided by these utilities.
- A representative selected by the President of the Senate who is a board member or executive officer of a business that is located in Florida and that does not have any business interests relating to energy who can provide guidance as to locating and operating a business in this state.
- A representative selected by the Speaker of the House of Representatives who is a board member or executive officer of a business that is located in Florida and that does not have any business interests relating to energy who can provide guidance as to locating and operating a business in this state.
- A representative selected by the Governor from an environmental group who is informed about energy matters of the state.

Terms are for a period of 2 years, except that the bill provides for staggering of the initial terms in order to ensure continuity on the board.

Vacancies on the board must be filled in the same manner as the original appointment. Vacancies shall be filled for the remainder of the unexpired term, where applicable.

The board must select a chairperson biennially, upon appointment of all new members. Also, the board must meet at least four times each year, upon the call of the chairperson, or at the request of a majority of the membership.

Members of the board serve without compensation, but members, the president, and staff may be reimbursed for all reasonable, necessary, and actual expenses.

Each member of the board who is not otherwise required to file a financial disclosure statement must file such a disclosure statement as required pursuant to s. 112.3145, F.S.

The powers and duties of the board are specified.

Distributions shall be made to the corporation from the Florida Electric Energy Trust Fund under a contract between the Public Service Commission and the corporation, including any funding that is directed by the Legislature to be paid to a specific recipient.

The bill provides that all property of the corporations shall revert to the State upon dissolution of the corporation.

By December 1 each year, the corporation must submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairman of the Statewide Board of Governors. The report must include a description of the Center's activities and accomplishments; an annual financial accounting by an independent certified public accountant; a statement of its strategic priorities and their use in guiding resource allocations; and any recommendations the Center has for action by the Legislature or by the agencies of state, county or municipal governments to foster development or use of alternative energy technology.

Section 2. Appropriates \$500,000 from General Revenue to the Office of the Governor to fund the activities of the Center for FY 2004-2005.

Section 3. Statutorily transfers the state energy program from the Department of Community Affairs to the Department of Environmental Protection.

Section 4. Provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill provides that the corporation is explicitly subject to the requirements of ch. 119, F.S., the Public Records Law, and ch. 286, F.S., relating to public meetings and records. While explicitly stating this provides notice to the public and the corporation regarding the applicability of those provisions, the corporation would likely be subject to these requirements as *an agency acting on behalf of the state* as interpreted by the Florida Supreme Court in *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*¹

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 3, of the State Constitution states:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Section 20.02(1), F.S., further elucidates this provision:

The State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the government. The legislative branch has the broad purpose on determining policies and programs and reviewing program performance. The executive branch has the purposes of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs

¹ 596 So.2d 1029 (Fla. 1992).

and of adjudicating any conflicts arising from the interpretation or application of the laws.

Chapter 20, F.S., provides for the creation of departments within the executive branch. A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute.² A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the powers and duties which the department is authorized to execute are delegated by the Legislature:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights of individuals.³

Chapter 20, F.S., authorizes, under limited circumstances, the reallocation of duties within the same department. Section 20.04(7)(a), F.S., states:

Unless specifically authorized by law, the head of a department may not reallocate duties and functions specifically assigned by law to a specific unit of the department. Those functions or agencies assigned generally to the department without specific designation to a unit of the department may be allocated and reallocated to a unit of the department at the discretion of the head of the department.

While s. 20.04(7)(a), F.S., permits reallocation of responsibilities under limited circumstances *within the same department*, it does not authorize transfer from one agency to another of a program or unit of government that has been established in that agency by the Legislature.⁴ Section 20.06, F.S., provides the means by which units of governments or programs are transferred. That section provides for a type I or a type II transfer and occur through the exercise of legislative power.

Part I of Chapter 163, F.S., contains the Florida Interlocal Cooperation Act of 1969. The purpose of the section is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and to provide services and facilities in a manner and pursuant to forms

² *Seaside Properties, Inc., v. State Road Department*, 190 So.2d 391 (3rd DCA 1966).

³ *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (5th DCA 1985).

⁴ Section 20.057, F.S., permits interagency agreements to delete duplication of inspections among the departments that inspect the same type of facility or structure. That section does not, however, permit the transfer of units of one department or of programs established in one department by the Legislature, to another department by an executive branch officer. This section also requires the Governor to make a report to the Legislature no later than 60 days prior to the beginning of the regular session regarding interagency agreements. The report has specified content requirements.

of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. Subsection (4) of the section permits a public agency⁵ of the state to *exercise jointly* with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately. Subsection (5) of the section provides that the *joint exercise of power* is to be made by contract in the form of an interlocal agreement and provides what must be in that contract.

Part II of chapter 377, F.S., provides that the Department of Community Affairs is assigned the responsibility by the Legislature to perform specific duties under ss. 377.601-377.712, F.S. On June 20, 2003, the Department of Community Affairs, through a Memorandum of Agreement (MOA), provided that the Department of Environmental Protection has responsibility for the supervision and administration of the Energy Program and its staff, with the exception of those matters that affects the salary rate and budget authority. In the MOA, the DCA retained the authority to approve or disapprove any recommendation by the DEP that staff be hired, terminated, or receive a pay adjustment. The MOA also provides that the DEP will have the authority to enter into contracts on behalf of the Energy Program, to amend existing Energy Program contracts, to administer all contracts, and to approve and disapprove payments, reports and other documentation, to approve procurements, and to approve travel requests and reimbursements. Further, the MOA gives the Secretary of the DEP the authority to take or refrain from taking all actions to the same extent that the DCA or its secretary could do so.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill appropriates \$500,000 from General Revenue to the Office of the Governor to fund the activities of the Florida Alternative Energy Technology Center.

VI. Technical Deficiencies:

None.

⁵ Under the definition of “public agency” to mean a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.

VII. Related Issues:

The bill establishes the members of the board of directors of the corporation beginning at page 4, line 18. It does not state who decides which “representative from the state energy program” is a board member. The bill also provides for one board member that is a representative “. . . selected by the Florida public utilities, as that term is defined in section 366.02, Florida Statutes.” Section 366.02, Florida Statutes, defines “public utility” very broadly to mean

. . . every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas . . . to or for the public within this state. . . .”

It is not clear who will make the appointment representing Florida public utilities or what process is intended to be used to select a board member who represents this broad group. The bill does not require establishment of performance levels or provide for periodic performance audits by OPPAGA.

VIII. Amendments:

None.