

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1551 w/CS Relating to Renewable Energy

**SPONSOR(S):** Reagan

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1492

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	<u>30 Y, 4 N w/CS</u>	<u>Holt</u>	<u>Liepshutz</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

HB1551 w/CS creates s. 366.91 relating to renewable electricity and amends s. 403.7061, F.S. Currently, Florida does not have a requirement that utilities generate or purchase renewable energy.

The bill requires that, on or before January 1, 2005, each public utility must continuously offer a 10-year purchase contract to producers of renewable energy. Additionally, each municipal electric utility and rural electric cooperative whose annual sales as of July 1, 1993, to retail customers were greater than 2,000 gigawatt hours is also required to continuously offer a 10-year term purchase contract to producers of renewable energy.

Amended in the bill is s. 403.7061(3)(c), F.S., relating to requirements for review of new waste-to-energy facilities by the Department of Environmental Protection. The bill reduces the requirement that an applicant for a permit to construct or expand a waste-to-energy facility must meet relating to solid waste management and recycling programs. The bill further encourages applicants for a permit to construct or expand a Class I landfill to consider construction of a waste-to-energy facility as an alternative to additional landfill space.

There does not appear to be a fiscal impact on state or local government.

The act takes effect October 1, 2004.

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

**STORAGE NAME:** h1551a.br.doc

**DATE:** April 6, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

The Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 2601 et seq., was enacted by Congress “to promote long-term economic growth by reducing the nation’s reliance on oil and gas, to encourage the development of alternative energy sources and thereby to combat a nationwide energy crisis.”

Section 210 of PURPA’s Title II, 16 U.S.C. §824a-3, encourages the development of cogeneration and small power production facilities, which Congress believed would reduce the demand for traditional fossil fuels. Section 210(a), 16 U.S.C. § 824a-3(a), directs the Federal Energy Regulatory Commission (FERC), in consultation with state regulatory authorities, to promulgate rules necessary to encourage such power production, including rules requiring utilities to offer to sell electricity to, and purchase electricity from qualifying facilities (QFs<sup>1</sup>). Section 210(f)(1) obligates state regulatory agencies such as the Florida Public Service Commission (PSC) to implement FERC rules through their own rulemaking, in particular those pertaining to electric utilities’ obligation to purchase power from QFs. 16 U.S.C. §824a-3(f)(1)(2000).

PURPA and its regulations prohibit FERC from “provid[ing] for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.” 16 U.S.C. § 824a-3(b). An electric utility’s incremental cost is the cost that the utility would incur in generating the electric energy itself or purchasing it from another source. 16 U.S.C. § 824a-3(d). Incremental cost is also referred to as avoided cost. 18 C.F.R. § 292.101(b)(6) (2001).

In 1980, the Florida Legislature adopted the Florida Energy Efficiency and Conservation Act (FEECA). FEECA requires the PSC to set goals and require utilities to develop and implement programs related to the conservation of electric energy and natural gas usage. Section 366.81, F.S., provides in part that:

Legislative findings and intent.— . . . The Legislature further finds that the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans related to the conservation of electric energy and natural gas

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<sup>1</sup> A designation created by the PURPA, for non-utility power producers that meet certain operating, efficiency and fuel use standards set by the FERC. To receive status as a QF under PURPA, the facility must produce electric energy and “another form of useful thermal energy through the sequential use of energy,” and meet certain ownership, operating, and efficiency criteria established by FERC. (See the Code of Federal Regulations, Title 18, Part 292). QFs may rely on renewable energy sources or cogeneration.

usage. The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop plans and implement programs for increasing energy efficiency and conservation within its service area, subject to the approval of the commission. Since solutions to our energy problems are complex, the Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load-control systems be encouraged. . .

The PSC rules relating to utilities' obligations with regard to cogenerators and small power producers are in Chapter 25, Part III, F.A.C. There are three rules which speak specifically to the relationship between utilities and QFs and the obligations to purchase; as-available energy; and firm capacity and energy contracts:

- Rule 25-17.082, F.A.C., The Utility's Obligation to Purchase; Customer's Selection of Billing Method,
- Rule 25-17.0825, F.A.C., As-Available Energy
- Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.

The PSC, in consultation with the DEP, was directed by the 2002 Florida Legislature to do an assessment of renewable energy in Florida and its potential for electric generation. The assessment report is entitled An Assessment of Renewable Electric Generating Technologies for Florida and was prepared by the PSC in January 2003. In the report, based on statutory language, renewable energy is described as electricity generated from any method or process that uses one or more of the following sources of energy, but not limited to: biomass; municipal solid waste; geothermal energy; solar energy; wind energy; wood waste; ocean thermal gradient power; hydroelectric power; landfill gas; and agricultural products and by-products. There is no generally accepted definition for "renewable energy." The report further noted that most renewable technologies are not yet cost-competitive with traditional forms of electric generation

### PROPOSED CHANGES

The bill creates section 366.91, F.S. – relating to renewable electricity. The legislative findings in the bill indicate that it is in the public interest to promote the development of renewable electric resources in Florida. Renewable electric 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.

As used in section 366.91, the terms:

(a) "Biomass" means a power source that is comprised of, but not limited to, combustible residues or gases from forest-products manufacturing, agricultural and orchard crops, waste products from livestock and poultry operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

(b) "Renewable energy" means electrical energy produced from any method or process that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, municipal solid waste, municipal liquid waste treatment operations, or landfill gas

The bill requires that, on or before January 1, 2005, each public utility must continuously offer a 10-year purchase contract to producers of renewable energy containing payment provisions for energy and capacity, if capacity payments are appropriate, which are based upon the utility's avoided costs.

On or before January 1, 2005, each municipal electric utility and rural electric cooperative whose annual sales as of July 1, 1993, to retail customers were greater than 2,000 gigawatt hours is also required to continuously offer a 10-year term purchase contract to producers of renewable energy containing payment provisions for energy and capacity, if capacity payments are appropriate, which are based upon the utility's avoided costs.

Amended in the bill is s. 403.7061(3)(c), F.S., relating to requirements for review of new waste-to-energy facility by the Department of Environmental Protection. It deletes the 30% municipal solid waste recycling goal that may hinder some counties from permitting a new waste-to-energy facility and adds new language that requires a county to have a solid waste recycling program in place designed to achieve 30% reduction.

The bill provides that local government applicants for a permit to construct or expand a Class I landfill are encouraged to consider construction of a waste-to-energy facility as an alternative to additional landfill space.

C. SECTION DIRECTORY:

None.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires each public utility and specified municipal electric utilities and rural cooperatives to continuously offer 10-year purchase contracts to producers of renewable energy. Prudent and reasonable costs associated with a renewable energy contract shall be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery clause mechanism administered by the PSC.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2004, the Committee on Business Regulation adopted a strike-all amendment. The amendment made the following changes to the bill:

##### **SECTION 1**

- Deleted creation of the Renewable Electric Energy Production Act.
- In the definition section of the bill the term "qualified renewable resource" was deleted and substituted with a definition for "renewable energy."
- Authorization for the PSC to require public utilities to offer a minimum 5-year renewable generation contract to facilities that produce certain specified renewable energy resources, establish contract terms, payment schedules, and adopt applicable rules are deleted. Customer recovery of cost associated with renewable generation contracts is also deleted.
- The provision that allows a facility that produces renewable energy to elect to sell its electric output to a utility outside the service territory of a host utility in which the facility is geographically located is deleted.

##### **SECTION 2**

- Deleted s. 366.95. This section provided applicable definitions for "biomass," "new sources of renewable energy," "renewable energy," and "renewable energy credit." The section included a percentage requirement to be met by public utilities for production or purchases from new sources of renewable energy in Florida. Cost recovery, PSC rule adoption, and penalties provisions related to production or purchase percentages were also deleted.

##### **SECTION 3**

- The requirement for the PSC to submit a report to the Senate President and House Speaker relating to new renewable energy is deleted.

##### **SECTION 4**

- Amended 403.7061(3)(c), F.S., relating to requirements for review of new waste-to-energy facilities by the Department of Environmental Protection. The amendment deletes the 30% municipal solid waste recycling goal that may hinder some counties from permitting a new waste-to-energy facility and adds new language that requires a county to have a solid waste recycling program in place designed to achieve 30% reduction.

##### **SECTION 5**

- This unnumbered section is deleted providing for requirements relating to solid waste disposal facility permitting; and for a feasibility study for waste-to-energy facilities.