

ENROLLED

HB 77, Engrossed 2

2005 Legislature

1 A bill to be entitled

2 An act relating to renewable energy; creating s. 366.91,
3 F.S.; providing legislative findings; providing
4 definitions; requiring public utilities, municipal
5 utilities, and rural electric cooperatives to offer a
6 purchase contract to producers of renewable energy;
7 requiring the Florida Public Service Commission to
8 establish requirements relating to the purchase of
9 capacity and energy by public utilities from renewable
10 energy producers; authorizing the commission to adopt
11 rules; providing requirements for contracts; requiring
12 that a producer pay the costs for interconnection;
13 amending s. 366.11, F.S.; specifying that requirements for
14 the purchase of renewable energy apply to municipal
15 utilities; amending s. 403.7061, F.S.; revising a permit
16 requirement for a waste-to-energy facility; encouraging
17 specified applicants for a landfill permit to consider
18 construction of a waste-to-energy facility; providing an
19 effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 366.91, Florida Statutes, is created to
24 read:

25 366.91 Renewable energy.--

26 (1) The Legislature finds that it is in the public
27 interest to promote the development of renewable energy
28 resources in this state. Renewable energy resources have the

Page 1 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0077-05-er

ENROLLED

HB 77, Engrossed 2

2005 Legislature

29 potential to help diversify fuel types to meet Florida's growing
30 dependency on natural gas for electric production, minimize the
31 volatility of fuel costs, encourage investment within the state,
32 improve environmental conditions, and make Florida a leader in
33 new and innovative technologies.

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

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

41 (b) "Renewable energy" means electrical energy produced
42 from a method that uses one or more of the following fuels or
43 energy sources: hydrogen produced from sources other than fossil
44 fuels, biomass, solar energy, geothermal energy, wind energy,
45 ocean energy, and hydroelectric power. The term includes the
46 alternative energy resource, waste heat, from sulfuric acid
47 manufacturing operations.

48 (3) On or before January 1, 2006, each public utility must
49 continuously offer a purchase contract to producers of renewable
50 energy. The commission shall establish requirements relating to
51 the purchase of capacity and energy by public utilities from
52 renewable energy producers and may adopt rules to administer
53 this section. The contract shall contain payment provisions for
54 energy and capacity which are based upon the utility's full
55 avoided costs, as defined in s. 366.051; however, capacity
56 payments are not required if, due to the operational

ENROLLED

HB 77, Engrossed 2

2005 Legislature

57 characteristics of the renewable energy generator or the
58 anticipated peak and off-peak availability and capacity factor
59 of the utility's avoided unit, the producer is unlikely to
60 provide any capacity value to the utility or the electric grid
61 during the contract term. Each contract must provide a contract
62 term of at least 10 years. Prudent and reasonable costs
63 associated with a renewable energy contract shall be recovered
64 from the ratepayers of the contracting utility, without
65 differentiation among customer classes, through the appropriate
66 cost-recovery clause mechanism administered by the commission.

67 (4) On or before January 1, 2006, each municipal electric
68 utility and rural electric cooperative whose annual sales, as of
69 July 1, 1993, to retail customers were greater than 2,000
70 gigawatt hours must continuously offer a purchase contract to
71 producers of renewable energy containing payment provisions for
72 energy and capacity which are based upon the utility's or
73 cooperative's full avoided costs, as determined by the governing
74 body of the municipal utility or cooperative; however, capacity
75 payments are not required if, due to the operational
76 characteristics of the renewable energy generator or the
77 anticipated peak and off-peak availability and capacity factor
78 of the utility's avoided unit, the producer is unlikely to
79 provide any capacity value to the utility or the electric grid
80 during the contract term. Each contract must provide a contract
81 term of at least 10 years.

82 (5) A contracting producer of renewable energy must pay
83 the actual costs of its interconnection with the transmission
84 grid or distribution system.

ENROLLED
 HB 77, Engrossed 2

2005 Legislature

85 Section 2. Subsection (1) of section 366.11, Florida
 86 Statutes, is amended to read:

87 366.11 Certain exemptions.--

88 (1) No provision of this chapter shall apply in any
 89 manner, other than as specified in ss. 366.04, 366.05(7) and
 90 (8), 366.051, 366.055, 366.093, 366.095, 366.14, ~~and~~ 366.80-
 91 366.85, and 366.91, to utilities owned and operated by
 92 municipalities, whether within or without any municipality, or
 93 by cooperatives organized and existing under the Rural Electric
 94 Cooperative Law of the state, or to the sale of electricity,
 95 manufactured gas, or natural gas at wholesale by any public
 96 utility to, and the purchase by, any municipality or cooperative
 97 under and pursuant to any contracts now in effect or which may
 98 be entered into in the future, when such municipality or
 99 cooperative is engaged in the sale and distribution of
 100 electricity or manufactured or natural gas, or to the rates
 101 provided for in such contracts.

102 Section 3. Section 403.7061, Florida Statutes, is amended
 103 to read:

104 403.7061 Requirements for review of new waste-to-energy
 105 facility capacity by the Department of Environmental
 106 Protection.--

107 (1) The Legislature recognizes the need to use an
 108 integrated approach to municipal solid waste management.
 109 Accordingly, the solid waste management legislation adopted in
 110 1988 was guided by policies intended to foster integrated solid
 111 waste management by using waste reduction, recycling, waste-to-
 112 energy facilities, and landfills. Progress is being made in the

ENROLLED

HB 77, Engrossed 2

2005 Legislature

113 | state using this integrated approach to municipal solid waste
114 | management, and this approach should be continued. Waste-to-
115 | energy facilities will continue to be an integral part of the
116 | state's solid waste management practices. However, the state is
117 | committed to achieving its recycling and waste reduction goals
118 | and must ensure that waste-to-energy facilities are fully
119 | integrated with the state's waste management goals. Therefore,
120 | the Legislature finds that the department should evaluate
121 | applications for waste-to-energy facilities in accordance with
122 | the new criteria in subsection (3) to confirm that the
123 | facilities are part of an integrated waste management plan.

124 | (2) Notwithstanding any other provisions of state law, the
125 | department shall not issue a construction permit or
126 | certification to build a waste-to-energy facility or expand an
127 | existing waste-to-energy facility unless the facility meets the
128 | requirements set forth in subsection (3). Any construction
129 | permit issued by the department between January 1, 1993, and May
130 | 12, 1993, which does not address these new requirements shall be
131 | invalid. These new requirements do not apply to the issuance of
132 | permits or permit modifications to retrofit existing facilities
133 | with new or improved pollution control equipment to comply with
134 | state or federal law. The department shall initiate rulemaking
135 | to incorporate the criteria in subsection (3) into its permit
136 | review process.

137 | (3) An applicant must provide reasonable assurance that
138 | the construction of a new waste-to-energy facility or the
139 | expansion of an existing waste-to-energy facility will comply
140 | with the following criteria ~~subsections~~:

ENROLLED
 HB 77, Engrossed 2

2005 Legislature

141 (a) The facility is a necessary part of the local
 142 government's integrated solid waste management program in the
 143 jurisdiction where the facility is located and cannot be avoided
 144 through feasible and practical efforts to use recycling or waste
 145 reduction.

146 (b) The use of capacity at existing waste-to-energy
 147 facilities within reasonable transportation distance of the
 148 proposed facility must have been evaluated and found not to be
 149 economically feasible when compared to the use of the proposed
 150 facility for the expected life of the proposed facility. This
 151 paragraph does not apply to:

152 1. Applications to build or expand waste-to-energy
 153 facilities received by the department before March 1, 1993, or
 154 amendments to such applications that do not increase combustion
 155 capacity beyond that requested as of March 1, 1993; or

156 2. Any modification to waste-to-energy facility
 157 construction or operating permits or certifications or
 158 conditions thereto, including certifications under ss. 403.501-
 159 403.518, that do not increase combustion capacity above that
 160 amount applied for before March 1, 1993.

161 (c) The county in which the facility is located has
 162 implemented and maintains a solid waste management and recycling
 163 program that is designed to ~~will~~ achieve the ~~30 percent~~ waste
 164 reduction goal set forth in s. 403.706(4) ~~by the time the~~
 165 ~~facility begins operation~~. For the purposes of this section, the
 166 provisions of s. 403.706(4)(c) for counties having ~~with~~
 167 populations of 100,000 ~~75,000~~ or fewer ~~less~~ do not apply.

ENROLLED

HB 77, Engrossed 2

2005 Legislature

168 (d) The local government in which the facility is located
169 has implemented a mulching, composting, or other waste reduction
170 program for yard trash.

171 (e) The local governments served by the facility will have
172 implemented or participated in a separation program designed to
173 remove small-quantity generator and household hazardous waste,
174 mercury containing devices, and mercuric-oxide batteries from
175 the waste stream prior to incineration, by the time the facility
176 begins operation.

177 (f) The local government in which the facility is located
178 has implemented a program to procure products or materials with
179 recycled content, pursuant to s. 403.7065.

180 (g) A program will exist in the local government in which
181 the facility is located for collecting and recycling recovered
182 material from the institutional, commercial, and industrial
183 sectors by the time the facility begins operation.

184 (h) The facility will be in compliance with applicable
185 local ordinances and with the approved state and local
186 comprehensive plans required by chapter 163.

187 (i) The facility is in substantial compliance with its
188 permit, conditions of certification, and any agreements or
189 orders resulting from environmental enforcement actions by state
190 agencies.

191 (4) For the purposes of this section, the term "waste-to-
192 energy facility" means a facility that uses an enclosed device
193 using controlled combustion to thermally break down solid,
194 liquid, or gaseous combustible solid waste to an ash residue
195 that contains little or no combustible material and that

ENROLLED

HB 77, Engrossed 2

2005 Legislature

196 produces electricity, steam, or other energy as a result. The
197 term does not include facilities that primarily burn fuels other
198 than solid waste even if such facilities also burn some solid
199 waste as a fuel supplement. The term also does not include
200 facilities that burn vegetative, agricultural, or silvicultural
201 wastes, bagasse, clean dry wood, methane or other landfill gas,
202 wood fuel derived from construction or demolition debris, or
203 waste tires, alone or in combination with fossil fuels.

204 Section 4. Requirements relating to solid waste disposal
205 facility permitting.--Local government applicants for a permit
206 to construct or expand a Class I landfill are encouraged to
207 consider construction of a waste-to-energy facility as an
208 alternative to additional landfill space.

209 Section 5. This act shall take effect October 1, 2005.