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## CHAMBER ACTION

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1 The Utilities & Telecommunications Committee recommends the  
2 following:

**Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to energy diversity and efficiency;  
8 providing a short title; providing purpose; providing  
9 definitions; providing requirements for the authorization,  
10 certification, and siting of nuclear power plants;  
11 providing for a Nuclear Power Plant Siting Board;  
12 enumerating the related powers and duties of the  
13 Department of Environmental Protection, including  
14 rulemaking authority; requiring certain application,  
15 certification, and licensure of nuclear power plants;  
16 specifying applicability to certain nuclear power plants;  
17 providing for distribution of certain applications and  
18 schedules; directing the Division of Administrative  
19 Hearings to appoint an administrative judge to conduct  
20 certain hearings; providing for the determination of  
21 application and amendment completeness; requiring a review  
22 of land use and zoning consistency; requiring affected  
23 agencies to submit certain reports; providing requirements

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24 and procedures with respect thereto; requiring public  
25 notice of department recommendation and petition for  
26 certification hearings; providing for land use and  
27 certification hearings; providing requirements and  
28 procedures with respect thereto; authorizing the board to  
29 have final disposition on certification applications;  
30 providing that this act supersedes certain laws and  
31 regulations; providing for effect of certification;  
32 requiring certain public notice; providing responsibility  
33 for certain costs; providing for revocation or suspension  
34 of certification; providing for appeal and review of  
35 proceedings under the act; providing for compliance  
36 enforcement; requiring the department to make certain  
37 information relating to power plant siting available to  
38 the public; providing requirements and procedures for  
39 modification of certification; providing for supplemental  
40 applications for sites certified for ultimate site  
41 capacity; requiring certain fees; providing for deposit  
42 into the Florida Permit Fee Trust Fund and subsequent  
43 distribution; requiring the Public Service Commission to  
44 hold hearings on determination of need; providing  
45 requirements and procedures with respect thereto; creating  
46 s. 366.93, F.S.; providing definitions; requiring the  
47 Public Service Commission to implement rules related to  
48 nuclear power plant cost recovery; requiring a report;  
49 providing an effective date.

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51 WHEREAS, the extraordinary and unprecedented global  
52 increases in the cost of fuel oil and natural gas, coupled with  
53 the state's rapidly growing population and increasing demands  
54 for electric energy, have brought into sharp focus the need to  
55 enhance fuel diversity, and

56 WHEREAS, the world growth in demand for fuel oil and  
57 natural gas may continue to have further impact on the cost and  
58 supply of these resources, and

59 WHEREAS, the impact of Hurricane Katrina on supplies of  
60 natural gas and fuel oil further substantiates the need to alter  
61 the balance of fuel diversity in connection with the generation  
62 of electricity in the state, and

63 WHEREAS, the federal Energy Policy Act of 2005 encourages  
64 the siting and operation of new nuclear generation by providing  
65 tax and other incentives to reduce the costs of such plants, and

66 WHEREAS, significant federally funded benefits and  
67 incentives available under the federal Energy Policy Act of 2005  
68 are available to only the first 6,000 megawatts of new advanced  
69 nuclear reactor generating capacity licensed in the United  
70 States, and

71 WHEREAS, operation of new nuclear power generation within  
72 the state, particularly if such generation is eligible for the  
73 tax and other incentives available under the federal Energy  
74 Policy Act of 2005, will benefit the state's electric customers,  
75 and

76 WHEREAS, existing provisions of the Florida Electrical  
77 Power Plant Siting Act are inadequate to address the unique  
78 issues of siting nuclear power generation within the state and

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79 | securing benefits under the federal Energy Policy Act of 2005,  
80 | NOW, THEREFORE,

81 |

82 | Be It Enacted by the Legislature of the State of Florida:

83 |

84 |       Section 1. Short title.--This act may be cited as the  
85 | "Florida Energy Diversity and Efficiency Act."

86 |       Section 2. Purpose.--The Legislature finds that the state,  
87 | its residents, and its economy benefit from diverse sources of  
88 | fuel for the generation of electricity. Diversity of fuel  
89 | sources contributes to lower cost electricity and improved  
90 | reliability of electric supply, as the state will not be  
91 | dependent upon a particular source of fuel. Nuclear power plants  
92 | are important sources of electric generation that contribute to  
93 | the diversity of fuel sources within the state. The state has  
94 | five operating nuclear power plants that have operated reliably  
95 | for the benefit of the state, and contributed a stable supply of  
96 | electricity, with minimal impacts on the state's environment.  
97 | The citizens of the state and electric power consumers have  
98 | benefited from the operation of existing nuclear power plants  
99 | within the state through low-cost and reliable energy  
100 | production, electric grid reliability, and economic and  
101 | environmental benefits. The Legislature further finds and  
102 | declares it is in the public interest and critical to the  
103 | health, prosperity, and general welfare of the state and its  
104 | citizens to promote the expansion of nuclear generation by the  
105 | siting of new nuclear power plants within the state so as to  
106 | continue these benefits and further ensure the state's access to

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107 safe, reliable, efficient, and affordable electric service,  
108 thereby enhancing the state's economic future while protecting  
109 the environment. Recent events have shown the state's  
110 vulnerability to disruptions and price volatility in its  
111 electric supplies from the importation of natural gas and fuel  
112 oil from domestic and foreign sources. The federal Energy Policy  
113 Act of 2005 contains important provisions to promote the  
114 construction and operation of new nuclear power plants in the  
115 United States, including financial incentives for qualifying  
116 advanced nuclear power plants and incentives that are limited to  
117 the first 6,000 megawatts of advanced nuclear power plant  
118 generating capacity licensed in the United States. The state  
119 would benefit from timely siting of a qualifying advanced  
120 nuclear power plant as a source of low-cost electricity. In  
121 consideration of the present and predicted growth in electric  
122 power needs in this state, and the potential for additional  
123 reliable sources of electricity from nuclear power plants, the  
124 Legislature finds that there is a need to develop a procedure  
125 for the selection and utilization of sites for electrical  
126 generating facilities utilizing nuclear energy and for the  
127 identification of a state position with respect to each proposed  
128 site and nuclear power plant. The Legislature recognizes that  
129 the selection of sites for new or expanded nuclear-powered  
130 electrical generating plants, including any associated linear  
131 facilities, will have a significant impact upon the welfare of  
132 the population, the location and growth of industry, and the use  
133 of the natural resources of the state. The Legislature finds  
134 that the efficiency of the permit application and review process

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135 at both the state and local level would be improved with the  
136 implementation of a process in which a permit application for  
137 nuclear power plants would be centrally coordinated and all  
138 permit decisions could be reviewed on the basis of adopted  
139 standards and recommendations of the deciding agencies. A  
140 centrally coordinated permitting process would also enhance the  
141 state's ability to become the location of a qualifying advanced  
142 nuclear power plant. Nuclear power plants may also be the  
143 location of or otherwise promote other public benefits for water  
144 supply projects, industrial development, or other activities.  
145 Legislation that addresses issues unique to the siting of  
146 nuclear power plants is required to encourage electric utilities  
147 to site and operate new nuclear power plant facilities within  
148 the state and to take advantage of provisions of the federal  
149 Energy Policy Act of 2005 that operate to reduce the overall  
150 costs of such plants. The state shall promote and approve new  
151 nuclear-powered electrical generating facilities that will  
152 reasonably balance the increasing demands for reliable, cost-  
153 effective electric power and decisions about electrical power  
154 plant location, construction, and operation with the broad  
155 interests of the public.

156 Section 3. Definitions.--As used in this act:

157 (1) "Act" means the Florida Energy Diversity and  
158 Efficiency Act.

159 (2) "Agency," as the context requires, means an official,  
160 officer, commission, authority, council, committee, department,  
161 division, bureau, board, section, or other unit or entity of  
162 government, including a regional or local governmental entity.

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163        (3) "Amendment" means a change in the information provided  
164 by the applicant to the application for certification made after  
165 the initial application filing.

166        (4) "Applicant" means any electric utility as defined  
167 under s. 366.8255(1)(a), Florida Statutes, city, town, county,  
168 public utility district, electric cooperative, or joint  
169 operating agency, or combination thereof, authorized under  
170 Florida law to engage in the business of generating,  
171 transmitting, or distributing electric energy to retail electric  
172 customers in the state.

173        (5) "Application" means the documents required by the  
174 department to be filed to initiate a certification proceeding  
175 and shall include the documents necessary for the department to  
176 render a decision on any permit required pursuant to any  
177 federally delegated or approved permit program.

178        (6) "Associated facility" means any facility that directly  
179 supports the construction and operation of the nuclear power  
180 plant, including, but not limited to, any substation,  
181 transmission line that connects the electrical power plant to an  
182 electrical transmission network, and right-of-way to which the  
183 applicant intends to connect.

184        (7) "Associated transmission line" means any new or  
185 upgraded transmission line that is owned by the applicant and  
186 connects the electrical power plant to a electrical transmission  
187 network or right-of-way to which the applicant intends to  
188 connect, including, at the applicant's option, any proposed  
189 terminal or intermediate substation, substation expansion  
190 connected to the associated transmission line to be certified,

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191 or new transmission line, upgrade, or improvement of an existing  
192 transmission line that is owned by the applicant on any portion  
193 of the state's electrical transmission system necessary to  
194 support the generation injected into the system from the  
195 proposed nuclear power plant.

196 (8) "Board" means the Governor and Cabinet sitting as the  
197 Nuclear Power Plant Siting Board.

198 (9) "Certification" means the written order of the board  
199 approving an application in whole or with such changes or  
200 conditions as the board may deem appropriate.

201 (10) "Completeness" means that the application has  
202 addressed all applicable sections of the prescribed application  
203 format and that those sections are sufficient in  
204 comprehensiveness of data or in quality of information provided  
205 to allow the department to determine whether the application  
206 provides the reviewing agencies adequate information to prepare  
207 the reports required by this act.

208 (11) "Corridor" means the proposed area within which an  
209 associated linear facility right-of-way is to be located. The  
210 width of the corridor proposed for certification as an  
211 associated facility, at the option of the applicant, may be the  
212 width of the right-of-way or a wider boundary, not to exceed a  
213 width of 1 mile, within which the right-of-way will be located.  
214 The area within the corridor in which a right-of-way may be  
215 located may be further restricted by a condition of  
216 certification. After all property interests required for the  
217 right-of-way have been acquired by the applicant, the boundaries



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218 of the area certified shall narrow to only that land within the  
219 boundaries of the right-of-way.

220 (12) "Department" means the Department of Environmental  
221 Protection.

222 (13) "Designated administrative law judge" means the  
223 administrative law judge assigned by the Division of  
224 Administrative Hearings pursuant to chapter 120, Florida  
225 Statutes, to conduct the hearings required by this act.

226 (14) "Federally delegated or approved permit program"  
227 means any environmental regulatory program approved by an agency  
228 of the Federal Government so as to authorize the department to  
229 administer and issue licenses pursuant to federal law,  
230 including, but not limited to, new source review permits,  
231 operation permits for major sources of air pollution, and  
232 prevention of significant deterioration permits under the Clean  
233 Air Act (42 U.S.C. ss. 7401 et seq.), permits under ss. 402 and  
234 404 of the Clean Water Act (33 U.S.C. ss. 1251 et seq.), and  
235 permits under the Resource Conservation and Recovery Act (42  
236 U.S.C. ss. 6901 et seq.).

237 (15) "License" means a franchise, permit, certification,  
238 registration, charter, comprehensive plan amendment, development  
239 order, or permit as defined in chapters 163 and 380, Florida  
240 Statutes, or similar form of authorization required by law,  
241 including permits issued under federally delegated or approved  
242 permit programs, but it does not include a license required  
243 primarily for revenue purposes when issuance of the license is a  
244 ministerial act.

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245       (16) "Local government" means a municipality or county in  
246 the jurisdiction of which the nuclear power generating facility  
247 is proposed to be located, unless the term is expressly stated  
248 to also include the local governments in the jurisdiction of  
249 which associated facilities or associated transmission lines are  
250 located.

251       (17) "Modification" means any change in the certification  
252 order after issuance, including a change in the conditions of  
253 certification.

254       (18) "Nonprocedural requirements of agencies" means any  
255 agency's regulatory requirements established by statute, rule,  
256 ordinance, or comprehensive plan, excluding any provisions  
257 prescribing forms, fees, procedures, or time limits for the  
258 review or processing of information submitted to demonstrate  
259 compliance with such regulatory requirements.

260       (19) "Notice of intent" means that notice which is filed  
261 with the department on behalf of an applicant prior to  
262 submission of an application pursuant to this act and which  
263 notifies the department of an intent to file an application.

264       (20) "Nuclear power generating facility" means the  
265 nuclear-fueled electrical generating facility within a nuclear  
266 power plant but, for purposes of this act, excludes any  
267 associated facility or associated transmission line.

268       (21) "Nuclear power plant" means, for the purpose of  
269 certification, any electrical generating facility using any  
270 process involving nuclear materials, fuels, or processes and, at  
271 the applicant's election, includes associated facilities and  
272 associated transmission lines.

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273       (22) "Preliminary statement of issues" means a listing and  
274 explanation of those issues within the agency's jurisdiction  
275 which are of major concern to the agency in relation to the  
276 proposed nuclear power plant.

277       (23) "Public Service Commission" or "commission" means the  
278 agency created pursuant to chapter 350, Florida Statutes.

279       (24) "Regional planning council" means a regional planning  
280 council as defined in s. 186.503(4), Florida Statutes, in the  
281 jurisdiction of which the nuclear power generating facility is  
282 proposed to be located.

283       (25) "Right-of-way" means land necessary for the  
284 construction and maintenance of an associated linear facility,  
285 such as a railroad line, pipeline, or transmission line,  
286 including associated facilities and associated transmission  
287 lines. The typical width of the right-of-way shall be identified  
288 in the application. The right-of-way shall be located within the  
289 certified corridor and shall be identified by the applicant  
290 subsequent to certification in documents filed with the  
291 department prior to construction.

292       (26) "Site" means any proposed location wherein a nuclear  
293 power generating facility, or a nuclear power generating  
294 facility alteration or addition resulting in an increase in  
295 generating capacity, will be located within state jurisdiction.  
296 The site may include appropriate buffers and may accommodate  
297 facilities constructed by the applicant or an agency to further  
298 an objective of an adopted water management district water  
299 supply plan. For purposes of this act, the term "site" does not

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300 include any associated facilities or associated transmission  
301 lines.

302 (27) "Site certification" means the final order issued by  
303 the board approving with any conditions or modifications a  
304 proposed nuclear power plant.

305 (28) "State comprehensive plan" means that plan set forth  
306 in chapter 187, Florida Statutes.

307 (29) "Water management district" means a water management  
308 district, created pursuant to chapter 373, Florida Statutes, in  
309 the jurisdiction of which the nuclear power plant is proposed to  
310 be located.

311 Section 4. Department of Environmental Protection; powers  
312 and duties enumerated.--The department shall have the following  
313 powers and duties in relation to this act:

314 (1) To adopt rules within 6 months of the effective date  
315 of this act pursuant to ss. 120.536(1) and 120.54, Florida  
316 Statutes, to implement the provisions of this act.

317 (2) To prescribe the form and content of the public  
318 notices and the notice of intent and the form, content, and  
319 necessary supporting documentation and studies to be prepared by  
320 the applicant for nuclear power plant site certification  
321 applications. The department shall utilize any existing site  
322 certification application forms and instructions adopted  
323 pursuant to the Florida Electrical Power Plant Siting Act, ss.  
324 403.501-403.518, Florida Statutes, until such new forms are  
325 adopted by the department.

326 (3) To receive applications for nuclear power plant site  
327 certifications and to determine the completeness thereof.

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328       (4) To make, or contract for, studies of nuclear power  
329 plant site certification applications.

330       (5) To administer the processing of applications for  
331 nuclear power plant site certifications and to ensure that the  
332 applications are processed as expeditiously as possible.

333       (6) To require such fees as allowed by this act.

334       (7) To conduct studies and prepare a written analysis.

335       (8) To prescribe the means for monitoring continued  
336 compliance with terms of the certification.

337       (9) To notify all affected agencies of the filing of a  
338 notice of intent within 15 days after receipt of the notice.

339       (10) To issue, with the nuclear power plant certification,  
340 any license required pursuant to any federally delegated or  
341 approved permit program.

342       Section 5. Applicability and certification.--

343       (1) The provisions of this act shall apply exclusively to  
344 any nuclear power plant as defined in this act and to any  
345 expansion in steam-generating capacity of any existing nuclear  
346 power plant. No construction of any new nuclear power plant or  
347 expansion in steam-generating capacity of any existing nuclear  
348 power plant may be undertaken after the effective date of this  
349 act without first obtaining certification as provided in this  
350 act. Except as otherwise provided in this subsection, this act  
351 shall not apply to any such nuclear power plant that is  
352 presently operating or that has, upon the effective date of this  
353 act, applied for a permit or certification under requirements in  
354 force prior to the effective date of such act.

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355       (2) Except as provided in the certification, modification  
356 of nuclear fuels, internal-related hardware, or operating  
357 conditions not in conflict with certification, which increase  
358 the electrical output of a unit to no greater capacity than the  
359 maximum operating capacity of the existing electrical generator,  
360 shall not constitute an alteration or addition to generating  
361 capacity which requires certification pursuant to this act.

362       (3) The application for any related department license  
363 which is required pursuant to any federally delegated or  
364 approved permit program shall be processed within the time  
365 periods allowed by this act, in lieu of those specified in s.  
366 120.60, Florida Statutes.

367       Section 6. Distribution of application; schedules.--

368       (1) Within 7 days after the filing of an application, the  
369 department shall provide to the applicant and the Division of  
370 Administrative Hearings the names and addresses of those  
371 affected or other agencies entitled to notice and copies of the  
372 application and any amendments.

373       (2) Within 7 days after the filing of an application, the  
374 department shall prepare a schedule of dates for submission of  
375 statements of issues, determination of completeness, and  
376 submittal of final reports from affected and other agencies,  
377 petition for a certification hearing, and other significant  
378 dates to be followed during the certification process, including  
379 dates for filing notices of appearance to be a party pursuant to  
380 section 12(3)(c). The schedule shall establish the date for  
381 conduct of any certification hearing as provided for in this  
382 act. This schedule shall be timely provided by the department to

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383 the applicant, the administrative law judge, all agencies  
384 identified pursuant to subsection (1), and all parties.

385 (3) Within 7 days after the department issues the names  
386 and addresses of those affected or other agencies entitled to  
387 notice and copies of the application and any amendments, the  
388 applicant shall distribute copies of the application to all  
389 agencies identified by the department. Copies of changes and  
390 amendments to the application shall be timely distributed by the  
391 applicant to all affected agencies and parties.

392 Section 7. Appointment of administrative law  
393 judge.--Within 7 days after receipt of an application, the  
394 department shall request the Division of Administrative Hearings  
395 to designate an administrative law judge to conduct the hearings  
396 required by this act. The division director shall designate an  
397 administrative law judge within 7 days after receipt of the  
398 request from the department.

399 Section 8. Determination of completeness.--

400 (1) Within 45 days after the distribution of the  
401 application or amendment to a pending application, the  
402 department shall file a statement with the Division of  
403 Administrative Hearings and with the applicant declaring its  
404 position with regard to the completeness of the application or  
405 amendment. The department's statement shall be based upon  
406 consultation with the affected agencies, which shall submit to  
407 the department recommendations on the completeness of the  
408 application within 30 days after distribution of the  
409 application.

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410        (2) If the department declares the application or  
411 amendment incomplete, the applicant may withdraw the application  
412 or amendment. If the applicant declines to withdraw the  
413 application or amendment, the applicant may, at its option:

414        (a) Within 40 days after the department filed its  
415 statement of incompleteness or such later date as authorized by  
416 department rules, file additional information necessary to make  
417 the application or amendment complete. If the applicant makes  
418 its application or amendment complete within this time period,  
419 the time schedules under this act shall not be tolled by the  
420 department's statement of incompleteness.

421        (b) Advise the department and the administrative law judge  
422 that the information necessary to make the application or  
423 amendment complete cannot be supplied within the time period  
424 authorized in paragraph (a). The time schedules under this act  
425 shall be tolled from the date of the notice of incompleteness  
426 until the application or amendment is determined complete.

427        (c) Contest the statement of incompleteness by filing a  
428 request for a hearing with the administrative law judge within  
429 15 days after the filing of the statement of incompleteness. If  
430 a hearing is requested by the applicant, all time schedules  
431 under this act shall be tolled as of the department's statement  
432 of incompleteness, pending the administrative law judge's  
433 decision concerning the dispute. A hearing shall be held no  
434 later than 21 days after the filing of the statement by the  
435 department, and a final decision shall be rendered by the  
436 administrative law judge within 10 days after the hearing.



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437 (3) (a) If the administrative law judge determines,  
438 contrary to the department, that an application or amendment is  
439 complete, all time schedules under this act shall resume as of  
440 the date of the administrative law judge's determination.

441 (b) If the administrative law judge agrees that the  
442 application is incomplete, all time schedules under this act  
443 shall remain tolled until the applicant files additional  
444 information and the application or amendment is determined  
445 complete by the department or the administrative law judge.

446 (4) If, within 30 days after receipt of the additional  
447 information submitted pursuant to paragraph (2) (a), paragraph  
448 (2) (b), or paragraph (3) (b), based upon the recommendations of  
449 the affected agencies, the department determines that the  
450 additional information supplied by an applicant does not render  
451 the application or amendment complete, the applicant may  
452 exercise any of the options specified in subsection (2) as often  
453 as may be necessary to resolve the dispute.

454 Section 9. Land use and zoning consistency.--

455 (1) The applicant shall include in the application a  
456 statement on the consistency of the site or any directly  
457 associated facilities with existing land use plans and zoning  
458 ordinances which were in effect on the date the application was  
459 filed, and a full description of such consistency.

460 (2) Within 80 days after the filing of the application,  
461 each local government shall file a determination with the  
462 department, applicant, administrative law judge, and all parties  
463 on the consistency of the site or any directly associated  
464 facilities with existing land use plans and zoning ordinances

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465 which were in effect on the date the application was filed,  
466 based on the information provided in the application. The  
467 applicant shall publish notice of the consistency determination  
468 in accordance with the requirements of section 17(1)(b).

469 (3) If any substantially affected person wishes to dispute  
470 the local government's determination, he or she shall file a  
471 petition with the department within 15 days after the  
472 publication of notice of the local government's determination.  
473 If a hearing is requested, the provisions of s. 403.508(1),  
474 Florida Statutes, shall apply.

475 (4) The dates in this section may be altered upon  
476 agreement between the applicant, the local government, and the  
477 department pursuant to s. 403.5095, Florida Statutes.

478 (5) If it is determined by the local government that the  
479 proposed site or directly associated facility conforms with  
480 existing land use plans and zoning ordinances in effect as of  
481 the date of the application and no petition has been filed, the  
482 responsible zoning or planning authority shall not thereafter  
483 change such land use plans or zoning ordinances so as to  
484 foreclose construction and operation of the proposed site or  
485 directly associated facilities unless certification is  
486 subsequently denied or withdrawn.

487 Section 10. Preliminary statements of issues, reports, and  
488 studies.--

489 (1) Each affected agency identified in paragraph (2)(a)  
490 shall submit a preliminary statement of issues to the department  
491 and the applicant no later than 45 days after the distribution  
492 of the application. The failure to raise an issue in this

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493 statement shall not preclude the issue from being raised in the  
494 agency's report.

495 (2) (a) The following agencies shall prepare reports as  
496 provided below and shall submit them to the department and the  
497 applicant within 60 days after the application is determined  
498 complete:

499 1. The Department of Community Affairs shall prepare a  
500 report containing recommendations which address the impact upon  
501 the public of the proposed nuclear power plant, based on the  
502 degree to which the nuclear power plant is consistent with the  
503 applicable portions of the state comprehensive plan and other  
504 such matters within its jurisdiction.

505 2. The Public Service Commission shall prepare a report as  
506 to the present and future need for the electrical generating  
507 capacity to be supplied by the proposed nuclear power plant. The  
508 report shall include the commission's determination pursuant to  
509 section 25(4) and may include the commission's comments with  
510 respect to any other matters within its jurisdiction.

511 3. The water management district shall prepare a report as  
512 to matters within its regulatory jurisdiction.

513 4. Each local government in whose jurisdiction the  
514 proposed nuclear power plant, including associated facilities  
515 and associated transmission lines, is to be located shall  
516 prepare a report as to the consistency of the proposed nuclear  
517 power plant with all applicable local ordinances, regulations,  
518 standards, or criteria that apply to the proposed nuclear power  
519 plant, including adopted local comprehensive plans, land  
520 development regulations, and any applicable local environmental

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521 regulations adopted pursuant to s. 403.182, Florida Statutes, or  
522 by other means. Each local government in which the nuclear power  
523 generating facility is to be located shall also report on  
524 whether the proposed site for a nuclear power generating  
525 facility is located in a future land use category and a zoning  
526 district, as adopted by the local government and which were in  
527 effect on the date upon which the application was filed, which  
528 permits the location of a nuclear power generating facility. If  
529 the proposed site for a nuclear power generating facility is not  
530 located in a future land use category or zoning district which  
531 allows such use, then the local government shall identify the  
532 future land use category or zoning district which would be  
533 required to allow the proposed nuclear power generating facility  
534 on the proposed site. If the proposed site for a nuclear power  
535 generating facility is not located in a future land use category  
536 or zoning district which allows such use, the local government  
537 shall identify in its report any reasonable and available  
538 methods which the local government believes are necessary to  
539 make the proposed use of the site for a nuclear power generating  
540 facility consistent with the local comprehensive plan future  
541 land use category, in compliance with the local zoning code or  
542 compatible with the existing land uses surrounding the proposed  
543 nuclear power generating facility site.

544 5. The Fish and Wildlife Conservation Commission shall  
545 prepare a report as to matters within its jurisdiction.

546 6. The regional planning council shall prepare a report  
547 containing recommendations that address the impact upon the  
548 public of the proposed nuclear power plant, as identified under

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549 the applicable provisions of the strategic regional policy plan  
550 adopted pursuant to chapter 186, Florida Statutes.

551 7. The Department of Health shall prepare a report as to  
552 matters within its jurisdiction.

553 8. The Department of Transportation shall prepare a report  
554 as to the impact of the proposed nuclear power plant and  
555 associated linear facilities on roads, railroads, airports,  
556 aeronautics, seaports, and other matters within its  
557 jurisdiction.

558 9. Any other agency, if requested by the department and  
559 upon approval of the assigned administrative law judge, shall  
560 also perform studies or prepare reports as to matters within  
561 that agency's jurisdiction which may be directly affected by the  
562 proposed nuclear power plant.

563 (b) Each report described in this subsection shall contain  
564 all information on variances, exemptions, exceptions, or other  
565 relief which may be required and any proposed conditions of  
566 certification on matters within the jurisdiction of such agency.  
567 For each condition proposed by an agency in its report, the  
568 agency shall list the specific statute, rule, or ordinance which  
569 authorizes the proposed condition. No condition of certification  
570 may be imposed upon a nuclear power plant project that is not  
571 directly required to ensure compliance with a specific statute,  
572 rule, or ordinance of an agency or the criteria set forth in  
573 this act.

574 (c) The agencies shall initiate the activities required by  
575 this section no later than 30 days after the complete  
576 application is distributed.

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577       (3) The department shall prepare a written analysis, which  
578 shall be filed with the designated administrative law judge and  
579 served on all parties no later than 85 days after the  
580 application is found complete, but no later than 60 days prior  
581 to the scheduled date for the certification hearing if a  
582 petition for hearing were filed, and which shall include:

583       (a) A statement indicating whether the proposed nuclear  
584 power plant and proposed ultimate site capacity will be in  
585 compliance with the rules of the department and in compliance  
586 with a specific statute, rule, or ordinance of an agency  
587 identified in that agency's report.

588       (b) Copies of the studies and reports required by this  
589 act.

590       (c) The comments received by the department from any other  
591 agency or person.

592       (d) The recommendation of the department as to the  
593 disposition of the application, variances, exemptions,  
594 exceptions, or other relief identified by any party, and of any  
595 proposed conditions of certification which the department  
596 believes should be imposed, including any conditions proposed by  
597 an agency which the department believes should be imposed in any  
598 final certification.

599       (e) The recommendation of the department regarding the  
600 issuance of any license required pursuant to a federally  
601 delegated or approved permit program.

602       (4) Except when good cause is shown, the failure of any  
603 agency to submit a preliminary statement of issues or a report,  
604 or to submit its preliminary statement of issues or report

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605 within the allowed time, shall not be grounds for the alteration  
606 of any time limitation in this act. Neither the failure to  
607 submit a preliminary statement of issues or a report nor the  
608 inadequacy of the preliminary statement of issues or report  
609 shall be grounds to deny or condition certification.

610 Section 11. Notice of department recommendation, petition  
611 for certification hearing.--

612 (1) The department and the applicant shall publish a  
613 public notice as provided for in this section, announcing the  
614 issuance of the department's recommendation on the application  
615 for site certification. The notice shall be published in the  
616 newspaper or newspapers in the jurisdictions where the proposed  
617 nuclear power plant and any associated facility are proposed to  
618 be located. The notice shall inform the public of the issuance  
619 of the department's report, the conclusion reached in that  
620 report, and the locations where the department's report and the  
621 application are available for public inspection.

622 (2) Within 14 days after its receipt of the department's  
623 recommendation or within 14 days after the newspaper notice of  
624 the department's recommendation, whichever occurs first, any  
625 party or any person whose substantial interests may be affected  
626 by the proposed nuclear power plant may file with the department  
627 a petition for a site certification hearing. The petition shall  
628 identify the person filing the petition, identify the  
629 substantial interests alleged to be affected, and identify with  
630 specificity those issues which the person alleges require the  
631 conduct of a certification hearing on the proposed nuclear power  
632 plant.

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633       (3) Failure to timely file a petition for a certification  
634 hearing shall result in the department's recommendation becoming  
635 final and no longer subject to challenge or reversal in any  
636 proceeding, including proceedings before the board. Only those  
637 conditions contained in the department's recommendation may be  
638 imposed upon the proposed nuclear power plant.

639       Section 12. Land use and certification hearings, parties,  
640 participants.--

641       (1) (a) If a petition for a hearing on land use has been  
642 filed pursuant to section 9(3), the designated administrative  
643 law judge shall conduct a land use hearing in the county of the  
644 proposed site or directly associated facility, as applicable, as  
645 expeditiously as possible, but not later than 30 days after the  
646 department's receipt of the petition. The place of such hearing  
647 shall be as close as possible to the proposed site or directly  
648 associated facility. If a petition is filed, the hearing shall  
649 be held regardless of the status of the completeness of the  
650 application. However, incompleteness of information necessary  
651 for a local government to evaluate an application may be claimed  
652 by the local government as cause for a statement of  
653 inconsistency with existing land use plans and zoning ordinances  
654 under the Florida Electrical Power Plant Siting Act.

655       (b) Notice of the land use hearing shall be published in  
656 accordance with the requirements of section 17.

657       (c) The sole issue for determination at the land use  
658 hearing shall be whether or not the proposed site is consistent  
659 and in compliance with existing land use plans and zoning  
660 ordinances. If the administrative law judge concludes that the



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661 proposed site is not consistent or in compliance with existing  
662 land use plans and zoning ordinances, the administrative law  
663 judge shall receive at the hearing evidence on, and address in  
664 the recommended order any changes to or approvals or variances  
665 of, the applicable land use plans or zoning ordinances which  
666 will render the proposed site consistent and in compliance with  
667 the local land use plans and zoning ordinances.

668 (d) The designated administrative law judge's recommended  
669 order shall be issued within 30 days after completion of the  
670 hearing and shall be reviewed by the board within 60 days after  
671 receipt of the recommended order by the board.

672 (e) If it is determined by the board that the proposed  
673 site does conform with existing land use plans and zoning  
674 ordinances in effect as of the date of the application, or as  
675 otherwise provided by this act the responsible zoning or  
676 planning authority shall not thereafter change such land use  
677 plans or zoning ordinances so as to foreclose construction and  
678 operation of the proposed power plant on the proposed site or  
679 directly associated facilities unless certification is  
680 subsequently denied or withdrawn.

681 (f) If it is determined by the board that the proposed  
682 site does not conform with existing land use plans and zoning  
683 ordinances, the board may, if it determines after notice and  
684 hearing and upon consideration of the recommended order on land  
685 use and zoning issues that it is in the public interest to  
686 authorize the use of the land as a site for an electrical power  
687 plant, authorize an amendment to, or a rezoning, variance, or  
688 other approval of, the adopted land use plan and zoning

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689 ordinances required to render the proposed site consistent with  
690 local land use plans and zoning ordinances. The board's action  
691 shall not be controlled by any other procedural requirements of  
692 law. In the event a variance or other approval is denied by the  
693 board, it shall be the responsibility of the applicant to make  
694 the necessary application to the applicable local government for  
695 any approvals determined by the board as required to make the  
696 proposed site consistent and in compliance with local land use  
697 plans and zoning ordinances. No further action may be taken on  
698 the complete application until the proposed site conforms to the  
699 adopted land use plan or zoning ordinances or the board grants  
700 relief as provided under this act.

701 (2) If any party or person whose substantial interests are  
702 affected files a petition for a certification hearing within 14  
703 days after publication of notice of the department's notice of  
704 its recommendation on the application for site certification, a  
705 certification hearing shall be held by the designated  
706 administrative law judge no later than 260 days from the date  
707 the application is filed with the department. However, an  
708 affirmative determination of need by the Public Service  
709 Commission pursuant to this act shall be a condition precedent  
710 to the conduct of the certification hearing. If a timely  
711 petition for a certification hearing is filed, the certification  
712 hearing shall be held at a location in proximity to the proposed  
713 site. The certification hearing shall also constitute the sole  
714 hearing allowed by chapter 120, Florida Statutes, to determine  
715 the substantial interest of a party regarding any required  
716 agency license or any related permit required pursuant to any

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717 federally delegated or approved permit program. At the  
 718 conclusion of the certification hearing, the designated  
 719 administrative law judge shall, after consideration of all  
 720 evidence of record, submit to the board a recommended order no  
 721 later than 60 days after the date of the filing of the hearing  
 722 transcript. In the event the administrative law judge fails to  
 723 issue a recommended order within 60 days after the date of the  
 724 filing of the hearing transcript, the administrative law judge  
 725 shall submit a report to the board with a copy to all parties  
 726 within 60 days after the date of the filing of the hearing  
 727 transcript to advise the board of the reason for the delay in  
 728 the issuance of the recommended order and of the date by which  
 729 the recommended order will be issued.

730 (3) (a) Parties to the proceeding shall include:

- 731 1. The applicant.
- 732 2. The Public Service Commission.
- 733 3. The Department of Community Affairs.
- 734 4. The Fish and Wildlife Conservation Commission.
- 735 5. The Department of Transportation.
- 736 6. The water management district.
- 737 7. The department.
- 738 8. The regional planning council.
- 739 9. The local government.

740 (b) Any party listed in paragraph (a) other than the  
 741 department or the applicant may waive its right to participate  
 742 in these proceedings. If such listed party fails to file a  
 743 notice of its intent to be a party on or before the 90th day

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744 prior to the scheduled date for the certification hearing, such  
745 party shall be deemed to have waived its right to be a party.

746 (c) Upon the filing of a notice of intent to be a party  
747 with the administrative law judge and no more than 21 days after  
748 the date of publication of notice of filing of the application  
749 for site certification, the following shall also be parties to  
750 the proceeding:

751 1. Any agency not listed in paragraph (a) as to matters  
752 within its jurisdiction.

753 2. Any domestic nonprofit corporation or association  
754 formed, in whole or in part, to promote conservation or natural  
755 beauty; protect the environment, personal health, or other  
756 biological values; preserve historical sites; promote consumer  
757 interests; represent labor, commercial, or industrial groups; or  
758 promote comprehensive planning or orderly development of the  
759 area in which the proposed nuclear power plant is to be located.

760 (d) Notwithstanding paragraph (e), failure of an agency to  
761 file a notice of intent to be a party within the time provided  
762 in this section shall constitute a waiver of the right of the  
763 agency to participate as a party in the proceeding.

764 (e) Other parties may include any person, including those  
765 persons enumerated in paragraph (c) who have failed to timely  
766 file a notice of intent to be a party, whose substantial  
767 interests are affected and being determined by the proceeding,  
768 and who timely file a motion to intervene pursuant to chapter  
769 120, Florida Statutes, and applicable rules. Late intervention  
770 pursuant to this paragraph may be granted by the designated  
771 administrative law judge upon a showing of good cause that

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772 excuses such late intervention and upon such conditions as he or  
773 she may prescribe any time prior to 30 days before the  
774 commencement of the certification hearing.

775 (f) Any agency, including those whose properties or works  
776 are affected, shall be made a party upon the request of the  
777 department or the applicant.

778 (4) When appropriate, any person may be given an  
779 opportunity to present oral or written communications to the  
780 designated administrative law judge. If the designated  
781 administrative law judge proposes to consider such  
782 communications, then all parties shall be given an opportunity  
783 to cross-examine, challenge, or rebut such communications.

784 (5) The designated administrative law judge shall have all  
785 powers and duties granted to administrative law judges by  
786 chapter 120, Florida Statutes, this act, and the rules of the  
787 department and the Administration Commission, including the  
788 authority to resolve disputes over the completeness and  
789 sufficiency of an application for certification.

790 Section 13. Final disposition of application.--

791 (1) Within 60 days after the date of the issuance of the  
792 department's recommendation if no hearing is held, or within 60  
793 days after the date of the receipt of the designated  
794 administrative law judge's recommended order following a  
795 certification hearing, the board shall act upon the application  
796 by written order, approving certification or denying the  
797 issuance of a certificate, in accordance with the criteria set  
798 forth in this act, and stating the reasons for issuance or  
799 denial. If no hearing has been held, the board shall enter a

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800 final order approving the proposed nuclear power plant subject  
801 only to the conditions of certification contained in the  
802 department's recommendation.

803 (2) Following the holding of a certification hearing, in  
804 determining whether an application should be approved in whole,  
805 approved with modifications or conditions, or denied, the board  
806 shall consider whether, and the extent to which, the location,  
807 construction, and operation of the proposed nuclear power plant  
808 will:

809 (a) Meet the electrical energy needs of the state in an  
810 orderly and timely fashion, as determined by the Public Service  
811 Commission.

812 (b) Comply with nonprocedural requirements of agencies.

813 (c) Be consistent with applicable local government  
814 comprehensive plans and in compliance with applicable zoning  
815 ordinances.

816 (d) Effect a reasonable balance between the need for the  
817 nuclear power plant as a means of providing abundant low-cost  
818 electrical energy and the impact upon the public and the  
819 environment resulting from the location, construction, and  
820 operation of the proposed nuclear power plant.

821 (3) Following the conduct of a certification hearing, if  
822 the certificate is denied, the board shall set forth in writing  
823 the actions the applicant would have to take to secure the  
824 board's approval of the application.

825 (4) The issues that may be raised in any hearing before  
826 the board shall be limited to those matters raised in the  
827 certification hearing before the administrative law judge or

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828 raised in the recommended order. Only parties may appear before  
829 the board and shall be subject to the provisions of s. 120.66,  
830 Florida Statutes.

831 (5) In regard to the properties and works of any agency  
832 which is a party to the certification hearing, the board shall  
833 have the authority to decide issues relating to the use, the  
834 connection thereto, or the crossing thereof, for the nuclear  
835 power plant and site and to direct any such agency to execute,  
836 within 30 days after the entry of certification, the necessary  
837 license or easement for such use, connection, or crossing,  
838 subject only to the conditions set forth in such certification.

839 Section 14. Alteration of time limits.--Any time  
840 limitation in this act may be altered by the designated  
841 administrative law judge upon stipulation between the department  
842 and the applicant, unless objected to by any party within 5 days  
843 after notice or for good cause shown by any party.

844 Section 15. Superseded laws, regulations, and  
845 certification power.--

846 (1) If any provision of this act is in conflict with any  
847 other provision, limitation, or restriction under any law, rule,  
848 regulation, or ordinance of this state or any political  
849 subdivision, municipality, or agency, this act shall govern and  
850 control, and such law, rule, regulation, or ordinance shall be  
851 deemed superseded for the purposes of this act.

852 (2) The state hereby preempts the siting, regulation, and  
853 certification of nuclear power plant sites and nuclear power  
854 plants as defined in this act.

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855       (3) The board may adopt reasonable procedural rules  
856 pursuant to ss. 120.536(1) and 120.54 to carry out its duties  
857 under this act and to give effect to the legislative intent that  
858 this act is to provide an efficient, simplified, centrally  
859 coordinated, one-stop licensing process.

860       Section 16. Effect of certification.--

861       (1) Subject to the conditions set forth in the  
862 certification, any certification signed by the Governor shall  
863 constitute the sole license of the state and any agency as to  
864 the approval of the site and the construction and operation of  
865 the proposed nuclear power plant, except for the issuance of  
866 department licenses required under any federally delegated or  
867 approved permit program and except as otherwise provided in  
868 subsection (4).

869       (2)(a) The certification shall authorize the applicant  
870 named in the certification to construct and operate the proposed  
871 nuclear power plant, subject only to the conditions of  
872 certification set forth in the certification, and except for the  
873 issuance of department licenses or permits required under any  
874 federally delegated or approved permit program.

875       (b) Except as provided in subsection (4), the  
876 certification may include conditions that constitute variances,  
877 exemptions, or exceptions from nonprocedural requirements of the  
878 department or any agency which were expressly considered during  
879 the proceeding, including, but not limited to, any site specific  
880 criteria, standards, or limitations under local land use or  
881 zoning approvals which affect the proposed power plant or its  
882 site unless waived by the agency as provided below and which



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883 otherwise would be applicable to the construction and operation  
884 of the proposed nuclear power plant. No variance, exemption,  
885 exception, or other relief shall be granted from a state statute  
886 or rule for the protection of endangered or threatened species,  
887 aquatic preserves, and Outstanding National Resource Waters and  
888 Outstanding Florida Waters, or for the disposal of hazardous  
889 waste, except to the extent authorized by the applicable statute  
890 or rule, or upon a finding by the board that certifying the  
891 nuclear power plant at the site proposed by the applicant  
892 overrides the public interest protected by the statute or rule  
893 from which relief is sought. Each party shall notify the  
894 applicant and other parties no more than 60 days after the  
895 application is determined sufficient of any nonprocedural  
896 requirements not specifically listed in the application from  
897 which a variance, exemption, exception, or other relief is  
898 necessary in order for the board to certify any nuclear power  
899 plant proposed for certification. Failure of such notification  
900 by an agency shall be treated as a waiver from nonprocedural  
901 requirements of the department or any other agency. However, no  
902 variance shall be granted from standards or regulations of the  
903 department applicable under any federally delegated or approved  
904 permit program, except as expressly allowed in such program.

905 (c) To the extent any condition of certification imposed  
906 pursuant to this act is inconsistent with or otherwise in  
907 conflict with any requirement of federal law, regulation, or  
908 license regulating construction and operation of a nuclear power  
909 plant certified under this act, then such condition of  
910 certification shall be automatically modified to conform to such

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911 federal requirement or be superseded by such federal  
912 requirement. The state shall not enforce compliance with any  
913 such federal requirement under this act, except to the extent  
914 the state is authorized to enforce such condition under federal  
915 law.

916 (3) The certification and any order on land use and zoning  
917 issued under this act shall be in lieu of any license, permit,  
918 certificate, or similar document required by any agency pursuant  
919 to, but not limited to, chapter 125, chapter 161, chapter 163,  
920 chapter 166, chapter 186, chapter 253, chapter 298, chapter 370,  
921 chapter 373, chapter 376, chapter 380, chapter 381, chapter 387,  
922 chapter 403, except for permits issued pursuant to s. 403.0885,  
923 Florida Statutes, and except as provided in s. 403.509(3) and  
924 (6), Florida Statutes, chapter 404, Florida Statutes, the  
925 Florida Transportation Code, or 33 U.S.C. s. 1341.

926 (4) This act shall not affect the right of any local  
927 government to charge appropriate fees or require that  
928 construction be in compliance with applicable building  
929 construction codes, provided that in the event of a conflict  
930 between requirements of local building construction codes and  
931 federal requirements, such federal requirements shall supersede  
932 local building construction codes.

933 (5) (a) A nuclear power plant certified pursuant to this  
934 act shall comply with rules adopted by the department subsequent  
935 to the issuance of the certification which prescribe new or  
936 stricter criteria, to the extent that the rules are applicable  
937 to nuclear power plants. Except when express variances,  
938 exceptions, exemptions, or other relief have been granted,

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939 subsequently adopted rules which prescribe new or stricter  
940 criteria shall operate as automatic modifications to  
941 certifications. A holder of a certification issued under this  
942 act may apply to the board for relief from such rules to the  
943 extent relief is available to other electrical power plants in  
944 the state. Any such relief shall be granted in the same manner  
945 as provided for the granting of relief at the time of the  
946 original certification, as provided for in this act.

947 (b) Upon written notification to the department, any  
948 holder of a certification issued pursuant to this act may choose  
949 to operate the certified nuclear power plant in compliance with  
950 any rule subsequently adopted by the department which prescribes  
951 criteria more lenient than the criteria required by the terms  
952 and conditions in the certification which are not site-specific.

953 (c) No term or condition of certification shall be  
954 interpreted to preclude the postcertification exercise by any  
955 party of whatever procedural rights it may have under chapter  
956 120, Florida Statutes, including those related to rulemaking  
957 proceedings.

958 Section 17. Notice; costs of proceeding.--

959 (1) The following notices are to be published by the  
960 applicant:

961 (a) A notice of filing of the application, which shall be  
962 published as specified in subsection (2) within 15 days after  
963 the application has been determined complete. Such notice shall  
964 give notice of the provisions of section 16(1) and (2).

965 (b) Notice of the land use determination made pursuant to  
966 section 9(1) within 15 days after the determination is filed.

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967 (c) Notice of the land use hearing, which shall be  
968 published as specified in subsection (2), no later than 15 days  
969 before the hearing.

970 (d) Notice of issuance of the department's agency report  
971 and recommendation, which shall be published as specified in  
972 subsection (2) no later than 10 days after the report and  
973 recommendation are issued by the department.

974 (e) If a certification hearing is to be conducted, then  
975 notice published as specified in subsection (2).

976 (f) Notice of modification when required by the  
977 department, based on whether the requested modification of  
978 certification will significantly increase impacts to the  
979 environment or the public. Such notice shall be published as  
980 specified under subsection (2):

981 1. Within 21 days after receipt of a request for  
982 modification, except that the newspaper notice shall be of a  
983 size as directed by the department commensurate with the scope  
984 of the modification.

985 2. If a hearing is to be conducted in response to the  
986 request for modification, then notice shall be provided as  
987 specified in paragraph (e).

988 (g) Notice of a supplemental application, which shall be  
989 published as follows:

990 1. Notice of receipt of the supplemental application shall  
991 be published as specified in paragraph (a).

992 2. Notice of the certification hearing shall be published  
993 as specified in paragraph (f).

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994       (2) Notices provided by the applicant shall be published  
995 in newspapers of general circulation within the county or  
996 counties in which the proposed nuclear power plant will be  
997 located. The newspaper notices shall be at least one-half page  
998 in size in a standard size newspaper or a full page in a tabloid  
999 size newspaper and published in a section of the newspaper other  
1000 than the legal notices section. These notices shall include a  
1001 map generally depicting the project and all associated  
1002 facilities corridors, including associated transmission lines,  
1003 if any. A newspaper of general circulation shall be the  
1004 newspaper which has the largest daily circulation in that county  
1005 and has its principal office in that county. If the newspaper  
1006 with the largest daily circulation has its principal office  
1007 outside the county, the notices shall appear in both the  
1008 newspaper having the largest circulation in that county and in a  
1009 newspaper authorized to publish legal notices in that county.

1010       (3) All notices published by the applicant shall be paid  
1011 for by the applicant and shall be in addition to the application  
1012 fee.

1013       (4) The department shall:

1014       (a) Publish in the manner specified in chapter 120,  
1015 Florida Statutes, notices of the filing of the application or  
1016 supplemental application; the land use determination and land  
1017 use hearing, if one is to be held; the department's report and  
1018 recommendation; the certification hearing, if one is to be held;  
1019 the hearing before the board; and stipulations, proposed agency  
1020 action, or petitions for modification.

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1021        (b) Provide copies of those notices to any persons who  
 1022 have requested to be placed on the departmental mailing list for  
 1023 the purposes provided in paragraph (a).

1024        (5) The applicant shall pay those expenses and costs  
 1025 associated with the conduct of the hearings and the recording  
 1026 and transcription of the proceedings.

1027        Section 18. Revocation or suspension of  
 1028 certification.--Any certification may be revoked or suspended:

1029        (1) For any material false statement in the application or  
 1030 in the supplemental or additional statements of fact or studies  
 1031 required of the applicant when a true answer would have  
 1032 warranted the board's refusal to recommend a certification in  
 1033 the first instance.

1034        (2) For failure to comply with the terms or conditions of  
 1035 the certification.

1036        (3) For violation of the provisions of this act or rules  
 1037 or orders issued under this act.

1038        Section 19. Review.--Proceedings under this act shall be  
 1039 subject to judicial review in the Florida Supreme Court.  
 1040 Separate appeals of the certification order issued by the board  
 1041 and of any department permit issued pursuant to a federally  
 1042 delegated or approved permit program shall be consolidated for  
 1043 purposes of judicial review. Review on appeal shall be based  
 1044 solely on the record before the board and briefs to the court  
 1045 and shall be limited to determining whether the certification  
 1046 order conforms to the constitution and laws of this state and  
 1047 the United States and is within the authority of the board under  
 1048 this act. The Supreme Court shall proceed to hear and determine

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1049 | the action as expeditiously as practicable and give the action  
 1050 | precedence over other matters not accorded similar precedence by  
 1051 | law.

1052 |       Section 20. Enforcement of compliance.--Failure to obtain  
 1053 | a certification or to comply with the conditions of  
 1054 | certification or this act shall constitute a violation of  
 1055 | chapter 403, Florida Statutes.

1056 |       Section 21. Availability of information.--The department  
 1057 | shall make available for public inspection and copying during  
 1058 | regular office hours, at the expense of any person requesting  
 1059 | copies, any information filed or submitted to the department  
 1060 | pursuant to this act.

1061 |       Section 22. Modification of certification.--

1062 |       (1) A certification may be modified after issuance in any  
 1063 | one of the following ways:

1064 |       (a) The board may delegate to the department the authority  
 1065 | to modify specific conditions in the certification.

1066 |       (b) The department may modify the terms and conditions of  
 1067 | the certification if no party to the certification hearing  
 1068 | objects in writing to such modification within 45 days after  
 1069 | notice by mail to such party's last address of record and if no  
 1070 | other person whose substantial interests will be affected by the  
 1071 | modification objects in writing within 30 days after issuance of  
 1072 | public notice. If objections are raised, the applicant may file  
 1073 | a petition for modification pursuant to paragraph (c).

1074 |       (c) Any petition for modification shall be filed with the  
 1075 | department and the Division of Administrative Hearings. A

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1076 | petition for modification may be filed by the applicant or the  
1077 | department setting forth:

- 1078 |     1. The proposed modification.
- 1079 |     2. The factual reasons asserted for the modification.
- 1080 |     3. The anticipated effects of the proposed modification on  
1081 | the applicant, the public, and the environment.

1082 |     (2) Petitions filed pursuant to this section shall be  
1083 | disposed of in the same manner as an application, but with time  
1084 | periods established by the administrative law judge commensurate  
1085 | with the significance of the modification requested.

1086 |     (3) Any agreement or modification under this section must  
1087 | be in accordance with the terms of this act. No modification to  
1088 | a certification shall be granted that constitutes a variance  
1089 | from standards or regulations of the department applicable under  
1090 | any federally delegated or approved permit program, except as  
1091 | expressly allowed in such program.

1092 |     Section 23. Supplemental applications for sites certified  
1093 | for ultimate site capacity.--

1094 |     (1) (a) The department shall adopt rules governing the  
1095 | processing of supplemental applications for certification of the  
1096 | construction and operation of nuclear power plants to be located  
1097 | at sites which have been previously certified for an ultimate  
1098 | site capacity pursuant to this act. Supplemental applications  
1099 | shall be limited to nuclear power plants using the fuel type  
1100 | previously certified for that site. The rules adopted pursuant  
1101 | to this section shall include provisions for:

- 1102 |     1. Prompt appointment of a designated administrative law  
1103 | judge.



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1104        2. The contents of the supplemental application.

1105        3. Resolution of disputes as to the completeness and  
 1106 sufficiency of supplemental applications by the designated  
 1107 administrative law judge.

1108        4. Public notice of the filing of the supplemental  
 1109 applications.

1110        5. Time limits for prompt processing of supplemental  
 1111 applications.

1112        6. Final disposition by the board within 215 days after  
 1113 the filing of a complete supplemental application.

1114        (b) The time limits shall not exceed any time limitation  
 1115 governing the review of initial applications for site  
 1116 certification pursuant to this act, it being the legislative  
 1117 intent to provide shorter time limitations for the processing of  
 1118 supplemental applications for nuclear power plants to be  
 1119 constructed and operated at sites which have been previously  
 1120 certified for an ultimate site capacity.

1121        (c) Any time limitation in this section or in rules  
 1122 adopted pursuant to this section may be altered by the  
 1123 designated administrative law judge upon stipulation between the  
 1124 department and the applicant, unless objected to by any party  
 1125 within 5 days after notice or for good cause shown by any party.  
 1126 The parties to the proceeding shall adhere to the provisions of  
 1127 chapter 120, Florida Statutes, and this act in considering and  
 1128 processing such supplemental applications.

1129        (2) Supplemental applications shall be reviewed as  
 1130 provided in this act, except that the time limits provided in  
 1131 this section shall apply to such supplemental applications.

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1132       (3) The land use and zoning consistency determination  
1133 provisions of the Florida Electrical Power Plant Siting Act  
1134 shall not be applicable to the processing of supplemental  
1135 applications pursuant to this section so long as:

1136       (a) The previously certified ultimate site capacity is not  
1137 exceeded.

1138       (b) The lands required for the construction or operation  
1139 of the electrical power plant which is the subject of the  
1140 supplemental application are within the boundaries of the  
1141 previously certified site.

1142       (4) For the purposes of this act, the term "ultimate site  
1143 capacity" means the maximum generating capacity for a site as  
1144 certified by the board.

1145       Section 24. Fees; disposition.--The department shall  
1146 charge the applicant the following fees, as appropriate, which  
1147 shall be paid into the Florida Permit Fee Trust Fund:

1148       (1) An application fee, which shall not exceed \$200,000.  
1149 The fee shall be fixed by rule on a sliding scale related to the  
1150 size, type, ultimate site capacity, increase in generating  
1151 capacity proposed by the application, or the number and size of  
1152 local governments in whose jurisdiction the nuclear power plant  
1153 is located.

1154       (a) Sixty percent of the fee shall go to the department to  
1155 cover any costs associated with reviewing and acting upon the  
1156 application, to cover any field services associated with  
1157 monitoring construction and operation of the facility, and to  
1158 cover the costs of the public notices published by the  
1159 department.

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1160           (b) Twenty percent of the fee or \$25,000, whichever is  
1161 greater, shall be transferred to the Administrative Trust Fund  
1162 of the Division of Administrative Hearings of the Department of  
1163 Management Services.

1164           (c) Upon written request with proper itemized accounting  
1165 within 90 days after final agency action by the board or  
1166 withdrawal of the application, the department shall reimburse  
1167 the Department of Community Affairs, the Fish and Wildlife  
1168 Conservation Commission, any water management district created  
1169 pursuant to chapter 373, Florida Statutes, the regional planning  
1170 council, and the local government in the jurisdiction of which  
1171 the proposed nuclear power plant is to be located, and any other  
1172 agency from which the department requests special studies  
1173 pursuant to this act. Such reimbursement shall be authorized for  
1174 the preparation of any studies required of the agencies by this  
1175 act, for agency travel and per diem to attend any hearing held  
1176 pursuant to this act, and for local governments to participate  
1177 in the proceedings. In the event the amount available for  
1178 allocation is insufficient to provide for complete reimbursement  
1179 to the agencies, reimbursement shall be on a prorated basis.

1180           (d) If any sums are remaining, the department shall retain  
1181 them for its use in the same manner as is otherwise authorized  
1182 by this act; provided, however, that if the certification  
1183 application is withdrawn, the remaining sums shall be refunded  
1184 to the applicant within 90 days after withdrawal.

1185           (2) A certification modification fee, which shall not  
1186 exceed \$30,000. The fee shall be submitted to the department  
1187 with a formal petition for modification to the department. This

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1188 fee shall be established, disbursed, and processed in the same  
 1189 manner as the application fee in subsection (1), except that the  
 1190 Division of Administrative Hearings shall not receive a portion  
 1191 of the fee unless the petition for certification modification is  
 1192 referred to the Division of Administrative Hearings for hearing.  
 1193 If the petition is so referred, only \$10,000 of the fee shall be  
 1194 transferred to the Administrative Trust Fund of the Division of  
 1195 Administrative Hearings of the Department of Management  
 1196 Services. The fee for a modification by agreement shall be  
 1197 \$10,000, to be paid upon the filing of the request for  
 1198 modification. Any sums remaining after payment of authorized  
 1199 costs shall be refunded to the applicant within 90 days after  
 1200 issuance or denial of the modification or withdrawal of the  
 1201 request for modification.

1202 (3) A supplemental application fee, not to exceed \$75,000,  
 1203 to cover all reasonable expenses and costs of the review,  
 1204 processing, and proceedings of a supplemental application. This  
 1205 fee shall be established, disbursed, and processed in the same  
 1206 manner as the certification application fee in subsection (1)  
 1207 except that only \$20,000 of the fee shall be transferred to the  
 1208 Administrative Trust Fund of the Division of Administrative  
 1209 Hearings of the Department of Management Services.

1210 Section 25. Exclusive forum for determination of need.--

1211 (1) On request by an applicant, the Public Service  
 1212 Commission shall begin a proceeding to determine the need for a  
 1213 nuclear power plant subject to this act. The applicant shall  
 1214 publish a notice of the proceeding in a newspaper of general  
 1215 circulation in each county in which the proposed nuclear power

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1216 plant will be located. The notice shall be at least one-quarter  
1217 of a page and published at least 21 days prior to the scheduled  
1218 date for the proceeding.

1219 (2) (a) The commission shall hold a hearing within 90 days  
1220 after the filing of the petition and shall issue an order  
1221 granting or denying the petition to determine need within 135  
1222 days after the date of the filing of the petition. The  
1223 commission shall be the sole forum for the determination of this  
1224 matter and the issues addressed in the petition, which  
1225 accordingly shall not be reviewed in any other forum. In making  
1226 its determination to either grant or deny a petition for  
1227 determination of need, the commission shall consider the need  
1228 for electric system reliability and integrity, including fuel  
1229 diversity, the need for base-load generating capacity, and the  
1230 need for adequate electricity at a reasonable cost.

1231 (b) The applicant's petition shall include:

1232 1. A description of the need for the generation capacity.

1233 2. A description of how the proposed nuclear power plant  
1234 will enhance the reliability of electric power production within  
1235 the state by improving the balance of power plant fuel diversity  
1236 and reducing Florida's dependence on fuel oil and natural gas.

1237 3. A description of and a nonbinding estimate for the cost  
1238 of the nuclear power plant.

1239 4. The annualized base revenue requirement for the first  
1240 12 months of operation of the nuclear power plant.

1241 (c) In making its determination, the commission shall take  
1242 into account matters within its jurisdiction, which it deems  
1243 relevant, including whether the nuclear power plant will:

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- 1244           1. Provide needed base-load capacity.
- 1245           2. Enhance the reliability of electric power production  
1246 within the state by improving the balance of power plant fuel  
1247 diversity and reducing Florida's dependence on fuel oil and  
1248 natural gas.
- 1249           3. Provide the most cost-effective source of power, taking  
1250 into account the need to improve the balance of fuel diversity,  
1251 reduce Florida's dependence on fuel oil and natural gas, reduce  
1252 air-emission compliance costs, and contribute to the long-term  
1253 stability and reliability of the electric grid.
- 1254           (3) No provision of rule 25-22.082, Florida Administrative  
1255 Code, shall be applicable to a nuclear power plant sited under  
1256 this act, including provisions for cost recovery, and an  
1257 applicant shall not otherwise be required to secure competitive  
1258 proposals for power supply prior to making application under  
1259 this act or receiving a determination of need from the  
1260 commission.
- 1261           (4) The commission's determination of need for a nuclear  
1262 power plant shall create a presumption of public need and  
1263 necessity and shall serve as the commission's report. An order  
1264 entered pursuant to this section constitutes final agency  
1265 action. Any petition for reconsideration of a final order on a  
1266 petition for need determination shall be filed within 5 days  
1267 after the date of such order. The commission's final order,  
1268 including any order on reconsideration, shall be reviewable on  
1269 appeal in the Florida Supreme Court. Inasmuch as delay in the  
1270 determination of need will delay siting of a nuclear power plant  
1271 or diminish the opportunity for savings to customers under the

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1272 federal Energy Policy Act of 2005, the Supreme Court shall  
 1273 proceed to hear and determine the action as expeditiously as  
 1274 practicable and give the action precedence over matters not  
 1275 accorded similar precedence by law.

1276 (5) After a petition for determination of need has been  
 1277 granted, the right of a utility to recover any costs incurred  
 1278 prior to commercial operation, including, but not limited to,  
 1279 costs associated with the siting, design, licensing, or  
 1280 construction of the plant, shall not be subject to challenge  
 1281 unless and only to the extent the commission finds, based on a  
 1282 preponderance of the evidence adduced at a hearing before the  
 1283 commission under s. 120.57, Florida Statutes, that certain costs  
 1284 were imprudently incurred. Proceeding with the construction of  
 1285 the nuclear power plant following an order by the commission  
 1286 approving the need for the nuclear power plant under this act  
 1287 shall not constitute or be evidence of imprudence. Evidence of  
 1288 imprudence shall not include any cost increases due to events  
 1289 beyond the utility's control. Further, a utility's right to  
 1290 recover costs associated with a nuclear power plant may not be  
 1291 raised in any other forum or in the review of proceedings in  
 1292 such other forum. Costs incurred prior to commercial operation  
 1293 shall be recovered pursuant to chapter 366, Florida Statutes.

1294 Section 26. Section 366.93, Florida Statutes, is created  
 1295 to read:

1296 366.93 Cost recovery for the siting, design, licensing,  
 1297 and construction of nuclear power plants.--

1298 (1) As used in this section, the term:

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1299        (a) "Cost" includes, but is not limited to, all capital  
1300 investments, including rate of return, any applicable taxes, and  
1301 all expenses, including operation and maintenance expenses,  
1302 related to or resulting from the siting, licensing, design,  
1303 construction, or operation of the nuclear power plant.

1304        (b) "Electric utility" or "utility" has the same meaning  
1305 as that provided in s. 366.8255(1)(a).

1306        (c) "Nuclear power plant" or "plant" has the same meaning  
1307 as that provided in the Florida Energy Diversity and Efficiency  
1308 Act.

1309        (d) "Preconstruction" is that period of time after a site  
1310 has been selected, including the date the utility begins site  
1311 clearing work. Preconstruction costs shall be afforded deferred  
1312 accounting treatment and shall accrue a carrying charge equal to  
1313 the utility's allowance for funds used during construction  
1314 (AFUDC) rate until recovered in rates.

1315        (2) Within 6 months after the effective date of this act,  
1316 the commission shall establish, by rule, alternative cost  
1317 recovery mechanisms for the recovery of costs incurred in the  
1318 siting, design, licensing, and construction of nuclear power  
1319 plants. Such mechanisms shall be designed to promote utility  
1320 investment in nuclear plants and allow for the recovery in rates  
1321 all prudently incurred costs, and shall include, but are not  
1322 limited to:

1323        (a) Recovery through the capacity cost recovery clause of  
1324 any preconstruction costs.

1325        (b) Recovery through an incremental increase in the  
1326 utility's capacity cost recovery clause rates of the carrying



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1327 costs on the utility's projected construction cost balance  
1328 associated with the nuclear power plant. To encourage investment  
1329 and provide certainty, for nuclear power plant need petitions  
1330 submitted on or before December 31, 2010, associated carrying  
1331 costs shall be equal to the pretax AFUDC rate in effect upon  
1332 this act becoming law. For nuclear power plants for which need  
1333 petitions are submitted after December 31, 2010, the utility's  
1334 existing pretax AFUDC rate is presumed to be appropriate unless  
1335 determined otherwise by the commission in the determination of  
1336 need for the nuclear power plant.

1337 (3) After a petition for determination of need is granted,  
1338 a utility may petition the commission for cost recovery as  
1339 permitted by this section and commission rules.

1340 (4) When the nuclear power plant is placed in commercial  
1341 service, the utility shall be allowed to increase its base rate  
1342 charges by the projected annual revenue requirements of the  
1343 nuclear power plant based on the jurisdictional annual revenue  
1344 requirements of the plant for the first 12 months of operation.  
1345 The rate of return on capital investments shall be calculated  
1346 using the utility's rate of return last approved by the  
1347 commission prior to the commercial inservice date of the nuclear  
1348 power plant. If any existing generating plant is retired as a  
1349 result of operation of the nuclear power plant, the commission  
1350 shall allow for the recovery, through an increase in base rate  
1351 charges, of the net book value of the retired plant over a  
1352 period not to exceed 5 years.

1353 (5) The utility shall report to the commission annually  
1354 the budgeted and actual costs as compared to the estimated

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1355 inservice cost of the nuclear power plant provided by the  
1356 utility pursuant to section 25(2)(b) until the commercial  
1357 operation of the nuclear power plant. The utility shall provide  
1358 such information on an annual basis following the final order by  
1359 the commission approving the determination of need for the  
1360 nuclear power plant, with the understanding that some costs may  
1361 be higher than estimated and other costs may be lower.

1362 (6) In the event the utility elects not to complete or is  
1363 precluded from completing construction of the nuclear power  
1364 plant, the utility shall be allowed to recover all prudent  
1365 preconstruction and construction costs incurred following the  
1366 commission's issuance of a final order granting a determination  
1367 of need for the nuclear power plant. The utility shall recover  
1368 such costs through the capacity cost recovery clause over a  
1369 period equal to the period during which the costs were incurred  
1370 or 5 years, whichever is greater. The unrecovered balance during  
1371 the recovery period will accrue interest at the utility's  
1372 weighted average cost of capital as reported in the commission's  
1373 earnings surveillance reporting requirement for the prior year.

1374 Section 27. This act shall take effect upon becoming law.