HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1473 CS Energy
SPONSOR(S): Hasner and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	17 Y, 0 N	Holt	Holt
2) Fiscal Council	20 Y, 0 N	Dixon/Diez-Arquelles	Kelly
3) Commerce Council	12 Y, 0 N, w/CS	Holt	Randle
4)			
5)			

SUMMARY ANALYSIS

HB 1473 creates a framework for the energy future of Florida. The bill establishes several financial instruments for citizens and businesses towards advancing renewable energy. In general, the bill creates and revises several sections of law to devise a methodology for advancing the development of renewable technologies, promoting economic growth, diversifying fuel supply, as well as, streamlining the Power Plant Siting Act and the Transmission Line Siting Act. More specifically, the bill:

- Creates the Renewable Energy Technologies Grants Program;
- Creates an Energy-Efficient Products Sales Tax Holiday from October 5, 2006, through October 11, 2006;
- Creates the Solar Energy System Incentive Program;
- Creates the Florida Energy Council;
- Creates a sales tax exemption for equipment, machinery, and other materials for renewable energy technologies;
- Creates a corporate investment tax credit for renewable energy technologies;
- Directs the Public Service Commission (PSC or commission) to consider fuel diversity in reviewing 10-year site plans;
- Creates the Florida renewable energy production credit.
- Establishes renewable energy policy
- Provides for siting nuclear power plants
- Provides for an alternative cost recovery mechanism
- Allows the PSC to require electric utilities to have their infrastructure exceed the National Electric Safety Code standards;
- Requires the PSC to direct a study of the electric transmission grid as well as examine the hardening of Florida's infrastructure to address issues arising from the 2004 and 2005 hurricane seasons; and
- Streamlines the Power Plant Siting Act and the Transmission Line Siting Act by setting new timelines and streamlining procedures
- Adjusts the criteria for the water projects grant program.

The Revenue Estimating Conference estimates that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will result in a negative fiscal impact of $11.0 million to state government and $1.2 million to local governments in FY 2006-07, and of $14.3 million to state government and $0.7 million to local governments in FY 2007-08. HB 5001, the General Appropriations Act, contains $15 million ($8.6m in General Revenue and $6.4 in Trust) for the Renewable Energy Technologies Grant Program and $5 million in General Revenue for the Solar Energy System Incentives Program. In addition, the bill provides an appropriation of $61,379 from the General Revenue Fund to the Department of Revenue (DOR) to administer the Energy-Efficient Products Sales Tax Holiday. The fiscal impact for the renewable energy production credit is yet to be determined.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill creates the Florida Energy Council to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on energy issues. It also requires the PSC to direct a study on Florida's electric transmission grid. The report is to additionally address hardening of the state's infrastructure in response to the issues arising from the 2004 and 2005 hurricane seasons. The bill streamlines the process for siting electric power plants and transmission lines. It authorizes DEP to issue final orders in an emergency and in a non-controversial case that requires no hearing.

Ensure Lower Taxes-The bill creates the following: Renewable Energy Technologies Grant Program, Energy-Efficient Products Sales Tax Holiday, and Solar Energy Systems Rebate Program, sales tax exemption for equipment, machinery and other renewable energy technologies, and renewable energy technologies investment tax credit, renewable energy production credit.

Promote Personal Responsibility/Empower Families-The bill contains rebates and tax incentives to promote the sale of energy-efficient products and the use of renewable energy technologies.

Maintain Public Security-The bill provides incentives for the investment in renewable energy and alternative fuels, which may reduce the state's dependence on imported fossil fuels. The bill requires the PSC to consider fuel diversity when analyzing the utilities' 10-year site plans, thereby also potentially easing the state's dependence on any particular fuel for the generation of electricity. The bill also allows the PSC to require electric utilities to construct their infrastructure to standards that exceed the National Electric Safety Code.

B. EFFECT OF PROPOSED CHANGES:

General Background

On November 10, 2005, Governor Jeb Bush issued Executive Order #05-241 directing the Department of Environmental Protection (DEP) to develop a comprehensive energy plan. On December 14, 2005, the Secretary of DEP hosted the Florida Energy Forum where various parties were able to provide input in developing the plan. As required by the Executive Order, DEP issued the Florida Energy Plan on January 17, 2005.

The energy plan contained recommendations that spanned several areas. Those areas covered issues of diversification, conservation, and economic incentives. HB 1473 comprehensively implements initiatives from each of those areas.

According to research conducted by DEP in developing the Florida Energy Plan, the following background information was provided:

Florida's economy and quality of life depends on a secure, adequate and reliable supply of energy. As the fourth most populous state, Florida ranks third nationally in total energy consumption. With more than 17 million citizens and nearly 1,000 new residents arriving daily, Florida is one of the fastest growing states in the nation. Because of its expanding economy, current forecasts indicate that Florida's electricity consumption will increase by close to 30 percent over the next ten years.

Since the last review of Florida's energy policy in 2000, several unpredictable events have heightened concern over energy reliability, security, and supply. The 2003 blackout in the northeast, along with

tremendous back-to-back hurricane seasons in 2004 and 2005, demonstrated the impact power outages and fuel interruptions have on the nation's economic welfare.

Producing less than one percent of the energy it consumes and limited by its geography, Florida is more susceptible to interruptions in energy supply than any other state. Unlike other states that rely on petroleum pipelines for fuel delivery, more than 98 percent of Florida's transportation fuel arrives by sea. The state's reliance on imported petroleum products, in addition to its anticipated growth in consumption, underscores its vulnerability to fluctuations in the market and interruptions in fuel production, supply and delivery.

Energy Production and a Growing Economy

Florida depends almost exclusively on other states and nations for supplies of oil and gasoline, generating less than one percent of the nation's crude oil production annually. To generate electricity, Florida primarily relies on natural gas, coal and oil imports.

Together, fossil fuels represent 86 percent of Florida's total generating capacity. Less than 10 percent of its generating capacity is derived from cleaner nuclear and renewable fuels. In fact, no new nuclear plants have entered service in Florida since 1983.

Current forecasts indicate that new generation capacity will be 80 percent natural gas-fired and 19 percent coal-fired. Meeting these projections could prove expensive at today's prices and lead to an over-reliance on one fuel type, affecting the reliability of electric utility generation supply in Florida. While expansions for natural gas capacity are needed and already underway, improving generation fuel diversity would enhance reliability over the long-term. Too great a reliance on a single fuel source leaves Floridians subject to the risks of price volatility and supply interruption.

A New Class of Energy

Although the nation's reliance on traditional fossil fuels is currently high, Florida is investing in alternative fuels and developing "next generation" energy technologies. In 2003, Governor Jeb Bush launched "H2 Florida" to accelerate the commercialization of hydrogen technologies and spur economic investment in Florida's economy. With a four to one return on investment, Florida and its federal partners have invested $9 million to date in hydrogen infrastructure. Construction of a "hydrogen highway" is underway, 28 hydrogen demonstration projects are in progress and more than 100 hydrogen research and development projects are taking place at Florida's universities.

Utilization of biofuels is in its infancy with the cost of renewable fuels relatively high compared with traditional hydrocarbon fuels. Currently, Florida has just one biodiesel facility and, absent a manufacturing plant, imports ethanol from refineries outside of the state. Increasing production, supply and infrastructure of biofuels through financial incentives would provide both economic and environmental returns for the state. Likewise, a stronger investment both residentially and commercially in solar technology would not only reduce utility costs but generate pollution-free power for Floridians. To date, solar technology has remained largely inefficient and expensive, however, costs are gradually decreasing as system quality and reliability increases. To encourage continued investment in solar energy, systems received a permanent exemption from Florida sales and use tax in 2005.

Florida Energy Office

The Florida Energy Office (FEO) is the state's primary center for energy policy and is administratively housed in the DEP. In addition to developing and implementing Florida's energy policy, the FEO coordinates all federal energy programs delegated to the state, including energy supply, demand, conservation and allocation. Coordination of fuel supply and request for fuel from local governments, law enforcement, and healthcare facilities throughout the state during hurricanes is also a responsibility of the FEO.

Proposed Changes

Section 1: Legislative findings and intent: This section provides legislative findings and intent. Generally, the Legislature finds that advancing the development of renewable energy efficiency and technologies is important for the state's future, its energy stability and diversity, its environment, and the protection of its citizens' public health. Moreover, the development of renewable energy technologies may have a correlated effect in reducing the demand for foreign fuels. To assist in the widespread commercialization and application of renewable energy, the findings promote marketing, among other things, to stimulate economic growth, to generate ongoing research and development, and to use the abundance of natural and renewable energy sources. These objectives are in addition to using the state's ability to attract significant federal research and development funds for its general welfare.

Section 2: Short title: The bill provides that ss. 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 3: Purpose: This act is intended to provide matching grants to stimulate in-state capital investment and promote statewide utilization of renewable technologies. In order to accomplish these goals, the targeted grants program is designed to: 1) advance renewable technologies, and 2) encourage the residential and commercial use of incentives, such as rebates, tax exemptions, and regulatory certainty.

Section 4: Definitions: The bill provides the following definitions as used in the act:

(1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.
(2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission.
(3) "Commission" means the Florida Public Service Commission.
(4) "Department" means the Department of Environmental Protection.
(5) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.
(6) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.
(7) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.
(8) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that would normally require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.
(9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.
(10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5: Renewable Energy Technologies Grant Program: The bill establishes within DEP the Renewable Energy Technologies Grant Program. The program provides renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies. Eligible entities for award consideration include: 1) municipalities and county governments, 2) established for-profit companies licensed to do business in the state, 3) in-state universities and colleges, 4) not-for-profit organizations, 5) other qualified persons, as determined by the department. Rulemaking authority is granted to DEP for adoption of application requirements, ranking applications, and administering grant awards. Two sets of similar factors are included in the bill as a non-exhaustive list to consider when assessing applications for an award. In evaluating the proposals, DEP shall solicit the expertise of other state agencies in order to address a broad range of issues. These agencies solicited by DEP shall cooperate and provided the assistance requested.

Further, it is incumbent upon DEP to coordinate and actively consult with the Department of Agriculture and Consumer Service (DACS) during the review and approval process of grants relating to bio-energy projects. The departments are to jointly determine and approve grants in the bio-energy area.

Section 6: Energy-Efficient Products Sales Tax Holiday: During the period from 12:01 a.m., October 5, 2006, through midnight, October 11, 2006, a tax-free week is established by the bill, and it shall be designated "Energy Efficient Week." The tax levied under ch. 212, F.S., may not be collected during this period on the sale of new energy-efficient products having a per item selling price of $1,500 or less. This exemption only applies to items that are for noncommercial home or personal use, and does not apply when the product is purchased for trade, business, or resale. "Energy-efficient product" as used in this section means a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency or by the United States Department of Energy as meeting or exceeding the requirements under the Energy Star Program for either agency.

Purchases that are eligible for this exemption may not be made using a business or company credit or debit card or check. Any construction company, building contractor, or commercial business or entity that purchases or attempts to purchase the energy-efficient products exempt in this section commits an unfair method of competition in violation of s. 501.204, F.S., and is punishable as provided in s. 501.2075.[1]

Section 7: Solar Energy System Incentives Program: Under this program, three solar rebate incentives are created. From July 1, 2006, through June 30, 2010, any Florida resident who purchases and installs a solar photovoltaic system, a solar thermal system, or a solar thermal pool heater is eligible to apply. However, application for a rebate must be made within 90 days after the purchase, and each system must meet the specific criteria outlined in the bill.

In general, the new solar photovoltaic system must be 2 kilowatts or larger, and the new solar thermal system must provide at least 50 percent of a building's hot water consumption. For the specific eligibility requirements, s. 337.806 reads in part:

> (2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.
> (a) Eligibility requirements. A solar photovoltaic system qualifies for a rebate if:
> 1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.
> 2. The system complies with state interconnection standards as provided by the commission.
> 3. The system complies with all applicable building codes as defined by the local jurisdictional authority.
> (b) Rebate amounts. The rebate amount shall be set at $4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:
> 1. $20,000 for a residence.
> 2. $100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization.
> (3) SOLAR THERMAL SYSTEM INCENTIVE.
> (a) Eligibility requirements. A solar thermal system qualifies for a rebate if:
> 1. The system is installed by a state-licensed solar or plumbing contractor.
> 2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

[1] The punishment for each violation is a civil penalty of up to $10,000, as provided in s. 501.2075, F.S

(b) Rebate amounts. Authorized rebates for installation of solar thermal systems shall be as follows:

1. $500 for a residence.

2. $15 per 1,000 Btu for a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization including condominiums or apartment buildings. Btu must be verified by approved metering equipment.

(4) SOLAR THERMAL POOL HEATER INCENTIVES.—

(a) Eligibility requirements. – A solar thermal pool heater qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts. – Authorized rebates for installation of solar thermal pool heaters shall by $100 per installation.

Moreover, the total dollar amount of all DEP-issued rebates is subject to an appropriation for the program during any fiscal year. DEP will publish on a regular basis a running rebate fund balance for each fiscal year. If applications exceed the available funds, unfunded applications roll-over to the next year with priority consideration. DEP shall adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to develop rebate applications and administer rebate issuance.

Section 8: Florida Energy Council: The bill creates the Florida Energy Council within DEP as an energy advisory group. The council is to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on current and projected energy issues including, but not limited to, transportation, generation, transmission, distributed generation, fuel supplies, emerging technologies, environmental issues, as well as efficiency and conservation. This diverse council membership shall be comprised of stakeholders who may include utility providers; alternative energy providers, researchers, environmental scientists, fuel suppliers, and technology manufacturers; and persons representing environmental, consumer, and public health interests, and others. In developing its recommendations, the council shall be guided by the principles of reliability, efficiency, affordability, and diversity. There will be nine voting members:

- The Secretary of DEP, or designee, serves as the council's chair
- The Chair of PSC, or designee, serves as the council's vice chair
- The Commissioner of Agriculture and Consumer Services, or designee
- Two members appointed by the Governor
- Two members appointed by the President of the Senate
- Two members appointed by the Speaker of the House of Representatives

Prior to September 1, 2006, all initial appointments shall be made. The appointments made by the Governor, the President of the Senate, the Speaker of the House of Representatives are for a term of two years, with members serving until their successors are appointed. Any vacancies are filled in the same manner as original appointments and are for the remainder of a vacated membership. Members are entitled to travel reimbursement and per diem, but they serve without compensation.

Additionally, DEP provides primary staff support to the council, and it shall electronically record the meetings and preserve those recordings pursuant to chapters 119 and 257. Rulemaking authority is granted to DEP to implement the provisions of this section.

Section 9: Sales Tax Exemption: A sales tax exemption is created in s. 212.08, F.S., for equipment, machinery, and other materials for renewable energy technologies, and is available to a purchaser through a refund of previously paid taxes. This exemption is designed to assist in stimulating the development of in-state hydrogen technologies and bio-fuels. Enhancing the production, distribution

and retail mechanisms supporting bio-fuels, this incentive may result in a reduction in the consumption of fossil fuels. There are currently four hydrogen fueling stations planned for installation, and those facilities are partially funded by DEP. Florida has no ethanol fuel production facilities or retail outlets selling ethanol blends to the public.

The bill creates the following definitions as used in this section:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

The bill provides that the in-state sale or use of the following items is excluded from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in tax each state fiscal year.

b. Commercial stationary hydrogen fuel cells, up to a limit of $1 million in tax each state fiscal year.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E85), including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided by this subsection.

DEP is the designated lead agency for submitting the list of items eligible for the exemption to the Department of Revenue (DOR). The bill directs DEP, in consultation with DOR, to develop the application for exemption, along with minimal criteria for the application content. Applicants are to also submit a sworn statement of information accuracy and to the section requirements being met. An application processing schedule is also outlined in the bill.

Rulemaking is granted to DOR for governing the manner and form of the refund applications and to additionally establish guidelines for requisites of an affirmative showing of qualification for exemption. Rulemaking is also granted to DEP to ensure the exemptions do not exceed the provided limits, and DEP shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

This exemption is repealed on July 1, 2010.

Section 10: Confidentiality and information sharing: This section allows for the sharing of information between DEP and DOR related to the sales tax exemption (212.08(7)) and investment tax credit (220.192).

Section 11: Corporate income tax: This is a conforming change.

Section 12: Renewable energy technologies investment tax credit: The bill creates the renewable energy technologies investment tax credit. The following definitions are provided for this section:

(a) "Biodiesel" means biodiesel as defined in s. 212.08(7)(ccc).

(b) "Eligible costs" means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per

state fiscal year for all taxpayers, in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6.5 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subparagraph.

(c) "Ethanol" means ethanol as defined in s. 212.08(7)(ccc).

(d) "Hydrogen fuel cell" means hydrogen fuel cell as defined in s. 212.08(7)(ccc).

The section does not create a fiscal impact for 2006, but for tax years beginning on or after January 1, 2007, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2007, and ending December 31, 2010, after which the credit shall expire. If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in tax years beginning January 1, 2007, and ending December 31, 2012, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

Any corporation wishing to obtain tax credits available under this section must submit to the DEP an application for tax credit that includes a complete description of all eligible costs and a description of the total amount of credits sought. The DEP shall make a determination on the eligibility of the applicant for the credits sought and certify the determination to DOR. The bill is silent on the timeframe in which DEP must render its determination. However, DEP is authorized to adopt the necessary rules, guidelines, and application materials for the application process.

As for DOR, in addition to its existing audit and investigation authority, it may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, that are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with this section. The DOR shall also have the authority to adopt rules relating to the forms required to claim a tax credit, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures. Provisions are also included for forfeiture, revocation or modification of tax credits under this section

The DEP shall provide technical assistance, when requested by the DOR, on any technical audits or examinations. It shall further determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

<u>Section 13. Florida renewable energy production credit</u>: The bill creates s. 220.193, and it reads as follows:

(1) The purpose of this section is to encourage the development and expansion of facilities that produce renewable energy in Florida.

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

(a) "Commission" shall mean the Florida Public Service Commission.
(b) "Florida renewable energy facility" shall mean a facility in Florida that produces renewable energy, as defined in s. 377.803.
(c) "New facility" shall mean a Florida renewable energy facility that is operationally in service after May 1, 2006.
(d) "Expanded facility" shall mean a Florida renewable energy facility that increases its electrical production by more than 5 percent after May 1, 2006.

A credit against the tax imposed by this chapter shall be allowed to a taxpayer, based on the taxpayer's production and sale of electricity from a new or expanded Florida renewable energy facility. For a new facility, the credit shall be based on the taxpayer's sale of the facility's entire electrical production. For an expanded facility, the credit shall be based on the increases in the facility's electrical production that are achieved after May 1, 2006.

The credit shall be $0.01 for each kilowatt-hour of electricity produced and sold by the taxpayer to an unrelated party during a given tax year and the credit may be claimed for electricity produced and sold on or after January 1, 2007. Ten years is the maximum for which this credit may be claimed beginning the first tax year the credit is earned. In cases of multiple expansions of the same facility which are completed in different calendar years, the taxpayer may propose staggered commencement dates for each expansion project provided the relevant credit is separately identified and quantified for each expansion. Additional provisions related to the credit are as follows:

- If the credit granted pursuant to this section is not fully used in one year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers in the order provided in s. 220.02(8).

- A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group.

- Tax credits that may be available under this section to an entity eligible under this section may be transferred after a merger or acquisition to the surviving or acquiring entity and used in the same manner with the same limitations.

- The entity or its surviving or acquiring entity as described in subparagraph 1. may transfer any unused credit in whole or in units of no less than 25 percent of the remaining credit. The entity acquiring such credit may use it in the same manner and with the same limitations under this section.

- In the event the credit provided for under this section is reduced as a result of an examination or audit by the Department of Revenue, such tax deficiency shall be recovered from the first entity or the surviving or acquiring entity to have claimed such credit up to the amount of credit taken. Any subsequent deficiencies shall be assessed against any entity acquiring and claiming such credit, or in the case of multiple succeeding entities in the order of credit succession.

- Notwithstanding any other provision of this section, until calendar year 2011, the total credits granted by the Department of Revenue pursuant to this section shall not exceed 10 million dollars for any tax year. Thereafter, such credits shall not exceed 15 million dollars for any tax year. It is unclear how the credit caps in this provision were established.

- A taxpayer claiming a credit under this section shall be required to add back to net income that portion of its business deductions claimed on its federal return paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under this section.

- A taxpayer claiming credit under this section may not claim a credit under s. 220.192. A taxpayer claiming credit under s. 220.192 may not claim a credit under this section.

The DOR may adopt rules to implement and administer this section, including rules prescribing forms, the documentation needed to substantiate a claim for the tax credit, and the specific procedures and guidelines for claiming the credit. This section shall take effect upon becoming law and shall apply to tax years beginning on and after January 1, 2007.

Section 14: Adjusted federal income: This is a conforming change.

Section 15: Ten-year site plans: Pursuant to s. 186.801, F.S., all major generating electric utilities are required to annually submit a Ten-Year Site Plan to the PSC for review. Each Ten-Year Site Plan contains projections of the utility's electric power needs for the next ten years and the general location of proposed power plant sites and major transmission facilities. As a result, the PSC performs a preliminary study of each Ten-Year Site Plan to determine whether it is "suitable" or "unsuitable." To aid in its review, the PSC receives comments from state, regional, and local planning agencies regarding various issues. Upon review completion, the PSC forwards its Ten-Year Site Plan review, to DEP for use in subsequent power plant siting proceedings.

To implement the provisions s. 186.801, F. S., the PSC has adopted Rules 25-22.070 through 25-22.072, F.A.C. These rules require electric utilities to file an annual Ten-Year Site Plans by April 1. However, utilities whose existing generating capacity is below 250 megawatts (MW) are exempt from this requirement unless the utility plans to build a new unit larger than 75 MW within the ten-year planning period.

In evaluating the 10-year site plans, the PSC is required to review:

- Need for electrical power in the area to be served.
- Anticipated environmental impact.
- Possible alternatives to the proposed plan.
- Views of appropriate local, state, and federal agencies.
- Consistency with the state comprehensive plan.
- Information of the state on energy availability and consumption.

The bill adds the “effect on fuel diversity within the state” to the above objectives considered by the PSC in evaluating the10-year site plans.

Section 16: Jurisdiction of the PSC: Section 366.04, F.S., provides that the jurisdiction of the PSC includes prescribing and enforcing safety standards for electric transmission and distribution. This bill adds the phrase “at a minimum” when describing the safety standards the PSC must adopt. This allows the PSC to adopt stricter safety standards than the National Electrical Safety Code (NESC) as needed to protect Florida’s electric system from disasters.

Section 17: Powers of the PSC: Section 366.05(1), F.S., reads in part:

366.05 Powers.—

> (1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by

each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities. . .

The bill amends this section to give the PSC the power to adopt construction standards that exceed the NESC in order to ensure the reliable provision of service. In addition, the PSC is given the power to order the replacement of plant by a public utility.

Section 366.05(8), F.S., gives the PSC power over the state's electrical grid, and the authority, following certain proceeding, to require the installation or repair of necessary facilities if inadequacies with respect to the grid exist. The bill amends this section to strengthen PSC authority to require utilities to build additional facilities or repair existing facilities if the PSC determines that the electric grid is inadequate with respect to "fuel diversity or fuel supply reliability."

Section 18: Creates s. 366.92: Florida renewable energy policy:

Background

The federal Public Utilities Regulatory Policy Act of 1978, Public Law 95-617 (92 Stat. 3117), required electric utilities to purchase any electricity generated by a cogenerator or a small power producer where a small power producer was someone who used renewable fuels. The utility was to pay "incremental cost" for the power. Incremental cost was defined as "the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

The Florida Legislature gave the PSC authority to implement such provisions at 366.051. The statute adopts the term "avoided cost" but it is defined in the same terms as the incremental cost in the federal act. The utility pays the small power producer/cogenerator no more than what it would cost the utility to gene4rate the electricity. In 2005, the Legislature passed 366.91 to encourage renewable energy and again defined the payment to renewable generators as avoided cost.

The bill provides intent language that reads:

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

For the purposes of this section, "Florida renewable energy resources" shall mean renewable energy, as defined in s. 377.803 that is produced in Florida. However, s. 377.803 does not define "Florida renewable energy resources." In ch. 2005-259, LOF, there is a definition for renewable energy which reads as follows:

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

Further it shall be the role of the PSC to adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable energy resources. The PSC may change the goals through the review and reestablishment of these goals at least once every five years. Concern was raised about this provision ceding to the PSC authority to establish policy relating to "appropriate goals" as opposed

to the Legislature determining the goals of public policy as related to this issue. Further, the commission may adopt rules to administer and implement the provisions of this section.

Section 19: The bill requires the PSC to direct a study on Florida's electric transmission grid. The study shall examine the efficiency and reliability of power transfer and emergency contingency conditions. Additionally, the study must examine the hardening of infrastructure to address issues raised from the 2004 and 2005 hurricane seasons. The results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007.

Sections 20 through 42: These sections amend the Florida Electrical Power Plant Siting Act (PPSA). On the recommendation of the Florida Energy Plan, the proposed changes are to streamline the siting process by setting new timelines, streamlining procedures, and streamlining the determination of consistency with land use, among other things.

Created by the Legislature in 1973, the PPSA provides for certification (licensure) of steam electric or solar power plants which are 75 megawatts or larger in size. The plants can be gas-fired, combined-cycle units, nuclear units, or others that are fueled by more conventional means. Combustion turbine units can be permitted in conjunction with a certified facility, or as an addition via the modification process, but as a stand alone, this type of unit does not trigger the certification process.

DEP is the lead agency for coordinating the siting process. Plant certification may include the plant's directly associated facilities, which are necessary for the construction and operation, such as natural gas pipeline, rail lines, roadways, and electrical transmission lines. Final certification is issued by the siting board (Governor & Cabinet).

Section 20: Definitions: The bill amends several definitions s. 403.503, F.S., in order to broaden, delete and conform terms as used in this section. However, noteworthy are three terms: 1)Associated facilities means, for the purpose of certification, those facilities which directly support the construction and operation of the electrical power plant such as fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility.2) Electrical power plant means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act. This term includes associated facilities to be owned by the applicant which are physically connected to the electrical power plant site or which are directly connected to the electrical power plant site by other proposed associated facilities to be owned by the applicant, and associated transmission lines to be owned by the applicant which connect the electrical power plant to an existing transmission network or rights-of-way of which the applicant intends to connect. At the applicant's option, this term may include, any offsite associated facilities which will not be owned by the applicant; offsite associated facilities which are owned by the applicant but which are not directly connected to the electrical power plant site; any proposed terminal or intermediate substations or substation expansions connected to the associated transmission line; or new transmission lines, upgrades, or improvements of an existing transmission line on any portion of the applicant's electrical transmission system necessary to support the generation injected into the system from the proposed electrical power plant; 3) "Completeness" is amended to incorporate the concept of "sufficiency". This change combines two review processes.

Section 21: Department of Environmental Protection; powers and duties: The bill broadens DEP powers and duties by expanding its rulemaking authority to include construction as a component to be included as it sets forth rules for environmental precautions in relation to power plants. DEP has the authority to issue final orders when there is no certification hearing, resulting in a significant saving in overall licensing time. DEP is also given the authority to issue emergency orders when emergency

conditions require a short turn-around time. Other additional powers and duties include acting as clerk for the siting board as well as administering and managing the terms and conditions of the certification order, supporting documents and records for the life of the facility.

Section 22: Application for permits: The bill amends s. 403.5055, F.S., to provide that DEP include in its project analysis copies of proposed permits under federally delegated or approved permit programs. The bill modifies the section to require such inclusion only if the permit is available at the time DEP issues its project analysis.

Section 23: Applicability and certification: The bill amends s. 405.506, F.S., relating to applicability and certification to include "thresholds." The section is amended to exempt cogeneration facilities which are expanding by less than 35 megawatts. This will assist in the development and utilization of an additional resource. The term "maximum electrical generator rating" replaces the term "maximum normal generator nameplate rating" in order to more accurately reflect the term of art in the industry.

Section 24: Distribution of application: Section 403.5064, F.S., is amended to read "Application schedules" in lieu of "Distribution of application." The date of certification commencement shall begin when the applicant distributes the appropriate number of certification applications and submits the application fee pursuant to 403.518, F.S. This change in the date of commencement will result in a time savings of approximately 22 days because the distribution to the affected parties is done sooner. A provision is added to provide that any amendment made prior to certification will be addressed as part of the original certification proceeding; however, the amendment may create a good cause of altering the time limits.

Further, this section provides that within 7 days after DEP files its proposed schedule, the administrative law judge (ALJ) will issue an order establishing a schedule for matters contained in the proposed schedule. The bill also clarifies notice provisions in order to reference the new notice section.

Section 25: Appointment of administrative law judge: This section is amended to clarify that the ALJ has all powers and duties granted pursuant to chapter 120, F.S., and by the laws and rules of DEP.

Section 26: Determination of completeness: The bill amends this section to give the applicant 30 days rather than 15 days to respond to a notice of incompleteness. A statement of completeness shall be filed with the Division of Administrative Hearings (DOAH), the applicant, and the parties, within 40 days in lieu of 15 days, after filing an application. The bill outlines the procedure for an applicant to follow when DEP declares an application incomplete.

Section 27: Informational public meetings: Section 403.50663, F.S., is created to establish that a local government or a regional planning council in whose jurisdiction the proposed plant exist may hold an information public meeting to inform the public about the proposed site and its associated facilities. The meeting must be noticed not less than 5 days prior to the date; however, the failure to hold an informational public meeting or the procedure used for the informational meeting are not grounds for the alteration of any time limitation or grounds to deny or condition certification.

Further, the bill clarifies that it is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

Section 28: Land use consistency: Section 403.50665, F.S., is created to generally streamline the land use determination, and to require that the applicant includes a description in the application of land use consistency with existing land use plans and zoning ordinances. If a local government makes an affirmative determination that the site and or facilities are consistent with local land use, but a substantially affected individual disputes the local government's determination, that person has 15 days to file a petition disputing the determination.

If it is determined by the local government that the proposed site, or directly associated facility, does conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.

Section 29: Determination of Sufficiency: Section 403.5067, F.S., is repealed. This review is combined with the completeness review.

Section 30: Preliminary statement of issues, reports, project analyses, and studies: The bill amends s. 403.507, F.S., relating to preliminary statements of issues, reports, project analyses, and studies. It changes the date for the filing of preliminary statements of issues from 60 days after distribution of the application, to 40 days after the application has been determined complete. It now requires agency reports to be filed 100 days after the application has been determined complete, expediting the review process by approximately 32 days.

The bill also clarifies that the Department of Community Affairs shall address emergency management in its report, and water management district reports shall include issues related to impact on water resources, impact on regional water supply planning, and impact on district-owned lands and works.

The Department of Transportation (DOT) is added to the list of agencies that must address the impact of the proposed plant on matters within its jurisdiction. DOT is typically involved in the certification process, but its statutory addition as a reporting agency ties in with its addition to the list of parties to the proceeding. It also establishes DOT as an agency eligible for reimbursement from the application fee.

The bill deletes the provisions related to the PSC filing of its determination and relocates it to a separate section. Additionally, prior to DEP issuing its project analysis; the PSC must have made an affirmative determination of need. While the need determination is currently required prior to the certification hearing, this language is amended to provide for instances when a hearing may be canceled.

Section 31: Land use and certification hearings: The bill amends s. 403.508, F.S., relating to land use and certification hearings. The bill addresses both types of hearings:

(1) Land use hearing: provides that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follows such situations. Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board. The bill further readjusts processing time in order to conform to responses to determination of incompleteness. However, this does not impact the overall issuance of the final certification.

(2) Certification hearing: changes the date for the holding of the certification hearing to from 300 to 265 days after the filing of the application. The DEP analysis would have been filed approximately 95 days earlier. Moreover, according to DEP, this length of time is needed to account for the possibility of an application being incomplete as filed, but it was rendered complete before the deadline for the tolling of the time clock. This provision also provides adequate time to prepare for the hearing.

A key substantive change is the addition of a mechanism for the cancellation of the otherwise mandatory certification hearing. If there are no disputed issues of fact or law, no later than 29 days

before the certification hearing, but with enough time to provide three days notice of canceling the hearing, DEP or the applicant may request that the certification hearing be canceled. The ALJ, upon request, can order cancellation of the hearing for a non-controversial project upon stipulation by all parties. The ALJ would relinquish jurisdiction, and DEP would prepare the Final Order. This new option would shorten the process by as much as four and a half months, and would save the applicant and the agencies expense.

The bill also makes numerous technical changes to this section, including the relocation of provisions to group related activities and improve the chronological sequencing of events. Additionally, DOT is added to the list of parties, and process deadlines are revised to conform to other deadline changes. The language regarding "public notice" has been relocated to a new notice section pertaining to the entire process, as opposed to just the hearing proceeding.

The bill also conforms existing provisions related to the conduct of the hearing, parties, and intervention, and retains existing provisions related to public participation and public hearings, though relevant dates are changed to conform to changes in the dates of the overall process.

Section 32: Final Disposition of the Application: The bill amends s. 403.509, F.S., relating to the final disposition of application. The bill adds a provision allowing DEP to issue the final order on certification, if the ALJ has cancelled the certification hearing. This would only apply if there are no controversial issues, and could save several months.

This section also creates criteria for approval or denial of the application, which is drawn from the intent language, and criteria listed elsewhere in the act. In order to make the act internally consistent regarding federally delegated/approved permits, provisions related to these permits are deleted.

Section 33: Effect of Certification: The bill amends s. 403.511, F.S., relating to the effect of certification. The bill deletes language to conform to the provisions that allow the Secretary of DEP to sign certifications, under certain circumstances. Language is added to this section to clarify that local land use permits and zoning ordinances are preempted by the PPSA. This section further clarifies that federal permits are to be issued under their own program guidelines and not those of the Siting Board or PPSA. Subsection (8) is also added to this section and reads:

> (8) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

Section 34: Filing of Notice of Certified Corridor Route: The bill creates s. 403.5112, F.S., relating to filing of notice of certified corridor route. This provision is drawn from s. 403.5312, F.S., contained in the Transmission Line Siting Act, but which technically applies to the PPSA, as well. This section provides that within 60 days after a directly associated linear facility is certified, the applicant must file notice of the certified route with DEP and the clerk of the circuit court in each county through which the corridor will pass.

The notice is to consist of maps and aerial photographs clearly showing the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. The clerk is to record the filing in the official record of the county for the duration of the certification, or until the applicant certifies to DEP and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within the county, whichever is sooner.

Section 35: Postcertification Amendments: The bill creates s. 403.5113, F.S., related to post-certification amendments. This is essentially a technical addition clarifying the difference in required actions between amendments submitted by the applicant during the application review, and those submitted after

certification. These changes codify and clarify existing DEP rules, and provide regulatory certainty for licensees.

If subsequent to certification, a licensee proposes a material change to the certification, the licensee must submit to DEP a written request for amendment and a description of the proposed change to the application. DEP has 30 days to determine whether or not the proposed change requires the conditions of certification to be modified. If DEP concludes that the change would not require a modification of the conditions of certification, DEP must provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

If DEP concludes that the change would require a modification of the conditions of certification, DEP sends written notification to the licensee stating that the proposed changes require a request for modification.

Postcertification submittals filed by the licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification and must be reviewed by the agencies on an expedited and priority basis because each facility certified under this act is a critical infrastructure facility. In no event shall a postcertification review be completed in more than 90 days after complete information is submitted to the reviewing agencies.

Section 36: Public Notice: The bill amends s. 403.5115 F.S., relating to public notice. Language in this section conforms to requirements in other provisions, updates methods for notification to allow for notice as specified in ch. 120, F.S., and makes clarifications. The applicant is responsible for publishing and paying for the notices in newspapers of general circulation relating to its filings with DEP, hearings, the cancellation of hearings, modifications, and supplemental applications.

DEP is required to provide the notices in the manner specified by ch. 120, F.S., and provide copies to persons who have been placed on its mailing list pertaining to various filings and hearing, the cancellation of hearings and any notice of stipulations, proposed agency actions and petitions for modification.

Section 37: Review: The bill amends the judicial review provisions in s. 403.513, F.S. to conform its requirements to other provisions. The bill clarifies that when possible, separate appeals of the certification order and any DEP permit issued pursuant to a federally delegated or approved permit program may be consolidated for purposes of judicial review.

Section 38: Modification of Certification: Modifications of certification are frequently necessary, in part because a life-of-the-facility license was granted. However, not all changes at a certified facility necessitate a formal modification, rather, an approved amendment may suffice. A "modification" is any change in the certification order after issuance, including a change in the conditions of certification. For example, a condition might specify that the chemical treatment system for the facility only be allowed a 30 foot mixing zone, and if the applicant wishes to have a 40 foot mixing zone, a modification would be necessary. However, if a construction shed was to be moved and this was not mentioned in the conditions nor are there any foreseeable impacts, an amendment would be approved.

According to DEP, modifications can be approved by the Siting Board, but this authority is most frequently delegated to the Secretary of DEP. However, if a dispute arises, the decision-making authority reverts to the Siting Board.

The bill amends s. 403.516, F.S., relating to the modification of certification. This section makes edits to clarify and streamline unclear provisions related to modification of certifications. Additionally, it conforms requirements to other provisions regarding federally delegated or approved permits.

Section 39: Supplemental Applications for Sites Certified for Ultimate Site Capacity: The bill amends s. 403.517, F.S., relating to supplemental applications certified for ultimate site capacity. These

applications are for certification of the construction of electrical power plants to be located at sites which have been previously certified for ultimate site capacity. Supplemental applications are limited to electrical power plants using a fuel type previously certified for the site.

This section is amended to add that these applications include all new directly associated facilities that support the construction and operation of the electrical power plant. The bill also simplifies and clarifies language regarding procedural steps for applications at facilities that have previously been certified, but are expanding. Additionally, the definition of "ultimate site capacity" was deleted and transferred to the definitions section.

Section 40: Existing Electrical Power Plant Site Certification: The bill amends s. 403.5175, F.S., relating to existing electrical power plant site certification to make technical edits conforming this section to other sections of the PPSA.

Section 41: Disposition of Fees: For the siting of a power plant, the applicant must pay DEP a $2,500 fee upon filing the notice of intent and a fee not to exceed $200,000 when filing the application. In addition, there are fees associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of this fee goes to DEP for its costs associated with coordinating the review, acting on the application, and covering its associated costs. Twenty percent goes to DOAH to cover its costs associated with conducting the hearing. The remaining twenty-percent may be provided to various agencies to reimburse them for their costs associated with their participation in the proceeding.

The bill amends s. 403.518, F.S., relating to the disposition of fees to take into account the potential cancellation of the certification hearing. Currently, DOAH receives 20 percent of the application fee to cover its administrative costs. Under the new provisions, DOAH would receive 5 percent up front to cover its initial administration costs. DOAH would receive an additional 5 percent if a land use hearing is held and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will receive the 20 percent it currently receives. The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year. In other words, a grandfathering exists for certain applications in the process, i.e. those requiring cancellation of certification.

DEP shall establish rules for determining a certification modification fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

Section 42: Applicability of Revisions: The bill provides that any applicant for power plant certification under the PPSA is to be processed under the law applicable when the application was filed, except that provisions relating to the cancellation of the certification hearing, the provisions related to the final disposition of the application and issuance of the written order by the secretary of DEP, and notice of the cancellation of the certification hearing may apply to any application for power plant certification. This will have the effect of leaving the existing time frame in place for any application which is pending when the bill becomes law.

Section 43: Exclusive Forum for Determination of Need: The PSC is the sole forum for determination of electrical need. The need determination process can occur prior to the filing of a certification application, or afterwards; however, it is usually recommended that it be commenced beforehand. Need determination is a formal process required under s. 403.519, F.S., and is conducted by the PSC.

The PSC reviews the need for the generation capacity which the proposed facility would produce in relation to the needs of the region, and to the state as a whole. The PSC also looks at whether the facility would be the most cost-effective means of obtaining generating capacity. If the PSC makes a negative determination, or recommends that an alternative approach is more suitable, then either the pending application need not be submitted, or should be revised. If the application has already been submitted, then the certification application process comes to a halt.

Section 403.519(2), F.S., requires the PSC to publish notices in the newspaper of its need determination hearing 45 days before the date set for the hearing. The bill shifts this responsibility to the applicant and shortens the time frame to 21 days before the hearing. In addition, it states that the PSC shall continue to post a notice in the Florida Administrative Weekly at least seven days prior to the date of the hearing.

The bill amends s. 403.519(3), F.S., to provide that the PSC shall take into account the need for fuel diversity and supply reliability when making a need determination. In making its determination to either grant or deny a petition for determination of need, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost. According to the PSC, it has and can examined fuel diversity and type of generating plant that is being requested as part of its consideration of a need petition. The bill however makes fuel diversity and base-load generating capacity specific criteria. Additionally, the bill does not specify if the need for fuel diversity and supply reliability refers to the state as a whole or to the specific applicant.

As the sole forum for determination of electrical need. Section 403.519 reads in part:

> In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available.

The bill proposes new language in s. (4) that reads in part:

> In making its determination on a proposed electrical power plant using nuclear materials as fuel, the commission shall hold a hearing within 90 days after the filing of the petition to determine need and shall issue an order granting or denying the petition within 135 days after the date of the filing of the petition. The commission shall be the sole forum for the determination of this matter and the issues addressed in the petition, which accordingly shall not be reviewed in any other forum, or in the review of proceedings in such other forum. In making its determination to either grant or deny the petition, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost.

The bill includes a description of information required for an applicant's petition. Further, s 403.519(4)(c), provides that no provision of rule 25-22.082, Florida Administrative Code, shall be applicable to a nuclear power plant sited under this act, including provisions for cost recovery, and an applicant shall not otherwise be required to secure competitive proposals for power supply prior to making application under this act or receiving a determination of need from the commission.

FPSC Rule 25-22.082, relates to selection of generating capacity. This rule requires utilities prior to requesting a determination of need to solicit bids from alternative providers of generating capacity. The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as it considers the project's cost-effectiveness. Requirements of the bid rule can be waived upon a showing by a public utility and a finding by the PSC "that a proposal not in compliance with this rule's provisions will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or otherwise will serve the public welfare."

HB 1473 establishes that PSC's determination of need for a nuclear power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4)(a). An order entered pursuant to this section constitutes final agency action. Any petition for

reconsideration of a final order on a petition for need determination shall be filed within 5 days after the date of such order. The commission's final order, including any order on reconsideration, shall be reviewable on appeal in the Florida Supreme Court. Inasmuch as delay in the determination of need will delay siting of a nuclear power plant or diminish the opportunity for savings to customers under the federal Energy Policy Act of 2005, the Supreme Court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over matters not accorded similar precedence by law.

Pursuant to s 403.519(4)(e), after a petition for determination of need for a nuclear power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant, shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred. Proceeding with the construction of the nuclear power plant following an order by the commission approving the need for the nuclear power plant under this act shall not constitute or be evidence of imprudence. Imprudence shall not include any cost increases due to events beyond the utility's control. Further, a utility's right to recover costs associated with a nuclear power plant may not be raised in any other forum or in the review of proceedings in such other forum. Costs incurred prior to commercial operation shall be recovered pursuant to chapter 366.

Section 44. Section 366.93, is created to read:

366.93 Cost recovery for the siting, design, licensing, and construction of nuclear power plants.
(1) As used in this section, the terms:
(a) "Cost" includes, but is not limited to, all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant.
(b) "Electric utility" or "utility" has the same meaning as that provided in s. 366.8255(1)(a).
(c) "Nuclear power plant" or "plant" is an electrical power plant as defined in s. 403.503(12) that uses nuclear materials for fuel.
(d) "Preconstruction" is that period of time after a site has been selected through and including the date the utility completes site clearing work. Preconstruction costs shall be afforded deferred accounting treatment and shall accrue a carrying charge equal to the utility's allowance for funds during construction (AFUDC) rate until recovered in rates.

Sections 366.93(2) – (6) outlines an alternative cost recovery method. According to the PSC, it currently uses a standard to determine prudence based on a "preponderance of the evidence." Under traditional ratemaking practice, expenditures for any pre-operational costs to build power plants would accrue in a regulatory account and when the plant becomes operational, all costs in this account would become part of the total plant cost that could be placed in rate. PSC practice does allow public utilities to request early cash flows to occur for power plant construction costs upon a showing that the utility would suffer financial hardship without such early recovery of costs.

The bill provides in (2) that within 6 months after the enactment of this act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant. Such mechanisms shall be designed to promote utility investment in nuclear power plants and allow for the recovery in rates all prudently incurred costs, and shall include, but are not limited to:

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

(b) Recovery through an incremental increase in the utility's capacity cost recovery clause rates of the carrying costs on the utility's projected construction cost balance associated with the nuclear power plant. To encourage investment

and provide certainty, for nuclear power plant need petitions submitted on or before December 31, 2010, associated carrying costs shall be equal to the pretax AFUDC in effect upon this act becoming law. For nuclear power plants for which need petitions are submitted after December 31, 2010, the utility's existing pretax AFUDC rate is presumed to be appropriate unless determined otherwise by the commission in the determination of need for the nuclear power plant.

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

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

(5) The utility shall report to the commission annually the budgeted and actual costs as compared to the estimated inservice cost of the nuclear power plant provided by the utility pursuant to s. 403.519(4), until the commercial operation of the nuclear power plant. The utility shall provide such information on an annual basis following the final order by the commission approving the determination of need for the nuclear power plant, with the understanding that some costs may be higher than estimated and other costs may be lower.

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

Section 45: Short title: Sections 403.52-403.5363 may be cited at the Florida Electric Transmission Line Siting Act. This short title replaces the former Transmission Line Siting Act.

Background
Enacted in 1980, the Transmission Line Siting Act (TLSA) is a highly procedural, centralized, coordinated permitting process that is coordinated by the DEP. The process encompasses permitting and other authorizations, including the proprietary interest of all state, regional, and local agencies having jurisdiction for electric transmission lines as well as intermediary substations. No construction of any transmission line may be undertaken without first obtaining a certification under the TLSA; however, certain transmission lines are exempt from the act. Transmission lines subject to the TLSA are those which are 230 kilovolts (kV) or greater, 15 miles or more in length and cross a county line. Applicants under the TLSA may also request that corridors of up to a mile wide be approved, rather than designating a specific right-of-way corridor. Specific locations of rights-of-way are addressed in the post-certification process.

There are exemptions to transmission lines being certified pursuant the TLSA. Those exemptions include: a transmission line certified pursuant to the Florida Electrical Power Plant Siting Act ; a lower voltage distribution line located solely within one county; transmission line development in which all construction is limited to established rights-of-way ; transmission line rights-of-way, transmission lines established in rights-of-way created before or after October 1, 1983. Further, a utility is required to notify DEP in writing of its intent to construct a transmission pursuant to the exemption criteria listed in section 403.524, F.S., prior to the start of construction,

Currently, a certification hearing is a mandatory administrative hearing feature of the TLSA. This hearing is held whether or not there are any controversial issues or intervenors in the case. This procedure requires the expenditure of significant resources by the applicants and the state. Also, the TLSA has several provisions that add time to the process, including a bifurcated completeness and sufficiency review of the application.

In Order 2000 issued by FERC, among other things related to Regional Transmission Organizations (RTOs), Independent System Operators (ISOs), or their counterparts, it provided provide for the consolidation of utility management of transmission systems into large networks. However, the TLSA does not appear to allow applications submitted by RTOs, ISOs, or their counterparts.

Section 46: Legislative intent: The bill amends the legislative intent contained in s. 403.521, F.S. to clarify that the act establishes a licensing process rather than a means for issuance of an individual permit. It adds "operation" of the electric transmission line to the list of subjects the certification process covers. The bill also designates transmission lines as critical infrastructure facilities, and adds language to specify that the legislature is concerned with energy system reliability.

Section 47: Definitions: Several definitions at s. 403.522, F.S., are amended, added or deleted to conform to the provisions of the act.

Section 48: The bill expands and codifies certain powers and duties of DEP at s. 403.523, F.S., to include:

- To adopt procedural rules to administer this act.
- To provide that post certification reviews are to be processed on an expedited and priority basis.
- To prescribe the means for monitoring the effects arising from the location of the transmission line corridor operation.
- To issue final orders after receipt of an ALJ's order relinquishing jurisdiction pursuant to s. 403.527(6).
- To act as clerk for the Siting Board
- To administer and manages the terms of the certification order for the life of the facility.
- To issue emergency orders when conditions require a short turn-around time.

Section 49: Applicability and Certification: The bill amends s. 403.524, F.S., relating to the applicability and certification to include exemptions. Changes to this section are to clarity the facilities that are exempt under the act. Of the four basic types of exemptions, one is based on transmission lines located on established rights-of-ways (ROWs), and the meaning of "established" is based on a past date (October 1, 1983). The bill deletes the date. Additionally, the revisions provide that ROWs for transmission lines would have to have been created five years prior to construction of a new line in order for it to be deemed "established." ROWs for other types of state or local projects (roads, gas pipelines, water pipelines, etc.) may have been created at any time. This change is to prevent applicants from establishing transmission line rights of ways simply to create an exemption for a proposed line. Additionally, if an established right-of-way is relocated to accommodate a public project, the date of establishment of the original right-of-way continues to apply for purposes of qualifying for the exemption.

The bill also clarifies the exemption language for lines not subject to the act (those less than 15 miles in length or which did not cross a county line). Other technical revisions were made to incorporate revisions to the definitions section and to streamline applicant notification of the intent to construct.

Section 50: Administrative Law Judge- appointment; powers and duties:Section 403.525, F.S, provides for the appointment of an ALJ to conduct the hearings required by the act. This section is amended to include a technical correction that relocates existing ALJ powers and duties from other sections in the TLSA to this section. The provision that is added to this section reads that:

(2) The administrative law judge has all powers and duties granted to administrative law judges under chapter 120 and by the laws and rules of the department.

Section 51: Application Schedules: The bill amends s. 403.5251, F.S., to change the date of process initiation to the date the application is filed with the DEP and distributed to the other agencies. This amendment results in a time savings as agencies get to review an application earlier in the process. The bill also clarifies that transmission line starting and ending points must be included in the application. The bill deletes from this section provisions related to completeness. Completeness issues are now relocated to a separate section. It also amends and clarifies the application filing schedule and notice provisions. Additionally, the bill provides for electronic application filing which can save time and funds for the state and applicant.

Section 52: Determination of Completeness: Numerous technical corrections are made to s. 503.5252, F.S., to consolidate the sufficiency review (whether adequate information to review the application) with the completeness review (did the application contain the required chapters). This change is to streamline steps and expedite the review process. Agencies will file completeness comments with DEP 30 days after the distribution of the application, and DEP issues its initial completeness determination 7 days later (day 45). If the application is initially determined incomplete, the applicant has 14 days to file additional information to make the application complete. DEP then has an additional 21 days to issue a second determination of completeness of the application. If the application is again determined incomplete, the time clock stops at that point. Numerous existing provisions relating to hearings on completeness and other options for the applicant are relocated to this section to further enhance a streamlined process.

Section 53: Preliminary Statement of Issues, reports, project analyses, and studies: The bill amends s. 403.526, F.S. to change the filing date for preliminary statements of issues from 60 days after distribution of the application, to 50 days after filing. It clarifies that agency reports are due 90 days after filing of the application. This is 18 days after the second determination of completeness if the application was initially incomplete, compared to 15 days from a second sufficiency determination in the existing law. It also clarifies that the Department of Community Affairs shall include issues related to emergency management in their report.

Section 403.526, F.S. is also amended to include the Department of Transportation (DOT) to the list of agencies that must file reports. The addition of DOT incorporates it into the list of parties to a proceeding, and it makes DOT eligible for reimbursement from the application fee.

The bill requires other agencies, at DEP's request, to perform studies and prepare reports on subjects within their jurisdiction which may be affected by the proposed transmission line.

The bill requires receipt of an affirmative finding of need by the PSC as condition for further processing of an application. While the need determination currently is a condition precedent to conducting a certification hearing, the bill clarifies that requirement. Also, the PSC has authority to include comments with respect to any other subject under its jurisdiction, such as fuel diversity or the need for secondary transmission lines for hurricane backup.

The bill also amends the date of the issuance of DEP's project analysis from 135 days after distribution of the application to 115 days after the application is filed. DEP will now issue its report 25 days after receipt of agency reports. Other existing sections relating to agency reports are also incorporated into this section.

Section 54: Certification Hearing, Parties and Participants: Section 403.52, F.S., is substantially reworded. The bill changes the date for the holding of the certification hearing from 185 days after application filing, to 145 days after the application is filed. The DEP analysis will have been issued 30 days prior to the certification hearing. The bill retains existing provisions related to the conduct of the hearing, parties, and intervention. It also keeps existing provisions related to public participation and public hearings, though relevant dates are changed to conform to changes in the dates of the overall process.

A key substantive change to s. 403.52, F.S., is the addition of a mechanism for the cancellation of the otherwise mandatory certification hearing. The ALJ, upon request, can order cancellation of the hearing for a non-controversial project upon stipulation by all parties. The ALJ would relinquish jurisdiction, and the department would prepare the final order. Using this new option the process would be shortened by several months, and would save money for the applicant and the agencies.

The bill also makes numerous technical changes to this section. These changes include grouping related activities that are currently spread throughout the TLSA, events are chronologically sequenced, DOT is added to the list of parties to a proceeding, and process deadlines are revised to conform to other deadline changes. The language regarding public notice currently contained in this section has been relocated to a new notice section pertaining to the entire process, as opposed to just the hearing proceeding.

Section 55: Alternate Corridors: The alternative corridor provision of the law, which does not occur in the Power Plant Siting Act, allows parties to the TLSA proceeding to propose corridors which are alternate in location to the one proposed by the applicant. These alternative corridors must be reviewed by the agencies and may be the one (or variation thereof) which is ultimately certified.

The bill makes numerous technical changes to s. 403.5271, F.S., predominately correcting glitches in the existing law, clarifying procedures, and conforming process deadlines. Under this revision, alternate corridor proposals must now be made no later than 45 days before the certification hearing, rather than 50 days prior. The bill also changes deadlines for the processing of alternate corridor proposals by the agencies to conform to other time frame changes in the Act.

In addition to addressing the primary corridor route, if any alternative corridors are proposed the bill provides the party proposing the alternative corridor has the burden to prove that the alternate corridor can be certified at the certification hearing. This act does not require an applicant or agency that is not proposing the alternate corridor to submit data in support of the alternate corridor. Further, the bill requires parties proposing an alternative corridor to provide all necessary data to the agencies listed in section 403.526(2), F.S. Similar to the primary route, all reviewing agencies must then notify the DEP if the data is incomplete. If the alternative route data is complete, then the reviewing agencies must under new section 403.5271(1)(f) and (g), F.S., file supplemental reports with the applicant and the DEP addressing the alternative corridor no later than 24 days after it is submitted or determined complete. The supplemental reports must include all the same information as required for the primary submission.

Section 56: Informational Public Meetings: The bill clarifies provisions related to the conduct of public meetings by local governments. Regional planning councils have been added as agencies that may conduct early public meetings about the project, thereby expanding opportunities for public interaction in the process. Existing statutory language limits this authority to local governments. Technical corrections are included to conform to process deadlines and provide for notice.

Section 57: Amendment to the Application: Technical corrections are made to s. 403.5275, F.S., to clarify that this section only applies to amendments filed prior to certification. Amendments made after certification are handled separately.

Section 58: Alteration of Time Limits: Section 403.528, F.S., is amended to provide that an ALJ may for good cause alter any time limitation upon stipulation between the DEP and the applicant unless objected to by any party within five days after notice. This provision makes the filing of applications for projects that are larger than normal good cause of the alteration of deadlines in the procedures and agencies may seek additional time if necessary under such circumstances.

Section 59: Final Disposition of Application: The bill adds a new provision to s. 403.529, F.S., allowing DEP to issue the final order on certification if the ALJ has cancelled the certification hearing. This will allow a time savings of several months in the overall process, and is procedurally sound when there are no controversial issues in a case.

The bill also changes the deadline for the Siting Board hearing from 30 days to 60 days after the ALJ issues the recommended order. According to DEP, this edit is a non-controversial recognition of real processing time frames that occur in every case, and does not affect the actual date that final orders are actually issued.

Section 60: Effect of Certification: This section is amended to make technical and grammatical corrections conforming to changes in various sections. This section also clarifies that the certification is only in lieu of state or local permits, which would not include federal permits.

Section 61: Filing of Notice of Certified Corridor Route: Section 403.5312, F.S., requires that within 60 days after the certification of a directly associated transmission line under the Florida Electric Power Plant Siting Act or a transmission line under the Transmission Line Siting Act the applicant is required to provide notice of the certified route to the DEP and the clerk of the circuit court in each county through which the corridor will pass. This section is amended to make technical changes improving notification to the DEP.

Section 62: Modification of Certification: Section 403.5315, F.S., is amended to make minor edits to clarify and streamline former unclear provisions related to modification of certifications.

Additions are also made to this section to provide if objections are raised or DEP denies the proposed modification, the licensee may request a hearing with DEP, which is to be handled pursuant to ch. 120, F.S. If a request for hearing is referred to DOAH, it shall be disposed of in the same manner as an application, but with the ALJ establishing time periods commensurate with the significance of the modification requested.

Section 63: Postcertification Activities: Section 403.5317, F.S., is created, relating to postcertification activities. This new section is essentially a technical addition clarifying the difference between actions required for amendments submitted by the applicant during the application review and amendments submitted after certification. It also includes a provision regarding the review of postcertification submittals. These changes codify and clarify existing DEP rules, and provide regulatory certainty for licensees.

Section 64: Public Notices; Requirements: Section 403.5363, F.S., is created, relating to public notice requirements. This section relocates the bulk of the notice provisions from various places in the act into this section. It deletes language regarding a "reminder notice" less than 10 days prior to the certification hearing currently contained in s. 403.527, F.S. According to DEP the reason for this is that the timing of the notice did not fit with the new possibility of cancellation of a hearing, and experience indicated that this newspaper notice was often overlooked. The bill also adds requirements for notices of alternate corridors are to be paid for by the proponent of the alternate route.

Section 65: Disposition of Fees: Under the TLSA, the applicant is responsible for paying application fees. The fees are designed to cover various reviews by the large number of agencies that may be involved in the process. The last time DEP addressed primary application fee was in 1993.

Currently, the application fee is $100,000, plus $750 per mile for each mile of transmission line right-of-way proposed to be located within an existing electrical transmission line right-of-way or within any existing right-of-way for any road, highway, railroad, or other aboveground linear facility, or $1,000 per mile for each mile of transmission line corridor proposed to be located outside existing right-of-way.

Sixty percent of the fee is allocated to DEP to cover costs associated with reviewing and acting upon the application, as well as costs for field services associated with monitoring construction and operation of the facility. Twenty percent of the fee, except for postcertification fees, is transferred to the Administrative Trust Fund of the Division of Administrative Hearings (DOAH) of the Department of Management Services.

Upon written request with proper itemized accounting, DEP is authorized to reimburse the expenses and costs of the DCA, the FWCC, the water management districts, regional planning councils, and local government in the jurisdiction of which the transmission line is to be located. Such reimbursement is authorized for the preparation of any studies required of the agencies by this act, and for the local government to participate in the proceedings. In the event the amount available for allocation is insufficient to provide for complete reimbursement to the agencies, the reimbursement will be on a prorated basis. If any sums are remaining, DEP has the authority to retain them for its use in the same manner as is otherwise authorized under statute. However, if a certification is withdrawn, the remaining sum will be refunded to the applicant.

This section amends s. 403.5365, F.S., relating to the disposition of fees to account for changes in the process resulting from the potential cancellation of the certification hearing. Under the new fee schedule, DOAH would now receive an initial fee of 5 percent up front rather than 20 percent to cover initial administration costs. DOAH would receive an additional 10 percent if a certification hearing is held. The bill adds provisions to allow reimbursement of agency expenses for applications held in abeyance for more than one year. Further, DOT will also be eligible for reimbursement from DEP for its costs associated with the act.

Section 66: Determination of Need; Although s. 403.537, F.S., is not part of the TLSA, ss. 503.53-403.5363, F.S., it is intrinsically related to it. Section 403.537, F.S., charges the PSC with responsibility for determining whether a proposed transmission line is needed. The need determination is a prerequisite to TLSA proceedings, and a hearing to determine need may be held upon request of the electric utility or upon motion of the PSC. Further, s. 403.537(1), F.S., requires the PSC, among other things, to notice in newspapers of general circulation and in the Florida Administrative Weekly at least 45 days before the hearing date.

In determining the need for the proposed transmission line, the PSC must consider "the need for electric system reliability and integrity, the need for abundant, low-cost electric energy to assure the economic well-being of the citizens of this state, the appropriate starting and ending point of the line, and other matters within its jurisdiction deemed relevant to the determination of need. Once the PSC's determination of need is rendered, it is binding on all parties to the certification hearing. The determination is then included in the proposed project analysis submitted by DEP to the ALJ.

The bill amends s. 403.537, F.S, to require the applicant publish notice in newspapers of general circulation at least 21 days before the hearing date, and the PSC notice in the manner specified in chapter 120, F.S. In addition, the bill clarifies that the PSC is the sole forum for the determination of need, and that determination may not be raised or be the subject of review in another proceeding.

The bill adds to the variables taken into account by the PSC in its determination of need that the appropriate starting and ending points of the transmission line must be verified. Cross-references are also corrected in this section.

Section 67: This is a conforming amendment.

Section 68: This is a conforming amendment

Section 69: This is a technical amendment.

Section 70: This is a conforming amendment.

Section 71: Sections 403.5253 and 403.5369 are repealed.

Section 72: Water Projects: The bill amends s. 403.885, to change the title of the section from Stormwater management; wastewater management; and Water Restoration Grant Program to the Water Projects Grant Program. Section 403.885 is amended to provide that the DEP shall administer a grant program to

use funds transferred pursuant to s. 212.20 to the Ecosystem Management and Restoration Trust Fund or other moneys as appropriated by the Legislature for water quality improvement, stormwater management, wastewater management, and water restoration and other water projects as specifically appropriated by the Legislature. The eligible recipients are broadened by the bill, and various additional criteria are deleted.

Section 73: The bill provides an appropriation of $61,379 from the General Revenue Fund to DOR to administer the Energy-Efficient Products Sales Tax Holiday.

Section 74: For the 2006-2007 fiscal year, the sum of $8,587,000 in nonrecurring funds is appropriated from the General Revenue Fund and $6,413,000 in nonrecurring funds is appropriated from the Grants and Donations Trust Fund in the Department of Environmental Protection for the purpose of funding the Renewable Energy Technologies Grants program authorized in section 377.804. From the General Revenue Funds, $5,000,000 is contingent upon the coordination between the Department of Environmental Protection and the Department of Agriculture and Consumer Services pursuant to section 377.804(6).

Section 75: For the 2006-2007 fiscal year, the sum of $2.5 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding commercial and consumer solar rebates authorized in section 377.802.

Section 76: Effective Date: This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 Provides legislative findings and intent.

Section 2 Creates the Florida Renewable Energy Technologies and Energy Efficiency Act.

Section 3 Creates s. 377.802, F.S., provides purpose.

Section 4 Creates s. 377.803, F.S., provides definitions.

Section 5 Creates s. 377.804, F.S., Renewable Energy Technologies Grant Program.

Section 6 Creates s. 377.805, F.S., Energy-Efficient Products Sales Tax Holiday.

Section 7 Creates s. 377.806, F.S., Solar Energy System Rebate Program.

Section 8 Creates s. 377.901, F.S., Florida Energy Council.

Section 9 Creates s. 212.08(7)(ccc), F.S., sales tax exemption for equipment, machinery and other renewable energy technologies.

Section 10 Adds s. 213.053(7)(y), F.S., relating to confidentiality and information sharing.

Section 11 Amends s. 220.02(8), F.S., conforming change.

Section 12 Creates s. 220.192, F.S., Renewable energy technologies investment tax credit.

Section 13 Creates s. 220.193, F.S., Florida renewable energy production credit.

Section 14 Amends s. 220.13, F.S., relating to definition of “adjusted federal income.”

Section 15 Amends s. 186.801(2), F.S., relating to ten-year site plan.

Section 16	Amends s. 366.04(6), F.S., relating to jurisdiction of the Public Service Commission.
Section 17	Amends s. 366.05(1) and (8), F.S., relating to powers of the Public Service Commission.
Section 18	Creates s. 366.92, Florida renewable energy policy.
Section 19	Requires the Public Service Commission to direct a study.
Section 20	Amends s. 403.503, F.S., provides definitions for the Florida Electrical Power Plant Siting Act.
Section 21	Amends s. 403.504, F.S., relating to powers and duties of the Department of Environmental Protection.
Section 22	Amends s. 403.5505, F.S., relation to applications for permits pursuant to s. 403.0885, F.S. (Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) Program).
Section 23	Amends s. 403.506, F.S., relating to applicability, thresholds, and certification.
Section 24	Amends s. 403.5064, F.S., relating to application; schedules.
Section 25	Amends s. 403.5065, F.S., relating to appointment, powers, and duties of an administrative law judge.
Section 26	Amends s. 403.5066, F.S., relating to determination of completeness.
Section 27	Creates s. 403.50663, F.S., relating to informational public meetings.
Section 28	Creates s. 403.50665, F.S., relating to land use consistency.
Section 29	Repeals s. 403.5067, F.S., determination of sufficiency.
Section 30	Amends s. 403.507, F.S., preliminary statement of issues, reports, project analyses, and studies.
Section 31	Amends s. 403.508, F.S., relating to land use and certification hearings.
Section 32	Amends s. 403.509, F.S., relating to final disposition of the application.
Section 33	Amends s. 403.511, F.S., relating to effect of certification.
Section 34	Creates s. 403.5112, F.S., relating to filing of notice of certified corridor route.
Section 35	Creates s. 403.5113, F.S., relating to post certification amendments.
Section 36	Amends s. 403.5115, F.S., relating to public notice.
Section 37	Amends s. 403.513, F.S., relating to judicial review.
Section 38	Amends s. 403.516, F.S., relating to modification of certification.
Section 39	Amends s. 403.517, F.S., relating to supplemental applications for sites certified for ultimate site capacity.
Section 40	Amends s. 403.5175, F.S., relating to electrical power plant site certifications.

Section 41	Amends s. 403.518, F.S., relating to fees and disposition.
Section 42	Provides for the applicability of revisions to the Power Plant Siting Act.
Section 43	Amends s. 403.519, F.S., relating to determination of need.
Section 44	Creates s. 366.93; relating to nuclear cost recovery
Section 45	Creates the Florida Electric Transmission Line Siting Act
Section 46	Creates 403.521, relating to legislative intent
Section 47	Amends s. 403.522 relating to definitions
Section 48	Amends 403.523, F.S. relating to DEP powers and duties
Section 49	Amends s. 403.524, F.S. relating to applicability; certifications; exemptions
Section 50	Amends s. 403.525, F.S. relating to administrative law judge
Section 51	Amends s 403.5251, F.S. relating to application schedules
Section 52	Amends s. 403.5252. F.S. relating to determination of completeness
Section 53	Amends s. 403.526, F.S., relating to preliminary statements of issue
Section 54	Amends s. 403.527, F.S., relating to certification hearing
Section 55	Amends s. 403.5271 relating to alternate corridors
Section 56	Amends s. 403.5272, F.S., relating informational public meetings
Section 57	Amends s. 403.5275, F.S., relating to amendment to application
Section 58	Amends s. 403.528, F.S., relating to alteration of time limits
Section 59	Amends 403.529,. F.S., relating to final disposition of application
Section 60	Amends 403.531, F.S., relating to effect of certification
Section 61	Amends 403.5312, F.S., relating to filing of notice of certified corridor route
Section 62	Amends s. 403.5315, F.S., relating to modification of certification
Section 63	Creates 403.5317, F.S. relating to postcertification activities
Section 64	Creates 403.5363, F.S. relating to public notices
Section 65	Amends s. 403.5365, F.S., relating to fees; disposition
Section 66	Amends s. 403.537, F.S., relating to determination of need for transmission line; powers and duties
Section 67	Amends s. 373.441. F.S., conforming amendment
Section 68	Amends s. 403.061, F.S., conforming amendment

Section 69 Amends s. 406.0876, F.S., technical amendment

Section 70 Amends s. 403.809, F.S., conforming amendment

Section 71 Repeals ss. 403.5253 and 403.5369

Section 72 Amends s. 403.885, F.S., relating to water projects grant criteria.

Section 73-75 Provides an appropriations

Section 76 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	($11.0m)	($14.3m)
State Trust	(Insignificant)	(Insignificant)
Total	($11.0m)	($14.3m)

2. Expenditures:

   Renewable Energy Technologies Grant Program
   According to DEP, there will be recurring costs associated with administering the programs provided for under the act. At this time, the Energy Office staff time is paid through a grant from the United States Department of Energy and administering grant programs would be an allowable cost under the federal grant. However, the additional workload may create a need for hiring additional staff.

   Solar Energy System Incentives Program
   The fiscal impact of the Solar Energy System Incentives Program is indeterminate at this time. The availability of the rebates is subject to the amount appropriated to the program each fiscal year. DEP will incur some expenses associated with administering this program.

   Florida Energy Council
   The Energy Council may incur costs associated with conducting its duties, and DEP may incur administrative costs associated with staffing the council. There is no appropriation for these expenses.

   Sales Tax Exemption and Corporate Income Tax Credit Administration
   According to DEP, it will either administer the tax incentive program or contract with an outside organization to do so. The costs associated with this incentive are recurring in nature. The Energy Office staff is paid through a grant from the U.S. Department of Energy and administration of a tax incentive program for biofuels and hydrogen would be allowable under the federal grant. However, the additional workload may create a need for hiring additional staff.

According to DOR, it will need one additional position at a recurring cost of $48,708 to administer these programs. For the 2006-2007 fiscal years, DOR expects to incur $4,834 in non-recurring expenses.

Public Service Commission
According to PSC, it may see an increased workload as a result of the additional authority monitoring system reliability as it relates to fuel diversity. The PSC will also incur costs related to the study it is required to direct.

Power Plant Siting Act
For the siting of a power plant, an applicant must pay DEP a $2,500 fee upon filing the notice of intent, and a fee not to exceed $200,000 when filing the application. In addition, there are fees associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of the fees are allocated to DEP to cover its review, the processing of the application, and other associated costs.

Twenty percent of the fees are allocated to DOAH to cover its administrative costs associated with conducting the hearing. However, under this bill, DOAH will receive 5 percent up front to cover its initial administration costs, an additional 5 percent if a land use hearing is held, and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will be allocated the 20 percent it currently receives.

The remaining twenty percent may be provided to various agencies to reimburse them for their costs associated with their participation in a PPSA proceeding.

The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year.

Other Costs

DEP and DOR will incur expenses associated with the rulemaking requirements. In addition, DEP and the PSC may incur expenses associated with revising their current rules to conform to the statutory changes.

DEP, DOR, and the PSC will also incur some costs implementing various portions of the bill and administering various programs. Among these costs are those that will be incurred by DOR to administer the Energy-Efficient Products Sales Tax Holiday. However, all of these costs are indeterminate at this time.

The cost of the grant program is limited to the amount appropriated each year. However, the fiscal impact is yet to be determined for the Florida renewable production credit.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, and the sales tax exemptions for renewable energy technologies will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	($0.2m)	($0.1m)
Local Gov't. Half Cent	($0.5m)	($0.3m)
Local Option	($0.5m)	($0.3m)
Total Local Impact	($1.2m)	($0.7m)

Local governments would be eligible to receive grants under the Renewable Energy Technologies Grant Program.

2. Expenditures:

In the long-run, local governments may save funds as a result of canceling the certification hearing under the PPSA; however, local governments may also incur expenses related to holding informational public meetings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax exemptions and tax credits included in this bill will reduce the private sector's tax burden on certain items used for the production of renewable energy technologies.

Persons that purchase the solar energy items covered by this bill will benefit by receiving a rebate. Also, persons that purchase the items covered by this bill during Energy Efficiency Week may save money by not having to pay a sales tax. In addition, the solar rebates and the Energy-Efficient Products Sales Tax Holiday may prompt some consumers to purchase more of the eligible items, thereby causing an increase in the number of sales by Florida retailers.

Power plant and transmission siting applicants could realize a direct economic benefit from a streamlined permitting process, including the ability to begin construction at an earlier date and cancellation of hearing.

D. FISCAL COMMENTS:

The bill does not contain an appropriation for the expenses related to the Florida Energy Council.

HB 5001, the General Appropriations Act, contains a $5 million General Revenue appropriation for the Solar Energy System Rebates Program. There is also an appropriation of $15 million ($8.6m in General Revenue and $6.4 in Trust) for Renewable Energy Technology Grants including $5 million (GR) for the Farm to Fuel program.

The bill provides an appropriation of $61,379 from the General Revenue Fund to DOR to administer the Energy-Efficient Products Sales Tax Holiday.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority in the following instances:

DEP may adopt rules:

a. to administer the Renewable Energy Technologies Grant Program.
b. to designate rebate amounts and administer the issuance of Solar Energy Systems Incentive Program.
c. to implement provisions related to the Florida Energy Council.
d. to implement guidelines, rules, and application materials for the Renewable Energy Technologies Investment Tax Credit.
e. to ensure sales tax exemptions do not exceed the provided limits, regularly publish the amount of sales tax remaining in each fiscal year.
f. to determine the appropriate fee for a certificate modification under the Florida Electric Power Plant Siting Act.
g. to amend its power plant siting rules to conform to change to the Florida Electric Power Plant Siting Act.
h. to include "construction" as a component to be included in rules for environmental precautions in relation to the PPSA.

DOR is required to adopt rules regarding the manner and form of sales tax refund applications and may establish guidelines for an affirmative showing of qualification for exemptions. Also, DOR has the authority to adopt rules relating to forms required to claim the Renewable Energy Technologies Investment Tax Credit, the requirements and basis for establishing an entitlement to a credit, and examination and audit procedures required to administer the credit. DOR also has rulemaking authority to implement and administer the Florida renewable energy production credit.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On line 279, the bill provides that during the sales tax holiday, the tax levied under ch. 212, F.S., may not, be levied. This language is permissive. In order to provide that the tax cannot be levied, this language should be changed to shall not.

Other Comments

The PSC may need rulemaking authority to amend some of its current rules to conform to provisions contained in this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Utilities & Telecommunications adopted a strike-all amendment and nine amendments to the strike-all. These amendments provided the following:

A) Renewable Energy and Energy Efficiency Act:

1. Amends definition of "renewable energy resource" to more clearly specify targeted resources.
2. Modifies grant program language to clarify criteria and DEP duties.
3. Removes the energy-efficient appliance rebate program and creates the new Energy-Efficient Products Sales Tax Holiday.
4. Revises language to incorporate concepts into the existing solar energy rebate program, including providing incentives for solar pool heaters, setting rebate amounts, establishing eligibility criteria, and setting rebate caps.

B) Florida Energy Council

1. Adds the Commissioner of Agriculture and Consumer Services to the membership of the council.

2. Adds that the Secretary of DEP, the Chair of the PSC, and the Commissioner of DACS may appoint a designee.
3. Adds that the Council's recommendations shall be guided by the principles of reliability, efficiency, affordability, and diversity.

C) Tax Incentives
1. Amends definitions of "Biodiesel" and "Ethanol" to reflect more accepted definitions of those terms, and revises related concepts to clarify what is eligible for tax incentives.
2. Makes technical corrections for proper operation of the tax programs.

D) Public Service Commission
1. Clarifies the PSC is to direct a broad study all forms of system hardening.

E) Power Plant Siting Act
1. Clarifies definitions.
2. Clarifies the interaction with federal permit programs.
3. Amends the applicability section to exempt cogeneration facilities which are expanding by less than 35 megawatts.
4. Changes the section on completeness to give the applicant 30 days, rather than 15, to respond to a notice of incompleteness. Other formatting changes were made to make this section clearer.
5. Streamlines the process on the determination of consistency with land use to ensure that the applicant files the necessary information, and that the local government's abilities in issuing a statement of inconsistency are protected.

On April 21, 2006, the Fiscal Council passed HB 1473 CS with four amendments that made the following revisions to the bill:

- Limited the "Energy-Efficient Products Sales Tax Holiday" to one year;
- Clarified that the sales tax exemption is for new energy-efficient products;
- Provided that eligible products are limited to those that qualify for the Energy Star Programs;
- Provided that purchases may not be made using a business or company credit or debit card or check;
- Provided penalties for businesses that buy products tax-free;
- Provided adjustments to the water projects grant criteria; and
- Provided an appropriation of $61,379 from the General Revenue Fund to the Department of Revenue to administer the Energy-Efficient Products Sales Tax Holiday.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendments adopted by the Fiscal Council.

On April 24, 2006, the Commerce Council adopted two amendments that made the following major revisions to the bill:

- Creates the Florida renewable energy production credit.
- Establishes renewable energy policy
- Streamlines the Transmission Line Siting Act
- Provides for siting nuclear power plants
- Provides for an alternative cost recovery mechanism