HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Cater	Holt
2) Fiscal Council			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1473 is designed to revise a broad section of energy laws in Florida to provide for the streamlined siting of new, diverse and reliable supplies of energy and to provide for new grants and other incentives for renewable energy. The bill provides for the following:

- Creates the Renewable Energy Technologies Grants Program
- Creates the Energy Efficient Appliance Rebate Program
- Creates the Solar Energy System Rebate Program
- Creates he Florida Energy Council
- Creates a sales tax exemption for equipment, machinery, and other materials for renewable energy technologies.
- Creates the renewable energy technologies investment tax credit.
- Allows the Public Service Commission (PSC) to consider fuel diversity in reviewing 10-year site plans.
- Allows the PSC to require electric utilities to have their infrastructure meet standards that exceed the National Electric Safety Code.
- Requires to PSC to conduct a study of the electric transmission grid.
- Streamlines the Power Plant Siting Act by setting new timelines, streamlining procedures, and establishing a land use consistency determination.

The total fiscal impact of the bill is unknown; however the grants, rebates, and tax exemptions will be paid for from general revenue.

The bill has an effective date of July 1, 2006.

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 Public Service Commission (PSC) to conduct a study on the state's electric transmission grid and subterranean placement of electric distribution facilities, and the hardening of the electric infrastructure.

Ensure Lower Taxes-The bill creates the Renewable Energy Technologies Grants Program. It also provides rebates for the purchase of energy efficient appliances and solar energy systems. The bill creates a sales tax exemption for certain renewable energy technologies, and the renewable energy technologies investment tax credit.

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

Maintain Public Security-The bill provides incentives for the investment in renewable energy and alternative fuels, which will reduce the state's dependence on imported fossil fuels. The bill also requires the PSC to consider fuel diversity when analyzing the utilities' 10-year site plans, 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 have their infrastructure constructed to standards that exceed the National Electric Safety Code.

B. EFFECT OF PROPOSED CHANGES:

General Background

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 Plan

On November 10, 2005, Governor Bush issued an Executive Order requiring 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 on the energy plan. As required by the Executive Order, DEP issued Florida's Energy Plan on January 17, 2005.

The energy plan gave the following recommendations for electricity generation:

- Streamline and expedite the siting and permitting of generation resources by revising the provisions of the Florida Electrical Power Plant Siting Act.
- Streamline and expedite the siting and permitting of electric transmission and distribution resources by revising the provisions of the Florida Electrical Transmission Line Siting Act. Incorporate the siting of substations into the Transmission Line Siting Act.
- Promote fuel diversity, fuel supply reliability and energy security.
- Facilitate additional fuel delivery mechanisms in Florida for power generation.
- Expedite all State permits required for the redundancies and increased capacity.
- Adopt updated interconnection standards to include all distributed generation technologies.
- Establish an energy council to provide policy advice and counsel to the Governor, Speaker of the House of Representatives and President of the Senate.
- Expedite State performance contracting with Energy Service Companies.

- Promote awareness of energy conservation and alternative energy technologies.
- Use discretionary enforcement authority to allow approved alternative energy projects that provide a greater public benefit in lieu of civil monetary penalties.
- Require all new State government building construction to meet the U.S. Green Building Council's Leadership in Environmental Design standards. Encourage local governments and community developers to adopt high performance green building practices.
- Provide grant funding for research and demonstration projects associated with the development and implementation of renewable energy systems. Expand solar, hydrogen, biomass, wind, ocean current and other emerging technologies.
- Identify alternative energy production and distribution industries as Qualified Target Industries.
- Provide consumer and commercial rebates to assist with initial cost of photovoltaic and solar thermal technology installations on residential and commercial buildings.
- Provide consumer rebates for purchases of energy efficient ENERGY STAR™ appliances.
- Provide sales and corporate tax incentives for the manufacture, purchase and use of fuel cells for supplemental and backup power.

While this bill does not contain all of the recommendations in the Florida Energy Plan, it does contain some of the proposed changes.

Florida Energy Office

The Florida Energy Office (FEO), located within DEP, is the state's primary center for energy policy. It is responsible for developing and implementing Florida's energy policy, and coordinating all federal energy programs delegated to the state, including energy supply, demand, conservation and allocation.

Through the FEO, the State of Florida is shaping "Florida's Energy Future," by focusing on advanced clean energy sources, energy conservation and efficiency. Florida is actively leading the nation in projects that promote hydrogen power, solar energy, bio-based fuels, clean vehicles and energy conservation.

Proposed Changes

Legislative Findings and Intent (Section 1)

The first section of the bill provides the Legislature's findings and intent. In its intent language, the Legislature finds that advancing the development of renewable energy technologies and energy efficiency is important for the state's future, its energy stability, and the protection of its citizens' public health and environment.

Florida Renewable Energy Technologies and Energy Efficiency Act (Sections 2 through 7)

Some of the recommendations in Florida's Energy Plan are to provide grant funding for renewable energy research and provide rebates for the purchase of energy efficient and solar energy products. The bill creates the Florida Renewable Energy Technologies and Energy Efficiency Act (act) in ss. 377.801 through 377.806, F.S., whose purpose is to provide matching grants to advance renewable energy technologies. The grants program is designed to advance the establishment of renewable energy technologies and encourage the use of other incentives to attract additional renewable energy technology producers, developers, and users to the state. The act also intends to provide rebates for energy efficient appliances and for solar energy equipment installations for residential and commercial buildings.

Definitions

While the act provides several definitions, the following are the ones that are the most technical in nature.

Energy Star qualified appliance-A refrigerator, residential model clothes washer, including a residential style coin operated clothes washer, or dishwasher that has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding the energy saving efficiency requirements under each agency's Energy Star program.

Renewable energy- 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. [1]

Renewable energy technology-any technology that generates or utilizes a renewable energy resource.

Solar energy system-equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that require a conventional source of energy such as petroleum products, natural gas, or electricity and equipment that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only the components which collect and transfer solar energy shall be included in this definition. The term "solar energy system" does not include a swimming pool heater.

Solar photovoltaic system-a devise that converts incident sunlight into electrical current.

Solar thermal system-a device that traps heat from incident sunlight in order to heat water.

Renewable Energy Technologies Grant Program

The FEO currently administers approximately $1 million annually in U.S. Department of Energy grant funds. These grants are targeted at energy efficiency and renewable energy, with current projects including hydrogen fueling infrastructure, hydrogen vehicles, stationary fuel cells, solar photovoltaic systems, solar thermal systems, energy efficiency projects, and biomass projects.

The Renewable Energy Technologies Grant Program is created within DEP to provide matching grants for demonstration, commercialization, research and development projects relating to renewable energy technologies. These grants may be made to any of the following:

- Municipal and county governments
- Established for-profit companies licensed to do business in Florida
- Universities and Colleges
- Utilities located and operating within the state
- Not-for-profit organizations
- Other qualified persons as determined by DEP.

In order to administer this program. DEP is given rulemaking authority. In considering who to award the grants to, the DEP must consider, but is not limited to the following:

- Degree the project stimulates in-state capital investment and economic development
- Extent that the proposed project has been demonstrated to be technologically feasible
- Degree the project incorporates an innovative new technology or innovative application of an existing technology

[1] The bill provides that the definition of "renewable energy" is the definition in s. 366.91, F.S.

- Degree the project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential
- Degree the project demonstrates efficient use of energy and material resources
- Degree the project fosters overall understanding and appreciation of renewable energy technologies
- Ability of matching funds from the applicant
- Other in-kind contributions applied to the project
- Ability to administer a complete program
- Project duration and timeline for expenditures
- Geographic area in which the project is to be conducted in relation to other projects
- Degree of public visibility and interaction

Energy Efficient Appliance Rebate Program

The bill creates the energy efficient appliance rebate program to provide financial incentives for the purchase of Energy Star qualified appliances. In order to receive a rebate, a Florida resident must purchase a qualified appliance from a retail store between July 1, 2006 and June 30, 2010. The rebate application must be made within 90 days after purchasing the appliance, and is limited to one per type of appliance per year.

DEP is required to adopt rules designating rebate amounts and administer their issuance, and these rules may include separate incentives for low-income families.

The total dollar amount of the rebates is subject to the total amount appropriated in any fiscal year. However, if there are insufficient funds to pay all requests for rebates in one fiscal year, any outstanding requests may be processed in the following fiscal years. On a regular basis, DEP is to determine and publish the amount of rebate funds remaining.

Solar Energy System Rebate Program

The FEO offers a $500 financial incentive for the installation of a solar water heater in new home construction. Through the Energy Policy Act of 2005, the Federal government provides a 30 percent tax credit, up to $2,000, for qualified solar system expenditures. Additionally, there is a federal business tax credit of 30 percent for business that purchase solar thermal and solar photovoltaic systems during 2006 and 2007.

The bill creates the Solar Energy System Rebate Program to provide rebates for the purchase of solar energy systems. In order to be eligible a rebate, one must purchase a two kilowatt or larger solar photovoltaic system or a solar energy system that provides at least 50 percent of the building's hot water consumption for a solar thermal system. In order to receive a rebate, the system must be installed by a certified solar contractor between July 1, 2006 and June 30, 2010. DEP must adopt rules to designate rebate amounts and administer their issuance. The rebate application must be made within 90 days after purchasing an eligible system, and is limited to two per person.

The total dollar amount of the rebates is subject to the total amount appropriated in any fiscal year. However, if there are insufficient funds to pay all requests for rebates in one fiscal year, any outstanding requests may be processed in the following fiscal years. On a regular basis, DEP is to determine and publish the amount of rebate funds remaining.

<u>Florida Energy Council (Section 8)</u>

The bill creates the Florida Energy Council, within DEP, to provide advice and counsel on energy policy to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The council's membership is to be comprised of utility providers, researchers, fuel suppliers, technology

manufacturers, environmental interests, and others. The council will consist of the following eight members:

- The Secretary of DEP who serves as the council's chair
- The Chair of PSC who serves as the council's vice chair
- 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

All initial appointments must be made by September 1, 2006. The appointments made by the Governor, President of the Senate, and Speaker of the House of Representatives are for a term of two years, with members serving until their successors are appointed. Any vacancies on the council are to be filled in the manner of the original appointment and are for the remainder of the vacated term. While the members serve without compensation, they are entitled to travel reimbursement and per diem expenses related to their council duties and responsibilities. The council is to be staffed by DEP, who is responsible for electronically recording the meetings and preserving those electronic recordings.

DEP is given the authority to adopt rules pertaining to the Florida Energy Council.

Tax Incentives and Rebates (Sections 9 through 13)

For hydrogen fuel cells used in a business, the Federal government offers a tax credit of 30 percent of the expenditure, up to $500, per 500 watt capacity. In order to receive the tax credit, the business must use fuel cells with a capacity of 500 watts or greater and a generation efficiency of 30 percent or greater

For biofuels, the Federal government provides several tax incentives. First, it provides an excise tax exemption of 51 cents per gallon for ethanol blended into gasoline. This tax exemption goes to the petroleum blender. For biodiesel and biodiesel blends, there is also an excise tax credit of one cent per percentage point of biodiesel blended with petroleum diesel. There is also a half-cent per percentage point tax credit for biodiesel made from sources such as recycled cooking oil. Finally, the Energy Policy Act of 2005, created a 30 percent tax credit for installing clean-fuel vehicle refueling property.[2]
.
One of the recommendations in Florida's Energy Plan is to provide sales and corporate tax incentives for the manufacture, purchase, and use of fuel cells for supplemental and back-up power.

Sales Tax Exemption

The bill creates a sales tax exemption for equipment, machinery, and other materials used for renewable energy technologies in order to stimulate the development of hydrogen technologies and biofuels in the state. At this time, only four hydrogen fueling stations are planned for installation, and all of those facilities are at least partially funded by the DEP. At this time, Florida does not have any fuel ethanol production facilities or retail outlets selling ethanol blends to the public.. Florida also has a limited availability of biodiesel.. The tax exemption is designed to enhance the production, distribution and retail mechanisms supporting biofuels in order to their use while reducing the consumption of fossil fuels.

The sales tax exemption is available through a refund of previously paid. Pursuant to the bill's provisions, the following items are excluded from sales tax:

- Hydrogen powered vehicles, materials incorporated into hydrogen powered vehicles, and hydrogen fueling stations, up to $2 million each fiscal year.

[2] Clean fuel includes blends containing 20 percent or more biodiesel as well as ethanol and hydrogen.

- Commercial stationary hydrogen fuel cells,[3] up to $1 million each fiscal year.
- Materials used in the distribution of biodiesel[4] (B10-B100) and ethanol[5] (E10-E85), including fueling infrastructure, transportation, and storage, up to $1 each fiscal year.

In order to receive the refund, a purchaser must file an application with DEP containing information such as the ones name and address, a description of the purchase for which the refund is sought, a proof of purchase, and a sworn statement attesting to the accuracy of the information provided.

Once an application has been received, DEP has 30 days to review it and notify the applicant of any deficiencies. Within 60 days of receiving a complete application, DEP must issue either a written certification that the applicant is eligible for the refund or deny the refund, and provide. the Department of Revenue (DOR) a copy of each certification it issues.

After receiving certification, the applicant has six months to forward to DOR a certified copy of the application and all required documents. Any refund of the sales tax must be made within 30 days of DOR' s approval of the refund. In addition, the generally applicable sales tax refund provisions do not apply to a refund application pursuant to this section.

The DOR is required to adopt rules governing the manner and form of the application and may establish guidelines as to the requirements for showing that one qualifies for an exemption. It is DEP's responsibility to ensure that the exemptions do not exceed the provided limits. The DEP is required to regularly determine and publish the amount of sales tax funds remaining in each fiscal year.

This exemption is repealed on July 1, 2010.

Renewable Energy Technologies Investment Tax Credit

The bill creates the renewable energy technologies investment tax credit, where for tax years beginning on or after January 1, 2007, a credit against corporate income tax is granted in the amount equal to the eligible costs. The costs eligible for the credit are costs incurred between July 1, 2006 and June 30, 2010, including, but not limited to the costs of constructing, installing, and equipping various renewable energy technologies. "Eligible Costs" are defined as:

- Seventy-five percent of all capital costs, operational and maintenance costs, and research and development costs, up to $3 million per fiscal year, in connection with an investment in hydrogen powered vehicles and hydrogen vehicle fueling stations.
- Seventy-five percent of all capital costs, operational and maintenance costs, and research and development costs, up to a limit of $1.5 million in connection with an investment in commercial stationary hydrogen fuel.
- Seventy-five percent of all capital costs, operational and maintenance costs, and research and development costs, up to a limit of $6.5 million per fiscal year, in connection with an investment in the production and distribution of biodiesel (B10-B100) and ethanol (E10-E85).

This tax credit may be used between January 1, 2007, and December 31, 2013. If a corporation does not fully use the credit in one tax year, the unused amount may be carried forward through December 31, 2012. A taxpayer filing a consolidated tax return may be allowed to take the credit on a consolidated basis up to the amount of tax imposed upon the consolidated group. Eligible costs for

[3] Hydrogen Fuel Cells are equipment using hydrogen or hydrogen rich fuel in an electrochemical process to generate energy, electricity or transfer heat.

[4] Biodiesel is a fuel derived from vegetable oils or animal fats meeting certain requirements. It may refer to a blend of biodiesel fuel and petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

[5] Ethanol is a high octane, liquid fuel produced by the fermentation of plant sugars. Ethanol refers to a blend of ethanol fuel with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend.

which a credit is claimed and deducted or otherwise reduces federal taxable income is required to be added back in the calculation of adjusted federal income.

If a corporation wishes to obtain this tax credit it must submit an application to DEP, which must including a complete description of eligible costs and a description of the total amount of the credit sought. DEP will determine the applicant's eligibility and certify its determination to both the applicant and DOR. In order to use the tax credit, the corporation must attach DEP's certification to the tax return on which the credit claimed. DOR is authorized to adopt rules, guidelines, and materials for the application process.

The bill gives DOR the authority to perform the financial and technical audits and investigations that to verify the eligible costs included in the tax credit return and to ensure compliance. Upon request from DOR, DEP is required to provide technical assistance on any technical audits or examinations. Previously claimed and received tax credits may be forfeited if DOR determines that a taxpayer received tax credits to which the taxpayer is not entitled. The taxpayer is responsible for returning the forfeited tax credits to DOR to be paid into the General Revenue Fund.

If it is discovered that an applicant submitted any false information on the application for the tax credit or any supporting documentation, DEP is authorized to revoke or modify any written decision granting eligibility for tax credits. Upon the revocation or modification of an order granting a tax credit, DEP is required to immediately notify DOR.

If there is a change to the tax credit it is claiming, the taxpayer must notify DOR. Additionally, the taxpayer shall file with DOR an amended return or other report is required to pay any required tax and interest within 60 days of being notified that its tax credits have been revoked or modified. If the order is contested, the taxpayer is required to file this information within 60 days after a final order is issued following proceedings.

After the taxpayer receives formal notification from DEP that the approved tax credits have been revoked or modified, the DOR has three years to issue a notice of deficiency. However, if a taxpayer fails to notify DOR of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

The DOR is authorized to adopt rules relating to the forms required to claim the tax credit, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer the credit.

Other Changes

In order to provide for the new sales tax exemption and income tax credit, other changes were made to tax sections of the statutes. One change allows DOR to share certain information with DEP for enforcement purposes. A second change provides the order of application of the renewable energy technologies investment tax credit. A final change adds the renewable energy technologies investment tax credit to the definition of "adjusted federal income."

Public Service Commission (Sections 14 through 17)

The Florida PSC is charged with ensuring the development of reliable electric system resources in a manner that is economically competitive and protective of consumers. Chapter 366, F. S., provides the PSC with the authority and mechanisms for ensuring the provision of adequate, reliable, and reasonable cost electricity to consumers. The bill contains provisions concerning the authority of the PSC.

Ten-Year Site Plan

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. In accordance with the statute, 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 of concern. Upon completion, the PSC forwards its *Ten-Year Site Plan* review, to DEP for use in subsequent power plant siting proceedings.

To fulfill the requirements of Section 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 their 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 it 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 requires the PSC to consider each 10-year site plan's effect on fuel diversity within the state. While the PSC currently looks at fuel issues, this change provides that fuel issues must be considered.

Jurisdiction of the Public Service Commission

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.[6]

Powers of the Public Service Commission

Section 366.05, F.S., provides for the power of the PSC. Section 366.05(1), F.S., gives the PSC the power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements and service rules and regulations for public utilities to require repairs, improvements, additions, and extensions to plant and equipment of public utilities reasonably necessary to promote the convenience and welfare of the public and secure adequate service. 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 the power over the state's electrical grid, and gives the PSC the power, following certain proceeding, to require the installation or repair of necessary facilities if inadequacies exist. While the existing authority permits the PSC to require repairs to the distribution systems of individual utilities, this authority has never been tested. The bill amends this section to give the PSC the authority to require utilities to build additional facilities or repair existing facilities if the PSC

[6] The PSC currently has open Docket No. 060173-EU, which proposes an amendment to the PSC's rules regarding overhead electric facilities to allow more stringent construction standards than required by the NESC.

determines that the electric grid is inadequate with respect to "fuel diversity or fuel supply reliability." Further, "distribution" is specifically identified as facilities that can be ordered by the PSC to be upgraded. This new language would strengthen the PSC's authority if such actions were challenged.

Public Service Commission Study

The bill requires the PSC to conduct a study on Florida's electric transmission grid. The study shall look at electric system reliability to examine the efficiency and reliability of power transfer and emergency contingency conditions. Additionally, the study must examine the subterranean placement of distribution lines and the hardening of infrastructure to address issues from the 2004 and 2005 hurricane seasons. The report of the results must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 10, 2007.

According to the PSC, the January 10, 2007 deadline to perform all three components of this study could be difficult to achieve. An effective date of July 1, 2006, gives the PSC six months to perform the required study. It has been the PSC's experience with respect to undergrounding lines, the complexity of the issues, and the need for public input frequently requires a longer time frame. The PSC is currently working with the Florida Reliability Coordinating Council (FRCC) on a new transmission planning process and this involvement may enhance the proposed study on Florida's electric transmission grid. The purpose of the new FRCC transmission planning process is to increase coordination among the FRCC members in an effort to improve the overall transmission planning process and to provide a better transmission expansion plan from a statewide perspective. The utilities will file their first reports utilizing this new planning process in April 2006. Additionally, the PSC has opened a docket proposing rules governing the placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground, to address the effects of extreme weather events.[7]

Florida Electrical Power Plant Siting Act (Sections 18 through 40)

Created by the Legislature in 1973, the Power Plant Siting Act (PPSA), provides for certification (licensure) of steam electric or solar power plants which are 75 megawatts (MW) or larger in size. The plants can be gas-fired combined-cycle units, nuclear units or those fueled by more conventional means. Combustion turbines can be permitted in conjunction with a certified facility, or as an addition via the modification process, but in and of themselves do not trigger the certification process.

Certification may include a power plant's directly associated facilities, which are necessary for the construction and operation of the power plant, such as a natural gas pipeline, rail lines, roadways, and electrical transmission lines. For linear features, the applicant can propose certification of a corridor, within which a right-of-way will be located. These corridors can be up to a mile in width, whereas the rights-of-way are typically more on the order of 100-200 feet in width, depending on the facility type.

Certification is issued by the Siting Board (Governor & Cabinet). For the PPSA, DEP is the lead agency for coordination of the siting process, and has jurisdiction for many of the activities which the certification is in lieu of.

The PPSA allows electric utilities to file applications for:

- A site and several units to be constructed immediately.
- A site at which one or more units will be constructed immediately, and the others will be constructed some time in the future ("ultimate site capacity").
- Supplemental units to be added to a site which has been certified for "ultimate site capacity."

[7] Docket No. 060172-EU

- Certification of an existing power plant site at which there will be an increase in generating capacity, or at which the applicant wishes to roll all existing individual permits into a unified certification.

Since certification is a life-of-the facility permit, and many power plants may be in operation for 40 or more years, the considerations involved in the application review are extensive, and the applications themselves may be many volumes in size.

Certification Process

In order to initiate the review process, the application must be submitted along with the appropriate fee. The Office of General Counsel's siting support attorney will request the assignment of an Administrative Law Judge (ALJ) by the Division of Administrative Hearings (DOAH); this immediately shifts the review into a formal legal proceeding.

As a part of the certification application, permit applications for federally delegated or approved permit programs are submitted. The review of these permits is interwoven with the certification process, but due to federal requirements, may not operate under the same time schedules as certification. Also, the final approval body for the permits is not the Siting Board, but DEP. Where possible, these two processes overlap, and steps are combined.

Once the application is filed, the SCO then determines whether or not the application is "complete" --- that all the appropriate portions are there, but not that the information is adequate for reviewers to analyze the impacts of the proposed project. This determination must occur within 15 days of application filing. If the application is not complete, the applicant may withdraw it or submit additional material, but the review clock does not commence until the application is determined complete. The majority of applications submitted over the years have been complete as filed. Distribution of the application by the applicant to the other agencies must occur no later than 7 days after the determination of completeness. Also, copies of the application will have been distributed by the applicant to the main library in the vicinity of the site.

Within 15 days of the determination that the application is complete, notice must be published about the application. A newspaper advertisement is required, which must be at least 1/2 page in size.

Once the application has been determined complete, the affected agencies and DEP's Power Plant Siting Review Committee assess whether the application is "sufficient" --- that the information is adequate for reviewers to analyze the impacts of the proposed project. This assessment is forwarded to the SCO by no later than 30 days after the application has been determined to be complete, for compilation into an overall determination, which must be submitted to the applicant by no later than 45 days after the application has been determined to be complete (Day 67). The majority of applications submitted over the years have not been sufficient as filed. The applicant is afforded an opportunity to (a) rectify insufficiencies, but if the application is not sufficient within 40 days of the sufficiency determination, then the clock reverts back to Day 67; or, (b) challenge the determination and have the issue resolved by the ALJ.

One difficulty with the sufficiency clock under provision (a) above is that, if the applicant submits its information on the 39th day after the sufficiency determination, this is process Day 106. The clock does not stop while the next iteration of sufficiency review is ongoing. If, at the end of the 30 days allowed for this, the application is determined sufficient, the processing clock is at Day 136. This may encroach on the time available for the agencies for report preparation.

Regardless of the status of sufficiency, the agencies (including DEP) are required to file a "Preliminary Statement of Issues" by no later than 60 days after distribution of a complete application, or about Day 82 in the process. This statement is on the order of a "fatal flaw" analysis, or to highlight various

problems with the project as proposed which have been noted early in the review. A more detailed assessment will occur in the required agency reports.

The PPSA requires that a Land Use and Zoning hearing by an ALJ be conducted to verify that the site is consistent with and in compliance with local government plans and zoning ordinances. This hearing must occur no later than 90 days after receipt of a complete application. The ALJ's findings will then be sent to the Siting Board for final ratification no later than 75 days after the administrative hearing (Process Day 165). If the site is not in compliance, the applicant is allowed the opportunity to correct the problem, but if corrections cannot be arranged through a variety of legal recourses, further actions by the agencies are halted.

Within 150 days after the distribution of a complete application (Day 172), the designated agencies are required to file Agency Reports on matters within their jurisdiction which will be affected by the project.

Among the other agencies, the PSC must submit a report on the project, which must contain their Determination of Need. Since the PPSA states that "an affirmative finding of need is condition precedent to the conduct of the certification", if the report/determination is negative, the remainder of the process essentially becomes moot.

DEP has additional report requirements under the PPSA, which must be available within 210 days after the filing of a complete application. Such items include topics not normally within the department's jurisdiction, and so the SCO may contract for special studies, or may rely on the expertise of the other affected agencies. Day 210 is also when information must be available on whether the proposed project will meet federally delegated or approved permit program requirements. However, because of federal process needs and clocks, this is not always possible, so draft positions are used when necessary.

The SCO, on behalf of DEP, will then take the various reports and recommendations, and prepare an analysis. This must be done no later than 240 days after the complete application is filed. This analysis must attempt to interweave all the varying viewpoints and come up with an overall picture of the issues. A recommendation, based to the degree possible on all the recommendations, will be included, along with (a) if approval is recommended, appropriate conditions of certification that combine duplicative conditions, and the terms for any variances, if recommended; (b) if denial is recommended, the reasons therefore and the corrective measures suggested.

A "Certification Hearing", which is conducted by an ALJ, must be held on every application, regardless of whether any matters remain in dispute. The hearing must be conducted no later than 300 days after a complete application is filed. A notice of this hearing will be published no later than 45 days before the hearing, including a large newspaper advertisement. . Federal permit program disputes may be combined, where possible, with this hearing, and so in actuality, the federal time schedules may control. Testimony and evidence will be presented, and agency staff may be called upon to be witnesses. The hearing will be held in the vicinity of the site. The hearings may last from a few hours to several weeks. The public may testify at this hearing, although oftentimes a special time is set aside for this purpose, typically in the evening.

Within 60 days after receipt of the transcript of the Certification Hearing, the ALJ must issue a Recommended Order, which contains finding of facts and conclusions of law about the matters raised at the hearing and in the application. The agencies may file exceptions to this recommended order if they feel something has been overlooked or incorrectly interpreted. Upon occasion, agency staff is asked to assist in reviewing the order and preparing the exceptions.

The Recommended Order, Exceptions, and other pertinent data are then formulated into an Agenda package to be sent to the Governor and Cabinet (Siting Board). Much of this work is done by DEP's Office of General Counsel, the SCO, as well as the DEP Cabinet Affairs Office. The Siting Board must

hold a hearing and act upon the application within 60 days of receipt of the ALJ's Recommended Order.

A Final Order is issued by the Board, in which the application may be approved, or denied. If denied, an explanation must be given as to what could be done to make the project approvable. If approved, the Order will be accompanied by Conditions of Certification.

Once the Final Order is signed, it must be sent to the Clerk of the Siting Board for official entry. The Clerk of the Department has been designated the Clerk for PPSA proceedings. The certification will not become effective until "clerked-in".

One of the recommendations in Florida's Energy Plan is to streamline the Florida Electrical Power Plant Siting Act (PPSA) Included in that recommendation was to:

- Simplify and streamline completeness and sufficiency procedures
- Reduce mandatory hearings
- Revise time limits
- Clarify the statutes defining the authority of the Siting Board to review local government determinations on land use consistency to ensure the successful development of projects critical to the State's welfare,

In order to address the recommendations of Florida's Energy Plan, the bill makes numberous changes to the PPSA.

Definitions

The bill amends s. 403.503, F.S., in order to amend, add, and delete the following definitions:

- "**Application**" is amended to provide that it includes the initial document filing, amendments, and responses to requests from DEP for additional data and information.

- "**Completeness**" is amended to incorporate the concept of sufficiency.

- "**Electrical power plant**" is amended to provide that it includes associated facilities such as fuel unloading facilities, pipelines necessary for transporting fuel for the operation of the facility or other fuel transporting facilities, water or wastewater transport pipelines, construction, maintenance and access roads, railway lines necessary for transport of construction equipment or fuel for the operation of the facility.

- "**Sufficiency**" is deleted since this part of the process will be subsumed under the completeness review.

- "**Licensee**" is defined as an applicant that has obtained a certification order for the subject project.

- "**Ultimate Site Capacity**" is defined as the maximum generation capacity for a site as certified by the board.

Department of Environmental Protection-Powers and Duties

In its role of coordinating the siting process, DEP has the following powers and duties:

- Adopt procedural rules to administer this act.

- Prescribe the form and content of public notices, supporting documentation, and any required studies for certification application.
- Receive applications for certification and initially determine their completeness and sufficiency.
- Make or contract for studies of certification applications.
- Administer the processing of applications for certification.
- Require fees as allowed by the act.
- Conduct studies and prepare a project analysis.
- Prescribe a means for monitoring the construction and operation of the electrical power plants to assure continued compliance with terms of the certification.

The bill gives DEP's the authority to issue final orders when there is no certification hearing, resulting in a significant saving in overall licensing time. DEP also receives the authority to issue emergency orders, which will expedite issuance of such orders when emergency conditions require a short turn-around time.

In recognizing existing practice and ensure efficient application processing, the DEP receives the statutory authority to act as clerk for the Siting Board. As a clarification, DEP also receives the power to administer and manages the terms of the certification.

Application for Permits

The bill amends s. 403.5055, F.S., relating to applications for permits pursuant to s. 403.0885, F.S[8]. The bill adds that only if the decision regarding any proposed NPDES permit is available at the time the Project Analysis is issued, the NPDES decision must be included in the analysis. It also provides that any hearing on an NPDES permit shall be conducted in conjunction with the certification hearing. This section also deletes language duplicative of other statutory provisions relating to NPDES permits.

Applicability and Certification

The applicability provisions in s. 403.506, F.S., are amended to clarify how an expansion of in steam generator capacity is measured. In this instance, it is measured by an increase in the normal generator nameplate rating, which is the initial capacity of a piece of electrical equipment as stated on a nameplate attached to the equipment.

Distribution of the Application; Schedules

The distribution of the application and application schedule provisions of s.. 403.5064, F.S., are amended. The date the process begins is changed to the date the application is filed with the department and distributed to the agencies, resulting in a time savings. 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 be good cause of altering time limits.

This section provides that the ALJ will issue a schedule for processing the application based on a schedule recommended by DEP. The bill also clarifies notice provisions to reference that the notice of application filing will be done pursuant to the newly created notice section. Additionally, it provides for electronic filing of the application, which can save time and money.

Appointment of Administrative Law Judge; Powers and Duties

The bill amends s. 403.5065, F.S., relating to the powers, duties and appointment of the ALJ. This section contains technical correction relocating existing ALJ powers and duties language to this section. This change is related to the proposed provisions designed to streamline the section on certification hearings. This section also deletes reference to completeness to conform to changes made elsewhere in the PPSA.

[8]Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) Program

Determination of Completeness

The bill amends determination of completeness provisions contained in s. 403.5066, F.S. The bill makes numerous technical corrections to consolidate the old sufficiency review with the old completeness review, streamlining steps and expediting the review process. Under the new provisions, agencies will file comments on the application's completeness 30 days after the application is filed and DEP will issue its initial completeness determination 10 days later (Day 40). If the DEP initially determines that the application is incomplete, the applicant has 15 days to file additional information to make the application complete. DEP then has an additional 22 days to issue a second determination on the completeness of the application. Another completeness review ensues with shorter timeframes. If the additional information is determined to render the application complete, the time clocks are not stopped. However, if the application is determined incomplete, the time clocks stop at that point.

Informational Public Meeting

The bill creates s. 403.50663, F.S., providing that local governments, or regional planning councils if local governments do not do so, may hold informational public meetings to obtain public comments about the proposed power plant, including its associated facilities. This meeting(s) expands the opportunity for public interaction, with the applicant and DEP being required to attend the meeting(s). The number of meetings is limited to one per county and must be held within 70 days of the filing of an application. The local government/regional planning council must provide notice of the meeting, but such notice is reimbursable from the application fee. This section also provides that lack of an informational public meeting is not grounds for alteration of any time limitation.

Land Use Consistency Determination

The bill creates s. 403.50665, F.S., to revises a mechanism for review of the proposed power plant's consistency with local zoning ordinances and land use codes. Within 80 days of the application being filed, each local government is required to file a determination of the power plant's consistency with land use and zoning ordinances in effect when the application was filed. Inadequate information can be used a grounds for finding on inconsistency.

Any substantially affected persons may dispute the local government's determination, in which case the ALJ will conduct a hearing. If no objections are filed to the land use determination, no hearing is necessary, and the review process is expedited. Following the determination, the local government may then not change the ordinances or plans so as to foreclose construction and operation of the project.

Determination of Sufficiency

The bill repeals s. 403.5067, F.S., relating to the determination of sufficiency. This determination is now included in the review for completeness.

Preliminary Statement of Issues, Reports, Project Analyses, and Studies

The bill amends s. 403.507, F.S., relating 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 (Day 80). It now requires agency reports to be filed to 100 days after the application has been determined complete, expediting the review process by 32 days.

The bill also clarifies that the Department of Community Affairs (DCA) shall include issues related to emergency management in their report, and that the water management district's report shall include

issues related to water resources, impact on regional water supply planning, and impact on district-owned lands and works.

This section also adds the Department of Transportation (DOT) to the list of agencies that must file reports. Currently, DOT is typically involved in the process, but its formal addition ties in with DOT's addition to the list of parties to the proceeding, and to the list of agencies eligible for reimbursement from the application fee.

The bill relocates provisions related to the PSC filing it report. 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 needed is amended, since the hearing may now be canceled.

The bill amends the date of the issuance of DEP's project analysis from 240 days after the filing of the application to 130 days after the application is filed. DEP will now issue its report 30 days after receipt of agency reports, expediting the review process by 70 days. This section also adds requirements to the contents of the analysis.

In addition to other provisions, this section relocates provisions requiring agency reports to include notification regarding whether variances, exemptions, or exceptions are necessary in order for the application to be certified, and deletes several provisions related to a federally delegated/approved permit program, in order to make the act internally consistent regarding the handling of such permits.

Land Use and Certification Hearings

The bill amends s. 403.508, F.S., relating to land use and certification hearings. First, there are supportive changes to the land use consistency determination provisions. This section provides a process for circumstances when a petition for a land-use hearing. It provides that even if the application is not complete, this hearing, if necessary, will be held at the time provided. It also provides that if the application information on land use plans and zoning ordinances was inadequate, this can be used as grounds for a finding that the project will be inconsistent. This section also provides for notice of the land use hearing.

If the Siting Board determines that that the project is consistent with existing land use plans and zoning ordinances, the bill prohibits the local government from making changes to these plans and ordinances that would prevent subsequent construction and operation of the project. If the siting board determines that that the project is not consistent, the siting board may authorize variances or rezoning of the site for the project. If the siting board does not authorize variances or rezoning, no further action can be taken on the application until the applicant obtains the appropriate changes.

The bill changes the date for the holding of the certification hearing from 300 days after application filing, to 265 days after the application is filed. The DEP analysis will have been issued 95 days earlier. According to DEP, this length of time is needed to account for the possibility that the application was not complete as filed but was rendered complete before the deadline for the tolling of the time clock, and also to provide 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. 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. This new option would shorten the process by as much as four and a half months, and would save money for the applicant and the agencies.

The bill also makes numerous technical changes to this section, including the relocation of provisions to group that 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.

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.

Effect of Certification

The bill amends s. 403.511, F.S., relating to the effect of certification. The bill provides that no term or condition of site certification is to be interpreted to supersede or control provisions of a final operation permit for a major source of air pollution. Another section is added to recognize that the certification acts as the state’s determination of coastal zone consistency.

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.

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, as opposed to after certification. This section also requires DEP to determine within 30 days of receiving the amendment whether or not the proposed change requires the conditions of certification to be modified.. These changes codify and clarify existing DEP rules, and provide regulatory certainty for licensees.

Public Notice; Costs of Proceeding

The bill amends s. 403.5115 F.S., relating to public notice. This section conforms requirements to other provisions, updates vehicles for notification to allow for notice as specified in ch. 120, F.S., and makes clarifications. This section also adds new public notices for the land use determination (15 days after it is filed), and for the cancellation of the certification hearing (seven days before the hearing was originally scheduled).

Review

The bill amends the judicial review provisions in s. 403.513, F.S. to conform its requirements to other provisions regarding the separate handling of federally delegated or approved permits.

Modification of Certification

Modifications of certification are frequently necessary, in part because of the life-of-the-facility license 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. Thus, 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.

Modifications can be approved by the Siting Board, or the may delegate that authority to the Secretary of DEP --- which is frequently the case. If a dispute arises, the decision-making authority reverts to the Siting Board.

The process for modifications normally starts with informal discussions about what the licensee is contemplating. Often a decision can be reached whether a formal modification is needed, or whether an amendment will do. If a formal modification is needed, the licensee must file a request with DEP and pay a fee, beginning a legal proceeding, requiring oversight and assistance from OGC.

The request will be circulated to the appropriate staff for a completeness/sufficiency review. Copies will also be sent to the parties to the certification proceeding. If DEP believes the change will significantly increase the impacts to the environment or the public, newspaper notice of the proposed modification may be published.. If objections are received from either staff or the parties, the licensee will be asked for more information, or to discuss possible revisions. If no objections are received regarding sufficiency, or, subsequently, on the proposal, then the SCO and OGC will prepare a proposed Final Order and circulate it to staff and the parties. Notice of the proposed modification will be published.

Staff and parties will have 45 days after issuance of the notice to the proposed final order to object to it; other substantially affected persons will have 30 days. If no objections have been submitted, and if DEP has been delegated the authority to approve the modification, then the final order will be signed, sent to the parties, and to the clerk of the DEP/SIting Board. After that, the conditions of certification will be updated to reflect the changes.

If objections have been submitted, the licensee can attempt to resolve the problem, or it can file a petition for an administrative hearing. DEP also has the authority to request a hearing. Such petitions are to be "disposed of in the same manner as an application" that is, undergo the various steps outlined for a Certification review; however it is done in a time period commensurate with the significance/scope of the modification requested. Since a completeness and sufficiency review would have already been conducted, it is likely that this step would be forgone. Unless the site boundary is expanded, a land use hearing would probably be unnecessary. However, staff would need to submit information to the SCO for a preliminary statement of issues (unless some other step could be determined to suffice for this), and information for the agency report. Further justification might be needed in the report on the proposed findings and the recommended new or revised conditions of certification. A written analysis would be issued, an administrative hearing conducted, and eventually the matter would be heard by 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 former unclear provisions related to modification of certifications. Additionally, it conforms requirements to other provisions regarding federally delegated or approved permits.

Supplemental Applications for Sites Certified for Ultimate Site Capacity

The bill amends s. 403.517, F.S., relating to supplemental applications for sites certified for ultimate site capacity to simplify and clarify language regarding procedural steps for applications at facilities that

have previously been certified, but are expanding. Additionally, the definition of "ultimate site capacity" transferred to the definitions section.

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.

Fees; Disposition

The bill amends s. 403.518, F.S., relating to the disposition of fees. These changes 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 now receive an initial fee of 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. Additionally, a provision is added to allow agencies to seek reimbursement of their expenses if an application held in abeyance for more than one year.

Exclusive Forum for Determination of 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., allowing the PSC to take into account the need for fuel diversity and supply reliability when making a need determination. The PSC currently includes fuel issues in its need determination proceeding, but bill requires it to be addressed in the PSC's deliberations. 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.

<u>Effective Date (Section 41)</u>

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 Provides legislative findings and intent.

Section 2 Creates s. 377.801, F.S., providing a popular name.

Section 3 Creates s. 377.802, F.S., providing a purpose.

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

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

Section 6 Creates s. 377.805, F.S., creating the Energy Efficient Appliances Rebate Program.

Section 7 Creates s. 377.806, F.S., creating the Solar Energy Systems Rebate Program.

Section 8 Creates s. 377.900, F.S., creating the Florida Energy Council.

Section 9 Creates s. 212.08(7)(ccc), F.S., creating a sales tax exemption for renewable energy technologies.

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

Section 11 Amends s. 220.02(8), F.S., providing an order for the application of tax credits.

Section 12 Creates s. 220.192, F.S., creating the renewable energy technologies investment tax credit.

Section 13 Amends s. 220.13, F.S., relating to the definition of “adjusted federal income,” for purposes of the corporate income tax.

Section 14 Amends s. 186.801(2), F.S., relating to the ten-year site plan.

Section 15 Amends s. 366.04(6), F.S., relating to the jurisdiction of the Public Service Commission.

Section 16 Amends s. 366.05(1) and (8), F.S., related to powers of the Public Service Commission

Section 17 Requires the Public Service Commission to conduct a study.

Section 18 Amends s. 403.503, F.S., providing definitions for the Florida Electrical Power Plant Siting Act

Section 19 Amends s. 403.504, F.S., providing powers and duties of the Department of Environmental Protection.

Section 20 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 21 Amends s. 403.506, F.S., relating to applicability, thresholds, and certification.

Section 22 Amends s. 403.5064, F.S., relating to the distribution of the application and the application schedule.

Section 23 Amends s. 403.5065, F.S., relating to the appointment, powers, and duties of the administrative law judge.

Section 24 Amends s. 403.5066, F.S., relating to determination of completeness.

Section 25 Creates s. 403.50663, F.S., relating to informational public meetings.

Section 26 Creates s. 403.50665, F.S., relating to land use consistency determination.

Section 27 Repeals s. 403.5067, F.S., relating to determination of sufficiency.

Section 28 Amends s. 403.507, F.S., preliminary statement of issues, reports, project analyses, and studies.

Section 29 Amends s. 403.508, F.S., relating to land use and certification hearings.

Section 30 Amends s. 403.509, F.S, relating to the final disposition of the application.

Section 31 Amends s. 403.511, F.S., relating to the effect of certification.

Section 32 Creates s. 403.5112, F.S. relating to the filing of notice of certified corridor route.

Section 33 Creates s. 403.5113, F.S., relating to post certification amendments.

Section 34 Amends s. 403.5115, F.S., relating to public notice.

Section 35 Amends s. 403.513, F.S., relating to judicial review.

Section 36 Amends s. 403.516, F.S., relating to the modification of certification.

Section 37 Amends s. 403.517, F.S., relating to supplemental applications for sites certified for ultimate site capacity

Section 38 Amends s. 403.5175, F.S., relating to electrical power plant site certifications

Section 39 Amends s. 403.518, F.S., relating to the disposition of fees.

Section 40 Amends s, 403.519, F.S. relating to the determination of need.

Section 41 This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Conceptually, there could be a positive effect on state revenues due to the encouraged investment in renewable energy technologies and solar energy. However, there could be a decrease in gross tax receipts due to a reduced sale in electricity.

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 Energy Office staff time is paid for via a federal government grant from the United States Department of Energy and administering a grant program would be an allowable cost under the federal grant. However, the additional workload may necessitate additional staff being hired. The actual grant program will be funded out of general revenue. The current House of Representatives General Appropriations Act has a $5 million appropriation for a grant program for the 2006-2007 fiscal year.[9]

   The Energy Efficient Appliance and Solar Energy System Rebate Programs

[9] Specific Appropriation 1963.

The DEP will incur costs associated with administering these rebate programs. Based on information provide by DEP, it estimates the final cost to the state for the Energy Efficient Appliance Rebate Program to be approximately $2.5 million, and the cost of the Solar Energy System Rebate Program to be about $375,000.

Florida Energy Council

The DEP will incur administrative costs as staff to the council. The state will also have to absorb the cost of travel reimbursement for council members.

Sales Tax Exemption and Corporate Income Tax Credit

These provisions will necessitate the administering of the tax incentive program or DEP contracting with an outside organization to do so. The costs associated with these incentives are recurring in nature, though Energy Office staff time is covered via a federal government grant from the U.S. Dept. of Energy and administration of a tax incentive program for biofuels and hydrogen would be an allowable cost under the federal grant. However, the additional workload may necessitate the hiring of additional staff.

There will also be general revenue impact to the state as a result of the sales tax exemption and corporate income tax credit. The bill total limits for the sales tax exemption is $4 million per fiscal year. The bill limits the total amount of the tax credit to $11 million per fiscal year.

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 year, DOR expects to incur $4,834 in non-recurring expenses.

Public Service Commission

The PSC may see an increased workload as a result of the additional authorities given to it to monitor system reliability related to fuel diversity. The PSC will also incur costs related to the study it is required to conduct.

Power Plant Siting Act

As a result of potential hearing cancellations, the costs to conduct and participate those hearings should decrease. However, the shortened time frames will result in an increased workload over the same amount of time, and may require additional staff.

Other Costs

The DEP and DOR will incur expenses associated with rulemaking required by this bill. In addition, DEP and the PSC incur expenses associated with revising their current rules to conform to statutory changes.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Local governments would be eligible to receive grants under the Renewable Energy Technologies Grant Program. Added infrastructure and development could have a positive impact on a local government's revenues.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Renewable Energy Technologies Grant Program will provide grants to the private sector. Applicants for siting power plants will see a direct economic benefit from a streamlined permitting process, including the ability to begin construction at an earlier date.

D. FISCAL COMMENTS:

The bill does not contain a appropriation for the expenses of the Florida Energy Council.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority in the following instances:

a. The DEP may adopt rules to administer the Renewable Energy Technologies Grant Program
b. The DEP shall adopt rules to designate rebate amounts and administer the use issuance of Energy Efficient Appliance Rebates. These rules may include incentives for low-income families to purchase qualifying appliances.
c. The DEP shall adopt rules to designate rebate amounts and administer the issuance of Solar Energy Systems Rebates.
d. The DEP may adopt rules to implement provisions related to the Florida Energy Council
e. The 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.
f. The DEP is authorized to adopt rules, guidelines, and application materials for the application process for the Renewable Energy Technologies Investment Tax Credit
g. The 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.

The DEP may have to amend its power plant siting rules[10] to conform to change to the Florida Electric Power Plant Siting Act.

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

[10] These rules are contained in ss. 62.17.011 through 62.17.293, F.A.C.

Tax Issues

Sales Tax Exemption

For the sales and use tax exemptions DOR suggests that the terms “hydrogen powered vehicles”, “hydrogen fueling stations,” “commercial stationary fuel cells,” and “materials used in the distribution of biodiesel and ethanol” be defined for greater clarity.

DOR also recommends that this section be clarified to provide that the term “fiscal year” is the state fiscal year, and that it be clarified that the cap amounts in the statute be clarified that those are the amounts paid in tax.

There is a specific sales tax exemption on materials used in the distribution of biodiesel and ethanol, including fueling infrastructure, transportation, and storage. According to DOR, this language appears to be vague and overly broad in that many fuel handling systems handle more than one type of fuel. DOR recommends specifying that the exemption only applies to systems exclusively used for alternative fuels.

Investment Tax Credit

The bill creates the Renewable Energy Technologies Investment Tax Credit. Except for credit carryovers, this statute is repealed on July 1, 2010. The statute also provides DOR and DEP with the authority to audit and revoke wrongfully obtained credits. According to DOR, it usually audits a return one or two years after their return is filed, and that return is not filed until April or October of the following year. If this section is repealed on July 1, 2010, according to DOR, it will not have the authority to audit or revoke wrongfully obtained credits for most tax years in which such credits will be claimed.

The credit is set to expire on July 1, 2010. On line 515, the bill provides that the credit may be used for tax years beginning January 1, 2007 through December 31, 2013. Other portions of this section provide that the credit may be used for tax years beginning on January 1, 2007 and through December 31, 2010, not December 31, 2013.

Other Change

The DEP is recommending several changes to in order to clarify provisions contained in the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES