SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Communications and Public Utilities Committee

BILL:	CS/SB 888
INTRODUCER:	Communications & Public Utilities Committee, Senator Constantine and others
SUBJECT:	Energy
DATE:	March 28, 2006
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.			EP	
3.			TA	
4.				
5.				
6.				

I. Summary:

The bill:

- creates the Florida Energy Commission to develop recommendations for legislation on a state energy policy;
- transfers the energy office from the Department of Environmental Protection to the Florida Energy Commission;
- requires the Public Service Commission to direct a study of the electric transmission grid and report the results;
- provides financial incentives for renewable energy technologies, energy efficient appliances, solar energy, biodiesel and ethanol, and biomass;
- includes the effect of fuel diversity in considerations of the 10-year site plans;
- revises the safety standard for public utility transmission facilities;
- revises the Florida Electrical Power Siting Act to streamline and shorten time frames by: combining completeness and sufficiency; eliminating mandatory land use and certification hearings, and changing deadlines;
- exempts nuclear power plants from the requirement of a competitive bid for a power supply before beginning the certification and determination of need processes;
- directs the Public Service Commission to consider fuel diversity and reliability in determining the need for a proposed electric power plant;
- revises the Transmission Line Siting Act to streamline and shorten time frames by: combining completeness and sufficiency; eliminating mandatory land use and certification hearings, and changing deadlines; and
- requires the Department of Environmental Protection to report on the state's leadership by example in energy conservation and efficiency.

The bill substantially amends the following sections of the Florida Statutes: 212.08, 213.053, 220.02, 220.13, 186.801, 366.04, 366.05, 403.503, 403.504, 403.5055, 403.506, 403.5064, 403.5065, 403.5066, 403.507, 403.508, 403.509, 403.511, 403.5115, 403.513, 403.516, 403.517, 403.5175, 403.518, 403.519, 403.52, 403.521, 403.522, 403.523, 403.524, 403.525, 403.5251, 403.5252, 403.526, 403.527, 403.5271, 403.5272, 403.5275, 403.528, 403.529, 403.531, 403.5312, 403.5315, 403.5365, 403.537, 373.441, 403.061, 403.0876, and 403.809.

The bill creates the following sections of the Florida Statutes: 377.801, 377.802, 377.803, 377.804, 377.805, 377.806, 220.192, 403.50663, 403.50665, 403.5112, 403.5113, 403.5317, 403.5363, 570.954, and 220.192.

The bill repeals the following sections of the Florida Statutes: 403.5067, 403.5253 and 403.5369.

II. Present Situation:

The state energy program (commonly referred to as the Energy Office) is set forth in sections 377.701 and 377.703, F.S. Section 377.703, F.S., also contains the only current statement of a state energy policy which provides that it is the policy of the State of Florida to:

- Develop and promote the effective use of energy in the state and discourage all forms of energy waste.
- Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation.
- Include energy considerations in all planning.
- Utilize and manage effectively energy resources used within state agencies.
- Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs.
- Include the full participation of citizens in the development and implementation of energy programs.
- Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses.
- Promote energy education and the public dissemination of information on energy and its environmental, economic, and social impact.
- Encourage the research, development, demonstration, and application of alternative energy resources, particularly renewable energy resources.
- Consider, in its decisionmaking, the social, economic, and environmental impacts of energy-related activities, so that detrimental effects of these activities are understood and minimized.
- Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within Florida.

The Energy Office also coordinates fuel supply and requests for fuel from local governments, law enforcement, and healthcare facilities throughout the state during hurricanes.

The Energy Office is federally funded through annual grant from U.S. Department of Energy. It has 7 full-time staff members:

- a director,

- a manager,
- a manager for hydrogen programs,
- a manager for solar programs,
- a manager for conservation and biomass programs,
- a chief financial officer, and
- an administrative assistant.

The Energy Office's current budget is $7,231,843, including:

- 441,334 for salaries and benefits (grants and donations trust fund)
- 250,340 for other personal expenses (grants and donations trust fund)
- 277,760 for expenses (grants and donations trust fund)
- 3,500,000 for energy efficiency projects (grants and donations trust fund)
- 815,725 for hydrogen energy technology projects (general revenue fund)
- 3,095 for risk management insurance (grants and donations trust fund)
- 1,943,589 for US Department of Energy projects (grants and donations trust fund)

III. Effect of Proposed Changes:

Section 1 creates the Florida Energy Commission and locates it within the Office of Legislative Services for administrative purposes. The commission is to have 19 members, 9 voting members and 10 nonvoting members. The voting members are to be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, each of whom will appoint 3 members. The legislative appointments are to be made in consultation with the minority leaders. The voting members have 4-year terms; however, to establish staggered terms, for the initial appointments, each appointing official appoints one member with a 2-year term, one member with a 3-year term, and one member with a 4-year term.

A voting member must be an expert in energy, natural resource conservation, economics, engineering, finance, law, consumer protection, state energy policy, or another field substantially related to the duties and functions of the commission, and the commission membership must fairly represent these fields. Additionally, a voting member cannot have specified financial interests or employment relationships.

The nonvoting members consist of:

- The Chair of the Florida Public Service Commission;
- The Public Counsel;
- The Commissioner of Agriculture;
- The Secretary of the Department of Environmental Protection;
- The Secretary of the Department of Community Affairs;
- The Secretary of the Department of Transportation;
- The Secretary of Health;
- The director of the Office of Insurance Regulation;
- The Chair of the State Board of Education; and
- The Executive Director of the Florida Solar Energy Center.

The Governor selects the commission chair. Meetings are to be held around the state, at the call of the chair, but the commission must meet at least twice a year. Voting members serve without compensation, but are to be entitled to reimbursement for per diem and travel expenses as provided by s. 112.061, F.S. Nonvoting members serve at the expense of the entity they represent.

The commission may employ staff to assist in performance of its duties, including an executive director, an attorney, a communications person, and an executive assistant. Additionally, agencies whose heads serve as non-voting members must supply staff and resources as necessary to provide information needed by the commission. The commission may appoint focus groups to work on specific issues.

The commission is to develop recommendations for legislation to establish a state energy policy based on the guiding principles of reliability, efficiency, affordability, and diversity. The bill sets out lists of specific issues the commission is to consider relating to fossil fuels used to generate electricity, fuel diversity and alternative energy technology, demand side management and efficiency, transmission and distribution facilities, the relationship between energy and growth management, research, development, and deployment of new or alternative energy technologies, fossil fuels for motor vehicles, alternative fuels for motor vehicles, and research, development, and deployment of these alternative fuels.

The commission is required to report annually, no later than December 31 of each year, to the Governor, Cabinet, the President of the Senate, and the Speaker of the House of Representatives on its progress and recommendations, including draft legislation. The commission's initial report must: identify incentives for research, development, or deployment projects involving the goals and issues set forth herein; set forth recommendations on improvements to the electricity transmission and distribution system including recommended incentives to encourage utilities and local governments to work together in good faith on under ground utility issues; set forth the appropriate test for the Public Service Commission to use in determining which energy efficiency programs are cost effective and should be implemented, together with the rationale in selecting the test; and, set forth a plan of action, together with a timetable, for addressing the remaining issues.

The commission is to continually review the statewide energy policy and recommend any necessary changes or improvements to the Legislature.

Section 2 transfers the state energy program (known as the Energy Office) from the Department of Environmental Protection to the Florida Energy Commission. The transfer includes all statutory powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds associated with the program.

Section 3 requires the Public Service Commission to direct a study of the transmission grid reliability, including hardening of infrastructure, and report to the Governor, the Senate President, and the Speaker of the House by March 1, 2007.

Sections 4-10 create the Florida Renewable Energy Technologies and Energy Sufficiency Act to provide grants to promote renewable energy technologies, including the Renewable Energy

Technologies Grant Program, the Energy Efficient Appliances Rebate Program, and the Solar Energy Systems Rebate Program.

The Renewable Energy Technologies Grant Program is to provide matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies. The bill lists the types of entities that can receive the grants and the factors the Department of Environmental Protection (DEP) is to use in awarding the grants.

The Energy Efficient Appliances Rebate Program provides for rebates, to be administered by DEP, for the purchase of Energy Star qualified appliances.

The Solar Energy Systems Rebate Program provides for rebates, to be administered by DEP, for the purchase of a solar voltaic or solar thermal system.

Section 11 and 14 create tax incentives for alternative fuels.

Section 11 amends s. 212.08, F.S., to create an exemption from the state tax on sales, rental, or use of equipment, machinery, and other materials for hydrogen powered vehicles, commercial stationary hydrogen fuel cells, and materials used in the distribution of biodiesel and ethanol. The bill also establishes a procedure for claiming the exemptions and an automatic repeal of the exemption on July 1, 2010.

Section 14 creates s. 220.192, F.S., to create the renewable energy technologies investment tax credit to give a tax credit for “eligible costs” relating to biodiesel, ethanol, or hydrogen fuel cells. It also creates a procedure for claiming the tax credit. It provides for a repeal of the credit on July 1, 2010, except for carryover provisions.

Section 12 amends s. 213.053, F.S., to create confidentiality for information relating to the new tax exemption and credit.

Section 13 amends s. 220.02, F.S., the statement of legislative intent that credits against either the corporate income tax or the franchise tax be applied in the specified order, to add at the end of the list a reference to the new renewable energy technologies investment tax credit.

Section 15 amends s. 220.13, F.S., to add to the definition of “adjusted federal income” for corporate income tax purposes the renewable energy technologies investment tax credit.

Section 16 amends s. 186.801, F.S., to require that the PSC, in considering a 10-year power plant site plan, consider the effect of the plan on fuel diversity in the state.

Section 17 amends s. 366.04, F.S., to provide that the minimum safety standards that the PSC may adopt for transmission and distribution facilities is the current standard, the National Electrical Safety Code.

Section 18 amends s. 366.05, F.S., to authorize the PSC to adopt safety standards exceeding this code. It also authorizes the PSC to include in its review of the energy grid a consideration of any inadequacies in fuel diversity or fuel supply reliability.

Sections 19-41 amend the Power Plant Siting Act, ss. 403.501-403.518, F.S. The primary effect of these amendments is to streamline and shorten time frames by: combining completeness and sufficiency; eliminating mandatory land use and certification hearings, and changing deadlines. The bill also exempts nuclear power plants from the requirement of a competitive bid for a power supply before beginning the certification and determination of need processes.

Section 19 amends s. 403.503, F.S., the definitions section. The term "electrical power plant" is currently defined to include "associated facilities." The bill sets out examples of what is included in associated facilities, including 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, railway lines necessary for transport of construction equipment or fuel for the operation of the facility.

Section 20 amends s. 403.504, F.S., on the powers of DEP. Currently DEP has the power to adopt rules setting forth environmental precautions to be followed in relation to the location and operation of a power plant. The bill adds to this the construction of a power plant.

Section 21 amends s. 403.5055, F.S., on application for a permit under the federally approved state National Pollutant Discharge Elimination System (NPDES) Program, to provide that a hearing on such an application will be conducted in conjunction with the power plant certification hearing when possible.

Section 22 amends s. 403.506, F.S. This section currently provides that no expansion in steam generating capacity of an existing power plant can be done without obtaining certification under the act. The bill amends this to provide that to trigger the certification requirement, the expansion of steam generation capacity must be an expansion in the maximum normal generator nameplate rating, not an expansion in capacity due to increases in steam turbine efficiency.

Section 23 amends s. 403.5064, F.S. The bill establishes the formal date of filing a certification application and the beginning of the certification review process as the date on which the applicant submits copies of the application to DEP and other required agencies and submits the specified fee. The bill also provides that any amendment to the application that is made prior to certification is to be disposed of as part of the original certification hearing. Amendment of the application may be considered good cause for altering time limits. The bill changes the times for establishing a proposed schedule for the certification process. Currently the statute requires that DEP prepare a schedule within 7 days after completeness has been determined, which currently must happen within 15 days after filing of the application. The bill changes this to within 15 days after filing of the application. The bill requires the administrative law judge (ALJ) to issue an order establishing a schedule within 7 days after DEP files its proposed schedule.

Section 24 amends s. 403.5065, F.S., to provide that the ALJ is to have all powers and duties granted to ALJs by chapter 120 and the DEP rules.

Section 25 amends s. 403.5066, F.S., on determination of completeness to incorporate the current determination of sufficiency into the determination of completeness. Under the current statutes, "completeness" means that the application has addressed all applicable sections of the

prescribed application format, but does not mean that those sections are sufficient in comprehensiveness of data or in quality of information provided, and "sufficiency" means that the application is not only complete but that all sections are sufficient in the comprehensiveness of data or in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the required reports. The bill combines these determinations. The bill provides that within 30 days after the filing of an application, each affected agency must file with DEP a statement of the agency's recommendations as to the completeness of the application. Then, within 40 days of filing of the application (instead of the current 15 days) DEP must file a statement of its position on completeness, based upon consultation with all affected agencies. If DEP declares the application to be incomplete, the applicant has 15 days to file a withdrawal of the application, additional information to make the application complete, a statement contesting the determination of incompleteness, or a statement agreeing with the determination and requesting additional time to provide the necessary information. The statutory parties to a hearing on an issue of completeness include the applicant, DEP, and any agency having jurisdiction over the issue in dispute. Any substantially affected person wishing to become a party must file a motion no later than 10 days prior to the date of the hearing. If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to DEP, no later than 15 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 22 days after receipt of the additional information from the applicant, DEP must determine whether the additional information makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options listed above as often as is necessary to resolve the dispute.

Section 26 creates s. 403.50663, F.S., to authorize each local government or regional planning council, in the jurisdiction of which the power plant is proposed to be sited, to hold one informational public meeting in addition to the hearings specifically authorized on any matter associated with the electric power plant proceeding. Any informational public meetings must be held no later than 70 days after the application is filed. The purpose of an informational public meeting is for the local government or regional planning council to further inform the public about the proposed electric power plant or associated facilities, obtain comments from the public, and formulate its recommendation with respect to the proposed electric power plant. Informational public meetings are to be held solely at the option of each local government or regional planning council, however, the bill states that it is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the certification proceedings are encouraged to attend; however, no party other than the applicant and DEP is required to attend. A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 5 days prior to the meeting. The failure to hold an informational public meeting or the procedure used for the informational public meeting are not grounds for the alteration of any time limitation or grounds to deny or condition certification.

Section 27 creates s. 403.50665, F.S., to require that 80 days after the application is filed, each local government must file a determination with DEP and the applicant on the consistency of the site or any directly associated facilities within their jurisdiction with existing land use plans and zoning ordinances which were in effect on the date the application was filed. The applicant must

publish notice of the determination in a prescribed manner. The publication dates may be altered upon agreement between the applicant, the local government, and DEP. If any substantially affected person wishes to dispute the local government's determination, he or she must file a petition with the department within 15 days of the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) apply. 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 cannot thereafter change these land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 28 repeals s. 403.5067, F.S., which provides for a determination of sufficiency of the application, which is made a part of the determination of completeness in the bill.

Section 29 amends s. 403.507, F.S., to change the date on which each affected agency must submit a preliminary statement of issues to DEP from 60 days after distribution of the distribution of the complete application to 40 days after the application has been determined to be complete. The bill also changes the date for affected agencies to prepare reports and submit them to DEP and the applicant from within 150 days after distribution of the complete application to no later than 100 days after the determination of completeness. The bill deletes a requirement that the PSC file a report on the determination of need for the power plant at this time, instead requiring that report 150 days from the date the application is filed. It requires that the water management district’s report contain the impact on water resources, on regional water supply planning, and on district-owned lands and works. The bill deletes a requirement that each affected local government’s report address the consistency of the proposed power plant with adopted local comprehensive plans and land development regulations. It requires that the Department of Transportation report on the impact of proposed transmission lines or corridors on roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction. The bill also deletes a requirement that DEP prepare or contract for studies on the impact of the proposed plant on specified items. The bill revises the requirements for each report as to variances. Currently, each report must contain all information on variances, exemptions, and exceptions or other relief which may be required. The bill changes this to require that each report contain a notice of any nonprocedural requirements no specifically listed in the application from which a variance, exemption, or exception or other relief is necessary for the proposed power plant to be certified, and provides that failure to provide this notice is a waiver of such a requirement. The bill changes the date on which DEP’s project analysis must be filed from no later than 240 days after the complete application is filed to no later than 130 days after the application is determined complete.

Section 30 amends s. 403.508, F.S., on land use and certification hearings. Under the bill, a land use hearing would be held only if a petition for one has been filed after the newly created land use consistency determination. A land use hearing would now address the proposed power plant site or directly associated facility site, as applicable. (Under the bill, “associated facilities” include 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, railway lines necessary for transport of construction

equipment or fuel for the operation of the facility.) As to the certification hearing, it would be held no later than 250 days after the filing of the application, as opposed to the current 300 days after that date. The bill changes the time for the ALJ to file a recommended order with the siting board from within 60 days after the filing of the hearing transcript to within 45 days of that filing. The bill creates a process for the ALJ to relinquish jurisdiction of the certification to DEP. Under these provisions, no later than 25 days prior to the conduct of the certification hearing, either DEP or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to DEP if all parties to the proceeding stipulate that there are no disputed issues of fact to be raised at the certification hearing. The ALJ must issue an order granting or denying the request within 5 days. If the administrative law judge grants the request, DEP and the applicant must publish notices of the cancellation of the certification hearing. If the ALJ grants the request, DEP must prepare and issue a final order. Parties may submit proposed recommended orders to DEP no later than 10 days after the ALJ issues an order relinquishing jurisdiction.

Section 31 amends s. 403.509, F.S., on final disposition of the application. The bill provides that if the ALJ relinquishes jurisdiction, within 40 days thereafter the DEP Secretary must issue a written order granting or denying the application and stating the reasons for the decision. If the ALJ does not relinquish jurisdiction, the application proceeds to the siting board as under current law. The bill establishes criteria to be used by the siting board or the DEP Secretary in determining whether an application should be approved in whole, approved with modifications or conditions, or denied, including whether, and the extent to which, the location of electric power plant and directly associated facilities and their construction and operation will:

- Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.
- Comply with applicable nonprocedural requirements of agencies.
- Be consistent with applicable local government comprehensive plans and land development regulations.
- Meet the electrical energy needs of the state in an orderly and timely fashion.
- Provide a reasonable balance between the need for the facility and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources as a result of the construction and operation of the facility.

Section 32 amends s. 403.511, F.S., on the effect of certification to provide that no term or condition of a site certification shall be interpreted to supersede or control the provisions of a final operation permit for a major source of air pollution issued by DEP to a facility certified under these statutes. Also, electrical power plants are subject to the federal coastal consistency review program and issuance of certification constitutes the state's certification of coastal zone consistency.

Section 33 creates s. 403.5112, F.S., to provide for the filing of a notice of a certified corridor route. Within 60 days after certification of a directly associated linear facility pursuant to the power plant siting act, the applicant must file with DEP and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route. The notice consists of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the

certified route and must state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk must record the filing in the official record of the county for the duration of the certification or until such time as 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 that county, whichever is sooner.

Section 34 creates s. 403.5113, F.S., on postcertification amendments. If a licensee proposes any material change to the application after certification, the licensee must submit a written request for amendment and a description of the proposed change to the application to DEP. Within 30 days after the receipt of the request for the amendment, DEP must determine whether the proposed change to the application requires a modification of the conditions of certification. 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 interested parties. If DEP concludes that the change would require a modification of the conditions of certification, DEP must provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516, F.S.

Section 35 amends s. 403.5115, F.S., on public notices. The bill requires that the notice of the filing of the application include a description of the certification proceedings. There must be a notice of the deadline for filing notice of intent to become a party to the certification hearing at least 65 days before the hearing.

Section 36 amends s. 403.513, F.S., on judicial review of the proceedings to provide that separate appeals of the certification order and of any DEP permit issued pursuant to a federally delegated or approved program may be consolidated when possible, as opposed to the current requirement that they be consolidated.

Section 37 amends s. 403.516, F.S., on modification of certification to provide that DEP may modify specific conditions of site certification which are inconsistent with the terms of any federally delegated or approved permit, and may do so without further notice if notice has been given under the federally delegated or approved program.

Section 38 amends s. 403.517, F.S., on supplemental applications for certification of the construction and operation of power plants to be located on previously certified sites. The bill requires that such applications include all new directly associated facilities.

Section 39 amends s. 403.5175, F.S., on certification of an existing power plant to provide that applications are to be processed and reviewed using the same procedural steps and notices required for an application for a new facility.

Section 40 amends s. 403.518, F.S., on fees and their disposition. Currently the statute provides for twenty percent of the application fee or $25,000, whichever is greater, to be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The bill changes this to: five percent for the initial duties associated with an application for certification, an additional five percent if a land use hearing is held, and an additional ten percent if a certification hearing is held, which corresponds with the changes

making a land use hearing and certification hearing before an ALJ optional. Current law requires that DEP reimburse governmental agencies for preparing reports and studies. The bill authorizes these agencies preparing reports or participating in a land use hearing to submit a written request for reimbursement containing an accounting of expenses incurred.

Section 41 amends s. 403.519, F.S., on the exclusive forum for determination of need for a proposed power plant. Current law requires that the PSC publish notice of the determination of need proceeding in a newspaper of general circulation in each county in which the proposed power plant will be located at least 45 days prior to the scheduled date for the hearing. The bill changes this to require that the applicant give this notice at least 21 days prior to the hearing, and requires that the PSC give notice as specified in chapter 120[1] at least 21 days prior to the scheduled hearing date. The bill also provides that in making its determination of the need for the power plant, the PSC is to consider the need for fuel diversity and supply reliability.

The bill also provides that Rule 25-22.082, Florida Administrative Code, does not apply to an electrical power plant using nuclear materials for fuel and that an applicant for a determination of need for such a power plant is not required to secure competitive proposals for a power supply before applying for a certificate and filing a petition for a determination of need.

Sections 42-68 amend the Transmission Line Siting Act, ss. 403.52-403.5365, F.S. The primary effect of these amendments is to streamline and shorten time frames by: combining completeness and sufficiency; eliminating mandatory land use and certification hearings, and changing deadlines.

Section 42 amends s. 403.52, F.S., to change the short title of the act, the Transmission Line Siting Act, to the Florida Electric Transmission Line Siting Act.

Section 43 amends s. 403.521, F.S., to make reference to the operation of electric transmission lines, to recognize that they are critical infrastructure facilities, and that they have an effect upon the reliability of the electric power system, the environment, and land use.

Section 44 amends s. 403.522, F.S., which provides definitions relating to the act. The most significant changes include:

- Revising the definition of “completeness” to include the current definition of “sufficiency” to reflect that DEP will now be determining sufficiency of filings at the time of determining their completeness.
- Revising the definition of “electric utility” to include regional transmission organizations, operators of independent transmission systems, or other transmission organizations approved by the Federal Energy Regulatory Commission or the PSC for the operation of transmission facilities.

[1] Section 120.525(1), F.S., provides that except in the case of emergency meetings, each agency shall give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Weekly not less than 7 days before the event.

Section 45 amends s. 403.523, F.S., relating to DEP powers and duties, to authorize DEP to issue final orders in certification proceedings where the ALJ relinquishes jurisdiction, to act as clerk for the siting board, and to issue emergency orders on behalf of the board.

Section 46 amends s. 403.524, F.S., relating to applicability and exemptions. Currently development of a transmission line in which all construction is limited to established rights-of-ways is exempt from the act. For rights-of-way other than for transmission lines, the term includes rights-of-way created both before or after October 1, 1983. For transmission rights-of-way, the term includes only those rights-of-way created before that date. The bill changes this, so that established rights-of-way includes rights-of-way established at any time for roads, highways, railroads, gas, water, oil, electricity, sewage, or any other public purpose which were established at any time. For transmission line rights-of-way, established rights-of-way must have been established at least five years before notice of the start of construction of the new line. If an established transmission line right-of-way is relocated to accommodate a public project, the date of establishment of the original transmission right-of-way continues to apply to the relocation project for purposes of the exemption.

Section 47 amends s. 403.525, F.S., relating to administrative law judges, moving the provision on the administrative law judge's powers and duties from s. 403.527(6), F.S., to this section.

Section 48 amends s. 403.5251, F.S., relating to distribution of the application and schedules. The bill establishes the formal date of filing the application as the date on which the applicant submits copies of the application to DEP and all affected agencies and submits the application fee to DEP. Currently DEP must prepare a schedule for the certification process within 7 days after determining that the application is complete. The bill changes this to within 15 days after the formal date of application filing. Within 7 days after the proposed schedule is filed, the ALJ must issue an order establishing a schedule.

Section 49 amends s. 403.5252, F.S., relating to the determination of completeness. The bill consolidates the current determination of completeness and determination of sufficiency. Within 30 days after distribution of an application, the affected agencies must file a statement with DEP with recommendations as to whether the application is complete. Within 7 days after receipt of the completeness statement of all agencies, DEP must state its position on completeness. If DEP declares the application to be incomplete, the applicant has 14 days to file a withdrawal of the application, additional information to make the application complete, a statement contesting the determination of incompleteness, or a statement agreeing with the determination and requesting additional time to provide the necessary information. The statutory parties to a hearing on an issue of completeness include the applicant, DEP, and any agency having jurisdiction over the issue in dispute. Any substantially affected person wishing to become a party must file a motion no later than 10 days prior to the date of the hearing. If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to DEP, no later than 14 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 21 days after receipt of the additional information from the applicant, DEP must determine whether the additional information makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options listed above as often as is necessary to resolve the dispute.

Section 50 amends s. 403.526, F.S., relating to preliminary statements and reports. The bill changes the date on which each affected agency must submit a preliminary statement of issues to DEP from 60 days after distribution of the complete application to 50 days after the filing of the application. The bill requires that the Department of Transportation report on the impact of proposed transmission lines or corridors on roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction. The bill also requires the PSC to prepare a report containing its findings as to the determination of need and any comments with respect to any other subject within its jurisdiction. Each report must contain a notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, or exception or other relief is necessary for the proposed power plant to be certified, and provides that failure to provide this notice is a waiver of such a requirement.

Section 51 amends s. 403.527, F.S., relating to the certification hearing. No later than 145 days after the application is filed, the ALJ must conduct a certification hearing at a central location in proximity to the proposed transmission line or corridor. Parties to the proceeding are:

- The applicant.
- DEP.
- The PSC.
- The Department of Community Affairs.
- The Fish and Wildlife Conservation Commission.
- The Department of Transportation.
- Each water management district in the jurisdiction of which the proposed transmission line or corridor is to be located.
- The local government.
- The regional planning council.

Any party except the applicant or DEP may waive its right to participate in these proceedings. If any listed party fails to file a notice of its intent to be a party on or before the 30th day before the certification hearing, the party is deemed to have waived its right to be a party unless its participation would not prejudice the rights of any party to the proceeding.

Upon the filing with the ALJ of a notice of intent to be a party by an agency, corporation, or association specified in the bill, or upon the filing of a petition for intervention by specified persons, no later than 30 days before the date set for the certification hearing, those entities or persons may also be parties to the proceeding.

One public hearing where members of the public who are not parties to the certification hearing may testify must be held within the boundaries of each county, at the option of any local government. A local government wanting to have a hearing must notify the ALJ and all parties not later than 21 days after the application has been determined complete. If a filing for an alternate corridor is accepted for consideration by the department and the applicant, any newly affected local government must notify the ALJ and all parties not later than 10 days after the data concerning the alternate corridor has been determined complete as to whether the local government wishes to have such a public hearing. The local government is responsible for providing the location of the public hearing if held separately from the certification hearing.

Within 5 days after notification, the ALJ must determine the date of the public hearing, which must be held before or during the certification hearing. If two or more local governments within one county request a public hearing, the hearing must be consolidated so that only one public hearing is held in any county. The location of a consolidated hearing is to be determined by the ALJ.

If a local government does not request a public hearing within 21 days after the application has been determined complete, persons residing within the jurisdiction of the local government may testify during that portion of the certification hearing at which public testimony is heard.

At the conclusion of the certification hearing, the ALJ must, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 45 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings.

No later than 25 days before the certification hearing, the department or the applicant may request that the ALJ cancel the certification hearing and relinquish jurisdiction to DEP if all parties to the proceeding stipulate that there are no disputed issues of material fact to be raised at the certification hearing. The ALJ must issue an order granting or denying the request within 5 days. If the ALJ grants the request, DEP and the applicant must publish notices of the cancellation of the certification hearing. If the administrative law judge grants the request, DEP must prepare and issue a final order. Parties may submit proposed final orders to DEP no later than 10 days after the ALJ issues an order relinquishing jurisdiction.

Section 52 amends s. 403.5271, F.S., relating to alternate corridors. Current law provides that any party may propose an alternate corridor no later than 50 days before the originally scheduled certification hearing. The bill changes this to no later than 45 days before. Agencies reviewing the proposed alternate corridor must advise DEP of any issues concerning completeness no later than 15 days after submittal of data to the agencies. If DEP determines that the data is not complete, the party proposing the alternate corridor must file additional data within 14 days. If DEP determines that the data is still incomplete, this constitutes a withdrawal of the proposed alternate corridor. The party proposing an alternate corridor has the burden of proving that the corridor can be certified.

Section 53 amends s. 403.5272, F.S., relating to informational public meetings. Existing statutory language limits the authority to conduct early public meetings to local governments. The bill authorizes regional planning councils to conduct these public meetings.

Section 54 amends s. 403.5275, F. S., relating to application amendments to provide that amendments made before certification must be sent to the ALJ and all parties.

Section 55 amends s. 403.528, F.S., on alteration of time limits to provide that a comprehensive application encompassing more than one proposed transmission line may be good cause for alteration of time limits.

Section 56 amends s. 403.529, F.S., relating to final disposition of the application. The bill provides that if the ALJ has relinquished jurisdiction, the DEP Secretary must issue or deny the certification within 40 days of relinquishment and state the reasons for the decision. If the ALJ does not

relinquish jurisdiction, the siting board must determine the application within 60 days, as opposed to the current 30 days, after receipt of the ALJ's recommended order. The bill adds to the criteria to be considered in determining whether to approve an application consideration of the operation of the proposed transmission line, consideration of whether the proposed line will meet the electrical needs of the state in an economical fashion, and whether it will effect a reasonable balance between the need for the line as a means of providing reliable, economically efficient electric energy and the impact on the public and the environment resulting from the construction, operation, and maintenance of the line.

Section 57 amends s. 403.531, F.S., to provide that the certification is in lieu of any license, permit, or similar document required by any state, regional, or local agency.

Section 58 amends s. 403.5312, F.S., relating to filing of notice of certified corridor. The bill requires that after a transmission line route is certified, the applicant must file notice of the certified route for a transmission line with DEP.

Section 59 amends s. 403.5315, F.S., to provide that a modification of a certification may be commenced by the licensee or by DEP on its own initiative. If objections to a proposed modification or if DEP denies the proposed modification, the licensee may file a request for a hearing.

Section 60 creates s. 403.5317, F.S., to provide for post-certification amendments. If, subsequent to certification by the board, a licensee proposes any material change to the application or prior amendments, the licensee must submit to DEP a written request for amendment and description of the proposed change to the application. If DEP concludes that the change would not require a modification of the conditions of certification, it is to notify, in writing, the licensee, all agencies, and all parties of the approval of the proposed amendment. If DEP concludes that the change would require a modification of the conditions of certification, it is to notify the licensee that the proposed change to the application requires a request for modification.

Section 61 creates s. 403.5363, F.S., to consolidate public notice provisions from existing sections of the act.

Section 62 amends s. 403.5365, F.S., relating to fees. Currently the statute provides for twenty percent of the application fee to be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The bill changes this to: five percent for the initial duties associated with an application for certification and an additional ten percent if a certification hearing is held.

Section 63 amends s. 403.537, F.S., relating to determination of need for a transmission line. The bill requires that the applicant give notice at least 21 days prior to the hearing, and requires that the PSC give notice as specified in chapter 120 at least 21 days prior to the scheduled hearing date. The bill also provides that the PSC is the sole forum in which to determine the need for a transmission line and that the need cannot be raised or be the subject of review in any other proceeding.

Sections 64, 65, 66, and 67 amend ss. 373.411(3), 403.061, 403.0876, and 403.809(3)(b), F.S., to conform references to the re-named Florida Electric Transmission Line Siting Act.

Section 68 repeals s. 403.5253, F.S., relating to the sufficiency determination, as this is made a part of the determination of completeness, and s. 403.5369, F.S., which provides that the act does not apply to any application for certification of an electrical power plant or transmission line corridor which has been determined to be complete prior to July 3, 1990.

Section 69 creates s. 570.954, F.S., to create the Food to Fuel program within the Department of Agriculture and Consumer Services (DACS) to promote the use of Florida crops and biomass to produce bioenergy. The program is to provide grants for research, development, and demonstration of commercial applications of bioenergy technology. The bill sets out criteria to obtain a grant.

Section 70 appropriates $5,500,000 for the grants.

Section 71 creates s. 220.192, F.S., to create a farm to fuel production tax credit against corporate income tax for in-state producers of ethanol or biodiesel.

Section 72 requires that by November 1, 2006, DEP report to the Governor, the Senate President, and the Speaker of the House on the state's leadership by example in energy conservation and efficiency, including a description of state programs and the costs of implementation and the current and projected energy and cost savings.

Section 73 provides that the bill takes effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Environmental Protection has stated that it is seeking to include in the state budget the following amounts per year for a 4-year period: $10 million for its renewable energy technologies grant program, $2.5 million for its energy efficient appliances rebate program, and $2.5 million for its solar energy systems rebate program. The Department's sales tax exemption for hydrogen vehicles and stations, fuel cells, and biodiesel and ethanol distribution creates the following caps: a cap of $2 million per year for hydrogen vehicles and station, a cap of $1 million per year for fuel cells, and a cap of $1 million per year for biodiesel and ethanol distribution. Finally, its renewable energy technologies tax credit has the following provisions and caps: credits for 75% of costs for investment in hydrogen powered vehicles and hydrogen vehicle fueling stations up to a cap of $3 million per year, credits for 75% of costs for an investment in commercial stationary hydrogen fuel cells up to a cap of $1.5 million per year, and credits for 75% of costs for an investment in the production and distribution of biodiesel and ethanol up to a cap of $6.5 million per year.

The Department of Agriculture and Consumer Services has a $5.5 million appropriation in the bill for its farm to fuel grant program.

Section 40 amends s. 403.518, F.S., on power plant siting act fees and their disposition. Currently the statute provides for twenty percent of the application fee or $25,000, whichever is greater, to be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The bill changes this to: five percent for the initial duties associated with an application for certification, an additional five percent if a land use hearing is held, and an additional ten percent if a certification hearing is held. Similarly, section 62 amends s. 403.5365, F.S., relating to transmission line siting act fees. Currently the statute provides for twenty percent of the application fee to be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The bill changes this to: five percent for the initial duties associated with an application for certification and an additional ten percent if a certification hearing is held. These fee changes appear to correspond to procedural hearing changes which may result in a reduced workload for the ALJ. The net effect on the amount of fees collected is indeterminable.

VI. Technical Deficiencies:

Newly created s. 570.954, F.S., create the Food to Fuel program to promote the use of Florida crops and biomass to produce bioenergy. The bill defines "biomass" but does not define "bioenergy."

Newly created subsection 403.50663(4), F.S., provides that "the failure to hold an informational public meeting or the procedure used for the informational public meeting are not for the alteration of any time limitation or grounds to deny or condition certification." It probably should say that neither the failure to hold a meeting nor the procedure used at a meeting are *grounds* for alteration of a time limit.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.