

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

On July 13, 2007, the Governor signed Executive Order 07-128 establishing the Governor's Action Team on Energy and Climate Change. The Executive Order required the Action Team to issue recommendations to address:

- Strategic investments and public-private partnerships in Florida to spur economic development around climate-friendly industries and economic activity that reduces emissions in Florida;
- Strategies and mechanisms for the long-term coordination of Florida's public policy in the areas of economic development, university-based research and technology development, energy, environmental protection, natural resource management, growth management, transportation, and other areas as needed to assure a future of prosperity of Floridians in reducing greenhouse gas admissions.

Effect of Proposed Changes

HB 1549 creates the Florida Advanced Combustion Center, Inc., (Center) a not-for-profit corporation to promote energy-related research and development of advanced combustion technologies. The Center is composed of a board of directors of seven residents of Brevard County. Three candidates for each vacancy are nominated by the Brevard County Legislative Delegation for appointment by the Governor. Two members are members of the Brevard County Commission and appointed by the Commission. The Governor may remove any member for misfeasance, malfeasance, or willful neglect of duty.

The board has the power, among others, to:

- Enter into interlocal agreements;
- Secure funding for programs and activities;
- Elect or appoint officers and agents and determine reasonable compensation;
- Acquire, enjoy, use, and dispose of patents, copyrights, and trademarks and any licenses, royalties, and other rights or interests;
- Carry forward any unexpended state appropriations into succeeding fiscal years;
- Issue revenue bonds and bond anticipation notes;
- Disseminate information about itself and its activities;
- Establish and fund a guaranty fund; and
- Borrow money and apply for and accept advances, loans, grants, contributions, and other forms of financial assistance including receipt of tax increment revenues.

Additionally, the credit of the state may not be pledged.

The Center is not a special district under ch. 189, F.S., or a unit of local government for purposes of part III of ch. 218, F.S. The provisions of chs. 120, 215, and 287, F.S., are not applicable to the Center, except for s. 215.84, F.S., regarding interest rates on obligations, and s. 287.0582, F.S., pertaining to contracts subject to annual appropriation, and s. 287.0641, F.S., agreements are not debt or pledge of the state.

The corporation and its existence continue until terminated by law. However, no termination is effective so long as the Center has bonds outstanding unless adequate provision has been made for the payment of such bonds. Upon dissolution, the title to all property and all rights and properties in excess of its obligations revert to Brevard County.

The Center must issue an annual report to the Governor, President of the Senate, and the Speaker of the House of Representatives.

C. SECTION DIRECTORY:

Section 1: Creates the Florida Advanced Combustion Center, Inc., a not-for-profit corporation; establishing duties of board of directors; making center subject to public records and sunshine law; authorizing issuance of revenue bonds and bond anticipation notes; providing exemption from taxation; requiring annual report.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 24, 2008.

WHERE? In the *Florida Today*, a daily newspaper published in Brevard County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The Economic Impact Statement states that the Center will serve as a stimulus for the creation of new jobs and the establishment of Florida as a world leader in the area of combustion technology.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Oversight

The bill does not provide a limit on the amount of outstanding obligations of the Center. It may be prudent to limit outstanding loans to no more than five times the balance of the account and prohibit any loan guarantee or direct loan origination from exceeding 90 percent of the transaction contract.

The board should have a duty to adopt requirements to ensure the full repayment of loans and loan guarantees, plus accrued interest, full-recourse claims, and indemnities on direct loan originations sold by the corporation, and the solvency of any insurance and coinsurance program.

The bill should require the board to work with the Office of Program Policy Analysis and Government Accountability, to establish goals and measurable objectives for the Center which will provide the Legislature with a quantitative evaluation of the Center. In addition, the Office of Financial Regulation of the Financial Services Commission should review the corporation's activities once every 24 months to determine compliance laws and rules and to evaluate the corporation's operations. See the former Florida Aerospace Finance Corporation Act, Part III of ch. 331, F.S., (2003).

Possible Exemptions from General Law

Lines 190-194 provide that "bonds issued under this act do not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and are not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds."

Lines 235-243 provide that the provisions of chs. 120, 215, and 287, F.S., are not applicable to the Center, except for s. 215.84, F.S., regarding interest rates on obligations, ss. 287.0582 and 287.0641, F.S.

Lines 273-278 provide that notwithstanding any other provision of law, any pledge of or other security interest . . . shall be valid, binding, and perfected from the time such pledge is made or other security interest attaches without any physical delivery of the collateral or further act. . . ."

D. STATEMENT OF THE SPONSOR

The staff analysis expresses concern that the Florida Advanced Combustion Center, Inc.'s governing board, without limitations placed in the act, may incur excessive or imprudent indebtedness in pursuit of Center activities.

While these comments are well intended, there is little reason for concern. The Center's borrowing capacity is self-limiting by the pledged revenues from the project. Both the underwriter and any purchaser of these debt instruments will carefully examine the income and profit projections prior to advancing funds.

It is important to recognize the Center is governed by a local, home rule board. This board includes elected officials, who will exercise their discretion in undertaking the financing of any project within the constitutional limitations that preclude the pledge or obligation of the credit of the County or State.

The Center's purpose is to stimulate economic growth and development in Brevard County and Florida with an emphasis on energy independence. To do so requires the governing board be granted maximum flexibility. Arbitrary restrictions may well impair the effectiveness of this effort.

As to the second point, the governing board is free to consult with OPPAGA and the Office of Financial Regulation. These offices may provide valuable resources and assistance to the Center obviating the need for a mandate in the bill.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES