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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/14/2010	.	
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The Committee on Communications, Energy, and Public Utilities (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

(1) In order to stimulate the state's economy, encourage businesses to invest in clean technologies, and foster research, development, manufacturing, construction, and jobs in new and renewable energy, it is the intent of the Legislature to promote the development of renewable energy; protect the economic



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13 viability of Florida's existing renewable energy facilities;
14 diversify the types of fuel used to generate electricity in
15 Florida; lessen Florida's dependence on natural gas and fuel oil
16 for the production of electricity; minimize the volatility of
17 fuel costs; encourage investment within the state; improve
18 environmental conditions by minimizing water consumption and
19 reducing carbon and other greenhouse gas emissions emitted in
20 this state; and, at the same time, minimize the costs of power
21 supply to electric utilities and their customers.

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

23 (a) "Florida renewable energy resources" means renewable
24 energy, as defined in s. 377.803, that is produced in Florida.

25 (b) "Provider" means a "utility" as defined in s.
26 366.8255(1) (a).

27 (c) "Renewable energy" means renewable energy as defined in
28 s. 366.91(2) (d).

29 ~~(d) "Renewable energy credit" or "REC" means a product that~~
30 ~~represents the unbundled, separable, renewable attribute of~~
31 ~~renewable energy produced in Florida and is equivalent to 1~~
32 ~~megawatt-hour of electricity generated by a source of renewable~~
33 ~~energy located in Florida.~~

34 ~~(e) "Renewable portfolio standard" or "RPS" means the~~
35 ~~minimum percentage of total annual retail electricity sales by a~~
36 ~~provider to consumers in Florida that shall be supplied by~~
37 ~~renewable energy produced in Florida.~~

38 ~~(3) The commission shall adopt rules for a renewable~~
39 ~~portfolio standard requiring each provider to supply renewable~~
40 ~~energy to its customers directly, by procuring, or through~~
41 ~~renewable energy credits. In developing the RPS rule, the~~



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42 ~~commission shall consult the Department of Environmental~~
43 ~~Protection and the Florida Energy and Climate Commission. The~~
44 ~~rule shall not be implemented until ratified by the Legislature.~~
45 ~~The commission shall present a draft rule for legislative~~
46 ~~consideration by February 1, 2009.~~

47 ~~(a) In developing the rule, the commission shall evaluate~~
48 ~~the current and forecasted levelized cost in cents per kilowatt~~
49 ~~hour through 2020 and current and forecasted installed capacity~~
50 ~~in kilowatts for each renewable energy generation method through~~
51 ~~2020.~~

52 ~~(b) The commission's rule:~~

53 ~~1. Shall include methods of managing the cost of compliance~~
54 ~~with the renewable portfolio standard, whether through direct~~
55 ~~supply or procurement of renewable power or through the purchase~~
56 ~~of renewable energy credits. The commission shall have~~
57 ~~rulemaking authority for providing annual cost recovery and~~
58 ~~incentive-based adjustments to authorized rates of return on~~
59 ~~common equity to providers to incentivize renewable energy.~~
60 ~~Notwithstanding s. 366.91(3) and (4), upon the ratification of~~
61 ~~the rules developed pursuant to this subsection, the commission~~
62 ~~may approve projects and power sales agreements with renewable~~
63 ~~power producers and the sale of renewable energy credits needed~~
64 ~~to comply with the renewable portfolio standard. In the event of~~
65 ~~any conflict, this subparagraph shall supersede s. 366.91(3) and~~
66 ~~(4). However, nothing in this section shall alter the obligation~~
67 ~~of each public utility to continuously offer a purchase contract~~
68 ~~to producers of renewable energy.~~

69 ~~2. Shall provide for appropriate compliance measures and~~
70 ~~the conditions under which noncompliance shall be excused due to~~



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71 ~~a determination by the commission that the supply of renewable~~
72 ~~energy or renewable energy credits was not adequate to satisfy~~
73 ~~the demand for such energy or that the cost of securing~~
74 ~~renewable energy or renewable energy credits was cost~~
75 ~~prohibitive.~~

76 ~~3. May provide added weight to energy provided by wind and~~
77 ~~solar photovoltaic over other forms of renewable energy, whether~~
78 ~~directly supplied or procured or indirectly obtained through the~~
79 ~~purchase of renewable energy credits.~~

80 ~~4. Shall determine an appropriate period of time for which~~
81 ~~renewable energy credits may be used for purposes of compliance~~
82 ~~with the renewable portfolio standard.~~

83 ~~5. Shall provide for monitoring of compliance with and~~
84 ~~enforcement of the requirements of this section.~~

85 ~~6. Shall ensure that energy credited toward compliance with~~
86 ~~the requirements of this section is not credited toward any~~
87 ~~other purpose.~~

88 ~~7. Shall include procedures to track and account for~~
89 ~~renewable energy credits, including ownership of renewable~~
90 ~~energy credits that are derived from a customer-owned renewable~~
91 ~~energy facility as a result of any action by a customer of an~~
92 ~~electric power supplier that is independent of a program~~
93 ~~sponsored by the electric power supplier.~~

94 ~~8. Shall provide for the conditions and options for the~~
95 ~~repeal or alteration of the rule in the event that new~~
96 ~~provisions of federal law supplant or conflict with the rule.~~

97 ~~(c) Beginning on April 1 of the year following final~~
98 ~~adoption of the commission's renewable portfolio standard rule,~~
99 ~~each provider shall submit a report to the commission describing~~



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100 ~~the steps that have been taken in the previous year and the~~
101 ~~steps that will be taken in the future to add renewable energy~~
102 ~~to the provider's energy supply portfolio. The report shall~~
103 ~~state whether the provider was in compliance with the renewable~~
104 ~~portfolio standard during the previous year and how it will~~
105 ~~comply with the renewable portfolio standard in the upcoming~~
106 ~~year.~~

107 (3) (a) (4) In order to promote and facilitate the
108 development of clean energy industry in this state demonstrate
109 the feasibility and viability of clean energy systems, the
110 commission shall provide for full cost recovery under the
111 environmental cost-recovery clause of all reasonable and prudent
112 costs incurred by a provider for renewable energy projects that
113 result in a net decrease of ~~are zero~~ greenhouse gas emitted in
114 this state emitting at the point of generation, up to a total of
115 110 megawatts statewide, and for which the provider has secured
116 necessary land, zoning permits, and transmission rights within
117 the state.

118 (b) In addition to the full cost recovery for such
119 renewable energy projects, a return on equity of not less than
120 50 basis points above the top of the range of the provider's
121 last authorized rate of return on equity approved by the
122 commission for energy projects shall be approved and provided
123 for such renewable energy projects if a majority value of the
124 energy-producing components incorporated into such projects are
125 manufactured or assembled within this state.

126 (c) Such costs shall be deemed reasonable and prudent for
127 purposes of cost recovery so long as the provider has
128 demonstrated that the renewable energy project meets the



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129 criteria in s. 366.921(3)(a) and used reasonable and customary
130 industry practices in the design, procurement, and construction
131 of the project in a cost-effective manner appropriate to the
132 location of the facility. The provider shall report to the
133 commission as part of the cost-recovery proceedings the
134 construction costs, in-service costs, operating and maintenance
135 costs, hourly energy production of the renewable energy project,
136 environmental benefits, and estimated fuel savings attributable
137 to the facility and any other information deemed relevant by the
138 commission. Any provider constructing a clean energy facility
139 pursuant to this section shall file for cost recovery no later
140 than July 1, 2009.

141 (d) During any billing cycle, excess customer-owned
142 renewable generation delivered to the provider's electric grid
143 shall be credited to the customer's energy consumption for the
144 next month's billing cycle. Such energy credits produced must
145 accumulate and be used to offset the customer's energy usage in
146 subsequent months for a period of not more than 12 months. At
147 the end of each calendar year, the provider shall pay the
148 customer for any unused energy credits at an average annual rate
149 based on the provider's COG-3 energy tariff.

150 (4) Pursuant to the approval process under s. 366.921, the
151 commission shall approve a total of 700 megawatts of renewable
152 energy projects for the years 2010, 2011, and 2012, with up to a
153 total of 300 megawatts approved in 2010 and up to an additional
154 200 megawatts approved annually in 2011 and 2012, as part of new
155 renewable energy projects and an additional 35 megawatts, with
156 up to 15 megawatts annually for 2010 and up to 10 megawatts
157 annually for 2011 and 2012, which must be rooftop or pole-



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158 mounted solar energy applications in addition to megawatts
159 attributable to renewable energy projects approved by the
160 commission for cost recovery before January 1, 2010. Any
161 megawatts for renewable energy projects designated for approval
162 for a specific year which remain available at the end of the
163 calendar year shall be carried forward to the succeeding year.

164 (5) Each municipal electric utility and rural electric
165 cooperative shall develop standards for the promotion,
166 encouragement, and expansion of the use of renewable energy
167 resources and energy conservation and efficiency measures. On or
168 before April 1, 2009, and annually thereafter, each municipal
169 electric utility and electric cooperative shall submit to the
170 commission a report that identifies such standards.

171 (6) ~~Nothing in~~ This section does not ~~shall be construed to~~
172 impede or impair terms and conditions of existing contracts.

173 (7) The commission may adopt rules to administer ~~and~~
174 ~~implement the provisions of~~ this section.

175 Section 2. Section 366.921, Florida Statutes, is created to
176 read:

177 366.921 Renewable energy; approval process.—

178 (1) The Legislature finds that the goals stated in s.
179 366.92(1) shall be accomplished by fostering the expansion and
180 development of Florida renewable energy resources. Providers of
181 Florida renewable energy resources must acquire commission
182 approval before the construction, licensing, and operation of a
183 facility producing such resources or the purchase of capacity or
184 energy from a facility producing such resources. This
185 requirement does not apply to purchases of capacity or energy
186 under commission-approved standard-offer contracts or tariffs.



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187 Any petition filed by a provider for approval of a facility
188 producing a Florida renewable energy resource must meet the
189 criteria specified in this section.

190 (2) Notwithstanding s. 403.519, the Legislature finds that
191 there is a need for new Florida renewable energy resources
192 consistent with the goals stated in s. 366.92(1). This
193 legislative finding shall serve as the need determination
194 required under s. 403.519 and as the commission's agency report
195 under s. 403.507(4) (a).

196 (3) Upon the filing by a provider of a petition for
197 approval of a facility producing a Florida renewable energy
198 resource, the commission shall schedule a formal administrative
199 hearing within 10 days after the filing of the petition and vote
200 on the petition within 90 days after such filing.

201 (4) Before approving the petition, the commission shall
202 consider whether the:

203 (a) Proposal for the facility requires the use of
204 reasonable and customary industry practices in the design,
205 engineering, and proposed construction of the facility which are
206 appropriate to the proposed technology and location of the
207 facility.

208 (b) Entity, including a provider, which would engineer,
209 design, and construct the proposed facility has the requisite
210 technical and financial qualifications, expertise, and
211 capability.

212 (c) Entity, including a provider, which would operate the
213 proposed facility has the requisite technical qualifications,
214 expertise, and capability.

215 (d) Proposed production of the Florida renewable energy



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216 resource will have a positive impact on the environment,
217 including the reduction of greenhouse gas emissions in the
218 state, measured at the point of generation.

219 (e) Proposed production of the Florida renewable energy
220 resource will result in local economic benefits, including job
221 creation, for the state's economy.

222 (f) Proposed Florida renewable energy resource will enhance
223 the fuel diversity of the provider.

224 (g) Proposed facility producing the Florida renewable
225 energy resource will minimize or avoid the incremental use of
226 water resources at the project site in the production of
227 renewable power.

228 (5) The commission's final order approving a facility
229 producing a Florida renewable energy resource shall include
230 express authorization for annual cost recovery pursuant to ss.
231 366.8255 and 366.92.

232 (6) A provider that receives approval from the commission
233 for a specific renewable energy project pursuant to this section
234 shall file a report with the commission within 1 year after the
235 date of the order reflecting such approval. Prior to the
236 expiration of the time for filing the report, a provider may
237 request an extension of time up to 6 months to file such report
238 and the commission shall grant such request if the provider
239 demonstrates good cause for the extension. The report shall
240 summarize the status of the project, including confirmation that
241 construction of the project has commenced, and provide all
242 relevant supporting documentation. If a provider fails to timely
243 file such report, the approval of the project granted by the
244 commission shall be vacated by operation of law and the



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245 megawatts attributable to such project shall be restored as part
246 of the total megawatts available for renewable energy projects
247 under s. 366.92(4).

248 (7) The Legislature finds that there is a need for all
249 proposed Florida renewable energy resources for which an
250 application for certification has been filed by a provider and
251 is pending under part II of chapter 403, as of the effective
252 date of this act, and that such proposed Florida renewable
253 energy resources are exempt from the requirement to obtain a
254 determination of need pursuant to this section and s. 403.519.
255 Florida renewable energy resources for which an application for
256 certification has been filed by a provider and is pending under
257 part II of chapter 403, as of the effective date of this act,
258 are determined by the Legislature to meet the electrical needs
259 of the state in an orderly, reliable, and timely fashion, to
260 fulfill the provisions of s. 403.519(3), and to otherwise be in
261 the public interest. The Legislature's determination of need
262 reflected in this subsection creates a presumption of public
263 need and necessity which shall not be raised in any other forum
264 or in the review of proceedings in such other forum and shall
265 substitute for the commission's report required by s.
266 403.507(4). Notwithstanding any amendment to s. 403.503, all
267 proposed Florida renewable energy resources for which an
268 application for certification has been filed by a provider and
269 is pending under part II of chapter 403, as of the effective
270 date of this act, may, at the applicant's option, proceed to
271 obtain a final order of certification under part II of chapter
272 403.

273 Section 3. Subsection (14) of section 403.503, Florida



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274 Statutes, is amended to read:

275 403.503 Definitions relating to Florida Electrical Power
276 Plant Siting Act.—As used in this act:

277 (14) "Electrical power plant" means, for the purpose of
278 certification, any steam ~~or solar~~ electrical generating facility
279 using any process or fuel, including nuclear materials, except
280 that this term does not include any steam ~~or solar~~ electrical
281 generating facility of less than 75 megawatts in capacity or any
282 solar electrical generating facility of any sized capacity
283 unless the applicant for such a facility elects to apply for
284 certification under this act. This term also includes the site;
285 all associated facilities that will be owned by the applicant
286 that are physically connected to the site; all associated
287 facilities that are indirectly connected to the site by other
288 proposed associated facilities that will be owned by the
289 applicant; and associated transmission lines that will be owned
290 by the applicant which connect the electrical power plant to an
291 existing transmission network or rights-of-way to which the
292 applicant intends to connect. At the applicant's option, this
293 term may include any offsite associated facilities that will not
294 be owned by the applicant; offsite associated facilities that
295 are owned by the applicant but that are not directly connected
296 to the site; any proposed terminal or intermediate substations
297 or substation expansions connected to the associated
298 transmission line; or new transmission lines, upgrades, or
299 improvements of an existing transmission line on any portion of
300 the applicant's electrical transmission system necessary to
301 support the generation injected into the system from the
302 proposed electrical power plant.



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303 Section 4. This act shall take effect upon becoming a law.

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305 ===== T I T L E A M E N D M E N T =====

306 And the title is amended as follows:

307 Delete everything before the enacting clause
308 and insert:

309 A bill to be entitled
310 An act relating to renewable energy; amending s.
311 366.92, F.S.; revising legislative intent regarding
312 the state's renewable energy policy; deleting
313 provisions requiring that the Public Service
314 Commission adopt rules for a renewable portfolio
315 standard; requiring that the commission provide for
316 full cost recovery, including a return on equity, for
317 certain renewable energy projects; requiring excess
318 customer-owned renewable generation delivered to the
319 provider's electric grid to be credited to the
320 customer's energy consumption; requiring such energy
321 credits produced to accumulate and be used to offset
322 the customer's energy usage; requiring the provider to
323 pay the customer for any unused energy credits at an
324 average annual rate; requiring the commission to
325 approve certain renewable energy projects; creating s.
326 366.921, F.S.; providing legislative findings;
327 requiring that a petition filed by a provider for
328 approval of a facility producing a Florida renewable
329 energy resource comply with certain criteria;
330 specifying the criteria to be considered by the
331 commission in approving a petition for such facility;



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332 requiring that the commission's final order approving
333 a facility include authorization for annual cost
334 recovery; requiring providers to file a report with
335 commission; providing report requirements; providing
336 penalties for failure to file the report; providing
337 exemptions from determination-of-need requirements;
338 providing that certain legislative determinations
339 constitute a public need and necessity and fulfill
340 certain determination-of-need requirements; providing
341 for applicants meeting certain criteria to obtain a
342 final order of certification; amending s. 403.503,
343 F.S.; redefining the term "electrical power plant" for
344 purposes of the Florida Electrical Power Plant Siting
345 Act to exclude solar electrical generating facilities;
346 providing an effective date.