



739598

LEGISLATIVE ACTION

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

**Senate Substitute for Amendment (666162) (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



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13 the development of renewable energy; protect the economic  
14 viability of Florida's existing renewable energy facilities;  
15 diversify the types of fuel used to generate electricity in  
16 Florida; lessen Florida's dependence on natural gas and fuel oil  
17 for the production of electricity; minimize the volatility of  
18 fuel costs; encourage investment within the state; improve  
19 environmental conditions; and, at the same time, minimize the  
20 costs of renewable power supply to electric utilities and their  
21 customers. It is the further intent of the Legislature that all  
22 prudently incurred costs of renewable energy shall be  
23 recoverable from electric utility customers through the  
24 environmental cost recovery clause.

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

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

28 (b) "Provider" means a "utility" as defined in s.  
29 366.8255(1)(a).

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

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

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

41 ~~(3) The commission shall adopt rules for a renewable~~



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42 ~~portfolio standard requiring each provider to supply renewable~~  
43 ~~energy to its customers directly, by procuring, or through~~  
44 ~~renewable energy credits. In developing the RPS rule, the~~  
45 ~~commission shall consult the Department of Environmental~~  
46 ~~Protection and the Florida Energy and Climate Commission. The~~  
47 ~~rule shall not be implemented until ratified by the Legislature.~~  
48 ~~The commission shall present a draft rule for legislative~~  
49 ~~consideration by February 1, 2009.~~

50 ~~(a) In developing the rule, the commission shall evaluate~~  
51 ~~the current and forecasted levelized cost in cents per kilowatt~~  
52 ~~hour through 2020 and current and forecasted installed capacity~~  
53 ~~in kilowatts for each renewable energy generation method through~~  
54 ~~2020.~~

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

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



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71 ~~to producers of renewable energy.~~  
72       ~~2. Shall provide for appropriate compliance measures and~~  
73 ~~the conditions under which noncompliance shall be excused due to~~  
74 ~~a determination by the commission that the supply of renewable~~  
75 ~~energy or renewable energy credits was not adequate to satisfy~~  
76 ~~the demand for such energy or that the cost of securing~~  
77 ~~renewable energy or renewable energy credits was cost~~  
78 ~~prohibitive.~~  
79       ~~3. May provide added weight to energy provided by wind and~~  
80 ~~solar photovoltaic over other forms of renewable energy, whether~~  
81 ~~directly supplied or procured or indirectly obtained through the~~  
82 ~~purchase of renewable energy credits.~~  
83       ~~4. Shall determine an appropriate period of time for which~~  
84 ~~renewable energy credits may be used for purposes of compliance~~  
85 ~~with the renewable portfolio standard.~~  
86       ~~5. Shall provide for monitoring of compliance with and~~  
87 ~~enforcement of the requirements of this section.~~  
88       ~~6. Shall ensure that energy credited toward compliance with~~  
89 ~~the requirements of this section is not credited toward any~~  
90 ~~other purpose.~~  
91       ~~7. Shall include procedures to track and account for~~  
92 ~~renewable energy credits, including ownership of renewable~~  
93 ~~energy credits that are derived from a customer-owned renewable~~  
94 ~~energy facility as a result of any action by a customer of an~~  
95 ~~electric power supplier that is independent of a program~~  
96 ~~sponsored by the electric power supplier.~~  
97       ~~8. Shall provide for the conditions and options for the~~  
98 ~~repeal or alteration of the rule in the event that new~~  
99 ~~provisions of federal law supplant or conflict with the rule.~~



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100       ~~(c) Beginning on April 1 of the year following final~~  
101 ~~adoption of the commission's renewable portfolio standard rule,~~  
102 ~~each provider shall submit a report to the commission describing~~  
103 ~~the steps that have been taken in the previous year and the~~  
104 ~~steps that will be taken in the future to add renewable energy~~  
105 ~~to the provider's energy supply portfolio. The report shall~~  
106 ~~state whether the provider was in compliance with the renewable~~  
107 ~~portfolio standard during the previous year and how it will~~  
108 ~~comply with the renewable portfolio standard in the upcoming~~  
109 ~~year.~~

110       (3)(4) In order to promote the development of Florida  
111 renewable energy resources and the delivery of renewable energy  
112 in the state, pending the adoption of final renewable energy  
113 portfolio standards under federal or state law demonstrate the  
114 feasibility and viability of clean energy systems, the  
115 commission shall provide for full cost recovery under the  
116 environmental cost-recovery clause of all reasonable and prudent  
117 costs incurred by a provider of Florida renewable energy  
118 resources for renewable energy projects that are zero greenhouse  
119 gas emitting at the point of generation, up to a total of 110  
120 megawatts statewide, and for which the provider has secured  
121 necessary land, zoning permits, and transmission rights within  
122 the state. Pursuant to this section, a provider may build  
123 Florida renewable energy resources, convert existing fossil fuel  
124 generation plants to a Florida renewable energy resource, or  
125 purchase renewable energy. Such providers shall recover all  
126 reasonable and prudent costs associated with building Florida  
127 renewable energy resources, converting existing fossil fuel  
128 generation plants to a Florida renewable energy resource, or



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129 purchasing renewable energy under the environmental cost-  
130 recovery clause. Each provider has the sole discretion to  
131 determine the type and technology of the Florida renewable  
132 energy resources that it elects to build and determine whether  
133 to self-build or contract for purchase power with a third party.  
134 ~~Such costs shall be deemed reasonable and prudent for purposes~~  
135 ~~of cost recovery so long as the provider has used reasonable and~~  
136 ~~customary industry practices in the design, procurement, and~~  
137 ~~construction of the project in a cost-effective manner~~  
138 ~~appropriate to the location of the facility. The provider shall~~  
139 ~~report to the commission as part of the cost-recovery~~  
140 ~~proceedings the construction costs, in-service costs, operating~~  
141 ~~and maintenance costs, hourly energy production of the renewable~~  
142 ~~energy project, and any other information deemed relevant by the~~  
143 ~~commission. Any provider constructing a clean energy facility~~  
144 ~~pursuant to this section shall file for cost recovery no later~~  
145 ~~than July 1, 2009.~~

146 (4) Pending the adoption of a state or federal renewable  
147 portfolio standard, each provider may purchase or produce  
148 Florida renewable energy having capacity or energy costs in  
149 excess of the fully avoided cost limitations in s. 366.051,  
150 subject to the limitations and conditions specified in  
151 paragraphs (a) and (b).

152 (a) The cost of producing or purchasing Florida renewable  
153 energy in any calendar year in excess of the fully avoided cost  
154 limitations in s. 366.051 shall not exceed 2 percent in 2010 and  
155 2011, 3 percent in 2012, or 4 percent in 2013 and thereafter of  
156 the investor-owned utility's total revenue from retail sales of  
157 electricity for the calendar year 2009. Pursuant to this



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158 section, costs shall be computed using a methodology that  
159 averages the revenue requirements of the renewable energy  
160 resource or the purchases over their economic lives. Costs  
161 incurred by a provider in 2010 for Florida renewable energy  
162 resources for which construction is commenced or for renewable  
163 energy purchased on or after the effective date of this act  
164 shall be counted toward and included in the calculation of the  
165 cost cap. Costs for renewable energy resources approved by the  
166 commission for cost recovery through the environmental cost  
167 recovery clause before the effective date of this act shall not  
168 be subject to or included in the calculation of the cost cap.

169 (b) If a provider pays costs for purchased power above the  
170 limitations set out in s. 366.051, the seller shall surrender to  
171 the provider all renewable attributes of the energy being  
172 purchased by the provider.

173 (5) Each municipal electric utility and rural electric  
174 cooperative shall develop standards for the promotion,  
175 encouragement, and expansion of the use of renewable energy  
176 resources and energy conservation and efficiency measures. On or  
177 before April 1, 2009, and annually thereafter, each municipal  
178 electric utility and electric cooperative shall submit to the  
179 commission a report that identifies such standards.

180 (6) All prudently incurred costs of renewable energy shall  
181 be recoverable under s. 366.8255.

182 (a) The costs incurred by a provider in connection with the  
183 construction or conversion, operation, and maintenance of a  
184 Florida renewable energy resource shall be deemed to be prudent  
185 for purposes of cost recovery so long as the provider has used  
186 reasonable and customary industry practices in the design,



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187 procurement, and construction of the project in a cost-effective  
188 manner appropriate for the type of Florida renewable energy  
189 resource and appropriate to the location of the facility. The  
190 provider shall report to the commission as part of the cost-  
191 recovery proceedings the construction costs, in-service costs,  
192 operating and maintenance costs, hourly energy production of the  
193 renewable energy project, and any other information deemed  
194 relevant by the commission.

195 (b) The commission shall allow full cost recovery over the  
196 entire useful life of the Florida renewable energy resource of  
197 the revenue requirements using traditional declining balance  
198 amortization through the environmental cost-recovery clause of  
199 all reasonable and prudent costs incurred by the provider  
200 related to or resulting from activities under this section,  
201 including, but not limited to, the following:

202 1. The siting, licensing, engineering, design, permitting,  
203 construction, operation, and maintenance of Florida renewable  
204 energy resources and associated transmission facilities by the  
205 provider. Cost includes, but is not limited to, all capital  
206 investments, including rate of return and any applicable taxes  
207 and all expenses, including operation and maintenance expenses,  
208 for the purposes stated in this subsection;

209 2. The reasonable and prudent costs associated with the  
210 purchase of capacity and energy from new renewable energy  
211 resources; or

212 3. The reasonable and prudent costs for conversion of  
213 existing fossil fuel generating plants to a Florida renewable  
214 energy resource, including the costs of retirement of the fossil  
215 fuel generation plant.





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216           (c) Notwithstanding any other provision to the contrary,  
217 the commission shall allow a provider to recover all reasonable  
218 and prudent costs incurred to comply with a federal renewable  
219 portfolio standard, including costs to purchase renewable energy  
220 credits or alternative compliance payments.

221           (d) In addition to the full cost recovery for such  
222 renewable energy projects, a return on equity of not less than  
223 50 basis points above the top of the range of the provider's  
224 last authorized rate of return on equity, approved by the  
225 commission for energy projects, shall be approved and provided  
226 for such renewable energy projects if a majority value of the  
227 energy-producing components incorporated into such projects are  
228 manufactured or assembled within this state.

229           (7)~~(6)~~ Nothing in this section or actions taken pursuant to  
230 this section shall be construed to impede or impair terms and  
231 conditions of existing contracts or be a basis for renegotiating  
232 or repricing existing contracts.

233           (8) Nothing in this section impedes or impairs a provider's  
234 full cost recovery of all reasonable and prudent costs incurred  
235 for renewable energy projects approved by the commission as  
236 eligible for cost recovery through the environmental cost-  
237 recovery clause before the effective date of this act. Nothing  
238 in this section requires a provider to build Florida renewable  
239 energy resources, convert existing fossil fuel generation plants  
240 to a Florida renewable resource, or purchase renewable energy.  
241 Furthermore a provider is not required to contract for  
242 generation at a price above its avoided cost if doing so would  
243 be inconsistent with or violate the Public Utility Regulatory  
244 Policies Act of 1978, as amended.



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245           ~~(9)-(7)~~ The Commission may adopt rules to administer and  
246 implement the provisions of this section.

247           Section 2. Subsection (1) of section 366.8255, Florida  
248 Statutes, is amended to read:

249           366.8255 Environmental cost recovery.—

250           (1) As used in this section, the term:

251           (a) "Electric utility" or "utility" means any investor-  
252 owned electric utility that owns, maintains, or operates an  
253 electric generation, transmission, or distribution system within  
254 the State of Florida and that is regulated under this chapter.

255           (b) "Commission" means the Florida Public Service  
256 Commission.

257           (c) "Environmental laws or regulations" includes all  
258 federal, state, or local statutes, administrative regulations,  
259 orders, ordinances, resolutions, or other requirements that  
260 apply to electric utilities and are designed to protect the  
261 environment, including any federal or state law that requires an  
262 electric utility to provide electricity from renewable energy.

263           (d) "Environmental compliance costs" includes all costs or  
264 expenses incurred by an electric utility in complying with  
265 environmental laws or regulations, including, but not limited  
266 to:

- 267           1. Inservice capital investments, including the electric  
268 utility's last authorized rate of return on equity thereon.  
269           2. Operation and maintenance expenses.  
270           3. Fuel procurement costs.  
271           4. Purchased power costs.  
272           5. Emission allowance costs.  
273           6. Direct taxes on environmental equipment.



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274           7. Costs or expenses prudently incurred by an electric  
275 utility pursuant to an agreement entered into on or after the  
276 effective date of this act and prior to October 1, 2002, between  
277 the electric utility and the Florida Department of Environmental  
278 Protection or the United States Environmental Protection Agency  
279 for the exclusive purpose of ensuring compliance with ozone  
280 ambient air quality standards by an electrical generating  
281 facility owned by the electric utility.

282           8. Costs or expenses prudently incurred for the  
283 quantification, reporting, and third-party verification as  
284 required for participation in greenhouse gas emission registries  
285 for greenhouse gases as defined in s. 403.44.

286           9. Costs or expenses prudently incurred for scientific  
287 research and geological assessments of carbon capture and  
288 storage conducted in this state for the purpose of reducing an  
289 electric utility's greenhouse gas emissions when such costs or  
290 expenses are incurred in joint research projects with Florida  
291 state government agencies and Florida state universities.

292           10. Costs or expenses prudently incurred to comply with any  
293 environmental laws or regulations requiring that any portion of  
294 the electric utility's energy sales, demand, or other measures  
295 of the provision of electricity to its customers be derived from  
296 renewable energy, however defined, either produced by the  
297 electric utility itself or purchased from another source, or  
298 through credits purchased to comply in whole or in part with  
299 such provisions, including costs or expenses associated with  
300 setting up and participating in market or other mechanisms for  
301 trading such renewable energy credits.

302           Section 3. This act shall take effect upon becoming a law.



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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to renewable energy; amending s.  
366.92, F.S.; revising legislative intent regarding  
the state's renewable energy policy; deleting  
provisions requiring that the Public Service  
Commission adopt rules for a renewable portfolio  
standard; requiring that the commission provide for  
full cost recovery; requiring that each provider of  
Florida renewable energy resources build such  
resources, convert existing fossil fuel generation  
plants to a renewable energy resource, or purchase  
renewable energy; providing that each provider may  
purchase or produce renewable energy having capacity  
or energy costs in excess of the fully avoided cost  
limitations; specifying such cost limitations;  
providing for renewable attributes; providing  
guidelines for cost recovery; amending s. 366.8255,  
F.S.; revising the definition of the term  
"environmental laws or regulations" to include any  
federal or state law requiring an electric utility to  
provide electricity from renewable energy; revising  
the definition of the term "environmental compliance  
costs" to conform to changes made by the act;  
providing an effective date.