

HB 1471

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1 A bill to be entitled
2 An act relating to renewable energy; amending s. 366.92,
3 F.S.; revising legislative intent regarding the state's
4 renewable energy policy; deleting provisions requiring
5 that the Public Service Commission adopt rules for a
6 renewable portfolio standard; requiring that the
7 commission provide for full cost recovery, including a
8 return on equity, for certain renewable energy projects;
9 requiring the commission to approve certain renewable
10 energy projects; creating s. 366.921, F.S.; providing
11 legislative findings; requiring that a petition filed by a
12 provider for approval of a facility producing a Florida
13 renewable energy resource comply with certain criteria;
14 specifying the criteria to be considered by the commission
15 in approving a petition for such facility; requiring that
16 the commission's final order approving a facility include
17 authorization for annual cost recovery; requiring
18 providers to file a report with commission; providing
19 report requirements; providing penalties for failure to
20 file the report; providing exemptions from determination
21 of need requirements; providing that certain legislative
22 determinations constitute a public need and necessity and
23 fulfill certain determination of need requirements;
24 providing for applicants meeting certain criteria to
25 obtain a final order of certification; amending s.
26 403.503, F.S.; redefining the term "electrical power
27 plant" for purposes of the Florida Electrical Power Plant
28 Siting Act to exclude solar electrical generating

29 facilities; providing an effective date.

30

31 Be It Enacted by the Legislature of the State of Florida:

32

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

35 366.92 Florida renewable energy policy.—

36 (1) In order to stimulate the state's economy, encourage
37 businesses to invest in clean technologies, and foster research,
38 development, manufacturing, construction, and jobs in new and
39 renewable energy, it is the intent of the Legislature to promote
40 the development of renewable energy; protect the economic
41 viability of Florida's existing renewable energy facilities;
42 diversify the types of fuel used to generate electricity in
43 Florida; lessen Florida's dependence on natural gas and fuel oil
44 for the production of electricity; minimize the volatility of
45 fuel costs; encourage investment within the state; improve
46 environmental conditions by minimizing water consumption and
47 reducing carbon and other greenhouse gas emissions emitted in
48 this state; and, at the same time, minimize the costs of power
49 supply to electric utilities and their customers.

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

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

53 (b) "Provider" means a "utility" as defined in s.
54 366.8255(1) (a) .

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

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57 ~~(d) "Renewable energy credit" or "REC" means a product~~
58 ~~that represents the unbundled, separable, renewable attribute of~~
59 ~~renewable energy produced in Florida and is equivalent to 1~~
60 ~~megawatt-hour of electricity generated by a source of renewable~~
61 ~~energy located in Florida.~~

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

66 ~~(3) The commission shall adopt rules for a renewable~~
67 ~~portfolio standard requiring each provider to supply renewable~~
68 ~~energy to its customers directly, by procuring, or through~~
69 ~~renewable energy credits. In developing the RPS rule, the~~
70 ~~commission shall consult the Department of Environmental~~
71 ~~Protection and the Florida Energy and Climate Commission. The~~
72 ~~rule shall not be implemented until ratified by the Legislature.~~
73 ~~The commission shall present a draft rule for legislative~~
74 ~~consideration by February 1, 2009.~~

75 ~~(a) In developing the rule, the commission shall evaluate~~
76 ~~the current and forecasted levelized cost in cents per kilowatt~~
77 ~~hour through 2020 and current and forecasted installed capacity~~
78 ~~in kilowatts for each renewable energy generation method through~~
79 ~~2020.~~

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

81 ~~1. Shall include methods of managing the cost of~~
82 ~~compliance with the renewable portfolio standard, whether~~
83 ~~through direct supply or procurement of renewable power or~~
84 ~~through the purchase of renewable energy credits. The commission~~

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85 ~~shall have rulemaking authority for providing annual cost~~
86 ~~recovery and incentive-based adjustments to authorized rates of~~
87 ~~return on common equity to providers to incentivize renewable~~
88 ~~energy. Notwithstanding s. 366.91(3) and (4), upon the~~
89 ~~ratification of the rules developed pursuant to this subsection,~~
90 ~~the commission may approve projects and power sales agreements~~
91 ~~with renewable power producers and the sale of renewable energy~~
92 ~~credits needed to comply with the renewable portfolio standard.~~
93 ~~In the event of any conflict, this subparagraph shall supersede~~
94 ~~s. 366.91(3) and (4). However, nothing in this section shall~~
95 ~~alter the obligation of each public utility to continuously~~
96 ~~offer a purchase contract to producers of renewable energy.~~

97 ~~2. Shall provide for appropriate compliance measures and~~
98 ~~the conditions under which noncompliance shall be excused due to~~
99 ~~a determination by the commission that the supply of renewable~~
100 ~~energy or renewable energy credits was not adequate to satisfy~~
101 ~~the demand for such energy or that the cost of securing~~
102 ~~renewable energy or renewable energy credits was cost~~
103 ~~prohibitive.~~

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

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

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

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113 ~~6. Shall ensure that energy credited toward compliance~~
114 ~~with the requirements of this section is not credited toward any~~
115 ~~other purpose.~~

116 ~~7. Shall include procedures to track and account for~~
117 ~~renewable energy credits, including ownership of renewable~~
118 ~~energy credits that are derived from a customer-owned renewable~~
119 ~~energy facility as a result of any action by a customer of an~~
120 ~~electric power supplier that is independent of a program~~
121 ~~sponsored by the electric power supplier.~~

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

125 ~~(c) Beginning on April 1 of the year following final~~
126 ~~adoption of the commission's renewable portfolio standard rule,~~
127 ~~each provider shall submit a report to the commission describing~~
128 ~~the steps that have been taken in the previous year and the~~
129 ~~steps that will be taken in the future to add renewable energy~~
130 ~~to the provider's energy supply portfolio. The report shall~~
131 ~~state whether the provider was in compliance with the renewable~~
132 ~~portfolio standard during the previous year and how it will~~
133 ~~comply with the renewable portfolio standard in the upcoming~~
134 ~~year.~~

135 (3) (a) (4) In order to promote and facilitate the
136 development of clean energy industry in this state ~~demonstrate~~
137 ~~the feasibility and viability of clean energy systems, the~~
138 ~~commission shall provide for full cost recovery under the~~
139 ~~environmental cost-recovery clause of all reasonable and prudent~~
140 ~~costs incurred by a provider for renewable energy projects that~~

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141 result in a net decrease of ~~are zero~~ greenhouse gas emitted in
142 this state ~~emitting at the point of generation, up to a total of~~
143 ~~110 megawatts statewide,~~ and for which the provider has secured
144 necessary land, zoning permits, and transmission rights within
145 the state.

146 (b) In addition to the full cost recovery for such
147 renewable energy projects, a return on equity of not less than
148 50 basis points above the top of the range of the provider's
149 last authorized rate of return on equity approved by the
150 commission for energy projects shall be approved and provided
151 for such renewable energy projects if a majority value of the
152 energy-producing components incorporated into such projects are
153 manufactured or assembled within this state.

154 (c) Such costs shall be deemed reasonable and prudent for
155 purposes of cost recovery so long as the provider has
156 demonstrated that the renewable energy project meets the
157 criteria in s. 366.921(3)(a) and used reasonable and customary
158 industry practices in the design, procurement, and construction
159 of the project in a cost-effective manner appropriate to the
160 location of the facility. The provider shall report to the
161 commission as part of the cost-recovery proceedings the
162 construction costs, in-service costs, operating and maintenance
163 costs, hourly energy production of the renewable energy project,
164 environmental benefits, and estimated fuel savings attributable
165 to the facility ~~and any other information deemed relevant by the~~
166 ~~commission. Any provider constructing a clean energy facility~~
167 ~~pursuant to this section shall file for cost recovery no later~~
168 ~~than July 1, 2009.~~

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169 (4) Pursuant to the approval process under s. 366.921, the
 170 commission shall approve a total of 700 megawatts of renewable
 171 energy projects for the years 2010, 2011, and 2012, with up to a
 172 total of 300 megawatts approved in 2010 and up to an additional
 173 200 megawatts approved annually in 2011 and 2012, as part of new
 174 renewable energy projects and an additional 35 megawatts, with
 175 up to 15 megawatts annually for 2010 and up to 10 megawatts
 176 annually for 2011 and 2012, for rooftop or area lighting solar
 177 energy applications in addition to megawatts attributable to
 178 renewable energy projects approved by the commission for cost
 179 recovery before January 1, 2010. Any megawatts for renewable
 180 energy projects designated for approval for a specific year that
 181 remain available at the end of the calendar year shall be
 182 carried forward to the succeeding year.

183 (5) Each municipal electric utility and rural electric
 184 cooperative shall develop standards for the promotion,
 185 encouragement, and expansion of the use of renewable energy
 186 resources and energy conservation and efficiency measures. On or
 187 before April 1, 2009, and annually thereafter, each municipal
 188 electric utility and electric cooperative shall submit to the
 189 commission a report that identifies such standards.

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

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

194 Section 2. Section 366.921, Florida Statutes, is created
 195 to read:

196 366.921 Renewable energy; approval process.—

197 (1) The Legislature finds that the goals stated in s.
 198 366.92(1) shall be accomplished by fostering the expansion and
 199 development of Florida renewable energy resources. Providers of
 200 Florida renewable energy resources must acquire commission
 201 approval before the construction, licensing, and operation of a
 202 facility producing such resources or the purchase of capacity or
 203 energy from a facility producing such resources. This
 204 requirement does not apply to purchases of capacity or energy
 205 under commission-approved standard offer contracts or tariffs.
 206 Any petition filed by a provider for approval of a facility
 207 producing a Florida renewable energy resource must meet the
 208 criteria specified in this section.

209 (2) Notwithstanding s. 403.519, the Legislature finds that
 210 there is a need for new Florida renewable energy resources
 211 consistent with the goals stated in s. 366.92(1). This
 212 legislative finding shall serve as the need determination
 213 required under s. 403.519 and as the commission's agency report
 214 under s. 403.507(4) (a).

215 (3) Upon the filing by a provider of a petition for
 216 approval of a facility producing a Florida renewable energy
 217 resource, the commission shall schedule a formal administrative
 218 hearing within 10 days after the filing of the petition and vote
 219 on the petition within 90 days after such filing.

220 (4) Before approving the petition, the commission shall
 221 consider whether the:

222 (a) Proposal for the facility requires the use of
 223 reasonable and customary industry practices in the design,
 224 engineering, and proposed construction of the facility that is

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225 appropriate to the proposed technology and location of the
226 facility.

227 (b) Entity, including a provider, which would engineer,
228 design, and construct the proposed facility has the requisite
229 technical and financial qualifications, expertise, and
230 capability.

231 (c) Entity, including a provider, which would operate the
232 proposed facility has the requisite technical qualifications,
233 expertise, and capability.

234 (d) Proposed production of the Florida renewable energy
235 resource will have a positive impact on the environment,
236 including the reduction of greenhouse gas emissions in the
237 state, measured at the point of generation.

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

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

243 (g) Proposed facility producing the Florida renewable
244 energy resource will minimize or avoid the incremental use of
245 water resources at the project site in the production of
246 renewable power.

247 (5) The commission's final order approving a facility
248 producing a Florida renewable energy resource shall include
249 express authorization for annual cost recovery pursuant to ss.
250 366.8255 and 366.92.

251 (6) A provider that receives approval from the commission
252 for a specific renewable energy project pursuant to this section

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253 shall file a report with the commission within 1 year after the
254 date of the order reflecting such approval. Prior to the
255 expiration of the time for filing the report, a provider may
256 request an extension of time up to 6 months to file such report
257 and the commission shall grant such request if the provider
258 demonstrates good cause for the extension. The report shall
259 summarize the status of the project, including confirmation that
260 construction of the project has commenced, and provide all
261 relevant supporting documentation. If a provider fails to timely
262 file such report, the approval of the project granted by the
263 commission shall be vacated by operation of law and the
264 megawatts attributable to such project shall be restored as part
265 of the total megawatts available for renewable energy projects
266 under s. 366.92(4).

267 (7) The Legislature finds that there is a need for all
268 proposed Florida renewable energy resources for which an
269 application for certification has been filed by a provider and
270 is pending under part II of chapter 403, as of the effective
271 date of this act, and that such proposed Florida renewable
272 energy resources are exempt from the requirement to obtain a
273 determination of need pursuant to this section and s. 403.519.
274 Florida renewable energy resources for which an application for
275 certification has been filed by a provider and is pending under
276 part II of chapter 403, as of the effective date of this act,
277 are determined by the Legislature to meet the electrical needs
278 of the state in an orderly, reliable, and timely fashion, to
279 fulfill the provisions of s. 403.519(3), and to otherwise be in
280 the public interest. The Legislature's determination of need

281 reflected in this subsection creates a presumption of public
 282 need and necessity which shall not be raised in any other forum
 283 or in the review of proceedings in such other forum and shall
 284 substitute for the commission's report required by s.
 285 403.507(4). Notwithstanding any amendment to s. 403.503, all
 286 proposed Florida renewable energy resources for which an
 287 application for certification has been filed by a provider and
 288 is pending under part II of chapter 403, as of the effective
 289 date of this act, may, at the applicant's option, proceed to
 290 obtain a final order of certification under part II of chapter
 291 403.

292 Section 3. Subsection (14) of section 403.503, Florida
 293 Statutes, is amended to read:

294 403.503 Definitions relating to Florida Electrical Power
 295 Plant Siting Act.—As used in this act:

296 (14) "Electrical power plant" means, for the purpose of
 297 certification, any steam ~~or solar~~ electrical generating facility
 298 using any process or fuel, including nuclear materials, except
 299 that this term does not include any steam ~~or solar~~ electrical
 300 generating facility of less than 75 megawatts in capacity or any
 301 solar electrical generating facility of any sized capacity
 302 unless the applicant for such a facility elects to apply for
 303 certification under this act. This term also includes the site;
 304 all associated facilities that will be owned by the applicant
 305 that are physically connected to the site; all associated
 306 facilities that are indirectly connected to the site by other
 307 proposed associated facilities that will be owned by the
 308 applicant; and associated transmission lines that will be owned

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309 | by the applicant which connect the electrical power plant to an
310 | existing transmission network or rights-of-way to which the
311 | applicant intends to connect. At the applicant's option, this
312 | term may include any offsite associated facilities that will not
313 | be owned by the applicant; offsite associated facilities that
314 | are owned by the applicant but that are not directly connected
315 | to the site; any proposed terminal or intermediate substations
316 | or substation expansions connected to the associated
317 | transmission line; or new transmission lines, upgrades, or
318 | improvements of an existing transmission line on any portion of
319 | the applicant's electrical transmission system necessary to
320 | support the generation injected into the system from the
321 | proposed electrical power plant.

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