

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Precourt offered the following:

2  
3 **Substitute Amendment to Amendment (042441) (with title**  
4 **amendment)**

5 Remove lines 190-686 and insert:

6 Section 3. Section 366.90, Florida Statutes, is created to  
7 read:

8 366.90 Renewable energy for electricity production.—In  
9 furtherance of the energy policy goals established in s.  
10 377.601, the Legislature finds that it is in the public interest  
11 to promote the development of renewable energy resources in the  
12 state, for purposes of electricity production, through the  
13 mechanisms established in ss. 366.91 and 366.92. The Legislature  
14 further finds that renewable energy resources have the potential  
15 to help diversify fuel types to alleviate the state's growing  
16 dependence on natural gas and other fossil fuels for the

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17 production of electricity, minimize the volatility of fuel  
18 costs, encourage investment within the state, improve  
19 environmental conditions, and make the state a leader in new and  
20 innovative technologies.

21 Section 4. Subsection (1) and paragraph (a) of subsection  
22 (2) of section 366.91, Florida Statutes, are amended, and  
23 subsections (2) through (8) of that section are renumbered as  
24 subsections (1) through (7), respectively, to read:

25 366.91 Renewable energy.—

26 ~~(1) The Legislature finds that it is in the public~~  
27 ~~interest to promote the development of renewable energy~~  
28 ~~resources in this state. Renewable energy resources have the~~  
29 ~~potential to help diversify fuel types to meet Florida's growing~~  
30 ~~dependency on natural gas for electric production, minimize the~~  
31 ~~volatility of fuel costs, encourage investment within the state,~~  
32 ~~improve environmental conditions, and make Florida a leader in~~  
33 ~~new and innovative technologies.~~

34 ~~(1)-(2)~~ As used in this section, the term:

35 (a) "Biomass" means a power source that is comprised of,  
36 but not limited to, combustible residues or gases from forest  
37 products manufacturing, waste, byproducts, or products from  
38 agricultural and orchard crops, waste or coproducts from  
39 livestock and poultry operations, waste or byproducts from food  
40 processing, recycling byproducts, urban wood waste, municipal  
41 solid waste, municipal liquid waste treatment operations, and  
42 landfill gas.

43 Section 5. Section 366.92, Florida Statutes, is amended to  
44 read:

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45 366.92 Florida renewable energy policy.—

46 ~~(1) It is the intent of the Legislature to promote the~~  
47 ~~development of renewable energy; protect the economic viability~~  
48 ~~of Florida's existing renewable energy facilities; diversify the~~  
49 ~~types of fuel used to generate electricity in Florida; lessen~~  
50 ~~Florida's dependence on natural gas and fuel oil for the~~  
51 ~~production of electricity; minimize the volatility of fuel~~  
52 ~~costs; encourage investment within the state; improve~~  
53 ~~environmental conditions; and, at the same time, minimize the~~  
54 ~~costs of power supply to electric utilities and their customers.~~

55 ~~(1)(2)~~ As used in this section, the term:

56 ~~(a) "Florida renewable energy resources" means renewable~~  
57 ~~energy, as defined in s. 377.803, that is produced in Florida.~~

58 ~~(a)(b)~~ "Provider" means a "utility" as defined in s.  
59 366.8255(1)(a).

60 ~~(b)(e)~~ "Renewable energy" means renewable energy as  
61 defined in s. 366.91(2)(d) that is produced in the state.

62 ~~(d) "Renewable energy credit" or "REC" means a product~~  
63 ~~that represents the unbundled, separable, renewable attribute of~~  
64 ~~renewable energy produced in Florida and is equivalent to 1~~  
65 ~~megawatt-hour of electricity generated by a source of renewable~~  
66 ~~energy located in Florida.~~

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

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

80 ~~(a) In developing the rule, the commission shall evaluate~~  
81 ~~the current and forecasted levelized cost in cents per kilowatt~~  
82 ~~hour through 2020 and current and forecasted installed capacity~~  
83 ~~in kilowatts for each renewable energy generation method through~~  
84 ~~2020.~~

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

86 ~~1. Shall include methods of managing the cost of~~  
87 ~~compliance with the renewable portfolio standard, whether~~  
88 ~~through direct supply or procurement of renewable power or~~  
89 ~~through the purchase of renewable energy credits. The commission~~  
90 ~~shall have rulemaking authority for providing annual cost~~  
91 ~~recovery and incentive-based adjustments to authorized rates of~~  
92 ~~return on common equity to providers to incentivize renewable~~  
93 ~~energy. Notwithstanding s. 366.91(3) and (4), upon the~~  
94 ~~ratification of the rules developed pursuant to this subsection,~~  
95 ~~the commission may approve projects and power sales agreements~~  
96 ~~with renewable power producers and the sale of renewable energy~~  
97 ~~credits needed to comply with the renewable portfolio standard.~~  
98 ~~In the event of any conflict, this subparagraph shall supersede~~  
99 ~~s. 366.91(3) and (4). However, nothing in this section shall~~

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100 ~~alter the obligation of each public utility to continuously~~  
101 ~~offer a purchase contract to producers of renewable energy.~~

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

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

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

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

118 ~~6. Shall ensure that energy credited toward compliance~~  
119 ~~with the requirements of this section is not credited toward any~~  
120 ~~other purpose.~~

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

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

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

140 (2)(4) Subject to the provisions of this subsection ~~In~~  
141 ~~order to demonstrate the feasibility and viability of clean~~  
142 ~~energy systems, the commission shall provide for full cost~~  
143 ~~recovery under the environmental cost-recovery clause of all~~  
144 ~~reasonable and prudent costs incurred by a provider to produce~~  
145 ~~or purchase for renewable energy for purposes of supplying~~  
146 ~~electrical energy to its retail customers~~ projects that are zero  
147 ~~greenhouse gas emitting at the point of generation, up to a~~  
148 ~~total of 110 megawatts statewide, and for which the provider has~~  
149 ~~secured necessary land, zoning permits, and transmission rights~~  
150 ~~within the state. Such costs shall be deemed reasonable and~~  
151 ~~prudent for purposes of cost recovery so long as the provider~~  
152 ~~has used reasonable and customary industry practices in the~~  
153 ~~design, procurement, and construction of the project in a cost-~~  
154 ~~effective manner appropriate to the location of the facility.~~

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155 ~~The provider shall report to the commission as part of the cost-~~  
156 ~~recovery proceedings the construction costs, in-service costs,~~  
157 ~~operating and maintenance costs, hourly energy production of the~~  
158 ~~renewable energy project, and any other information deemed~~  
159 ~~relevant by the commission. Any provider constructing a clean~~  
160 ~~energy facility pursuant to this section shall file for cost~~  
161 ~~recovery no later than July 1, 2009.~~

162 (a) A provider may petition the commission for recovery of  
163 costs to produce or purchase renewable energy, subject to the  
164 cost cap in paragraph (c). The provider has sole discretion to  
165 determine the type and technology of the renewable energy  
166 resource that it intends to use. However, at least 20 percent of  
167 the total nameplate capacity for which a provider is permitted  
168 to recover costs in any calendar year under this subsection must  
169 be produced or purchased from renewable energy sources other  
170 than solar energy. No later than when a provider files a  
171 petition for cost recovery under this subsection, the provider  
172 must file with the commission a schedule of planned production  
173 and purchases for the calendar year in which cost recovery is  
174 requested. If any portion of the capacity required from nonsolar  
175 renewable energy resources is committed but, for reasons found  
176 by the commission to be beyond the control of the provider, is  
177 not available during the calendar year for which cost recovery  
178 is requested, the provider may continue to recover costs to  
179 produce or purchase renewable energy from solar energy resources  
180 if the provider continues in good faith to pursue the production  
181 or purchase of renewable energy from nonsolar resources. The  
182 provider has sole discretion to determine whether to construct

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183 new renewable energy generating facilities, convert existing  
184 fossil fuel generating facilities to renewable energy generating  
185 facilities, or contract for the purchase of renewable energy  
186 from third-party generating facilities in the state.

187 (b) In addition to the full cost recovery for such  
188 renewable energy projects, a return on equity of at least 50  
189 basis points above the top of the range of the provider's last  
190 authorized rate of return on equity approved by the commission  
191 for energy projects shall be approved and provided for such  
192 renewable energy projects if a majority value of the energy-  
193 producing components incorporated into such projects are  
194 manufactured or assembled in the state.

195 (c) For the production or purchase of renewable energy  
196 under this subsection, a provider may recover costs up to and in  
197 excess of its full avoided cost, as defined in s. 366.051 and  
198 approved by the commission, if the recovery of costs in excess  
199 of the provider's full avoided cost does not exceed, as a  
200 percentage of the provider's total revenues from the retail sale  
201 of electricity for calendar year 2009, the total cumulative  
202 amount of 2 percent in calendar years 2010 and 2011, the total  
203 cumulative amount of 3 percent in calendar year 2012, and the  
204 total cumulative amount of 4 percent in calendar year 2013 and  
205 thereafter. For purposes of cost recovery under this subsection,  
206 costs shall be computed using a methodology that, for a  
207 renewable energy generating facility, averages the revenue  
208 requirements of the facility over its economic life and, for a  
209 renewable energy purchase, averages the revenue requirements of  
210 the purchase over the life of the contract.

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211 (d) Cost recovery under this subsection is limited to new  
212 construction or conversion projects for which construction is  
213 commenced on or after July 1, 2010, and to purchases made on or  
214 after that date. All renewable energy projects for which costs  
215 are approved by the commission for recovery through the  
216 environmental cost recovery clause before July 1, 2010, are not  
217 subject to or included in the calculation of the cost cap.

218 (e) The costs incurred by a provider to produce or  
219 purchase renewable energy under this subsection are deemed to be  
220 prudent for purposes of cost recovery if the provider uses  
221 reasonable and customary industry practices in the design,  
222 procurement, and construction of the project in a cost-effective  
223 manner for the type of renewable energy resource and appropriate  
224 to the location of the facility.

225 (f) Subject to the cost cap in paragraph (c), the  
226 commission shall allow a provider to recover the costs  
227 associated with the production or purchase of renewable energy  
228 under this subsection as follows:

229 1. For new renewable energy generating facilities, the  
230 commission shall allow recovery of reasonable and prudent costs,  
231 including, but not limited to, the siting, licensing,  
232 engineering, design, permitting, construction, operation, and  
233 maintenance of such facilities, including any applicable taxes  
234 and a return based on the provider's last authorized rate of  
235 return.

236 2. For conversion of existing fossil fuel generating  
237 facilities to renewable energy generating facilities, the  
238 commission shall allow recovery of reasonable and prudent

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239 conversion costs, including the costs of retirement of the  
240 fossil fuel plant that exceed any amounts accrued by the  
241 provider for such purposes through rates previously set by the  
242 commission.

243 3. For purchase of renewable energy from third-party  
244 generating facilities in the state, the commission shall allow  
245 recovery of reasonable and prudent costs associated with the  
246 purchase. Any petition for approval of a purchased power  
247 agreement for renewable energy that is filed with the commission  
248 before April 2, 2010, and remains pending on July 1, 2010, shall  
249 be considered by the commission to have been filed in accordance  
250 with, and shall be subject to the provisions of, this  
251 subsection.

252 (g) In a proceeding to recover costs incurred under this  
253 subsection, a provider must provide the commission all cost  
254 information, hourly energy production information, and other  
255 information deemed relevant by the commission with respect to  
256 each project.

257 (h) When a provider purchases renewable energy under this  
258 subsection at a cost in excess of its full avoided cost, the  
259 seller must surrender to the provider all renewable attributes  
260 of the renewable energy purchased.

261 (i) Revenues derived from any renewable energy credit,  
262 carbon credit, or other mechanism that attributes value to the  
263 production of renewable energy, either existing or hereafter  
264 devised, received by a provider by virtue of the production or  
265 purchase of renewable energy for which cost recovery is approved  
266 under this subsection shall be shared with the provider's

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267 ratepayers such that the ratepayers are credited at least 75  
268 percent of such revenues.

269 (j) Section 403.519 does not apply to a renewable energy  
270 generating facility constructed or converted from an existing  
271 fossil fuel generating facility under this subsection, and the  
272 commission is not required to submit a report for such a project  
273 under s. 403.507(4) (a).

274 (3) Each provider shall, in its 10-year site plan  
275 submitted to the commission pursuant to s. 186.801, provide the  
276 following information:

277 (a) The amount of renewable energy resources the provider  
278 produces or purchases.

279 (b) The amount of renewable energy resources the provider  
280 plans to produce or purchase over the 10-year planning horizon  
281 and the means by which such production or purchases will be  
282 achieved.

283 (c) A statement indicating how the production and purchase  
284 of renewable energy resources impact the provider's present and  
285 future capacity and energy needs.

286 (4)-(5) Each municipal electric utility and rural electric  
287 cooperative shall develop standards for the promotion,  
288 encouragement, and expansion of the use of renewable energy  
289 resources and energy conservation and efficiency measures. On or  
290 before April 1, 2009, and annually thereafter, each municipal  
291 electric utility and electric cooperative shall submit to the  
292 commission a report that identifies such standards.

293 (5)-(6) ~~Nothing in~~ This section and any action taken under  
294 this section may not ~~shall~~ be construed to impede or impair the

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295 terms and conditions of, or serve as a basis for renegotiating  
296 or repricing, an existing contract ~~contracts~~.

297 (6)-(7) The commission may adopt rules to administer and  
298  
299

300 -----

301 **T I T L E A M E N D M E N T**

302 Remove lines 6-22 and insert:  
303 creating s. 366.90, F.S.; providing legislative intent  
304 relating to renewable energy production of electricity;  
305 amending s. 366.91, F.S.; deleting legislative intent  
306 provisions to conform to changes made by the act; revising  
307 the definition of the terms "biomass"; amending s.