

By Senator Bennett

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1                                   A bill to be entitled  
2           An act relating to renewable energy; amending s.  
3           366.92, F.S.; revising legislative intent regarding  
4           the state's renewable energy policy; deleting  
5           provisions requiring that the Public Service  
6           Commission adopt rules for a renewable portfolio  
7           standard; requiring that the commission provide for  
8           full cost recovery; allowing each provider of Florida  
9           renewable energy resources to build such resources,  
10          convert existing fossil fuel generation plants to a  
11          renewable energy resource, or purchase renewable  
12          energy to recover costs; providing that each provider  
13          may purchase or produce renewable energy having  
14          capacity or energy costs in excess of the fully  
15          avoided cost limitations; specifying such cost  
16          limitations; providing for renewable attributes;  
17          providing guidelines for full cost recovery; providing  
18          caveats; amending s. 366.8255, F.S.; revising the  
19          definition of the term "environmental laws or  
20          regulations" to include any federal or state law  
21          requiring an electric utility to provide electricity  
22          from renewable energy; revising the definition of the  
23          term "environmental compliance costs" to conform to  
24          changes made by the act; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28           Section 1. Section 366.92, Florida Statutes, is amended to  
29           read:

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30 366.92 Florida renewable energy policy.—

31 (1) In order to stimulate the state's economy, encourage  
32 businesses to invest in clean technologies, and foster research,  
33 development, manufacturing, construction, and jobs in new and  
34 renewable energy, it is the intent of the Legislature to promote  
35 the development of renewable energy; protect the economic  
36 viability of Florida's existing renewable energy facilities;  
37 diversify the types of fuel used to generate electricity in  
38 Florida; lessen Florida's dependence on natural gas and fuel oil  
39 for the production of electricity; minimize the volatility of  
40 fuel costs; encourage investment within the state; improve  
41 environmental conditions; and, at the same time, minimize the  
42 costs of renewable power supply to electric utilities and their  
43 customers. It is the further intent of the Legislature that all  
44 prudently incurred costs of renewable energy shall be  
45 recoverable from electric utility customers through the  
46 environmental cost-recovery clause.

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

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

50 (b) "Provider" means a "utility" as defined in s.  
51 366.8255(1) (a).

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

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

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

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

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

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

78 ~~1. Shall include methods of managing the cost of compliance~~  
79 ~~with the renewable portfolio standard, whether through direct~~  
80 ~~supply or procurement of renewable power or through the purchase~~  
81 ~~of renewable energy credits. The commission shall have~~  
82 ~~rulemaking authority for providing annual cost recovery and~~  
83 ~~incentive-based adjustments to authorized rates of return on~~  
84 ~~common equity to providers to incentivize renewable energy.~~  
85 ~~Notwithstanding s. 366.91(3) and (4), upon the ratification of~~  
86 ~~the rules developed pursuant to this subsection, the commission~~  
87 ~~may approve projects and power sales agreements with renewable~~

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88 ~~power producers and the sale of renewable energy credits needed~~  
89 ~~to comply with the renewable portfolio standard. In the event of~~  
90 ~~any conflict, this subparagraph shall supersede s. 366.91(3) and~~  
91 ~~(4). However, nothing in this section shall alter the obligation~~  
92 ~~of each public utility to continuously offer a purchase contract~~  
93 ~~to producers of renewable energy.~~

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

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

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

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

110 ~~6. Shall ensure that energy credited toward compliance with~~  
111 ~~the requirements of this section is not credited toward any~~  
112 ~~other purpose.~~

113 ~~7. Shall include procedures to track and account for~~  
114 ~~renewable energy credits, including ownership of renewable~~  
115 ~~energy credits that are derived from a customer-owned renewable~~  
116 ~~energy facility as a result of any action by a customer of an~~

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117 ~~electric power supplier that is independent of a program~~  
118 ~~sponsored by the electric power supplier.~~

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

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

132 ~~(3)-(4)~~ In order to promote the development of Florida  
133 renewable energy resources and the delivery of renewable energy  
134 in the state, pending the adoption of final renewable energy  
135 portfolio standards under federal or state law demonstrate the  
136 feasibility and viability of clean energy systems, the  
137 commission shall provide for full cost recovery under the  
138 environmental cost-recovery clause of all reasonable and prudent  
139 costs incurred by a provider of Florida renewable energy  
140 resources for renewable energy projects that are zero greenhouse  
141 gas emitting at the point of generation, up to a total of 110  
142 megawatts statewide, and for which the provider has secured  
143 necessary land, zoning permits, and transmission rights within  
144 the state. Pursuant to this section, a provider may build  
145 Florida renewable energy resources, convert existing fossil fuel

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146 generation plants to a Florida renewable energy resource, or  
147 purchase renewable energy. Such providers shall recover all  
148 reasonable and prudent costs associated with building Florida  
149 renewable energy resources, converting existing fossil fuel  
150 generation plants to a Florida renewable energy resource, or  
151 purchasing renewable energy under the environmental cost-  
152 recovery clause. Each provider has the sole discretion to  
153 determine the type and technology of the Florida renewable  
154 energy resources that it elects to build and determine whether  
155 to self-build or contract with a third party for the purchase of  
156 power. Such costs shall be deemed reasonable and prudent for  
157 purposes of cost recovery so long as the provider has used  
158 reasonable and customary industry practices in the design,  
159 procurement, and construction of the project in a cost-effective  
160 manner appropriate to the location of the facility. The provider  
161 shall report to the commission as part of the cost-recovery  
162 proceedings the construction costs, in-service costs, operating  
163 and maintenance costs, hourly energy production of the renewable  
164 energy project, and any other information deemed relevant by the  
165 commission. Any provider constructing a clean energy facility  
166 pursuant to this section shall file for cost recovery no later  
167 than July 1, 2009.

168 (4) Pending the adoption of a state or federal renewable  
169 portfolio standard, each provider may purchase or produce  
170 Florida renewable energy having capacity or energy costs in  
171 excess of the fully avoided cost limitations in s. 366.051,  
172 subject to the limitations and conditions specified in  
173 paragraphs (a) and (b).

174 (a) The cost of producing or purchasing Florida renewable

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175 energy in any calendar year in excess of the fully avoided cost  
176 limitations in s. 366.051 shall not exceed 2 percent in 2011 and  
177 2012, 3 percent in 2013, or 4 percent in 2014 and thereafter of  
178 the investor-owned utility's total revenue from retail sales of  
179 electricity for the calendar year 2010. Pursuant to this  
180 section, costs shall be computed using a methodology that  
181 averages the revenue requirements of the renewable energy  
182 resource or the purchases over their economic lives. Costs  
183 incurred by a provider in 2011 for Florida renewable energy  
184 resources for which construction is commenced or for renewable  
185 energy purchased on or after the effective date of this act  
186 shall be counted toward and included in the calculation of the  
187 cost cap. Costs for renewable energy resources approved by the  
188 commission for cost recovery through the environmental cost-  
189 recovery clause before the effective date of this act are not  
190 subject to or included in the calculation of the cost cap.

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

195 (5) Each municipal electric utility and rural electric  
196 cooperative shall develop standards for the promotion,  
197 encouragement, and expansion of the use of renewable energy  
198 resources and energy conservation and efficiency measures. On or  
199 before April 1, 2009, and annually thereafter, each municipal  
200 electric utility and electric cooperative shall submit to the  
201 commission a report that identifies such standards.

202 (6) All prudently incurred costs of renewable energy are  
203 recoverable under s. 366.8255.

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204       (a) The costs incurred by a provider in connection with the  
205 construction or conversion, operation, and maintenance of a  
206 Florida renewable energy resource shall be deemed to be prudent  
207 for purposes of cost recovery so long as the provider has used  
208 reasonable and customary industry practices in the design,  
209 procurement, and construction of the project in a cost-effective  
210 manner appropriate for the type of Florida renewable energy  
211 resource and appropriate to the location of the facility. The  
212 provider shall report to the commission as part of the cost-  
213 recovery proceedings the construction costs, in-service costs,  
214 operating and maintenance costs, hourly energy production of the  
215 renewable energy project, and any other information deemed  
216 relevant by the commission.

217       (b) The commission shall allow full cost recovery over the  
218 entire useful life of the Florida renewable energy resource of  
219 the revenue requirements using traditional declining balance  
220 amortization through the environmental cost-recovery clause of  
221 all reasonable and prudent costs incurred by the provider  
222 related to or resulting from activities under this section,  
223 including, but not limited to, the following:

224           1. The siting, licensing, engineering, design, permitting,  
225 construction, operation, and maintenance of Florida renewable  
226 energy resources and associated transmission facilities by the  
227 provider. Cost includes, but is not limited to, all capital  
228 investments, including rate of return and any applicable taxes  
229 and all expenses, including operation and maintenance expenses,  
230 for the purposes stated in this subsection;

231           2. The reasonable and prudent costs associated with the  
232 purchase of capacity and energy from new renewable energy



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233 resources; or

234 3. The reasonable and prudent costs for conversion of  
235 existing fossil fuel generating plants to a Florida renewable  
236 energy resource, including the costs of retirement of the fossil  
237 fuel generation plant.

238 (c) Notwithstanding any other provision to the contrary,  
239 the commission shall allow a provider to recover all reasonable  
240 and prudent costs incurred to comply with a federal renewable  
241 portfolio standard, including costs to purchase renewable energy  
242 credits or alternative compliance payments.

243 (d) In addition to the full cost recovery for such  
244 renewable energy projects, a return on equity of not less than  
245 50 basis points above the top of the range of the provider's  
246 last authorized rate of return on equity, approved by the  
247 commission for energy projects, shall be approved and provided  
248 for such renewable energy projects if a majority of the energy-  
249 producing components incorporated into such projects are  
250 manufactured or assembled within this state.

251 (7)~~(6)~~ Nothing in this section or actions taken pursuant to  
252 this section shall be construed to impede or impair terms and  
253 conditions of existing contracts or be a basis for renegotiating  
254 or repricing existing contracts.

255 (8) Nothing in this section impedes or impairs a provider's  
256 full cost recovery of all reasonable and prudent costs incurred  
257 for renewable energy projects approved by the commission as  
258 eligible for cost recovery through the environmental cost-  
259 recovery clause before the effective date of this act. Nothing  
260 in this section requires a provider to build Florida renewable  
261 energy resources, convert existing fossil fuel generation plants

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262 to a Florida renewable resource, or purchase renewable energy.  
263 Furthermore a provider is not required to contract for  
264 generation at a price above its avoided cost if doing so would  
265 be inconsistent with or violate the Public Utility Regulatory  
266 Policies Act of 1978, as amended.

267 (9)~~(7)~~ The Commission may adopt rules to administer and  
268 implement the provisions of this section.

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

271 366.8255 Environmental cost recovery.—

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

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

277 (b) "Commission" means the Florida Public Service  
278 Commission.

279 (c) "Environmental laws or regulations" includes all  
280 federal, state, or local statutes, administrative regulations,  
281 orders, ordinances, resolutions, or other requirements that  
282 apply to electric utilities and are designed to protect the  
283 environment, including any federal or state law that requires an  
284 electric utility to provide electricity from renewable energy.

285 (d) "Environmental compliance costs" includes all costs or  
286 expenses incurred by an electric utility in complying with  
287 environmental laws or regulations, including, but not limited  
288 to:

289 1. Inservice capital investments, including the electric  
290 utility's last authorized rate of return on equity thereon.

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- 291           2. Operation and maintenance expenses.
- 292           3. Fuel procurement costs.
- 293           4. Purchased power costs.
- 294           5. Emission allowance costs.
- 295           6. Direct taxes on environmental equipment.
- 296           7. Costs or expenses prudently incurred by an electric
- 297 utility pursuant to an agreement entered into on or after the
- 298 effective date of this act and prior to October 1, 2002, between
- 299 the electric utility and the Florida Department of Environmental
- 300 Protection or the United States Environmental Protection Agency
- 301 for the exclusive purpose of ensuring compliance with ozone
- 302 ambient air quality standards by an electrical generating
- 303 facility owned by the electric utility.
- 304           8. Costs or expenses prudently incurred for the
- 305 quantification, reporting, and third-party verification as
- 306 required for participation in greenhouse gas emission registries
- 307 for greenhouse gases as defined in s. 403.44.
- 308           9. Costs or expenses prudently incurred for scientific
- 309 research and geological assessments of carbon capture and
- 310 storage conducted in this state for the purpose of reducing an
- 311 electric utility's greenhouse gas emissions when such costs or
- 312 expenses are incurred in joint research projects with Florida
- 313 state government agencies and Florida state universities.
- 314           10. Costs or expenses prudently incurred to comply with any
- 315 environmental laws or regulations requiring that any portion of
- 316 the electric utility's energy sales, demand, or other measures
- 317 of the provision of electricity to its customers be derived from
- 318 renewable energy, however defined, either produced by the
- 319 electric utility itself or purchased from another source, or

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320 through credits purchased to comply in whole or in part with  
321 such provisions, including costs or expenses associated with  
322 setting up and participating in markets or other mechanisms for  
323 trading such renewable energy credits.

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