HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1391 Sustainable Community Demonstration Projects
SPONSOR(S): Economic Affairs Committee, Energy & Utilities Subcommittee, Kreegel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1878

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 0 N, As CS	Keating	Collins
2) Economic Affairs Committee	14 Y, 0 N, As CS	Fennell	Tinker

SUMMARY ANALYSIS

The bill creates the "Sustainable Community Demonstration Project Act."

The bill creates s. 288.036, F.S., which provides for the certification of projects that meet specified standards as "Sustainable Community Demonstration Projects" ("projects" or "project"). Such projects must demonstrate "the catalytic economic, technological, and environmental benefits of a prototypical community as a living laboratory for accelerating economic development through innovative technological infrastructure and capital investment, including clean renewable energy systems and smart grid technologies." The bill requires the Department of Economic Opportunity (DEO) to review and certify projects as Sustainable Community Demonstration Projects. The bill also establishes a list of items that a Sustainable Community Demonstration Project must demonstrate. It appears that a planned development project in Charlotte County, referred to as Babcock Ranch, may be eligible to seek certification under the bill.

The bill also creates s. 366.94, F.S., which authorizes the Public Service Commission (PSC) to approve the recovery of costs incurred by a "provider" for "renewable energy generating facilities and integrated smart grid infrastructure, constructed and operated as part of a [certified] Sustainable Community Demonstration Project." Under current law, public utilities likely would not invest in such projects due to the costs and/or capacity benefits of such projects relative to traditional generation resources and the resulting risk that a project would not be deemed prudent by the PSC for cost recovery purposes. The bill establishes a list of factors that the PSC must consider in determining whether to approve cost recovery and provides that costs will be considered reasonable and prudent if the provider has used reasonable and customary industry practices in the design, procurement, and construction of the facility and has integrated smart grid infrastructure in a cost-effective manner appropriate to the location of the facility. The bill sets a cap on the permissible rate impact on customers and provides that approved costs will be recovered through the utility's environmental cost recovery charge authorized under s. 366.8255, F.S. The bill establishes requirements for a "provider," as part of a cost-recovery proceeding, to report to the PSC certain cost and production information. Florida Power & Light Company is the utility provider for the area where the Babcock Ranch development is planned.

The DEO may need to dedicate or acquire resources to implement its responsibilities under the bill. The PSC has indicated that any additional workload resulting from the bill can be handled by existing staff. The Revenue Estimating Conference has not addressed the impacts of this bill.

To the extent that the bill results in the development and construction of new renewable energy generating facilities and smart grid infrastructure, investment in these facilities will likely generate a number of design and construction jobs and a smaller number of permanent jobs to operate and maintain the facilities. The costs of these facilities would be recovered through the utility's environmental cost recovery charge authorized under s. 366.8255, F.S., which is applied to the rates of all customers of the utility, subject to a cap of 5 cents per month per 1,000 kilowatt hours.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Current law authorizes the Public Service Commission (PSC) to approve cost recovery for certain economic development expenses incurred by public utilities.[1] These expenses are limited to the following:

- Expenditures for operational assistance, including the participation in trade shows and prospecting missions with state and local entities.
- Expenditures for assisting state and local governments in the design of strategic plans for economic development activities.
- Expenditures for marketing and research services, including assisting local governments in marketing specific sites for business and industry development or recruitment, and assisting local governments in responding to inquiries from business and industry concerning the development of specific sites.

Current law does not include economic development impacts as matters that the PSC must consider in determining whether to approve cost recovery for new power plants, including renewable energy projects.

Absent specific authority to recover the costs of renewable energy projects, public utilities will likely not invest in such projects due to the costs and/or capacity benefits of such projects relative to traditional generation resources. In reviewing the need for proposed electrical power plants, the PSC must consider, among other things, whether the proposed plant is the most cost-effective alternative available and the need for electrical system reliability and integrity.[2] In most cases, a renewable energy facility will not be the most cost-effective alternative available, and in some instances the facility may not make a significant contribution to electrical system reliability and integrity as compared to other resources. Even for renewable energy projects that do not require a determination of need from the PSC, the utility will be permitted to recover investment in such projects only if the PSC finds that the funds were prudently invested.[3]

A non-utility entity that develops an electrical generation project and sells power at retail to the public is considered under Florida law to be a "public utility" subject to regulation by the PSC.[4]

Effect of Proposed Changes

The bill creates the "Sustainable Community Demonstration Project Act."

The bill creates s. 288.036, F.S., which provides for the certification of projects that meet specified standards as "Sustainable Community Demonstration Projects" ("projects" or "project"). Such projects must demonstrate "the catalytic economic, technological, and environmental benefits of a prototypical community as a living laboratory for accelerating economic development through innovative technological infrastructure and capital investment, including clean renewable energy systems and smart grid technologies."

The bill requires the Department of Economic Opportunity (DEO) to review and certify projects as Sustainable Community Demonstration Projects. Pursuant to the provisions created by the bill as s.

[1] Section 288.035, F.S.
[2] Section 403.519, F.S. Pursuant to this section, the PSC must also consider the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.
[3] Section 366.06(1), F.S.
[4] PW Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988).

288.036(3), F.S., a project must be certified if, in addition to complying with any applicable law other than the act, the project:

- Is comprehensive in scope by addressing the full range of community infrastructure, including renewable energy systems, smart grid technologies, data communications networks, alternative transportation mobility systems, sources for powering electric vehicles, digital learning centers, health and wellness features, and storm safety.
- Has in place the permits and entitlements required for primary infrastructure before securing building permits for a particular phase of construction.
- Proposes to meet the majority of its electricity needs from renewable sources and produce more electricity from on-site renewable energy generating facilities and distributed rooftop renewable energy facilities than the community is projected to use annually.
- Incorporates and integrates smart grid infrastructure and technology as a tool for improving grid performance; manages energy distribution, transmission, and consumption; maximizes efficiencies; and deploys high-speed digital operating systems and data transmission networks.
- Uses reasonable and customary industry practices in the design and construction of proposed renewable energy systems and smart grid infrastructure.
- Consists of a land area of at least 2,500 contiguous acres.
- Includes an accountability plan for developing project benchmarks and evaluating, measuring, and reporting project results against the criteria provided in subsection (4) (see below), with the involvement of members of the Florida Energy Systems Consortium and research universities, and extending the application of project knowledge throughout the state in partnership with the State University System. Also, the plan must show the economic impacts of the project. The bill provides that the project must submit its initial evaluation of its results to the DEO by July 1, 2014, and biennially thereafter.
- Generates, through the use of an accepted economic model, a positive return on investment in the form of job creation, production of goods and services, capital investment, and overall economic activity. This analysis shall be reported to the DEO and the Governor on an ongoing basis over the life of the project.

The bill establishes, through s. 288.036(4), F.S., that a Sustainable Community Demonstration Project must be intended to demonstrate the following:

- The economic feasibility and viability of clean renewable energy systems and smart grid infrastructure and technologies.
- The affordability and appeal of a sustainable smart community to industry and residents.
- The ability to attract a cluster of complementary industries and stimulate new capital investment in sustainable innovation and community infrastructure.
- The efficient management of energy distribution and consumption using smart grid systems to improve grid performance and community design and construction features.
- The incorporation of sustainable community design principles and construction features in a way that promotes health and wellness and the development and use of innovative alternatives in personal transportation, such as electric vehicles.
- The catalytic effect of a renewable energy-centered community and smart grid infrastructure system in spurring job creation.
- The ability to attract companies to this state to invest and create new jobs and industry.
- The stabilization of energy prices over time.
- The opportunities to enter into partnerships with the State University System in conducting research in innovative clean energy and smart technology communities and technologies and the translation of that research into business opportunities.
- The effectiveness of enhanced building techniques and design criteria in providing storm safety.

It appears that a planned development project in Charlotte County, referred to as Babcock Ranch, may be eligible to seek certification under the bill. According to its website, Babcock Ranch is a planned

"sustainable, environmentally sensitive, green community."[5] The planned development describes itself as the "first city planned to be powered by the sun, with the majority of its electric needs generated from the largest on-site solar photovoltaic energy facility powering any city on earth,"[6] a $300 million solar photovoltaic facility constructed by Florida Power & Light Company (FPL) with an initial generating capacity of 75 megawatts (MW).[7] In addition, the planned community would allow residents and companies to program their homes and businesses through an advanced electricity distribution network, or "Smart Grid." This Smart Grid would provide real-time monitoring and remote programming of every outlet in a house or business in the community and would provide for greater reliability within the community's distribution system.[8]

Babcock Ranch's website describes the planned community further:

> Homes, businesses, and government buildings will all be built using groundbreaking energy-efficient methods and materials. Ultra-modern electric vehicles will glide along avenues beneath the glow of solar-powered street lamps, plugging in to recharge at convenient community-wide recharging stations. Ingenious, revolutionary Smart Grid technologies will monitor and manage energy use while Smart Home technology will allow residents to operate their homes at maximum efficiency, thereby reducing energy costs. For businesses, we'll help imaginative companies move from research and development into implementation – demonstrating the benefits of widespread adoption of green technologies powered by clean, renewable energy.[9]

Babcock Ranch bills itself as a "living laboratory for research on energy efficiency, emerging technologies and true green living."[10] Florida Power & Light Company is the utility provider for the area where the Babcock Ranch development is planned.

The bill also creates s. 366.94, F.S., which authorizes the PSC to approve the recovery of costs incurred by a "provider" for "renewable energy generating facilities and integrated smart grid infrastructure, constructed and operated as part of a [certified] Sustainable Community Demonstration Project." The bill provides that the PSC, in determining whether to approve cost recovery, must consider the specific economic development and job creation benefits, projected long-term stabilization of energy costs, the reduction of adverse environmental impacts, and the legislative findings in ss. 366.91(1) and 366.92(1), including, but not limited to:

1. Promoting this state's leadership among competitor states in the development of renewable energy resources;
2. Diversifying the fuel mix;
3. Reducing the growing dependence on fuel sources which results in an outflow of this state's capital;
4. Encouraging new investments in innovation and job creation; and
5. Protecting the economic viability of renewable energy resources in this state."[11,12]

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[5] http://www.babcockranchflorida.com/home.asp (viewed on January 26, 2012)
[6] *Ibid.*
[7] http://www.babcockranchflorida.com/innovationvideo.asp and http://www.babcockranchflorida.com/solar.asp (viewed on January 26, 2012)
[8] http://www.babcockranchflorida.com/smart_grid.asp (viewed on January 26, 2012)
[9] http://www.babcockranchflorida.com/innovation.asp (viewed on January 26, 2012)
[10] http://www.babcockranchflorida.com/living_laboratory.asp (viewed on January 26, 2012)
[11] Section 366.91(1), F.S., states: "The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies."
[12] Section 366.92(1), F.S., states: "It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers."

The bill provides that, for purposes of cost recovery, costs will be considered reasonable and prudent if the provider has used reasonable and customary industry practices in the design, procurement, and construction of the facility and has integrated smart grid infrastructure in a cost-effective manner appropriate to the location of the facility. Costs would be recovered through the utility's environmental cost recovery charge authorized under s. 366.8255, F.S., which is applied to the rates of all customers of the utility.[13] The bill establishes a cap on recoverable costs equal to 5 cents per 1,000 kilowatt hours per month.

The bill authorizes a provider to initiate cost recovery proceedings with the PSC no later than July 1, 2013. The bill establishes requirements for a provider, as part of a cost-recovery proceeding, to report to the PSC certain cost and production information. Also, as directed by the PSC the approved providers shall report on the construction and operational status of approved renewable energy generating facilities that are part of a demonstration project.

B. SECTION DIRECTORY:

Section 1. Provides that the act may be cited as the "Sustainable Community Demonstration Project Act."

Section 2. Creates s. 288.036, F.S., relating to creation of a Sustainable Community Demonstration Project.

Section 3. Creates s. 366.94, F.S., relating to cost recovery for renewable energy as part of a Sustainable Community Demonstration Project.

Section 4. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may require the Department of Economic Opportunity to dedicate or acquire resources to establish the expertise necessary to evaluate proposed Sustainable Community Demonstration

[13] Section 366.8255, F.S., establishes a mechanism by which investor-owned electric utilities are authorized to recover specified "environmental compliance costs" through an annual adjustment to their rates. "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.
2. Operation and maintenance expenses.
3. Fuel procurement costs.
4. Purchased power costs.
5. Emission allowance costs.
6. Direct taxes on environmental equipment.
7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.
8. Costs or expenses prudently incurred for the quantification, reporting, and third-party verification as required for participation in greenhouse gas emission registries for greenhouse gases as defined in s. 403.44, F.S.
9. Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

Projects for certification and to evaluate such projects. The Public Service Commission has indicated that any additional workload resulting from the bill can be handled by its existing staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would allow for the development and construction of new renewable energy generating facilities and smart grid infrastructure in areas certified by the Department of Economic Opportunity as Sustainable Community Demonstration Projects. Investment in these utility facilities would likely generate a number of design and construction jobs and a smaller number of permanent jobs to operate and maintain the facilities. It is not clear if the addition of these facilities in a Sustainable Community Demonstration Project would spur indirectly any additional investment and job growth.

The costs of these facilities would be recovered through the utility's environmental cost recovery charge authorized under s. 366.8255, F.S., which is applied to the rates of all customers of the utility. The bill establishes a cap on recoverable costs equal to 5 cents per 1,000 kilowatt hours per month.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants rulemaking authority to the PSC. The PSC is authorized to adopt rules to implement the bill's provisions that require the PSC to review, for purposes of cost recovery, proposed utility investment in certain renewable energy generating facilities constructed as part of a Sustainable Community Demonstration Project.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not define the term "provider." From the context, "provider" appears to refer to a regulated public utility, but this is not clear.

The bill provides that the PSC, in evaluating a request for cost recovery, must consider "projected long-term stabilization of energy costs." It is not clear whether this evaluation should be done on a project-specific, utility-wide, or statewide basis.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Energy & Utilities Subcommittee adopted a strike-all amendment to HB 1391, which is reflected in the committee substitute for the bill. The strike-all amendment resulted in the following changes to the bill:

- Removed "Babcock" from the name of the Act, so that it is now called the "Sustainable Community Demonstration Project."
- Clarified the factors that the Department of Economic Opportunity must consider when reviewing a project for certification.
- Expanded the pool of land areas that may be used for a project by:
    - Reducing the land size requirements for a project from at least 10,000 contiguous acres to at least 2,500 contiguous acres, and
    - Eliminating the requirement that a project be located within a legislatively-created special district or approved development of regional impact.
- Clarified that only a utility provider working as part of a project – not a project itself – may initiate cost recovery proceedings at the PSC.
- Clarified the types of costs eligible for recovery (to include both the costs of the renewable energy generating facility and smart grid infrastructure).
- Set a cap on the amount eligible for cost recovery to ensure that residential customers using 1,000 kilowatt hours per month are not charged more than 5 cents per month.
- Provided that the bill does not preclude a utility that is not working as part of a project from seeking cost recovery under other applicable law.

On February 8, 2012, the Economic Affairs Committee adopted an amendment that makes the following changes to the bill, which are reflected in the above analysis:

- Requires that a Sustainable Community Demonstration Project include in their certification that the project has a positive return on investment and the expected economic impact based on a Department approved economic model.
- Requires a provider to document the specific economic development and job creation benefits and show a reduction of adverse environmental factors to the PSC in order to receive cost recovery on an approved project.
- Clarifies that the amount of cost recovery may not exceed 5 cents per 1,000 kilowatt hour per month.
- Changes the final date that a provider may initiate proceedings with the PSC from January 1, 2013 to July 1, 2013.
- Allows the PSC to request providers report on the construction and operational status of approved renewable energy generating facilities that are part of a demonstration project.