The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL:	SB 640
INTRODUCER:	Senator Bennett
SUBJECT:	Local Government Energy Zones
DATE:	December 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	CA	**Pre-meeting**
2.			CU	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill creates local government energy zones and amends the definition of a public utility to allow certain renewable energy facilities to make retail sales to end-use customers. As a result, these renewable energy facilities could sell renewable energy as defined in s. 366.91(2), F.S., to retail customers.

The bill creates local government energy zones and amends the definition of a public utility in s. 366.02, F.S. The bill also incorporates the amendments to s. 366.02, F.S., into ss. 290.007 and 768.1382, F.S.

II. Present Situation:

Section 366.02, F.S., defines any entity, except for municipal or rural cooperative utilities, supplying electricity or gas to or for the public as a public utility. According to the Florida Public Service Commission (FPSC), status as a public utility carries with it certain obligations to serve, and also renders the entity subject to the jurisdiction of the FPSC.[1] In a milestone 1987 decision, referred to as the PW Ventures case, the FPSC found that any energy sales to an individual constituted a sale to the public, and thus would interfere with the natural monopolies in place by the electric utilities in the state. This FPSC decision was affirmed soon afterwards by the Florida Supreme Court.[2] The availability of the third-party ownership model varies from state to state.

[1] Florida Public Service Commission, *SB 640*, (Nov. 14, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[2] *PW Ventures v. Nichols*, 533 So. 2d 281 (Fla. 1988).

Eight states currently have specific policies allowing it: New Hampshire, California, Connecticut, New York, Colorado, Nevada, New Mexico, and Oregon. [3]

In a third-party ownership model, a third party owns the generation equipment on the customer's property and sells the power produced to the customer. This option helps defray the large up-front capital investment for solar power, and allows the investor to make a consistent profit from power sales, often through a power purchase agreement. The owner of the panels is also eligible for incentives offered at the federal level. Under other ownership models, these incentives might not be available.

Under current law, investors can lease generation equipment to customers, and even include operations and maintenance costs in terms of the lease, but cannot sell the electricity to customers at a rate based on the level of consumption. This solution is considered an imperfect one by some prospective investors, as it would render them ineligible for some governmental incentives that help form the basis of the business model. It also removes a direct incentive to ensure the panels are located and installed in a manner that maximizes production, as leases must be based on fair market value without regard to production.

Currently, many small renewable energy systems are eligible for net metering under an FPSC rule adopted in 2008.[4] Net metering allows a customer to have any renewable energy they produce to be applied against their retail purchases, allowing them to receive the equivalent of the retail rate for the excess renewable energy delivered to the grid. Under the FPSC's net metering rules, which apply to renewable energy systems 2 Megawatts (MW) or less, any excess production left at the end of a year is paid out to customers at a price equal to the utility's avoided cost, also known as an as-available energy rate. The FPSC also adopted interconnection rules at the same time, which require investor-owned utilities to allow customers with renewable energy systems under 2 MW to connect to the grid.[5]

III. Effect of Proposed Changes:

Section 1 provides definitions for "interruptible rate," "local government," "new customer," and "energy zones." Interruptible rate means a rate approved by the FPSC for service to renewable energy providers of their new customers which allows the utility to temporarily discontinue service at any time with or without notice when the utility is unable to provide service to the renewable energy producer or its new customer. The utility will be able to do this if it lacks capacity to serve the renewable energy producer or its new customer.

New customers are defined as "a residential or business location at which previous sales of electricity was only related to the development or construction of the property." It allows a local government to adopt an ordinance establishing energy zones within political or geographic boundaries. A producer of renewable energy may sell renewable energy to any new customer within that zone. The bill uses the definition of renewable energy in s. 366.91(2), F.S., which

[3] Florida Public Service Commission, *SB 640*, (Nov. 14, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[4] Rule 25-6.065, Florida Administrative Code, Interconnection and Metering of Customer-Owned Renewable Generation.
[5] Florida Public Service Commission, *SB 640*, (Nov. 14, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

includes electrical energy produced from a method that uses one or more of the following fuels or energy sources:

- Hydrogen produced from sources other than fossil fuels,
- Biomass,
- Solar energy,
- Geothermal energy,
- Wind energy,
- Ocean energy,
- Hydroelectric power,
- Waste heat from sulfuric acid manufacturing operations, and
- Pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

The bill would allow qualifying renewable energy producers to make retail sales without being classified as a public utility. The producers of renewable energy sold would pay the utility 1.5 cents per kilowatt hour. It is unknown if this payment is intended to compensate the utility for lost revenues or if the payment is cost based. The payment is waived if the producer and the customer elect a disconnectable rate. It is unclear if the payment to the utility is meant to off-set the potential costs of wheeling power[6] or if the payment is to compensate for lost sales and the costs to the utility should be recovered exclusively through the local government energy zone rates established by the FPSC.[7] The utility must offer to the producer and its customers an interruptible rate for any size service in the energy zone. Customers may elect to receive their power directly from the utility instead of the renewable energy producer.

This bill could allow customers to purchase renewable energy even if their homes are not installed with compatible renewable energy systems. Renewable energy companies could offer customers renewable energy and recoup the capital costs of these systems by charging customers for the electricity. It is unclear if the incumbent utility would be required to provide back-up or supplemental power.

The bill would require the FPSC to enter into rulemaking to set rates that ensure the general body of ratepayers do not subsidize customers who purchase renewable energy in the local government energy zone. The bill also provides that renewable energy producers under this bill would be required to provide the FPSC with information related to the renewable energy generation at the facility and any pertinent information required by FPSC.

Beginning October 1, 2013, the FPSC would be responsible for filing a report with the Legislature at least every six months. The report would detail how the act affects the utility system of the state, the individual utility systems, and the individual ratepayer. The report would also include recommendations for implementation of the act.

[6] The use of a utility system's transmission facilities to transmit power from one location to another.
[7] Florida Public Service Commission, *SB 640*, (Nov. 14, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

Section 2 amends s. 366.02, F.S., to redefine public utility to exempt producers and sellers of renewable energy from economic regulation by the FPSC.

Section 3 reenacts s. 290.007 (8), F.S., incentives for the revitalization of enterprise zones.

Section 4 reenacts s. 768.1382 (1) (e), F.S., incentives related to streetlights.

Section 5 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Renewable energy producers, installers, and service providers would see increased business as a new market segment would be made available to them. An unknown number of new jobs would likely result from this increase in business.

Utilities serving the customers receiving power from the renewable energy systems created as a result of the bill would likely see a loss in retail sales. These incumbent public utilities might also be expected to maintain reserve capacity, and provide transmission support.

The bill would also allow for an increase in the amount of renewable energy installed in the state without having the costs of renewable energy systems paid for directly by utility ratepayers. Most renewable energy resources do not provide firm capacity; however, utilities would still need to have reserve capacity for when renewable energy was operating at low levels. Solar installations, for which this bill will probably provide the greatest incentive, provide no capacity benefit, and utilities would need to have reserves capable of providing the expected solar output on non-sunny days and at night. Utility

ratepayers would have to continue to pay for this capacity, though their fuel costs likely would be lower.

C. Government Sector Impact:

According to the FPSC, the bill would partially reverse a policy in place since the 1980s. Any entity that sells power to even a single retail customer is considered a public utility, and subjects the seller to the Florida Public Service Commission (FPSC) rate setting authority.[8]

According to the FPSC, the rulemaking process typically takes six months, but may take longer depending on the number of workshops and/or hearings needed to develop the rule. Rulemaking would require additional technical and legal staff. The bill could have a significant economic impact on utilities, and thus the resulting rule would likely require legislative ratification.[9]

Further, according to the FPSC, the bill also creates ambiguities that would need to be addressed either legislatively or administratively. First, it is not clear whether the bill intends to include all electric utilities or just investor-owned utilities. If the intent is to include all utilities, the FPSC would need expanded authority to set rates for municipal and cooperative utilities. Second, the bill also provides that renewable energy producers under this bill would be required to provide the FPSC any information they deemed necessary. FPSC may not have regulatory authority over private producers and may have trouble accessing data. Finally, because the bill allows renewable energy sellers to sell or net meter into the grid, the bill is silent on whether utilities might be expected to wheel this electricity between generator and customer. While the FPSC has authority to set rates to help compensate for costs to the utility, it may not be possible to remove all subsidization.[10]

Depending on the location and size of the renewable facility, a municipal utility may also need to expand their transmission and distribution facilities. Municipal utilities may also need staff and/or consultants to participate in the rulemaking process.

According to the FPSC, the bill would require 2.5 additional staff positions: 2 Regulatory Analyst I's and .5 Attorney would be needed for rulemaking, reviewing the tariffs, and filing the legislative reports for renewable energy producers.[11]

[8] Florida Public Service Commission, Senate Bill 640 (Nov.14, 2011) (on file with the Committee on Community Affairs
[9] Ratification may be necessary due to the passage of HB 1565 during the 2010 Special Session A as HJR 9A. The rule may have costs that exceed $1 million over the first five years after implementation.
[10] Florida Public Service Commission, Senate Bill 640 (Nov.14, 2011) (on file with the Committee on Community Affairs).
[11] Id.

	(FY 12-13) Amount / FTE	(FY 13-14) Amount / FTE	(FY 14-15) Amount / FTE
A. Revenues			
1. Recurring			
2. Non-Recurring			
B. Expenditures			
1. Recurring	$128,472/2.5 FTE	$128,472/2.5 FTE	$128,472/2.5 FTE
2. Non-Recurring	$9,689/0 FTE	$0/0 FTE	$0/0 FTE

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.