

**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.)

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Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

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BILL: SB 1044

INTRODUCER: Senator Simpson

SUBJECT: Energy Policies

DATE: February 19, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Pre-meeting</b>
2.			AG	
3.			AP	

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**I. Summary:**

SB 1044 revises the statutes providing for the energy-related duties, powers, and functions of the Department of Agriculture and Consumer Services (DACS or department) to:

- authorize DACS to promote all forms of renewable energy, not just solar;
- authorize the Florida Energy Systems Consortium to participate with DACS and other entities in aiding and promoting the commercialization of renewable energy;
- authorize the Commissioner of Agriculture to appoint a member of the Southern States Energy Board;
- repeal existing, un-used statutes creating the rebates for solar energy systems and energy efficient appliances, together with making conforming changes;
- authorize DACS to post information on its website relating to alternative fueling stations and electric vehicle charging stations that are available to the public; and
- add to the Florida Building Commission one member who is a representative of the department's Office of Energy, appointed by the Governor from a list of three nominees provided by the Commissioner of Agriculture.

The bill also deletes the requirement that all solar systems manufactured or sold in Florida must be certified by the Florida Solar Energy Center.

**II. Present Situation:**

**Florida Energy Office/Department of Agriculture and Consumer Services -- Duties**

The Florida Office of Energy is the state entity primarily responsible for non-regulatory energy matters, including coordinating with federal entities on energy matters, administering federal energy programs delegated to the state, and administering state energy rebate programs. The Office has been located in the Executive Office of the Governor, the Department of Community Affairs, and the Department of Environmental Protection. It is now located within DACS.

Various duties associated with energy have been statutorily assigned to the department in which the Energy Office has been located. Section 377.6015, F.S., provides the department's primary powers and duties relating to energy resources, including:

- administering the Florida Renewable Energy and Energy-Efficient Technologies Grants Program to assure a robust grant portfolio;
- developing policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant;
- administering the Florida Green Government Grants Act and setting annual priorities for grants;
- administering specified information gathering and reporting functions;
- administering the provisions of the Florida Energy and Climate Protection Act;
- advocating for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions;
- being a party in the Public Service Commission's Florida Energy Efficiency and Conservation Act proceedings to adopt goals; and
- adopting rules in order to implement these powers and duties.

Section 377.703, F.S., sets forth additional functions of DACS relating to energy. It includes the following duties:

- submission of an annual report to the Governor and the Legislature reflecting its activities, which must include recommendations for energy conservation programs for the state;
- promoting the development and use of renewable energy resources by:
  - establishing goals and strategies for increasing the use of solar energy in this state;
  - aiding and promoting the commercialization of solar energy technology, in cooperation with the Florida Solar Energy Center and other agencies;
  - identifying barriers to greater use of solar energy systems in this state; and
  - in cooperation with specified entities, investigating opportunities for solar electric vehicles and other solar energy manufacturing, distribution, installation, and financing efforts which will enhance this state's position as the leader in solar energy research, development, and use; and
- promoting energy conservation in all energy use sectors throughout the state.

### **Florida Solar Energy Center**

Section 377.705, F.S., creates the Florida Solar Energy Center (FSEC or center). The center is required to develop and promulgate standards for solar energy systems manufactured or sold in this state based on the best currently available information and to consult with scientists, engineers, or persons in research centers who are engaged in the construction of, experimentation with, and research of solar energy systems to properly identify the most reliable designs and types of solar energy systems. The center is also required to establish criteria for testing performance of solar energy systems and to maintain the necessary capability for testing or evaluating performance of solar energy systems. All solar energy systems manufactured or sold in the state must meet the standards established by the center and display accepted results of approved performance tests in a manner prescribed by the center.

The center is to charge a testing fee sufficient to cover the costs of testing, with all testing fee revenue transmitted by the center to the Chief Financial Officer to be deposited in the Solar Energy Center Testing Trust Fund and disbursed for the payment of expenses incurred in testing solar energy systems.

The DACS bill analysis states:

According to a 2009 Office of Program Policy Analysis and Government Accountability (OPPAGA) report, the Florida Solar Energy Center (FSEC) has two issues regarding testing and certification of solar energy systems which are: (1) a backlog of solar technologies waiting to be tested which negatively affects solar related businesses; and (2) testing fees only covered 30 percent of the costs to run the program and state funds have had to make up most of the shortfall which amounted to \$256,255.00 for FY 2007-2008.

OPPAGA did a follow-up report in September 2011 that found the following: (1) FSEC reduced the testing time from 227 days to 129 days. (2) testing fees were increased which reduced state funds to \$77,931.00 for FY 2010-2011. However, testing fees for businesses were tripled in that time. “For example, solar thermal collector fees increased from \$3,000...to between \$10,000 and \$14,000 (OPPAGA).”

In addition, FSEC’s certification requirement created challenges during the American Recovery and Reinvestment Act. On July 8, 2011, the U.S. Department of Energy released a Buy American waiver for solar thermosiphon water heating systems stating “At this time, no domestic manufacturers of solar thermosiphon systems have been certified through FSEC. The certification process is too lengthy for any US manufacturer to become certified within the remainder of the Recovery Act spending period.”

### **Southern States Energy Compact**

Section 377.711, F.S., establishes Florida as a member of the Southern States Energy Compact. The compact is performed by the Southern States Energy Board (SSEB). The SSEB is a non-profit interstate compact organization created by state law in 1960 and consented to by Congress<sup>1</sup> with a broad mandate to contribute to the economic and community well-being of the southern region.<sup>2</sup> Its mission is to enhance economic development and the quality of life in the South through innovations in energy and environmental policies, programs, and technologies.

Its membership includes sixteen southern states and two territories: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia, and West Virginia. Each jurisdiction is represented by the Governor and a Legislator from the House and Senate. A Governor serves as the chair and legislators serve as vice-chair and treasurer. Ex-officio non-voting Board members include a federal representative appointed by the President of the United States, the Southern Legislative Conference Energy and Environment Committee Chair, and SSEB’s executive director, who serves as secretary.

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<sup>1</sup> Public Laws 87-563 and 92-440.

<sup>2</sup> <http://www.sseb.org/about/> last accessed 2/20/2014.

The SSEB pursues its mission through the creation of programs in the fields of energy and environmental policy research, development and implementation, science and technology exploration, and related areas of concern. SSEB serves its members directly by providing timely assistance designed to develop effective energy and environmental policies and programs and represents its members before governmental agencies at all levels. Its long-term goals are to:

- perform essential services that provide direct scientific and technical assistance to state governments;
- develop, promote, and recommend policies and programs on energy, environment, and economic development that encourage sustainable development;
- provide technical assistance to executive and legislative policy-makers and the private sector in order to achieve synthesis of energy, environment, and economic issues that ensure energy security and supply;
- facilitate the implementation of energy and environmental policies between federal, state, and local governments and the private sector;
- sustain business development throughout the region by eliminating barriers to the use of efficient energy and environmental technologies; and
- support improved energy efficient technologies that pollute less and contribute to a clean global environment while protecting indigenous natural resources for future generations.

Core funding for the Board comes from the appropriations of its eighteen member jurisdictions. Each member's share of support is determined by a formula written into the original Compact. The Board also is authorized to accept funds from any state, federal agency, interstate agency, institution, person, firm, or corporation provided those funds are used for the Board's purposes and functions. In addition, SSEB maintains an Associate Members program comprised of industry partners who provide an annual contribution to the Board.

Section 377.712, F.S., provides for Florida's participation on the SSEB, including requiring the Governor, the President of the Senate, and the Speaker of the House of Representatives to each appoint one member to the SSEB.<sup>3</sup> The section also authorizes departments, agencies, and officers of the state and its subdivisions to cooperate with the SSEB if the activities have been approved by either the Governor or the Florida Department of Health.

### **Rebate Programs**

Section 377.802, F.S., provides the purpose of the Florida Energy and Climate Protection Act (sections 377.801-377.807, F.S.). Among these purposes is providing incentives for the purchase of energy-efficient appliances and rebates for solar energy equipment installations for residential and commercial buildings.

Section 377.806, F.S., creates the Solar Energy System Incentives Program. The program was created in 2006 and was administered by the Florida Energy Office within the Florida Energy and Climate Commission (FECC). The purpose of the program was to provide financial incentives (rebates on a portion of the purchase price) for the purchase and installation of solar energy systems that meet specified requirements. Rebates were available for both solar

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<sup>3</sup> Currently the Florida members are Governor Rick Scott, Senator Anitere Flores, and Representative Jose Felix Diaz.

photovoltaic systems that produce electricity and solar thermal systems that produce heat. The amounts of the rebates was as follows:

- For a photovoltaic system, the rebate amount was \$4 per watt based on the total wattage rating of the system, with the maximum amount per system installation of:
  - \$20,000 for a residence and
  - \$100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.
- For a solar thermal system:
  - \$500 for a residence and
  - \$15 per 1,000 Btu up to a maximum of \$5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.
- For a solar thermal pool heater, \$100 per installation.

The rebate was available only for the purchase and installation, between July 1, 2006, and June 30, 2010, inclusive, of a new solar energy system of 2 kilowatts or larger for a solar photovoltaic system, a solar energy system that provides at least 50 percent of a building's hot water consumption for a solar thermal system, or a solar thermal pool heater. Application for a rebate had to be made within 120 days after the purchase of the solar energy equipment.

The FECC was to determine and publish on a regular basis the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued was subject to the total amount of appropriations in any fiscal year for this program. If funds were insufficient during one fiscal year, any requests for rebates received during that fiscal year could be processed during the following fiscal year. Requests for rebates received in a fiscal year that are processed during the following fiscal year had to be given priority over requests for rebates received during the following fiscal year.

The Legislature provided annual funding for the program, as follows:

- FY 2006-07        \$2.5 million in General Revenue
- FY 2007-08        \$3.5 million in General Revenue
- FY 2008-09        \$5.0 million in General Revenue
- FY 2009-10        \$14.4 million in federal ARRA 2009 funds
- FY 2010-11        No funding was provided.

The program proved much more popular than anticipated. Additionally, the FECC did not announce that funds for the program had been depleted until several months after the fact. These factors contributed to a backlog of over 13,000 applications and over \$52 million dollars being accumulated as of October 2010. The rebate applications dated as far back as June 2009.

Section 377.807, F.S., authorized the FECC to develop and administer a consumer rebate program for residential energy-efficient appliances consistent with federal law.<sup>4</sup> The Office of Energy applied for federal funds for this rebate program and received a USDOE ARRA Stimulus

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<sup>4</sup> Chapter 2009-36, Laws of Florida.

Grant of \$17,585,000 to be used exclusively for ENERGY STAR appliance rebate programs.<sup>5</sup> The rebates were scheduled to be awarded on one day in the fall of 2009 and the bulk of these funds were awarded that day; only \$2.5 million remained. USDOE suggested that the Office of Energy/FECC use these funds for additional programs. They made the decision to add USDOE State Energy Program funds and hold another rebate program, this one for HVAC appliances which had not been included in the first rebate program. As a result, there was a second energy efficient appliance rebate awarded during the fall of 2010, using the initial \$2,531,143 of Stimulus Grant funds and \$3,933,857 of SEP funds.

These funds were appropriated by the Legislature in 2010 Special Session A. The bill appropriated a total of \$31,369,867, with \$2,467,244 appropriated exclusively to implement the HVAC rebates.<sup>6</sup> The remaining \$28,902,623 was to be used first to pay any HVAC rebates in excess of the exclusive appropriation of \$2,467,244, with the remainder of the money to be used to pay a percentage of each unpaid and approved rebate application pursuant to the Solar Energy System Incentives Program.<sup>7</sup> The percentage of each approved rebate to be paid was to be derived by dividing the amount appropriated by the total dollar value of the backlog of final approved solar rebates.<sup>8</sup> Subsequent to this appropriation, the Energy Office was transferred from the FECC (which was abolished) to DACS, where the solar rebate awards were completed. Each eligible solar rebate applicant received payment for approximately 52 percent of the requested rebate amount.<sup>9</sup>

### **Florida Building Commission**

Section 553.74, F.S., creates the Florida Building Commission, which develops the Florida Building Code, including the Energy Efficiency Code for Building Construction. The commission is composed of 26 members, appointed by the Governor subject to confirmation by the Senate. The membership must be composed of:

- one architect registered to practice in this state and actively engaged in the profession;
- one structural engineer registered to practice in this state and actively engaged in the profession;
- one air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession;
- one electrical contractor certified to do business in this state and actively engaged in the profession;
- one member from fire protection engineering or technology who is actively engaged in the profession;
- one general contractor certified to do business in this state and actively engaged in the profession;
- one plumbing contractor licensed to do business in this state and actively engaged in the profession;

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<sup>5</sup> [http://freshfromflorida.s3.amazonaws.com/Office\\_of\\_Energy\\_Annual\\_Report\\_2011.pdf](http://freshfromflorida.s3.amazonaws.com/Office_of_Energy_Annual_Report_2011.pdf), pages 19-20, last accessed 2/21/1014.

<sup>6</sup> HB 15-A, Chapter No. 2010-282, Laws of Florida.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> [http://freshfromflorida.s3.amazonaws.com/Office\\_of\\_Energy\\_Annual\\_Report\\_2011.pdf](http://freshfromflorida.s3.amazonaws.com/Office_of_Energy_Annual_Report_2011.pdf), page 25, last accessed 2/21/1014.

- one roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession;
- one residential contractor licensed to do business in this state and actively engaged in the profession;
- three members who are municipal or district codes enforcement officials, one of whom is also a fire official;
- one member who represents the Department of Financial Services;
- one member who is a county codes enforcement official;
- one member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state;
- one member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry;
- one mechanical or electrical engineer registered to practice in this state and actively engaged in the profession;
- one member who is a representative of a municipality or a charter county;
- one member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry;
- one member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management;
- one member who is a representative of the insurance industry;
- one member who is a representative of public education;
- one member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession;
- one member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED);
- one member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state; and
- one member who shall be the chair.

Section 553.77, F.S., provides the specific powers of the commission, including:

- adopting and updating the Florida Building Code;
- making a continual study of the operation of the Florida Building Code and other laws relating to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities, including manufactured buildings, and code enforcement, to ascertain their effect upon the cost of building construction and determine the effectiveness of their provisions;
- updating the Florida Building Code every 3 years and reviewing existing provisions of law and making recommendations to the Legislature for the next regular session of the Legislature regarding provisions of law that should be revised or repealed to ensure consistency with the Florida Building Code at the point the update goes into effect; and
- determining the types of products which may be approved by the commission for statewide use and providing for the evaluation and approval of such products, materials, devices, and method of construction for statewide use.

## **Florida Energy Systems Consortium**

Section 1004.648, F.S., creates the Florida Energy Systems Consortium (consortium or FESC) to promote collaboration among experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state. The consortium is to focus on the research and development of innovative energy systems that will lead to alternative energy strategies, improved energy efficiencies, and expanded economic development for the state.

The consortium consists of all of the state universities. It is administered at the University of Florida by a director appointed by the President of the University of Florida. The director reports to the Department of Agriculture and Consumer Services. FESC has an oversight board consisting of the Vice President for Research or other appropriate representative appointed by the university president of each member of the consortium. The oversight board is responsible for the technical performance and financial management of the consortium.

The goal of the consortium is to become a world leader in energy research, education, technology, and energy systems analysis through collaborative research and development across the State University System and the industry. In so doing, the consortium is to:

- coordinate and initiate increased collaborative interdisciplinary energy research among the universities and the energy industry;
- assist in the creation and development of a Florida-based energy technology industry through efforts that would expedite commercialization of innovative energy technologies by taking advantage of the energy expertise within the State University System, high-technology incubators, industrial parks, and industry-driven research centers;
- provide a state resource for objective energy systems analysis;
- develop education and outreach programs to prepare a qualified energy workforce and informed public; and
- solicit and leverage state, federal, and private funds for the purpose of conducting education, research, and development in the area of sustainable energy.

The statute creates a steering committee that is responsible for ensuring the success of the consortium's mission. The steering committee consists of the university representatives included in the Centers of Excellence proposals for the Florida Energy Systems Consortium and the Center of Excellence in Ocean Energy Technology-Phase II which were reviewed during the 2007-2008 fiscal year by the Florida Technology, Research, and Scholarship Board created in s. 1004.226(4), Florida Statutes 2006; a university representative appointed by the President of Florida International University; and a representative of the Department of Agriculture and Consumer Services.

FESC must, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Agriculture and Consumer Services regarding its activities, including, but not limited to, education and research related to, and the development and deployment of, alternative energy technologies.



### III. Effect of Proposed Changes:

The bill makes changes to the statutes providing for the energy-related duties, powers, and functions of DACS to:

- revise the statute on the additional functions of the department relating to energy to:
  - add a requirement that DACS' annual report to the Governor and the Legislature contain recommendations on energy efficiency as well as the current recommendations on energy conservation;
  - change the requirements relating to the department's duties to promote solar energy to promotion of renewable energy; and
  - add the Florida Energy Systems Consortium to the list of entities DACS is to cooperate with in aiding and promoting the commercialization of renewable energy;<sup>10</sup>
- authorize the Commissioner of Agriculture to appoint a member of the Southern States Energy Board, increasing the Florida membership to a total of four;<sup>11</sup>
- repeal the existing statutes creating the rebates for solar energy systems and energy efficient appliances<sup>12</sup> and make conforming amendments;<sup>13</sup>
- authorize the department to post information on its website relating to alternative fueling stations and electric vehicle charging stations that are available to the public<sup>14</sup>; and
- add to the Florida Building Commission one member who is a representative of the department's Office of Energy, appointed by the Governor from a list of three nominees provided by the Commissioner of Agriculture.<sup>15</sup>

The bill also reduces the duties of the Florida Solar Energy Center (FSEC or center) and deletes the requirement that all solar systems manufactured or sold in Florida must meet standards established by the center and display accepted results of approved performance tests in a manner prescribed by the center.<sup>16</sup> Instead of the FSEC being required to develop and promulgate standards for solar energy systems manufactured or sold in Florida and to establish criteria for testing the performance of solar energy systems, these provisions are made permissive, allowing but not requiring these activities.

The bill takes effect July 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

<sup>10</sup> Section 1, amending s. 377.703, F.S.

<sup>11</sup> Section 3, amending s. 377.712, F.S.

<sup>12</sup> Section 9, repealing ss. 877.806 and 877.807, F.S.

<sup>13</sup> Section 4, amending s. 877.801, F.S.; section 5, amending s. 377.801, F.S.; and section 6, amending s. 377.803, F.S.

<sup>14</sup> Section 7, creating s. 377.815, F.S.

<sup>15</sup> Section 8, amending s. 553.74, F.S.

<sup>16</sup> Section 2, amending s. 377.705, F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Solar manufacturers and installers may save money and time due to the deletion of the requirement that all solar energy systems manufactured or sold in Florida be certified by the FSEC.

C. Government Sector Impact:

The DACS bill analysis states:

The annual membership fee for the Southern States Energy Board is \$47,212.00. Historically this fee was paid with Petroleum Violation Escrow (PVE) settlement agreement funds. However, those funds are now depleted. The Legislature would need to appropriate recurring General Revenue funds in this amount for the purpose of paying the annual membership fee. The department has a FY 14/15 LBR Issue to fund shift authority from the Federal Grants Trust Fund to General Revenue to address this.

**VI. Technical Deficiencies:**

Lines 67-77 provide:

including ~~the, but not limited to, the following factors:~~

1. Formulation of specific recommendations for improvement in the efficiency of energy utilization in governmental, residential, commercial, industrial, and transportation sectors.
2. Collection and dissemination of information relating to energy efficiency and conservation.
3. Development and conduct of educational and training programs relating to energy efficiency and conservation.
4. An analysis of the ways in which state agencies are seeking to implement s. 377.601(2), the state energy policy, and recommendations for better fulfilling this policy.

For proper parallel structure, either the word “an” should be stricken from the beginning of factor 4 or the word “the” should be deleted from line 67 and inserted at the beginning of factors 1-3.

On lines 131 and 138 the word “shall” is changed to “may” to authorize the FSEC to perform the stated activities but no longer require it to do so. However, the bill still requires FSEC to perform related activities by maintaining the word “shall” on lines 133 and 139. These terms also should be changed to “may.”

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 377.703, 377.705, 377.712, 377.801, 377.802, 377.803, and 553.74.

This bill creates section 377.815 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 377.806 and 377.807.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.