

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 Committee on Regulated Industries

BILL: SB 208

INTRODUCER: Senator Brandes

SUBJECT: Renewable Energy

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 208 provides an exemption from regulation by the Florida Public Service Commission (PSC) for commercial or industrial businesses with a “renewable energy source device” that sell renewable energy produced to another business located in the same or an adjacent parcel of land.

The bill defines the term “renewable energy source device” as having the same meaning in s. 193.624(1), F.S., which means equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits.

The bill authorizes owners of commercial or industrial businesses, or third parties contracted by such owners, to install, maintain, and operate a renewable energy source device on the structure in which the business operates or a property owned or leased by the business. It authorizes such parties to sell the electricity generated from the device to a business on the same or on an adjacent parcel of land.

The bill provides that a utility may recover the full cost of providing services, such as backup generation capacity or transmission, if the energy-producing business or its customers require these additional related services.

Upon petition of a utility, the bill allows the PSC to make a determination for cost recovery if there is a significant enough adverse impact to the rates of other customers in the rate territory. The bill provides a mechanism for customer to challenge such assessed cost.

The bill provides the PSC with rulemaking authority for such cost-recovery, including the costs of providing redundant capacity.

The bill clarifies that renewable energy rebates and incentives are the sole property of the owner of the renewable energy source device.

The bill is effective July 1, 2021.

II. Present Situation:

Florida Public Service Commission

The PSC is an arm of the legislative branch of government charged with regulating utilities.¹ The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.² In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.³

The PSC does not fully regulate publicly owned municipal electric utilities.⁴ However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁵ Additionally, the PSC has jurisdiction over 27 municipally owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.⁶

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.⁷ Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a "public utility" subjecting them to the PSC's regulatory jurisdiction, under s. 366.02(1), F.S.⁸ The PSC's jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC is to prevail.⁹

Renewable Energy

Section 377.803, F.S., defines "renewable energy" to mean "electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in s. 366.91, F.S., solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power."

¹ Section 350.001 F.S.

² See Florida Public Service Commission, *The PSC's Role*, <http://www.psc.state.fl.us> (last visited Mar. 18, 2021).

³ *Id.*

⁴ Florida Public Service Commission, *2020 FPSC Annual Report*, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 18, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ Section 366.02(1), F.S.

⁸ *Florida Public Service Com'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC's regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that "to the public," as used in ch. 366, F.S., means "to any member of the public," rather than "to the general public").

⁹ Section 366.04 (1), F.S.

Section 366.91, F.S.¹⁰, requires utilities, including municipal electric utilities and rural electric cooperatives whose annual sales are greater than 2,000 gigawatt hours, to continuously offer a purchase contract to renewable energy producers for a minimum of ten years.¹¹

Renewable Energy Source Device

“Renewable energy source device” is defined in s. 193.624(1), F.S., as equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits. It includes:

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
- Rockbeds;
- Thermostats and other control devices;
- Heat exchange devices;
- Pumps and fans;
- Roof ponds;
- Freestanding thermal containers;
- Pipes, ducts, wiring, structural supports, refrigerant handling systems, and other components used as integral parts of such systems; however, such equipment does not include conventional backup systems of any type or any equipment or structure that would be required in the absence of the renewable energy source device;
- Windmills and wind turbines;
- Wind-driven generators;
- Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate electricity or mechanical forms of energy;
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

A renewable energy device “does not include equipment that is on the distribution or transmission side of the point at which a renewable energy source device is interconnected to an electric utility’s distribution grid or transmission lines.”

Cogeneration and Small Power Producers

The Florida Statutes expressly provide for self-generation, and for the sale of any excess electricity to a public utility.¹² Cogeneration is the sequential production of thermal energy and electrical or mechanical energy from the same fuel source.¹³ A small-power producer generates

¹⁰ Chapter 2005-259, s. 1 Laws of Fla.

¹¹ Section 366.91, F.S.

¹² See s. 366.051, F.S.

¹³ See ScienceDirect, *Cogeneration*,

<https://www.sciencedirect.com/topics/engineering/cogeneration#:~:text=Cogeneration%E2%80%94also%20referred%20to%20as,potential%20to%20perform%20useful%20work>. (last visited Mar. 18, 2021).

electricity from facilities using biomass, solid waste, geothermal energy or renewable resources, including wind, solar, and small hydroelectric, as their primary energy sources.¹⁴

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA),¹⁵ which required promotion of energy efficiency and use of renewables.¹⁶ The act required utilities to purchase power from “qualifying facilities,” which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.¹⁷ The PURPA directed the Federal Energy Regulatory Commission to implement the provisions, which in turn, directed the states to implement the provisions. In response, the Florida Legislature created s. 366.051, F.S., to direct utilities to purchase power from the cogenerators or small power producers and defining “full avoided costs.”¹⁸

“A utility’s ‘full avoided costs’ are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.”¹⁹ Traditionally, the PSC has approved electric utilities power purchase contracts that include provisions for payment, capacity, and energy based upon either the utility’s cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the interchange market.²⁰

Net Metering

Net metering allows customers with renewable generation capability to offset their energy consumption with any excess energy that is delivered to the grid, through a credit applied against the customer’s energy bill in subsequent months.²¹ The PSC rule states that customer-owned renewable generation can include systems that are leased from a third party, provided the lease does not include the sale of electricity.²² In 2018, the PSC affirmed that a third-party equipment lease does not constitute a retail sale of electricity and would not be subject to the PSC’s regulation, opening up another avenue for customer financing of solar generation.²³ Section

¹⁴ U.S. Energy Information Administration, *Glossary: Small power producer (SPP)*, [https://www.eia.gov/tools/glossary/?id=electricity#:~:text=Small%20power%20producer%20\(SPP\)%3A,as%20a%20primary%20energy%20source](https://www.eia.gov/tools/glossary/?id=electricity#:~:text=Small%20power%20producer%20(SPP)%3A,as%20a%20primary%20energy%20source). (last visited Mar. 18, 2021).

¹⁵ 16 U.S.C. ch. 46 s. 2601 et seq.

¹⁶ Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, <https://www.ferc.gov/qf> (last visited Mar. 18, 2021).

¹⁷ *Id.*

¹⁸ Ch. 89-292, s. 5, Laws of Fla.

¹⁹ Sections 366.051(3) and (4), F.S.

²⁰ Florida Public Service Commission, *States’ Electric Restructuring Activities Update: Wholesale Sales* <http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4> (last visited Mar. 18, 2021); Florida Public Service Commission, *States’ Electric Restructuring Activities Update: Federal Legislation - Public Utilities Regulatory Policy Act* <http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#5> (last visited Mar. 18, 2021).

²¹ See ScienceDirect, *Net Metering*, <https://www.sciencedirect.com/topics/engineering/net-metering> (last visited Mar. 18, 2021); National Conference of State Legislatures, *State Net Metering Policies*, <https://www.ncsl.org/research/energy/net-metering-policy-overview-and-state-legislative-updates.aspx> (last visited Mar. 18, 2021).

²² Fla. Admin. Code R. 25-6.065.

²³ See Order No. PSC-2018-0251-DS-EQ, issued May 17, 2018, in Docket No. 20170273-EQ, *In re: Petition by Sunrun Inc. for Declaratory Statement Concerning Leasing of Solar Equipment*, <http://www.psc.state.fl.us/ClerkOffice/ShowDocket?orderNum=PSC-2018-0251-DS-EQ> (last visited Mar. 18, 2021).

366.91, F.S., requires all electric utilities to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation, and requires the PSC to establish rules for investor-owned electric utilities' net metering programs. Utilities are required to offer standard interconnection agreements and net metering for customer-owned renewable generation up to two megawatts in capacity.²⁴

Florida Energy Efficiency and Conservation Act

Under the Florida Energy Efficiency and Conservation Act (FEECA),²⁵ enacted in 1980, the Legislature directed the PSC to develop and adopt programs for increasing energy efficiency and conservation, intending, in part, that solar energy and renewable energy sources be encouraged.²⁶ The Legislature's goal is to advance the conservation of expensive resources, such as petroleum fuels, in order to reduce and control electric consumption.²⁷

Renewable Portfolio Standards and Goals

Renewable portfolio standards (RPS) are policies, either voluntary or formal, designed to increase the use of renewable energy sources for electricity generation.²⁸ RPS policies require that a specified percentage of the electricity sold by utilities comes from renewable resources.²⁹ Currently, there is not a national RPS in place.³⁰ However, most states have enacted their own RPS programs. Over the past year, state governments nationwide have revised their RPS policies to require that a specified percentage of electricity sold come from renewable sources.³¹

In 2007, Florida Governor Crist signed a series of three executive orders initiating Florida's energy policy and declaring Florida's commitment to be a leader in establishing energy security and reducing greenhouse gases:

- Executive Order 07-126; Establishing Climate Change Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government.³²
- Executive Order 07-127; Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida.³³

²⁴ Fla. Admin. Code R. 25-6.065.

²⁵ Sections 366.80-366.85, F.S.

²⁶ Section 366.81, F.S.

²⁷ *Id.*

²⁸ U.S. Energy Information Administration, *Renewable Energy Explained: Portfolio Standards*, [https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20\(RPS\)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs](https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20(RPS)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs) (last visited Mar. 18, 2021).

²⁹ National Conference of State Legislatures, *State Renewable Portfolio Standards and Goals*, <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx> (last visited Mar. 18, 2021).

³⁰ U.S. Energy Information Administration, *Renewable Energy Explained: Portfolio Standards*, <https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php> (last visited Mar. 18, 2021).

³¹ *Id.*

³² Fla. Exec. Order No. 07-126, available at <http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-126-actions.pdf> (last visited Mar. 18, 2021).

³³ Fla. Exec. Order No. 07-127, available at <http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-127-emissions.pdf> (last visited Mar. 18, 2021).

- Executive Order 07-128; Florida Governor’s Action Team on Energy and Climate Change.”³⁴

In Executive Order 07-127, the Governor requested the PSC to initiate rulemaking to require that utilities produce at least 20 percent of their electricity from renewable sources with a strong focus on solar and wind energy. In September 2007, the PSC began holding workshops to study the issue of renewable portfolio standards. Currently, Florida is one of only 12 states that does not have either a formal renewable energy portfolio or a voluntary renewable energy portfolio.³⁵

III. Effect of Proposed Changes:

SB 208 amends s. 366.91, F.S., to provide an exemption from regulation by the PSC for commercial or industrial businesses with a “renewable energy source device” that sell renewable energy produced to another business located in the same parcel of land or an adjacent parcel.

The bill defines the term “renewable energy source device” as having the same meaning as in s. 193.624(1), F.S.

The bill authorizes owners of commercial or industrial businesses, or third parties contracted by such owners, to install, maintain, and operate a renewable energy source device on the structure in which the business operates or any property owned or leased by the business. It authorizes such parties to sell the electricity generated from a device to a commercial or industrial business on the same parcel or a business on an immediately adjacent parcel, regardless of whether the device is located in a utility’s service territory. The bill provides that a business cannot be obligated to purchase the electricity produced, whether directly or indirectly, by lease or by other contractual arrangement.

Under the bill, a utility may recover the full cost of providing services such as backup generation capacity or transmission, if the energy-producing business or its customers requires these additional related services.

A utility may enter into a contract with a commercial or industrial business for installation, maintenance, and operation of a renewable energy source device and to sell the electricity generated to that business, or a business on the parcel, or a business on an immediately adjacent parcel. The bill provides that such sales are not retail sales for purposes of ch. 366, F.S., and do not subject the energy-producing business to regulation by the PSC.

If the PSC makes a determination, by a supermajority of the voting members, that there is a significant enough adverse impact to the rates of other customers in the rate territory, the bill authorizes the PSC to approve a utility’s request to recover its costs of providing capacity, generation, and distribution of the electricity needed by all customers, including customers using a renewable energy source device. The cost recovered must be an appropriate amount of fixed

³⁴ See Sellers, Lawrence E. & Curtin, Lawrence N., *Holland & Knight Newsletter: Florida Addresses Greenhouse Gas Issues* <https://www.hklaw.com/en/insights/publications/2007/09/florida-addresses-greenhouse-gas-issues> (last visited Mar. 18, 2021).

³⁵ NCSL, *State Renewable Portfolio Standards and Goals*, *supra* at n. 61.

costs to avoid the adverse impact and may only be assessed to customers using electricity generated from a renewable energy source device. A customer assessed such cost can file a petition with the PSC to challenge the cost recovery as excessive. If granted, the customer must be refunded any excess funds.

The bill provides the PSC with rulemaking authority for such cost-recovery, including the costs of providing redundant capacity.³⁶

The bill clarifies that renewable energy rebates and incentives are the sole property of the owner of the renewable energy source device.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Based on potential changes to an investor owned electric utility's existing territories, there may be an impairment of contract or a takings issue associated with lines 39-51 of the bill.³⁷

³⁶ "Redundant capacity," typically refers to backup or additional power generation, transmission or distribution facilities to serve a customer's load. For example, a customer with what it considers a critical load, such as manufacturing or public health, may wish to pay for additional facilities to reduce the risk of an interruption to electric service. *See e.g.*, Kentucky Public Service Commission, *Kentucky Utilities Company: Standard Rate Rider-Redundant Capacity*, <https://psc.ky.gov/tariffs/Electric/Kentucky%20Utilities%20Company/Cancelled%20Tariff%20Pages/2019/RC-Redundant%20Capacity/05-01.pdf> (last visited Mar. 18, 2021). "Such facilities represent a redundant delivery to provide electric service to the Customer's facility in the event that an emergency or unusual occurrence renders the Customer's principal delivery unavailable for providing service."

³⁷ *See* Public Service Commission, *Bill Analysis for SB 208* (Jan. 14, 2021) (on file with the Senate Committee on Regulated Industries).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Non-utility, third party renewable energy producers and their customers may benefit, to the extent that renewable energy is generated and sold for a lower price.³⁸

C. Government Sector Impact:

Allowing third-party power generation and sales may result in stranded³⁹ costs that may increase costs for customers purchasing or generating renewable energy under s. 366.91, F.S., and utilities may also face revenue lost to third-party sellers.⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that a customer may challenge the cost recovery assessed by filing a petition with the PSC for a determination of whether the costs recovered are excessive. In its analysis, the PSC states that litigation related to this bill is explicit and anticipated.⁴¹

Since the bill exempts businesses selling electricity from a renewable energy source device from regulation by the PSC, it is unclear how the bill will affect grid reliability caused by businesses selling electricity on an industrial scale.⁴²

Lines 55-58 of the bill provide that a utility may recover the full cost of providing services such as backup generation capacity or transmission, however, it does not express how a utility should address billing. The current net metering program only applies to customer-owned renewable generation under two megawatts and also excludes energy sold by a third party.⁴³

Lines 59-68 of the bill, allows electric utilities to engage in renewable energy sales and exempts these sales from PSC regulation. Since the bill does not require these sales to take place within

³⁸ See Department of Agriculture and Consumer Services, *Bill Analysis for SB 208* (Dec. 21, 2020) (on file with the Senate Committee on Regulated Industries).

³⁹ “A ‘stranded cost’ occurs when customers of one utility leave that utility and have power brought to them from some other supplier, thereby leaving the original utility with debts for plants and equipment it may no longer need and without the revenue from the ratepayers the plants were built to serve. Tennessee Power Company, *What’s Stranded Cost?* <https://web.archive.org/web/20100104092419/http://home.earthlink.net/~tpco/stranded.html> (last visited Mar. 18, 2021).

⁴⁰ See PSC Analysis *supra* at n. 37.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

that utility's service area, the PSC has raised the concern that a utility may be allowed to poach the customers of another utility through the sale of renewable energy produced on the same or adjacent parcel of land.⁴⁴

Also according to the PSC, certain terms in the bill lack a clear definition as it pertains to this section of statute, or are terms that are not generally used in the industry, such as:

- "Business;"
- "Rate territory;"
- "Costs that *impact the rates* of utility customers;"
- "Super majority" of the PSC's voting members; and
- "Customer."⁴⁵

VIII. Statutes Affected:

This bill substantially amends s. 366.91, F.S.

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.

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

⁴⁴ *Id.*

⁴⁵ *Id.*