

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1645 Energy Resources

**SPONSOR(S):** Energy, Communications & Cybersecurity Subcommittee, Payne

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	16 Y, 0 N, As CS	Bauldree	Keating
2) Appropriations Committee	20 Y, 6 N	Pigott	Pridgeon
3) Commerce Committee			

### SUMMARY ANALYSIS

The bill updates Florida's energy policies and amends specific energy-related laws. Specifically, the bill:

- Provides an updated statement of legislative intent concerning the state's energy policy and establishes a list of specific, fundamental policy goals to guide the state's energy policy.
- Updates energy policy statements in current law and the duties of the Department of Agriculture and Consumer Services (DACS) to be consistent with the energy policy goals established in the bill.
- Increases the minimum length of an intrastate natural gas pipeline that requires certification under the Natural Gas Transmission Pipeline Siting Act from 15 miles to 100 miles.
- Creates s. 163.3210, F.S., pertaining to natural gas resiliency and reliability infrastructure, and provides that certain "resiliency facilities" owned and operated by a public utility that deploy natural gas reserves for temporary use during a system outage or natural disaster are a permitted use in all commercial, industrial, and manufacturing land use categories and districts, subject to setback and landscape criteria for other similar uses.
- Provides for the recovery of certain facility relocation costs incurred by a natural gas utility through a charge separate from the utility's base rates.
- Requires the PSC to conduct an assessment of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats and to submit a report.
- Prohibits the PSC, without specific legislative authority, from authorizing a public utility to make direct sales of energy to a consumer solely for the consumer's use in powering a means of transportation.
- Authorizes the PSC to approve a utility program for residential, customer-specific electric vehicle (EV) charging if the program will not adversely impact the utility's general body of ratepayers.
- Requires the Department of Management Services (DMS) to develop the Florida Humane Preferred Energy Products List to identify certain products that appear to be largely made free from forced labor.
- Repeals the Renewable Energy and Energy-Efficient Technologies Grant Program, Florida Green Government Grants, the Energy Economic Zone Pilot Program, and Qualified Energy Conservation Bonds provisions.
- Prohibits community development districts and homeowners' associations from prohibiting certain types or fuel sources of energy production and appliances that use such fuels.
- Requires the PSC to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies and to submit a report of its findings and recommendations.
- Requires DOT to study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the state highway system.

The bill does not appear to have a fiscal impact on state or local government revenues but may have an indeterminate negative fiscal impact on expenditures. See fiscal comments.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### *Florida Energy Profile*

Florida is the third most populous state and the fourth largest energy-consuming state in the nation. However, Florida uses less energy per capita than all but six other states, in part because of its large population, moderate winter weather, and relatively low industrial sector energy use.<sup>1</sup> Florida's energy consumption can be broken down by end-use sector as follows:<sup>2</sup>

- Transportation – 39%
- Residential – 28%
- Commercial – 22%
- Industrial – 11%

In the electric power industry, natural gas is the dominant fuel in Florida and since 2011 has generated more electric power than all other fuels combined. Natural gas fueled approximately 70 percent of electric energy consumed in Florida in 2022. This number is anticipated to decline over the next ten years, reaching 56 percent by 2032.<sup>3</sup> Florida has very little natural gas production and limited gas storage capacity, thus the state is reliant upon out-of-state production and storage to satisfy its demand.<sup>4</sup> Supply from out-of-state is provided by five interstate natural gas pipelines, with the majority of peninsular Florida's supply provided by three interstate pipelines: Florida Gas Transmission Pipeline, Gulf Stream Natural Gas System, and Sabal Trail Transmission.<sup>5</sup>

In 2021, renewable energy resources were used to generate approximately 6 percent of the electric energy consumed in Florida. This number is anticipated to increase over the next ten years, reaching 28 percent by 2032, primarily from the addition of new solar generation. Solar generation in Florida is expected to exceed all non-natural gas energy sources combined (primarily nuclear and coal) by 2029.<sup>6</sup>

Of the current renewable generation capacity in Florida, approximately 37 percent is considered a “firm” resource than can be relied upon to serve customers and defer the need for traditional power plants. Because of the coincidence of solar generation and the peak demand for electrical energy, about 40 percent of installed solar generation is considered a firm resource. For utility-scale solar projects, that number increases to 52 percent. As the amount of solar increases in the state, the difference in how it operates compared to traditional generation will have an increasing importance to the grid. Solar generation cannot be dispatched as needed, but is produced based upon the conditions at the plant site, influenced by variations in daylight hours, cloud cover, and other environmental factors. Generally, the peak hours for production of a solar facility are closer to noon, whereas the peak in system demand tends to be in the early evening in summer and early morning in winter. Still, Florida is projected to meet its electricity demand and carry a reserve margin of between 16.4 and 30.1 percent on a statewide basis over the next 10 years.<sup>7</sup>

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<sup>1</sup> U.S. Energy Information Administration (EIA), *Florida, State Profile and Energy Estimates, Analysis*, <https://www.eia.gov/state/analysis.php?sid=FL#:~:text=Renewable%20resources%20fueled%20about%206,generation%20came%20from%20solar%20energy> (last visited Jan. 12, 2024).

<sup>2</sup> EIA, *Florida, State Profile and Energy Estimates, Data*, <https://www.eia.gov/state/data.php?sid=FL> (last visited Jan. 12, 2024). These figures reflect consumption in 2021, the most recent period reported by EIA for the state.

<sup>3</sup> Florida Public Service Commission (FPSC), *Review of the 2023 Ten-Year Site Plans of Florida's Electric Utilities*, available at <https://www.floridapsc.com/pscfiles/website-files/PDF/Utilities/Electricgas/TenYearSitePlans//2023/Review.pdf> (last visited Jan. 12, 2024).

<sup>4</sup> *Id.* at 42.

<sup>5</sup> FPSC, *Facts and Figures of the Florida Utility Industry, 2023*, at 17, <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf> (last visited Jan. 15, 2024).

<sup>6</sup> FPSC, *supra* note 3, at 3.

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

Since 2001, utility-scale electric generation from renewable resources in Florida had grown only 28 percent through 2016, but had grown over 300 percent by 2022.<sup>8</sup> Customer-owned renewable generation connected to the electric grid in Florida has also grown dramatically in recent years, increasing 460 percent from 2018 to 2022. This growth appears to correlate with decreasing prices for both utility-scale and customer-owned solar generation systems.<sup>9</sup>

In the transportation sector, the market for electric vehicles (EV) in Florida has grown significantly in recent years and is expected to continue growing.<sup>10</sup> Including both full battery electric vehicles and plug-in hybrid electric vehicles, only 21,700 EVs were registered in Florida in 2016; that number increased to 213,800 in 2022, second only to California.<sup>11</sup> Florida's generating electric utilities anticipate that annual EV energy consumption in their service territories will increase at a rate of almost 20% per year through 2032 and will comprise 3.9 percent of their net energy for load and 4 percent of summer peak demand in 2032.<sup>12</sup> This growth is accounted for in utility planning.<sup>13</sup> Registrations for compressed natural gas vehicles in Florida have declined from 18,000 in 2016 to 400 in 2022, and there is no data for registration of hydrogen-fueled vehicles in Florida for 2022.<sup>14</sup> Gasoline powered vehicles still account for the overwhelming majority of vehicle registrations in Florida, with almost 16 million registered in Florida.<sup>15</sup>

The United States Environmental Protection Agency (EPA) maintains an inventory of greenhouse gas (GHG) emissions by state, end-use sector, and type of gas, with the most recent inventory data for 2021.<sup>16</sup> According to this inventory, Florida's net GHG emissions for all sectors peaked in 2005 and were slightly lower (0.7 percent) in 2021 as compared to 2008.<sup>17</sup> GHGs reported to the EPA by large facilities<sup>18</sup> in Florida have declined from 147 million metric tons in 2010 to 113 million metric tons in 2022.<sup>19</sup> In 2021, the transportation sector accounted for 41 percent of Florida's GHG emissions, the electric power industry accounted for 35 percent, and the remaining 24 percent was associated with the industrial, commercial, agricultural, and residential sectors.<sup>20</sup>

## State Energy Policy and Governance (Sections 7-9)

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<sup>8</sup> EIA, *Electricity Data Browser*,

<https://www.eia.gov/electricity/data/browser/#/topic/0?agg=2,0,1&fuel=02fh&geo=g000001&sec=g&linechart=ELEC.GEN.AOR-US-99.A~ELEC.GEN.AOR-FL-99.A&columnchart=ELEC.GEN.AOR-US-99.A&map=ELEC.GEN.AOR-US-99.A&freq=A&start=2001&end=2022&chartindexed=1&ctype=linechart&ltype=pin&rtype=s&matype=0&rse=0&pin=> (last visited Jan. 12, 2024).

<sup>9</sup> See, e.g., NREL, *Documenting a Decade of Cost Declines for PV Systems*, Feb. 10, 2021,

<https://www.nrel.gov/news/program/2021/documenting-a-decade-of-cost-declines-for-pv-systems.html> (last visited Jan. 12, 2024) (stating that, from 2010 to 2020, there had been a 64%, 69%, and 82% reduction in the cost of residential, commercial-rooftop, and utility-scale PV systems, respectively and that a significant portion of the cost declines over that decade can be attributed to an 85% cost decline in module price).

<sup>10</sup> Florida Department of Transportation (FDOT), *Florida's Electric Vehicle Infrastructure Deployment Plan, August 2023*, at 17, [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/emergingtechnologies/evprogram/2023\\_florida's-vidp\\_update\\_092923.pdf?sfvrsn=1e4aee0\\_1](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/emergingtechnologies/evprogram/2023_florida's-vidp_update_092923.pdf?sfvrsn=1e4aee0_1) (last visited Jan. 15, 2024).

<sup>11</sup> U.S. Department of Energy (DOE), *Alternative Fuels Data Center*,

[https://afdc.energy.gov/transatlas/#/?state=FL&view=vehicle\\_count](https://afdc.energy.gov/transatlas/#/?state=FL&view=vehicle_count) (last visited Jan. 15, 2024).

<sup>12</sup> FPSC, *supra* note 3, at 5-6, 19.

<sup>13</sup> *Id.* at 17-20/.

<sup>14</sup> DOE, *supra* note 11.

<sup>15</sup> *Id.*

<sup>16</sup> For purposes of the EPA's inventory, GHGs include carbon dioxide, methane, fluorinated gases, and nitrous oxide. The inventory also accounts for changes associated with land use and forestry that affect the land's ability to serve as a sink for GHG emissions. EPA, *Greenhouse Gas Inventory Data Explorer*,

<https://cfpub.epa.gov/ghgdata/inventoryexplorer/#iiallsectors/allsectors/allgas/gas/all> (last visited Jan. 15, 2024).

<sup>17</sup> *Id.*

<sup>18</sup> Facilities that emit 25,000 metric tons or more per year of GHGs are required to annually report their GHG emissions to the EPA. Roughly half of total U.S. GHG emissions are reported by direct emitters. EPA, *Facility Level Information on Greenhouse Gases Tool*, [https://ghgdata.epa.gov/ghgp/main.do?site\\_preference=normal](https://ghgdata.epa.gov/ghgp/main.do?site_preference=normal) (last visited Jan. 12, 2024).

<sup>19</sup> *Id.*

<sup>20</sup> EPA, *supra* note 16.

## Present Situation

In 1974, in response to the 1973-1974 oil embargo,<sup>21</sup> the Legislature, upon finding that a lack of accurate and relevant information was hampering its ability to develop energy policy to address the energy resource shortages facing the state, created an “energy data center” to collect data on production, refinement, transportation, storage, and sale of energy resources in Florida, including all types of fossil fuels, nuclear energy, and renewables.<sup>22</sup> Three years later, the Legislature developed an energy policy statement with a focus on energy conservation, alternative energy resources, and public education about energy use.<sup>23</sup> This energy policy statement is still mostly intact in Florida law.<sup>24</sup>

In 1978, the Legislature transferred the duties of the energy data center to the former Department of Administration and expanded those duties to include additional data analysis and forecasting, public education, promoting conservation, and coordinating state energy-related programs.<sup>25</sup> This list of duties is now reflected in the duties established in current law for the Department of Agriculture and Consumer Services (DACCS).<sup>26</sup>

Florida’s current energy policies are largely established through various provisions of law related to specific aspects of energy production, distribution, sales, and use. The Legislature last addressed energy policy at a holistic level in 2008,<sup>27</sup> when it adopted the following statement of intent with regard to energy resource planning and development, which is unchanged in current law:<sup>28</sup>

The Legislature finds that the state’s energy security can be increased by lessening dependence on foreign oil; that the impacts of global climate change can be reduced through the reduction of greenhouse gas emissions; and that the implementation of alternative energy technologies can be a source of new jobs and employment opportunities for many Floridians. The Legislature further finds that the state is positioned at the front line against potential impacts of global climate change. Human and economic costs of those impacts can be averted by global actions and, where necessary, adapted to by a concerted effort to make Florida’s communities more resilient and less vulnerable to these impacts. In focusing the government’s policy and efforts to benefit and protect our state, its citizens, and its resources, the Legislature believes that a single government entity with a specific focus on energy and climate change is both desirable and advantageous. Further, the Legislature finds that energy infrastructure provides the foundation for secure and reliable access to the energy supplies and services on which Florida depends. Therefore, there is significant value to Florida consumers that comes from investment in Florida’s energy infrastructure that increases system reliability, enhances energy independence and diversification, stabilizes energy costs, and reduces greenhouse gas emissions.

In 2008, the Legislature also adopted the following energy policy statements, which are unchanged in current law:<sup>29</sup>

It is the policy of the State of Florida to:

- Develop and promote the effective use of energy in the state, discourage all forms of energy waste, and recognize and address the potential of global climate change wherever possible.
- Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions.

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<sup>21</sup> See, generally, U.S Department of State, Office of the Historian, *Oil Embargo, 1973-1974*, <https://history.state.gov/milestones/1969-1976/oil-embargo> (last visited Jan. 12, 2024).

<sup>22</sup> Ch. 74-186, L.O.F.

<sup>23</sup> Ch. 77-334, L.O.F.

<sup>24</sup> See s. 377.601(2), F.S.

<sup>25</sup> Ch. 78-25, L.O.F.

<sup>26</sup> See ss. 377.603 and 377.703, F.S.

<sup>27</sup> Ch. 2008-227, L.O.F.

<sup>28</sup> S. 377.601(1), F.S.

<sup>29</sup> S. 377.601(2), F.S.

- Include energy considerations in all state, regional, and local planning.
- Utilize and manage effectively energy resources used within state agencies.
- Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs.
- Include the full participation of citizens in the development and implementation of energy programs.
- Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses, and reduce those needs whenever possible.
- Promote energy education and the public dissemination of information on energy and its environmental, economic, and social impact.
- Encourage the research, development, demonstration, and application of alternative energy resources, particularly renewable energy resources.
- Consider, in its decision making, the social, economic, and environmental impacts of energy-related activities, including the whole-life-cycle impacts of any potential energy use choices, so that detrimental effects of these activities are understood and minimized.
- Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within Florida.

Under current law,<sup>30</sup> DACS is required to perform the following functions, consistent with the development of a state energy policy:

- Perform or coordinate the functions of any federal energy programs delegated to the state, including energy supply, demand, conservation, or allocation.
- Analyze present and proposed federal energy programs and make recommendations regarding those programs to the Governor and the Legislature.
- Coordinate efforts to seek federal support or other support for state energy activities, including energy conservation, research, or development, and is responsible for the coordination of multiagency energy conservation programs and plans.
- Analyze energy data collected and prepare long-range forecasts of energy supply and demand in coordination with the Public Service Commission (PSC), which is responsible for electricity and natural gas forecasts, which must contain:
  - An analysis of the relationship of state economic growth and development to energy supply and demand.
  - Plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas, and an analysis of the extent to which renewable energy sources are being utilized in the state.
  - Consideration of alternative scenarios of statewide energy supply and demand for 5, 10, and 20 years to identify strategies for long-range action, including identification of potential social, economic, and environmental effects.
  - An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels, and an analysis of anticipated effects on the state's environment and social services resulting from energy resource development activities or from energy supply constraints, or both.
- Submit an annual report to the Governor and the Legislature reflecting its activities and making recommendations for policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the residents of this state, including a report from the PSC on electricity and natural gas and information on energy conservation programs, with recommendations for energy efficiency and conservation programs for the state.
- Promote the development and use of renewable energy resources, consistent with the state comprehensive plan and the policy statements made in 2008.
- Promote energy efficiency and conservation in all energy use sectors in the state, including consultation with the Department of Management Services to coordinate energy conservation programs of state agencies.

- Serve as the state clearinghouse for indexing and gathering all information related to energy programs in state universities, in private universities, in federal, state, and local government agencies, and in private industry and prepare and distribute this information in any manner necessary to inform and advise the public.
- Coordinate energy-related programs of state government.
- Promote a comprehensive research plan for state programs, which must be consistent with state energy policy and be updated on a biennial basis.
- Prepare an assessment of the state's renewable energy production credit.

DACS is also responsible for administering the Florida Renewable Energy Technologies and Energy Efficiency Act,<sup>31</sup> which consists of the Renewable Energy and Energy-Efficient Technologies Grant Program, and the Florida Green Government Grants Act.<sup>32</sup> Both programs are discussed in further detail in this analysis under *Energy Grant Programs*, below.

### Effect of the Bill

The bill replaces the current statement of legislative intent concerning the state's energy policy with a more streamlined statement of intent that expresses the purpose of the state's energy policy. The new statement of intent provides:

The purpose of the state's energy policy is to ensure an adequate, reliable, and cost-effective supply of energy for the state in a manner that promotes the health and welfare of the public and economic growth. The Legislature intends that governance of the state's energy policy be efficiently directed toward achieving this purpose.

For purposes of achieving this new statement of intent, the bill provides a list of specific, fundamental policy goals to guide the state's energy policy. These goals are:

- Ensuring a cost-effective and affordable energy supply;
- Ensuring adequate supply and capacity;
- Ensuring a secure, resilient, and reliable energy supply, with an emphasis on a diverse supply of domestic energy resources;
- Protecting public safety;
- Protecting the state's natural resources, including its coastlines, tributaries, and waterways;
- and
- Supporting economic growth.

The bill's revised statement of intent removes current legislative findings related to global climate change, and the bill's list of energy policy goals does not specifically address global climate change.

Consistent with the bill's revised statement of legislative intent and its list of energy policy goals, the bill revises the energy policy statements in current law. These changes:

- Specify that it is the state's policy to promote the "cost-effective development and use of a diverse supply of domestic energy resources in the state," rather than the "effective use of energy in the state."
- Remove a provision that provides for recognizing and addressing "the potential of global climate change" as a state energy policy.
- Add that promotion of "the cost-effective development and maintenance of energy infrastructure that is resilient to natural and manmade threats to the security and reliability of the state's energy supply" is a state energy policy.
- Remove a provision that provides for the state to "play a leading role in developing and instituting energy management programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions."
- Add that reduction of "reliance on foreign energy resources" is a state energy policy.

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<sup>31</sup> Ss. 377.801-377.804, F.S.

<sup>32</sup> S. 377.808, F.S.

- Provide that it is the state’s policy to promote energy education and dissemination of public information on energy and its impacts in relation to the list of energy policy goals established by the bill.
- Provide that it is the state’s energy policy to consider, in its decision-making, the impacts of energy-related activities on the energy policy goals established in the bill.
- Provide that it is the state’s energy policy to encourage the research, development, demonstration, and application of domestic energy resources, including the use of renewable resources.

The bill also revises DACS’ energy-related duties to be consistent with these changes. First, the bill requires that DACS advocate for energy issues consistent with the bill’s list of energy policy goals. Next, the bill provides that DACS’ energy data analyses must address potential impacts in relation to the bill’s list of energy policy goals. The bill removes a provision that requires these analyses to include plans for development of renewable energy resources and reduction in dependence on depletable energy resources.

## **Reliability and Resilience of Energy Infrastructure and Supply** (Sections 1, 15, 17)

### Present Situation

#### *Florida’s Electrical Power Grid*

The electric power grid primarily consists of a network of transmission lines, substations, distribution lines, transformers, and meters that deliver electricity from electrical power plants to homes and businesses. Since 1974, the PSC has had jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes and to avoid uneconomic duplication of facilities.<sup>33</sup> The PSC exercises this jurisdiction, in part, through its review of electric utilities’ ten-year plans regarding power generating needs and proposed electrical power plant sites<sup>34</sup> and through its review of applications for certain electrical power plant additions and expansions and certain intrastate transmission line additions and expansions.

#### *Natural Gas Infrastructure*

Natural gas is transported to Florida consumers via three major interstate pipelines: Florida Gas Transmission Company (3.2 billion cubic feet, or bcf, per day), Gulfstream Natural Gas System (1.4 bcf per day), and Sabal Trail Interstate Pipeline (1.1 bcf per day). Florida also receive natural gas from two minor interstate pipelines: Gulf South Pipeline Company reaches into northwest Florida, and Southern Natural Gas reaches into north Florida.<sup>35</sup> Companies seeking to build interstate natural gas pipelines must obtain certificates of public convenience and necessity issued by the Federal Energy Regulatory Commission (FERC). FERC considers both economic and environmental factors in its review.<sup>36</sup>

Construction and operation of intrastate natural gas pipelines generally require approval through a process similar to the PPSA and TLSA processes. The Natural Gas Transmission Pipeline Siting Act (NGTPSA)<sup>37</sup> is the state’s process for licensing the construction and operation of such pipelines within Florida.<sup>38</sup> The NGTPSA provides a centralized and coordinated permitting process for the location of natural gas transmission pipeline corridors and the construction and maintenance of natural gas transmission pipelines in Florida.<sup>39</sup>

<sup>33</sup> Ch. 74-196, L.O.F., codified at s. 366.04(5), F.S.

<sup>34</sup> S. 186.801, F.S.

<sup>35</sup> FPSC, *supra* note 5, at 13 and 17.

<sup>36</sup> See Congressional Research Service, *Interstate Natural Gas Pipeline Siting: FERC Policy and Issues for Congress*, Jun. 9, 2024, available at <https://crsreports.congress.gov/product/pdf/R/R45239> (last visited Jan. 23, 2024).

<sup>37</sup> Ss. 403.9401-403.9425, F.S.

<sup>38</sup> Florida Department of Environmental Protection, *Natural Gas Pipeline Siting Act* (July 27, 2022),

<https://floridadep.gov/water/siting-coordination-office/content/natural-gas-pipeline-siting-act> (last visited Jan. 18, 2024).

<sup>39</sup> S. 403.9402, F.S.

An intrastate natural gas pipeline does not require certification if the pipeline:

- Is less than 15 miles long or does not cross a county line;<sup>40</sup>
- Has been issued a certificate of public convenience and necessity by FERC under s. 7 of the Natural Gas Act;<sup>41</sup>
- Has been certified as an associated facility to an electrical power plant pursuant to the Florida Electrical Power Plant Siting Act;<sup>42</sup> or
- Is owned or operated by a municipality or an agency thereof, by any person primarily for the local distribution of natural gas, or by a special district created by special act to distribute natural gas.<sup>43</sup>

These exceptions do not preclude an applicant from applying for certification under the NGTPSA.<sup>44</sup>

The U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (PHMSA) implements federal pipeline safety standards for interstate and intrastate gas pipelines, hazardous liquid pipelines, and underground natural gas storage under the Pipeline Safety Act.<sup>45</sup> The Pipeline Safety Act authorizes state assumption of the intrastate regulatory, inspection, and enforcement responsibilities subject to an annual certification with PHMSA.<sup>46</sup> State agencies must adopt standards that comply with the Pipeline Safety Act to qualify for certification.

In Florida, The Gas Safety Law of 1967 authorizes the PSC to regulate the safe transmission and distribution of natural gas in Florida.<sup>47</sup> The Gas Safety Law grants the PSC exclusive jurisdiction over “all persons, corporations, partnerships, associations, public agencies, municipalities, or other legal entities engaged in the operation of gas transmission or distribution facilities with respect to their compliance with the rules and regulations governing safety standards.”<sup>48</sup> Under this authority, the PSC promulgates rules covering the design, improvement, fabrication, installation, inspection, repair, reporting, testing, and safety standards of gas transmission and gas distribution systems.<sup>49</sup> The PSC is currently the state agency certified by PHMSA to inspect and enforce intrastate gas pipelines.<sup>50</sup>

#### *Land Development Regulations and Comprehensive Plans*

Under the Community Planning Act, local governments manage local growth through comprehensive plans enforced by local land use ordinances.<sup>51</sup> The Act prescribes certain principles, guidelines, standards, and strategies to allow for an orderly and balanced future land development<sup>52</sup> and outlines the required and optional elements of a comprehensive plan.<sup>53</sup> Local governments are directed to create and adopt comprehensive plans which are sensitive to private property rights, have no undue restrictions, and leave property owners free from government action that would harm their property or constitute an inordinate burden on their property rights.<sup>54</sup>

#### Effect of the Bill

##### *Intrastate Natural Gas Pipeline Permitting*

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<sup>40</sup> S. 403.9405(2)(a), F.S.

<sup>41</sup> S. 403.9405(2)(b), F.S.

<sup>42</sup> S. 403.9405(2)(b), F.S.

<sup>43</sup> S. 403.9405(2)(c), F.S.

<sup>44</sup> S. 403.9405(2)(a)-(c), F.S.

<sup>45</sup> See 49 U.S.C. §§ 60102-60143.

<sup>46</sup> 49 U.S.C. §§ 60105(e), 60106(d).

<sup>47</sup> S. 368.01-061, F.S.

<sup>48</sup> S. 368.05(1), F.S.; see also S. 368.021, F.S. (providing more entities subject to PSC jurisdiction).

<sup>49</sup> See ch. 25-12, F.A.C.

<sup>50</sup> Florida Public Service Commission, Agency Analysis of 2023 House Bill 81, p. 2 (October 26, 2023).

<sup>51</sup> S. 163.3167(1)(b), F.S.

<sup>52</sup> S. 163.3167(2), F.S.

<sup>53</sup> S. 163.3177, F.S.

<sup>54</sup> S. 163.3161(10), F.S. Specifically, such plans

The bill increases the minimum length of an intrastate natural gas pipeline that requires certification under the NGTPSA from 15 miles to 100 miles. A natural gas transmission pipeline company may still obtain certification under the NGTPSA if it chooses to do so.

#### *Land Development Regulations and Comprehensive Plans for Certain Natural Gas Facilities*

The bill defines the term “resiliency facility” as a facility owned and operated by a public utility for the purposes of assembling, creating, holding, securing, or deploying natural gas reserves for temporary use during a system outage or natural disaster. Under the bill, “natural gas reserve” means a facility that is capable of storing and transporting and, when operational, actively stores and transports a supply of natural gas.

The bills states that a resiliency facility is a permitted use in all commercial, industrial, and manufacturing land use categories in a local government comprehensive plan and in all commercial, industrial, and manufacturing districts.

Under the bill, a resiliency facility must comply with the setback and landscape criteria for other similar uses. As long as buffer and landscaping requirements do not exceed the requirements for similar uses in commercial, industrial, and manufacturing land use categories and zoning districts, a local government may adopt an ordinance specifying such requirements for resiliency facilities.

The bill provides that after July 1, 2024, a local government may not amend its comprehensive plan, land use map, zoning districts, or land development regulations in a way that would conflict with a resiliency facility’s classification as a permitted and allowable use, including, but not limited to, a nonconforming use, structure, or development.

#### *Security and Resiliency Assessment of Electric and Natural Gas Infrastructure*

The bill requires the PSC to conduct an assessment of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats. The bill requires the PSC to consult with the Division of Emergency Management and, in its assessment of cyber threats, with the Florida Digital Service. The bill provides that all electric utilities, natural gas utilities, and natural gas pipelines operating in this state, regardless of ownership structure, shall cooperate with the PSC to provide access to all information necessary to conduct the assessment.

The bill requires the PSC, by July 1, 2025, to submit a report of its assessment to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must also contain any recommendations for potential legislative or administrative actions that may enhance the physical security or cyber security of the state's electric grid or natural gas facilities.

#### **Provision of Transportation Fuels by Public Utilities (Sections 4-5)**

##### Present Situation

Under Florida law, the term “public utility” includes providers of electricity or natural gas, with the exception of rural cooperatives, municipal utilities, special districts, and wholesale-only pipeline companies.<sup>55</sup> With the growing use of EVs, most public electric utilities in the state have begun to offer EV charging services through their own public charging equipment, charging equipment at customer premises, or both. These services are typically provided under pilot programs and at rates approved by the PSC. Some public natural gas utilities in Florida support natural gas vehicle fueling under specific rate schedules approved by the PSC, either through publicly accessible compressed natural gas fueling facilities or through delivery of such gas to customer premises for use by the customer to fuel vehicles (typically for fleet fueling).

## Effect of the Bill

The bill provides that the PSC, without specific legislative authority, may not authorize a public utility to expand the scope of its regulated business activity to include direct sales of energy to a consumer solely for the consumer's use in powering means of transportation owned by the consumer. The bill provides that it does not apply to limited or pilot programs approved by the PSC before January 1, 2024.

The bill provides specific authority for the PSC to approve public utility programs for residential, customer-specific EV charging if the PSC determines that the rates and rate structure of the program will not adversely impact the public utility's general body of ratepayers. The bill requires that all revenues received from the program must be credited to the utility's retail ratepayers. The bill provides that it does not preclude cost recovery for EV charging programs approved by the PSC before January 1, 2024.

## **Relocation of Utility Facilities (Section 6)**

### Present Situation

Under current law, utilities bear the cost of relocating utility facilities placed upon, under, over, or within the right-of-way limits of any public road or publicly owned rail corridor which is found by the authority<sup>56</sup> to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor. Utility owners, upon 30 days' notice, must eliminate the unreasonable interference within a reasonable time or an agreed time, at their own expense.<sup>57</sup> These requirements apply even if the utility facility is within a public utility easement and the utility has a franchise agreement with the authority, absent some other agreement to the contrary regarding costs of relocation.<sup>58</sup> These costs are recovered by public utilities through base rates approved by the PSC.

### Effect of the Bill

The bill authorizes natural gas public utilities to petition the PSC to annually recover prudently incurred costs to relocate natural gas facilities<sup>59</sup> to accommodate requirements imposed by DOT and local government entities.<sup>60</sup> The bill allows each utility to recover such costs through a charge separate and apart from base rates, referred to in the bill as the natural gas facilities relocation cost recovery clause. Such costs may not include any costs that the utility recovers through its base rates.

The bill requires the PSC to establish an annual proceeding to review these petitions. This review is limited to:

- Determining the prudence of the utility's actual incurred natural gas facilities relocation costs;
- Determining the reasonableness of the utility's projected natural gas facilities relocation costs for the next calendar year; and
- Providing for a true-up of the costs with the projections on which past cost recovery charges were set.

Any refund or collection made pursuant to the true-up process must include applicable interest.

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<sup>56</sup> As used in ss. 337.401-337.404, F.S., "the authority" means DOT and local government entities. S. 337.401(1)(a), F.S.

<sup>57</sup> S. 337.403(1)(a)-(j), F.S., provides exceptions.

<sup>58</sup> *Lee County Electric Coop., Inc. v. City of Cape Coral*, 159 So. 3d 126, 130 (Fla. 2d DCA 2014).

<sup>59</sup> The bill defines natural gas facilities as gas mains, laterals, and service lines used to distribute natural gas to customers. The term also includes all ancillary equipment needed for safe operations, including, but not limited to, regulating stations, meters, other measuring devices, regulators, and pressure monitoring equipment.

<sup>60</sup> The bill defines these costs as the costs to relocate or reconstruct facilities as required by a mandate, a statute, a law, an ordinance, or an agreement between the utility and an authority, including, but not limited to, costs associated with reviewing plans provided by an authority.

The bill requires that all costs approved pursuant to this clause be allocated to customer classes pursuant to the rate design most recently approved by the PSC. If a capital expenditure is recoverable as a natural gas facilities relocation cost, the public utility may recover the annual depreciation on the cost, calculated at the public utility's current approved depreciation rates, and a return on the undepreciated balance of the costs at the public utility's weighted average cost of capital using the last approved return on equity.

The bill requires the PSC to adopt implementing rules as soon as practicable.

## **Energy Guidelines for Public Business (Section 2)**

### Present Situation

Current law requires state agencies to follow specified guidelines to promote energy efficiency and other environmental benefits when conducting public business.<sup>61</sup> Such guidelines require state agencies to:

- Consult the Florida Climate-Friendly Preferred Products List<sup>62,63</sup> when procuring products from state term contracts<sup>64</sup> and procuring such products if the price is comparable;<sup>65</sup>
- Contract for meeting and conference space only with facilities that have received the "Green Lodging" designation from DEP for best practices in water, energy, and wastewater efficiency standards, absent a determination from the agency head that no other viable alternative exists;<sup>66</sup>
- Ensure all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption and reporting compliance to the Department of Management Services (DMS);<sup>67</sup> and
- Use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.<sup>68</sup>

Additionally, when procuring new vehicles, state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan must first define the intended purpose for the vehicle and determine which statutorily listed use class<sup>69</sup> the vehicle is being procured for. These vehicles must be selected based on the greatest fuel efficiency available for the appropriate use class when fuel economy data is available. Exceptions may be made for emergency response vehicles in certain circumstances.<sup>70</sup>

### *Goods Produced by Child and Forced Labor*

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<sup>61</sup> S. 286.29, F.S.

<sup>62</sup> The Florida Climate-Friendly Preferred Products List is developed by the Department of Management Services (DMS), which works with the Department of Environmental Protection to continually assess the list. The list identifies specific products and vendors that offer energy efficiency or other environmental benefits over competing products. See s. 286.29(1), F.S.

<sup>63</sup> The Florida Climate-Friendly Preferred Products List was last updated in January of 2021 and contains 12 recommended products, which all are categorized as either hand sanitizer or cleaning supplies. See Florida Climate-Friendly Preferred Products List, Department of Management Services (Jan. 2021), [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_contracts\\_and\\_agreements/florida\\_climate-friendly\\_preferred\\_products\\_list](https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/florida_climate-friendly_preferred_products_list) (last visited Jan. 12, 2024).

<sup>64</sup> A state term contract is a contract for commodities or contractual services that is competitively procured by DMS and is used by agencies and other eligible users. See ss. 287.012(28), F.S. and 287.042(2)(a), F.S.

<sup>65</sup> S. 286.29(1), F.S.

<sup>66</sup> S. 286.29(2), F.S.

<sup>67</sup> S. 286.29(3), F.S.

<sup>68</sup> S. 286.29(5), F.S.

<sup>69</sup> Vehicle use classes include: state business travel, designated operator; state business travel, pool operators; construction, agricultural, or maintenance work; conveyance of passengers; conveyance of building or maintenance materials and supplies; off-road vehicle, motorcycle, or all-terrain vehicle; emergency response; or other. S. 286.29(4), F.S.

<sup>70</sup> S. 286.29(4), F.S.

The Bureau of International Labor Affairs (ILAB) in the United States Department of Labor maintains a list of goods and the countries which they are sourced from which ILAB has reason to believe are produced by child labor or forced labor. ILAB maintains this list to raise awareness about these issues in an effort to combat them. This list also provides information to consumers by highlighting product categories that may be at risk of being produced with child labor or forced labor.<sup>71</sup>

### Effect of the Bill

Under the bill, DMS is no longer required to maintain the Florida Climate-Friendly Preferred Products List, and state agencies are no longer required to consult the list when procuring products from state term contracts.

The bill repeals the requirement that state agencies contract for meeting and conference space only with hotels or conference facilities that have received the “Green Lodging” designation.

Under the bill, state agencies, local governments, state universities, and community colleges procuring a new vehicle no longer have to select each vehicle based on the greatest fuel efficiency available for the use class.

The bill requires DMS, in consultation with the Department of Commerce (COM) and DACS, to develop the Florida Humane Preferred Energy Products List. In developing the list, DMS must assess products currently available for purchase under state term contracts and identify specific products that appear to be largely made free from forced labor if the products contain or consist of:

- An energy storage device with a capacity of greater than one kilowatt, or
- An energy generation device with a capacity of greater than 500 kilowatts.

Under the bill, the term “forced labor” means any work performed or service rendered that is:

- Obtained by intimidation, fraud, or coercion, including by threat of serious bodily harm to, or physical restraint against, a person, by means of a scheme intended to cause the person to believe that if he or she does not perform such labor or render such service, the person will suffer serious bodily harm or physical restraint, or by means of the abuse or threatened abuse of law or the legal process;
- Imposed on the basis of a characteristic that has been held by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability;
- Not performed or rendered voluntarily by a person; or
- In violation of the Child Labor Law or otherwise performed or rendered through oppressive child labor.

When procuring the specified energy storage and generation devices, state agencies and political subdivisions must consult the Florida Humane Preferred Energy Products List and only purchase products from the list.

### **Energy Grant Programs (Sections 10-14)**

#### Present Situation

##### *Renewable Energy and Energy-Efficient Technologies Grant Program*

The Renewable Energy and Energy-Efficient Technologies (REET) Grant Program is established within DACS to provide matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies and innovative technologies that significantly

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<sup>71</sup> U.S. Department of Labor, Bureau of International Labor Affairs, *List of Goods Produced by Child Labor or Forced Labor*, <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods> (last visited Jan. 12, 2024).

increase energy efficiency for vehicles and commercial buildings.<sup>72</sup> The REET program is no longer active.<sup>73</sup>

### *Florida Green Government Grants Act*

DACS also administers the Florida Green Government Grants Act.<sup>74</sup> DACS is directed to adopt rules and come up with green government standards that provide for cost-efficient solutions, reducing greenhouse gas emissions, improving quality of life, and strengthening the state's economy.<sup>75</sup> DACS must administer the program to assist local governments, including municipalities, counties, and school districts in the development and implementation of programs that achieve green standards.<sup>76</sup> The Florida Green Government Grants program is no longer active.<sup>77</sup>

### *Energy Economic Zone Pilot Program*

In 2009, the Legislature authorized the creation of the Energy Economic Zone Pilot Program for the purpose of developing a model area that incorporates energy-efficient land-use patterns, cultivates green economic development, encourages the generation of renewable electric energy, and promotes the manufacturing of “green” products and jobs.<sup>78</sup> Florida law directs the Department of Commerce,<sup>79</sup> in consultation with the Department of Transportation to implement the program.<sup>80</sup>

### *Qualified Energy Conservation Bond Allocation*

Qualified Energy Conservation Bonds (QECBs) are taxable bonds that are issued by state or local governments to finance one or more qualified energy conservation purpose. QCEBs are federally funded, with Congress first authorizing the program in 2008. Examples of qualified projects include energy efficiency capital expenditures in public buildings, green communities, renewable energy production, and energy efficiency education campaigns.<sup>81</sup> Current law authorizes DACS to establish an allocation program for Florida's QCEB allocation in accordance with federal law.<sup>82</sup>

### Effect of the Bill

The bill repeals the REET Grant Program, the Florida Green Government Grants Act, the Energy Economic Zone Pilot Program, and all provisions related to Qualified Energy Conservation Bonds.

Under the bill, no new applications, certifications, or allocations may be approved; no new letters of certification may be issued; no new contracts or agreements may be executed; and no new awards may be made for the repealed programs. All certifications or allocations issued under such programs are rescinded except for the certifications of, or allocations to, those certified applicants or projects that continue to meet the applicable criteria in effect before July 1, 2024. Any existing contract or agreement authorized under any of these programs shall continue in full force and effect in accordance with the statutory requirements in effect when the contract or agreement was executed or last modified.

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<sup>72</sup> S. 377.804, F.S.

<sup>73</sup> Email from Isabelle Garbarino, Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services, RE: [External]RE: Question about grants programs (Jan. 22, 2024).

<sup>74</sup> S. 377.808, F.S.

<sup>75</sup> S. 377.808(2), F.S.

<sup>76</sup> *Id.*

<sup>77</sup> Email from Isabelle Garbarino, Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services, RE: [External]RE: Question about grants programs (Jan. 22, 2024).

<sup>78</sup> S. 377.809(1), F.S.

<sup>79</sup> In 2023, the Department of Economic Opportunity was renamed as the Department of Commerce. See Chapter 2023-173, Laws of Fla.

<sup>80</sup> S. 377.809(1), F.S.

<sup>81</sup> Kelly Smith Burk, Florida Department of Agriculture and Consumer Services, *Qualified Energy Efficiency Conservation Bonds (QCEB) Formula Allocations to Large Local Jurisdiction* (Apr. 23, 2015), [https://ccmedia.fdacs.gov/content/download/60128/file/FDACS%27\\_Memorandum\\_regarding\\_Qualified\\_Energy\\_Conservation\\_Bond\\_Formula\\_Allocations\\_to\\_Large\\_Local\\_Governments.pdf](https://ccmedia.fdacs.gov/content/download/60128/file/FDACS%27_Memorandum_regarding_Qualified_Energy_Conservation_Bond_Formula_Allocations_to_Large_Local_Governments.pdf) (last visited Jan. 25, 2024).

<sup>82</sup> S. 377.816, F.S.

However, further modifications, extensions, or waivers may not be made or granted relating to such contracts or agreements, except computations by the Department of Revenue of the income generated by or arising out of the qualifying project.

## **Consumer Choice of Energy Resources** (Sections 3, 16)

### Present Situation

#### *Community Development Districts*

Community development districts (CDDs) are a type of independent special district intended to provide urban community services in a cost-effective manner by managing and financing the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.<sup>83</sup> As of January 18, 2024, there were 961 active CDDs in Florida.<sup>84</sup>

Each CDD is governed by a five-member board elected by the landowners of the district on a one-acre, one-vote basis.<sup>85</sup> Board members serve four-year terms, except some initial board members serve a two-year term for the purpose of creating staggered terms.<sup>86</sup> After the sixth year (for districts of up to 5,000 acres) or the 10th year (for districts exceeding 5,000 acres or for a compact, urban, mixed-use district<sup>87</sup>) following the CDD's creation, each member of the board is subject to election by the electors of the district at the conclusion of their term. However, this transition does not occur if the district has fewer than 250 qualified electors (for districts of up to 5,000 acres) or 500 qualified electors (for districts exceeding 5,000 acres or for a compact, urban, mixed-use district).<sup>88</sup>

#### *Homeowners' Associations*

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>89</sup>

Only HOAs whose covenants and restrictions include mandatory assessments are regulated under chapter 720, F.S., the Homeowners' Association Act (HOA Act). An HOA is administered by an elected board of directors (board). The powers and duties of an HOA include the powers and duties provided in the HOA Act and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.<sup>90</sup>

An HOA must be a Florida corporation, and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

HOA governing documents may not:

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<sup>83</sup> S. 190.002(1)(a), F.S.

<sup>84</sup> Dept. of Commerce, Special District Accountability Program, *Official List of Special Districts*, available at <https://specialdistrictreports.floridajobs.org/OfficialList/CustomList> (last visited Jan. 26, 2024).

<sup>85</sup> S. 190.006(2), F.S.

<sup>86</sup> S. 190.006(1), F.S.

<sup>87</sup> S. 190.006(3)(a)2.a., F.S. A "compact, urban, mixed-use district" is a district located within a municipality and a CRA that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units. S. 190.003(7), F.S.

<sup>88</sup> S. 190.006(3)(a)2.b., F.S.

<sup>89</sup> S. 720.301(9), F.S.

<sup>90</sup> See *generally* ch. 720, F.S.

- Prohibit a homeowner from displaying up to two portable, removable flags in a respectful manner, consistent with the requirements for the United States flag.<sup>91</sup>
- Prohibit any property owner from implementing Florida-friendly landscaping<sup>92</sup> on his or her land or create any requirement or limitation in conflict with any provision of part II of Chapter 373, F.S., regarding consumptive uses of water or a water shortages order.<sup>93</sup>
- Prohibit solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restriction, covenant, declaration, or binding agreement.<sup>94</sup>

Additionally, HOAs may not restrict the installation, display, and storage of any items on a parcel that are not visible from the parcel's frontage or an adjacent parcel, unless the item is prohibited by general law or local ordinance. Such items include, but are not limited to:<sup>95</sup>

- Artificial turf.
- Boats.
- Flags.
- Recreational vehicles.

## Effect of the Bill

### *Prohibition of CDD Energy Use Restrictions*

The bill provides that development district resolutions, ordinances, rules, codes, or policies, may not take any action that restricts or prohibits, or has the effect of restricting or prohibiting, certain types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.

The bill also provides that development district resolutions, ordinances, rules, codes, or policies, may not take any action that restricts or prohibits, or have the effect of restricting or prohibiting, the use of any appliance,<sup>96</sup> including a stove or grill, which uses the types or fuel source of energy production which may be used, delivered, converted, or supplied by the entities listed above.

### *Prohibition of HOA Energy Use Restrictions*

The bill provides that HOA documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the types or fuel sources of energy production which may be used, delivered,

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<sup>91</sup> S. 720.3075(3), F.S.

<sup>92</sup> Section 373.185, F.S., defines "Florida-friendly landscaping" as quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.

<sup>93</sup> S. 720.3075(4), F.S.

<sup>94</sup> S. 163.04(2), F.S.

<sup>95</sup> S. 720.3045, F.S.

<sup>96</sup> The bill defines the term "appliance" as a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

converted, or supplied by the following entities to customer within the HOA that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.

The bill also provides that HOA declarations of covenants, articles of incorporation, or bylaws may not preclude, the use of any appliance,<sup>97</sup> including a stove or grill, which uses the types or fuel source of energy production which may be used, delivered, converted, or supplied by the entities listed above.

## Developing Energy Technologies (Sections 18, 19)

### Present Situation

#### *Nuclear Technologies*

Historically, nuclear power generation in the United States has relied on large light water reactors (LWRs) which were first commercialized in the 1950s.<sup>98</sup> Following the passage of the 2005 Energy Policy Act, federal loan guarantees along with state financing mechanisms began to spur activity in nuclear reactor development throughout states.<sup>99</sup> This activity slowed after public sentiment turned against nuclear power due to safety concerns related to the 2011 disaster at the Fukushima Daiichi nuclear plant in Japan and after the economics of power generation changed due to falling natural gas prices.<sup>100</sup> However, there has been increasing interest in “advanced nuclear reactors”<sup>101</sup> and “small modular reactors”<sup>102</sup> recently.<sup>103</sup> Advanced nuclear reactors are believed to improve upon earlier generations of reactors in areas of: cost, safety, security, waste management, and versatility.<sup>104</sup>

Nuclear energy is “carbon-free” as it does not directly produce carbon dioxide or other greenhouse gases.<sup>105</sup> Nuclear power provides more than half of the carbon-free electricity produced in the U.S.<sup>106</sup> Nuclear energy currently constitutes 8% of electric generating capacity in the United States, yet generates 18% of the total electricity in the country.<sup>107</sup> Nuclear energy generates about 13% of total electricity generation in Florida.<sup>108</sup> This is because most nuclear plants operate around the clock and

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<sup>97</sup> The bill defines the term “appliance” as a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

<sup>98</sup> MARK HOLT, CONG. RSCH. SERV., R45706, ADVANCED NUCLEAR REACTORS: TECHNOLOGY OVERVIEW AND CURRENT ISSUES (2023) [hereinafter CRS Report, Advanced Nuclear Reactors].

<sup>99</sup> Daniel Shea, *Nuclear Policy in the States: A National Review*, Journal of Critical Infrastructure Policy, Fall/Winter 2023, at 14-15 [hereinafter Shea, Nuclear Policy in the States].

<sup>100</sup> *Id.* at 15.

<sup>101</sup> An advanced nuclear reactor is a fission reactor “with significant improvements compared to reactors operating on the date of enactment” or a reactor using nuclear fusion. 42 U.S.C § 16271(b)(1).

<sup>102</sup> Small modular reactors are a form of advanced nuclear reactor with an electric generating capacity of 300 MW. Advanced nuclear reactors can be configured into small modular reactors. CRS Report, Advanced Nuclear Reactors, *supra* note 98, at 3-4.

<sup>103</sup> *Id.* at Introduction.

<sup>104</sup> CRS Report, Advanced Nuclear Reactors, *supra* note 98, at 3.

<sup>105</sup> Anne White & Aaron Krol, *Nuclear Energy*, Climate Portal (Oct. 14, 2020), <https://climate.mit.edu/explainers/nuclear-energy> (last visited Jan. 13, 2024).

<sup>106</sup> *Id.*

<sup>107</sup> U.S. Energy Information Administration, *U.S. energy facts explained*, <https://www.eia.gov/energyexplained/us-energy-facts/data-and-statistics.php> (last visited Jan. 12, 2024).

<sup>108</sup> U.S. Energy Information Administration, *Florida’s electricity generation mix is changing*, (Aug. 24, 2023), <https://www.eia.gov/todayinenergy/detail.php?id=60221> (last visited Jan. 19, 2024).

generate at maximum capacity around 93% of the time – nearly twice the capacity factor of resources like coal and natural gas, and triple that of wind and solar.<sup>109</sup>

State legislation related to nuclear energy has increased over the past decades.<sup>110</sup> These policies address different vantage points; some states have enacted policies to insulate their existing fleet of reactors from premature closure, while others have enacted policies to develop new nuclear capacity.<sup>111</sup> Many states have directed the conduct of studies on advanced nuclear reactors.<sup>112</sup>

### *Hydrogen for Transportation*

Hydrogen powered vehicles use hydrogen as a fuel source and produce no harmful tailpipe emissions as they only emit water vapor and warm air.<sup>113</sup> Currently, hydrogen powered vehicles are only available in select markets like southern and northern California.<sup>114</sup> This is because California is the only state which has a hydrogen fueling infrastructure, with over 60 public stations.<sup>115</sup>

California implemented its hydrogen fueling infrastructure with its “Hydrogen Highway Network” (Network) in 2004, which was later implemented by the legislature in 2005. The Network was designed with the desire to expand zero-emission hydrogen fuel cell electric cars by expanding California’s network of hydrogen refueling stations.<sup>116</sup> While hydrogen powered vehicles are environmentally beneficial, issues arise from the fueling infrastructure. Such issues, made apparent by the Network, include<sup>117</sup>:

- Vehicles becoming stranded because of lack of fueling stations;
- Frequent station malfunctions/shortages; and
- High state subsidies per fueling station.

In October 2023, the U.S. Department of Energy announced \$7 billion in federal funding under the Bipartisan Infrastructure Law to fund seven Regional Clean Hydrogen Hubs. The purpose of these investments is to “accelerate the commercial-scale deployment of clean hydrogen helping to generate clean, dispatchable power, create a new form of energy storage, and decarbonize heavy industry and transportation.”<sup>118</sup>

### Effect of the Bill

#### *Evaluation of Advanced Nuclear Technologies*

The bill requires the PSC to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies, including SMRs, to meet the electrical power needs of the state. The bill also requires the PSC to research means to encourage installation and use of nuclear technologies at military installations in the state in partnership with public utilities. In conducting this

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<sup>109</sup> Shea, Nuclear Policy in the States, *supra* note 99, at 16.

<sup>110</sup> Daniel Shea, *Nuclear Power and the Clean Energy Transition* (Apr. 6, 2023), <https://www.ncsl.org/energy/nuclear-power-and-the-clean-energy-transition> (last visited Jan. 13, 2024) (noting an increase from 74 bills considered in 2016 to more than 160 bills considered in 2022 in relation to nuclear energy).

<sup>111</sup> *Id.*

<sup>112</sup> See e.g., MICH. COMP. LAWS § 460.10hh (2022); Montana Senate Joint Resolution 3 (2021); Penn. HR 238 (2022).

<sup>113</sup> United States Department of Energy, *Fuel Cell Electric Vehicles*, [https://afdc.energy.gov/vehicles/fuel\\_cell.html](https://afdc.energy.gov/vehicles/fuel_cell.html) (last visited Jan. 13, 2024).

<sup>114</sup> United States Department of Energy, *Hydrogen Fuel Cell Electric Vehicle Availability*, [https://afdc.energy.gov/vehicles/fuel\\_cell\\_availability.html](https://afdc.energy.gov/vehicles/fuel_cell_availability.html) (last visited Jan. 13, 2024).

<sup>115</sup> United States Department of Energy, *Hydrogen Fueling Station Locations by State*, <https://afdc.energy.gov/data/10370> (last visited Jan. 13, 2024).

<sup>116</sup> California Energy Commission, *Hydrogen Vehicles & Refueling Infrastructure*, <https://www.energy.ca.gov/programs-and-topics/programs/clean-transportation-program/clean-transportation-funding-areas-1> (last visited Jan. 13, 2024).

<sup>117</sup> Evan Halper, *Is California’s ‘Hydrogen Highway’ a road to nowhere?*, L.A. Times, Aug. 10, 2021.

<sup>118</sup> U.S. DOE, Office of Clean Energy Demonstrations, *Regional Clean Hydrogen Hubs Selections for Award Negotiations*, <https://www.energy.gov/oced/regional-clean-hydrogen-hubs-selections-award-negotiations> (last visited Jan. 26, 2024).

study, the PSC must consult with the Department of Environmental Protection and the Division of Emergency Management.

By April 1, 2025, the PSC must prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing its findings and recommendations for potential legislative or administrative actions that may enhance the use of advanced nuclear technologies in a manner consistent with the state energy policy goals established by the bill.

#### *Evaluation of Hydrogen Fueling Infrastructure*

The bill requires DOT, in consultation with DACS, to study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the state highway system.

By April 1, 2025, DOT must prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing its findings and any recommendations for potential legislative or administrative actions concerning the development of hydrogen fueling infrastructure in manner consistent with the state energy policy goals established by the bill.

#### B. SECTION DIRECTORY:

- Section 1.** Creates s. 163.3210, F.S., relating to natural gas resiliency and reliability infrastructure.
- Section 2.** Amends s. 286.29, F.S., relating to energy guidelines for public business.
- Section 3.** Amends s. 366.032, F.S., relating to preemptions over utility service restrictions.
- Section 4.** Amends s. 366.04, F.S., relating to jurisdiction of the Public Service Commission.
- Section 5.** Amends s. 366.94, F.S., relating to electric vehicle charging.
- Section 6.** Creates s. 366.99, F.S.; relating to natural gas facilities relocation costs.
- Section 7.** Amends s. 377.601, F.S., relating to legislative intent.
- Section 8.** Amends s. 377.6015, F.S., relating to the Department of Agriculture and Consumer Services; powers and duties.
- Section 9.** Amends s. 377.703, F.S., relating to additional functions of the Department of Agriculture and Consumer Services.
- Section 10.** Repeals energy-related grant programs.
- Section 11.** Provides application relating to existing agreements under certain programs
- Section 12.** Amends s. 220.193, F.S., relating to Florida renewable energy production credit.
- Section 13.** Amends s. 288.9606, F.S., relating to issue of revenue bonds.
- Section 14.** Amends s. 380.0651, F.S., relating to statewide guidelines, standards, and exemptions.
- Section 15.** Amends s. 403.9405, F.S. relating to applicability; certification; exemption; notice of intent under the Natural Gas Transmission Pipeline Siting Act.
- Section 16.** Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.
- Section 17.** Directs the Public Service Commission to conduct a security and resiliency assessment.

**Section 18.** Directs the Public Service Commission to study and evaluate advanced nuclear technologies.

**Section 19.** Directs the Department of Transportation to study and evaluate hydrogen fueling infrastructure.

**Section 20.** Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative impact on state government expenditures because it imposes the following new requirements for specified state agencies, which may require the expenditure of resources:

- PSC assessment of the security and resiliency of the state's electric grid and natural gas facilities;
- DMS development of a Florida Humane Preferred Energy Products List;
- PSC study and evaluation of advanced nuclear power technologies; and
- DOT study and evaluation of the potential development of hydrogen fueling infrastructure.

Affected agencies may be able to satisfy all or some of these requirements with existing resources. Further, affected agencies may see expenditures offset to some degree by potential savings, and other agencies may see reduced expenditures, related to:

- Elimination of certain state purchasing requirements; and
- Expansion of the types of intrastate natural gas pipelines that are exempt from siting under the Natural Gas Transmission Pipeline Siting Act.

The impact of requiring state agencies to purchase certain energy-related items from a new Florida Humane Preferred Energy Products List, as required by the bill, is indeterminate, but likely not significant.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The impact of requiring political subdivisions of the state to purchase certain energy-related items from a new Florida Humane Preferred Energy Products List, as required by the bill, is indeterminate.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill refocuses state energy policy on promoting and ensuring a cost-effective, reliable, resilient, safe, diverse, and U.S. sourced energy supply and makes specific changes in law to meet these policy goals. The bill also attempts to streamline certain regulatory requirements to strengthen energy infrastructure, prepare Florida to respond to changing market forces, and increase market-based policies within Florida's various energy sectors. To the extent these changes succeed, there will be direct positive impacts on the economic well-being of Florida's businesses and consumers.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Energy, Communications & Cybersecurity Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed provisions that:
  - Require public utilities to obtain approval from the Public Service Commission (PSC) to retire certain electrical power plants and require the PSC to inform and provide technical support to the Attorney General if a plant retirement is required or induced by federal regulation and is inconsistent with the state's energy policy goals.
  - Require the PSC to develop certain smart grid policies to be submitted for consideration by the Legislature.
  - Require the Department of Transportation (DOT) to offer potential access to vendors of certain alternative motor vehicle fuels and repowering stations along the turnpike system.
  - Create an Electric Vehicle Battery Deposit Program within the Department of Highway Safety and Motor Vehicles.
- Provided for the recovery of certain facility relocation costs incurred by a natural gas utility through a charge separate from the utility's base rates.
- Extended due dates for certain reports that the bill requires the PSC and DOT to submit.
- Corrected drafting errors.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.