



Energy & Utilities Policy Committee

MEETING PACKET

**Friday, April 9, 2010
Morris Hall
3:00PM – 4:30 PM**

**Larry Cretul
Speaker**

**Stephen Precourt
Chair**



The Florida House of Representatives

General Government Policy Council

Energy & Utilities Policy Committee

Larry Cretul
Speaker

Stephen L. Precourt
Chair

AGENDA

April 9, 2010

3:00 p.m. – 4:30 p.m.

Morris Hall (17 House Office Building)

Opening Remarks by Chair Precourt

Consideration of the following Proposed Committee Bill:

PCB EUP 10-06 – Economic Incentives for Energy Initiatives

Closing Remarks by Chair Precourt

Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EUP 10-06 Economic Incentives for Energy Initiatives
SPONSOR(S): Energy & Utilities Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	<u>Energy & Utilities Policy Committee</u>		Keating <i>CK</i> Whittier <i>gyw</i>	Collins <i>JC</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

PCB EUP 10-06 revises existing statements of legislative intent with respect to Florida's energy policy and the development of renewable energy and provides a set of incentive mechanisms to encourage the development of renewable and alternative energy resources. The bill:

- Streamlines the existing statement of legislative intent with respect to Florida's energy policy by identifying and prioritizing the core goals of that policy;
- Extends the sunset date for sales and use tax exemptions for certain renewable energy technologies;
- Deletes the sales and use tax exemption for hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, which has not been used since its inception in 2006;
- Extends the sunset date for corporate investment tax credits for certain renewable energy technologies; reduces the total credit available for production, storage, and distribution of biodiesel and ethanol costs from \$6.5 million to \$6 million per state fiscal year for all taxpayers; and creates a new corporate investment tax credit for investments in solar energy systems up to a limit of \$2.5 million per system and up to \$7.5 million per state fiscal year for all taxpayers;
- Extends the sunset date for renewable energy production tax credits;
- Consolidates existing statements of legislative intent with respect to development of renewable energy;
- Amends the definition of the term "biomass" to include a power source comprised of recycling byproducts;
- Requires public utilities to continuously purchase renewable energy from producers that meet specified operating requirements at a rate equal to 80 percent of the weighted average of firm service retail electric rates of the public utility, with the costs to the utility recoverable from its ratepayers; provides a legislative finding that this calculation directly correlates with the utility's avoided cost for acquiring renewable energy from such producers and is administratively efficient and transparent; and grants the PSC authority to adopt rules to implement these provisions;
- Authorizes public utilities, subject to specified conditions, to recover the costs to produce or purchase up to 735 megawatts of renewable energy statewide, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, at any time, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2009;
- Exempts from the definition of "public utility" a developer of a solar energy generation facility that is no larger than 2 megawatts and is located on the premises of a host consumer, other than a multi-family residential building, for purposes of sale to the host consumer for consumption only on the premises and specifically authorizes such sales; requires the PSC to adopt implementing rules and submit related reports;
- Exempts solar electrical generating facilities from the Florida Electrical Power Plant Siting Act; and
- Establishes a loan guarantee program for certain renewable energy projects and facilities.

The Revenue Estimating Conference estimates that the sales and use tax exemptions will have a recurring negative impact on state revenue of \$2 million each year for FY10-11, FY11-12, and FY12-13; the investment tax credits will have a recurring negative impact on state revenues of \$18 million each year for FY10-11, FY11-12, and FY12-13; and the production tax credits will have a recurring negative impact on state revenues of \$5 million each year for FY10-11, FY11-12, and FY12-13. Provisions of the bill requiring public utilities to purchase renewable energy and allowing utilities to make discretionary production or purchases of renewable energy will result in an indeterminate increase in utility costs and rates.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Energy Policy Goals

Present Situation

In 2005, the Legislature established the following statement of intent in s. 366.91, F.S., with respect to the development of renewable energy in Florida:

The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.¹

In 2006, the Legislature established the following statement of intent in s. 366.92, F.S., with respect to the development of renewable energy in Florida:

It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.²

In 2008, through HB 7135, the Legislature established the following statement of intent in s. 377.601, F.S., with respect to the development of energy policy in Florida:

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

¹ Chapter 2005-259, L.O.F.

² Chapter 2006-230, L.O.F.

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.³

Over the course of several meetings beginning in late 2009, the House Energy & Utilities Policy Committee reviewed these statements of intent and other indications of legislative goals and strategies related to energy policy throughout the Florida Statutes and took testimony from interested persons concerning what the core goals of Florida's energy policy should be. The main questions asked during these meetings and the review of the statutes were:

- "Does the Florida Legislature provide adequate guidance to state agencies, other governmental entities, and the private sector to develop and evaluate specific policies and programs necessary to achieve a comprehensive and cohesive energy policy for the state?" and
- "Has the Legislature set clear priorities as to what the state energy policy is or should be?"

The consensus answer to both questions appeared to be that the laws do not provide adequate, clear, and consistent guidance for developing and implementing a state energy policy.

Effect of Proposed Changes

The bill replaces the statement of intent in s. 377.601, F.S., concerning the state's energy policy, with a more streamlined statement of intent. The new statement of intent provides:

It is the intent of the Legislature to ensure an adequate and reliable supply of energy for Florida in a manner that promotes the health and welfare of the public, promotes sustainable economic growth, and minimizes and mitigates adverse impacts. The Legislature also intends that governance of energy policy within Florida be efficiently directed toward achieving these purposes.

While this statement of intent is set forth in broader terms, it appears to capture most, if not all, of the specific issues addressed in the existing intent language from s. 377.601, F.S.

The bill creates s. 366.90, F.S., to consolidate the existing statements of intent in ss. 366.91 and 366.92, F.S., related to the development of renewable energy in Florida. The bill ties the consolidated statement of intent to the new statement of intent provided in s. 377.601, F.S. The consolidated statement of intent provides:

To further the energy policy goals established in s. 377.601, F.S., the Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state, for purposes of electricity production, through the mechanisms established in ss. 366.91 and 366.92. Renewable energy resources have the potential to help diversify fuel types for electricity production, minimize the volatility of fuel costs, encourage investment within the state, and improve environmental conditions.

³ Chapter 2008-227, L.O.F.

The consolidated statement of intent in the bill appears to capture most of the provisions of the existing intent language in ss. 366.91 and 366.92, F.S. The consolidated statement of intent in the bill does not include the provision from s. 366.92, F.S., that establishes intent to minimize the costs of power supply to electric utilities and their customers through development of renewable energy. However, the provisions of ss. 366.91 and 366.92, F.S., which are cross-referenced in the statement of intent and are addressed in detail below, include provisions that address cost.

Sales and Use Tax Exemption for Renewable Energy Technologies

Present Situation

Section 212.08(7)(ccc), F.S., provides for a sales tax exemption for renewable energy technologies in Florida, occurring between July 1, 2006, and June 30, 2010. Taxpayers applying for these exemptions must submit a form to the Florida Energy and Climate Commission (FECC) to determine eligibility before submitting a sales tax refund claim to the Department of Revenue. The exemption applies to the following items:

- Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of \$2 million in taxes each state fiscal year for all taxpayers.⁴
- Commercial stationary hydrogen fuel cells, up to a limit of \$1 million in taxes each state fiscal year for all taxpayers.
- Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-100), including fueling infrastructure, transportation, and storage, up to a limit of \$1 million in taxes each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption.

Effect of Proposed Changes

The bill extends the sunset date for several of the exemptions to June 30, 2016. The exemption for hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations has been deleted, as this program has not been utilized since its inception on July 1, 2006.

Renewable Energy Technologies Investment Tax Credit (Corporate)

Present Situation

Section 220.192, F.S., provides that, for tax years beginning on or after January 1, 2007, a credit against either the corporate income tax or the franchise tax will be granted in an amount equal to the "eligible costs." "Eligible costs" are defined as seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs, incurred between July 1, 2006, and June 30, 2010, in connection with an investment in the following:

- Hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state, up to a limit of \$3 million per state fiscal year for all taxpayers.
- Commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state, up to a limit of \$1.5 million per state fiscal year for all taxpayers, and limited to a maximum of \$12,000 per fuel cell.

⁴ The sales tax exemption for hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, was not utilized in any of the four fiscal years that the program has been in existence.

- Production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state [gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify], up to a limit of \$6.5 million per state fiscal year for all taxpayers.

Effect of Proposed Changes

The bill extends the sunset date to June 30, 2016, for all three corporate income tax credits under this section of statute. It reduces the exemption for production, storage, and distribution of biodiesel and ethanol costs from \$6.5 million to \$6 million per state per fiscal year. The bill also adds a fourth incentive for investments in solar energy systems. Specifically, eligible costs are defined as fifty percent of all capital costs incurred between July 1, 2010, and June 30, 2016, in connection with an investment in solar energy systems up to a limit of \$2.5 million per system and up to \$7.5 million per state fiscal year for all taxpayers. The bill provides that if a credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used until December 31, 2021, after which the credit carryover expires.

The term, "solar energy systems" is defined as equipment which provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy such as petroleum products, natural gas, or electricity and which performs primarily with solar energy. In such other systems in which solar energy is used in a supplemental way, only those components which collect and transfer solar energy shall be included in this definition.

In 2008, the Legislature transferred from the Department of Environmental Protection to the Florida Energy & Climate Commission the responsibility of approving the applications for this program. This bill amends the statutes to reflect the appropriate entity.

Florida Renewable Energy Production Credit (Corporate)

Present Situation

Section 220.193, F.S., provides for an incentive program designed to encourage the development and expansion of facilities that produce renewable energy in Florida. The credit is available to new renewable energy facilities that were operationally placed in service after May 1, 2006, or expanded renewable energy facilities that increased electrical production and sale by more than 5 percent over that produced during 2005.

The tax credit is based on the taxpayer's production and sale of electricity.⁵ The program may be used for electricity production and sales made between January 1, 2007, and June 30, 2010.

- The corporate income tax credit is equal to \$0.01 for each kilowatt-hour of electricity produced and sold or used during a given tax year.
- The program is capped at \$5 million per state fiscal year for all taxpayers.

Effect of Proposed Changes

The bill extends the sunset date for this production credit to June 30, 2016. Each taxpayer claiming a credit under this section must first apply to the Department of Revenue by February 1 of each year for an allocation of available credit. The bill extends the deadline for this from 2011 to 2017.

⁵ The corporate renewable energy production tax credit may be earned both for electricity *sold* and electricity *used* by the producer when the producer would have otherwise been required to purchase the electricity.

Renewable Energy Definitions

Present Situation

For purposes of ss. 366.91 and 366.92, F.S., the term “renewable energy” is defined in s. 366.91(2)(d), F.S., as electrical energy produced from one or more of the following resources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, and waste heat from sulfuric acid manufacturing operations.

The term “biomass” is defined in s. 366.91(2)(a), F.S., as a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing; waste, byproducts, or products from agricultural and orchard crops; waste or coproducts from livestock and poultry operations; waste or byproducts from food processing; urban wood waste; municipal solid waste; municipal liquid waste treatment operations; and landfill gas.

Effect of Proposed Changes

The bill amends the definition of the term “biomass” in s. 366.91(2)(a), F.S., to include a power source comprised of recycling byproducts. This would allow electrical power produced from this resource to be sold to a public utility under a standard offer contract, based on current law related to such contracts. Under the provisions of the bill discussed below, electrical power from this resource would be required to meet certain operating requirements to qualify for purchase by a public utility.

Required Purchases of Renewable Energy

Present Situation

Since 2005, public utilities have been required to continuously make available standard offer contracts for the purchase of renewable energy, with the costs of any purchases recoverable from the utility’s ratepayers.⁶ The law limits the price paid by a utility for renewable energy to the utility’s full avoided costs, which are defined in s. 366.051, F.S., as the costs the utility would have incurred to produce the energy and/or capacity itself or purchase it from another source if not for the purchase of the renewable energy.⁷ Capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility’s avoided unit, the renewable energy producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term.⁸ These standard offer contracts have produced little new renewable energy.

Effect of Proposed Changes

The bill eliminates the requirement that a standard offer contract be made continuously available and replaces it with a requirement that each public utility continuously offer to purchase renewable energy based on a new calculation of “full avoided cost” from producers that meet specified operating requirements. With respect to the calculation of full avoided cost, the bill provides a legislative finding that 80 percent of the weighted average of firm service retail electric rates of the public utility directly correlates with the utility’s avoided cost for acquiring renewable energy from producers that meet the specified operating requirements and that this method calculation is administratively efficient and transparent. The bill provides that renewable energy producers meeting the specified operating requirements are entitled to “full avoided cost” based on this calculation.

It is not clear whether this proxy method of calculating avoided cost is consistent with federal law. For purchases mandated by states, the Public Utility Regulatory Policies Act of 1978 (PURPA) limits prices to the “incremental cost of alternative energy,” which is defined as “the cost to the electric utility of the

⁶ Section 366.91(3), F.S.

⁷ This pricing scheme reflects limits established by federal law which have been in place since adoption of the Public Utilities Regulatory Policy Act in 1978.

⁸ Section 366.91(3), F.S.

electric energy which, but for the purchase . . . such utility would generate or purchase from another source.”⁹ The proxy method proposed by the bill is based on embedded utility costs rather than incremental costs not yet incurred. This proxy method has not previously been tested.

Under the bill, a renewable energy producer that meets one, or both, of two operating requirements is eligible to be paid “full avoided cost” based on the new calculation. First, a renewable energy producer that generates and delivers to the electric power grid a fixed amount of electrical capacity at a rate of production such that the amount of energy produced per 1 megawatt of fixed capacity is 7,000 megawatt hours or more per year is entitled to sell that fixed amount of capacity and energy to any public utility at the new “full avoided cost.” Certain producers of electrical energy from biomass resources may qualify for payments under this provision. Second, a renewable energy producer that generates electric energy using waste heat from sulfuric acid manufacturing operations, such that the amount of electrical energy produced at the site per 1 megawatt of system generating capacity is 5,500 megawatt hours or more per year, and that exports less than 50 percent of the total electric energy produced to the electric power grid, is entitled to sell any excess energy to any public utility at the new “full avoided cost,” but only up to an amount equal to the energy used to serve its own requirements. This provision appears to specifically apply to existing cogeneration facilities.

The bill provides that the costs of these purchases shall be recoverable from the ratepayers of the purchasing utility.

The bill removes the existing provision in the law which states that capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility’s avoided unit, the renewable energy producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term.

The bill provides that action by the Public Service Commission pursuant to or associated with implementing these provisions shall not be deemed to be an action relating to rates or service of utilities providing electric service. Pursuant to s. 3(b)(2), Art. V of the State Constitution, any action of the PSC relating to rates or service of utilities providing electric service is appealed directly to the Florida Supreme Court.¹⁰ Thus, this provision would require judicial review of PSC actions specifically related to these provisions of the bill to be heard in a lower court.¹¹

To the extent that these provisions require utilities to pay renewable energy producers more than “full avoided cost” as it is currently calculated, the bill should result in additional renewable energy being produced and sold to utilities. The bill does not require, however, that the utility have a need for the capacity, energy, or both from the purchase of renewable energy under these provisions.

Recovery of Discretionary Utility Costs to Produce and Purchase Renewable Energy

Present Situation

In 2008, the Legislature authorized public utilities to construct up to 110 MW of renewable energy demonstration projects that emit no greenhouse gases at the point of generation and to recover the costs of such projects.¹² As a result, Florida Power & Light Company (FPL) has constructed or is in the process of constructing two solar photovoltaic projects, with a capacity of 25 MW and 10 MW respectively, and a hybrid solar thermal facility capable of producing 75 MW. FPL has received approval from the PSC to recover the costs of these projects.

Absent specific authority to recover the costs of renewable energy projects, including construction and purchases, public utilities will likely not invest in such projects due to the costs and/or capacity benefits

⁹ 16 U.S.C. 824a-3(d).

¹⁰ See also, Section 366.10, F.S.

¹¹ It appears that appeals of action taken by the PSC to implement these provisions of the bill would be made to a District Court of Appeal pursuant to s. 4, Art. V of the State Constitution, although some appeals of administrative action are taken to circuit court pursuant to s. 5, Art. V of the State Constitution.

¹² Chapter 2008-227, L.O.F.

of such projects relative to traditional generation resources. In reviewing the need for proposed electrical power plants, the PSC must consider, among other things, whether the proposed plant is the most cost-effective alternative available and the need for electrical system reliability and integrity.¹³ In most cases, a renewable energy facility will not be the most cost-effective alternative available, and in some instances the facility may not make a significant contribution to electrical system reliability and integrity as compared to other resources. Even for renewable energy projects that do not require a determination of need from the PSC, the utility will be permitted to recover investment in such projects only if the PSC finds that the funds were prudently invested.¹⁴

Effect of Proposed Changes

The bill authorizes public utilities to recover the costs to produce or purchase up to 735 megawatts of renewable energy statewide, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, at any time, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2009. The costs to be recovered must be computed using a method that averages the revenue requirements of the facility or purchase over its economic life. A utility's eligible costs will be recovered from its ratepayers through the existing environmental cost recovery clause established in s. 366.8255, F.S.

The bill authorizes public utilities to petition the PSC:

- Through 2011, for recovery of costs to produce or purchase up to a total of 300 megawatts of renewable energy statewide and an additional 15 megawatts of rooftop or pole-mounted solar energy applications;
- In 2012, for recovery of costs to produce or purchase up to an additional 200 megawatts of renewable energy statewide and an additional 10 megawatts of rooftop or pole-mounted solar energy applications; and
- In 2013, for recovery of costs to produce or purchase up to an additional 200 megawatts of renewable energy statewide and an additional 10 megawatts of rooftop or pole-mounted solar energy applications.

If a utility does not request approval to recover the costs of the total amount of capacity designated for one of these specific time periods, the remaining capacity for the applicable time period can be carried forward to the succeeding period but not beyond 2013.

The bill provides that each utility has the sole discretion to determine the type and technology of the renewable energy resources it intends to use and to determine whether to construct a facility itself, convert an existing fossil fuel facility, or contract for the purchase of renewable energy. The bill specifies the types of costs associated with each option that a utility may recover. The bill provides that costs shall be deemed prudent for purposes of cost recovery if the utility has used reasonable and customary industry practices in the design, procurement, and construction of the renewable energy project in a cost-effective manner for the type of renewable energy resource selected.

The bill limits cost recovery to new construction or conversion projects for which construction is commenced after the effective date of the bill and to purchases made after the effective date of the bill. The bill excludes from the cost cap calculation the costs of renewable energy projects approved for recovery prior to the effective date of the bill.

The bill provides that when a utility purchases renewable energy at a cost in excess of its full avoided cost, the seller must surrender to the utility all renewable attributes of the energy purchases (e.g., renewable energy credits). Further, the bill requires that no less than 75 percent of any revenues

¹³ Section 403.519, F.S. Pursuant to this section, the PSC must also consider the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

¹⁴ Section 366.06(1), F.S.

derived by the utility from renewable energy credits, carbon credits, or similar mechanisms, by virtue of production or purchases made under these provisions, shall be credited to ratepayers.

The bill exempts renewable energy facilities constructed under these provisions from the requirement of obtaining a determination of need from the PSC. The bill also provides that the PSC is not required to submit a report for any such projects that would otherwise be required under the Florida Electrical Power Plant Siting Act.

The bill requires each utility to provide certain information concerning the production or purchase of renewable energy in its annual ten-year site plan submitted to the PSC.

Limited Exception for Retail Sales of Electricity

Present Situation

Current law provides that any entity that sells electricity to or for the public, including a sale to a single customer, is a "public utility" subject to the regulatory oversight of the PSC.¹⁵

Effect of Proposed Changes

The bill exempts from the definition of "public utility" a developer of a solar energy generation facility that is no larger than 2 megawatts and is located on the premises of a host consumer, other than a multi-family residential building, for purposes of sale to the host consumer for consumption only on the premises. The bill specifically authorizes such sales. The bill provides that the host consumer's premises are limited to contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

The bill requires that the PSC adopt rules to implement this provision and requires the PSC to submit semiannual reports to the Legislature concerning implementation of this provision.

In *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988), the Florida Supreme Court held that the sale of electricity to even a single customer made the seller a "public utility" as defined in the law. As the court noted in that case, the effect of allowing non-utility electrical generation providers to serve customers in a utility's monopoly service territory would be that revenue that otherwise would have gone to the regulated utilities would be diverted to unregulated producers. The court further noted that this revenue would have to be made up by the remaining utility customers because the utility's fixed costs would not be reduced.

The bill attempts to address the concerns raised by the court by limiting the size of any non-utility facilities to 2 megawatts and requiring that the PSC adopt a mechanism to set rates that ensure the utility's general body of ratepayers does not subsidize any redundant generating capacity necessary to serve the customer. The bill also requires the PSC to submit, at least every six months, a report to the Legislature concerning implementation of this provision and recommendations concerning continued implementation. The bill does not, however, establish a cap on the total amount of capacity eligible for non-utility providers to serve.

Exemption of Solar from Siting Act Certification

Present Situation

The Florida Electrical Power Plant Siting Act (Siting Act), establishes a centrally coordinated process for the review of permit applications for electrical power plants.¹⁶ The Department of Environmental Protection administers the process, and several affected agencies provide input in the certification

¹⁵ *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988).

¹⁶ Section 403.502, F.S.

proceeding concerning matters within their respective jurisdictions. For purposes of certification under the Florida Electrical Power Plant Siting Act, current law defines "electrical power plant" as any steam or solar electrical generating facility, except for such facilities with a capacity of less than 75 megawatts.¹⁷

Effect of Proposed Changes

The bill amends the definition of "electrical power plant" for purposes of certification under the Siting Act by eliminating all solar electrical generating facilities from the definition. Thus, the bill would remove the requirement that solar electrical generating facilities obtain certification under the Siting Act.

Currently, none of the solar electrical generating facilities in Florida have required certification under the PPSA. Florida Power & Light Company currently is constructing a 75 megawatt solar thermal facility to provide steam to power an existing turbine at a natural gas power plant on the same site, but this facility is exempt from the PPSA. Other large solar "farm" facilities could be built with a capacity of 75 megawatts or greater. Such a project could impact a greater area of land than smaller capacity solar facilities exempted under the PPSA.¹⁸ However, solar projects may not implicate as many matters within the jurisdiction of affected agencies as a fossil-fuel or nuclear plant may implicate, in particular environmental matters concerning emissions and water use.

Loan Guarantee Program

Present Situation

Florida Development Finance Corporation

The Florida Development Finance Corporation (FDFC) was created in 1993 as a state authorized issuer of industrial revenue bonds. The FDFC is staffed by Enterprise Florida, Inc. (EFI), "as a public-private partnership responsible for leading Florida's economic development... FDFC is heavily dependent on EFI for financial support in the form of in-kind services and financing operations during the periods of inadequate cash flows." The FDFC operates through interlocal agreements with political subdivisions (cities, counties, and authorities). Currently, the FDFC has no direct statewide authority.

According to the FDFC Annual Report for the 2008-2009, the

FDFC's primary business is the issuance of tax exempt revenue bonds, which are permissible under the U.S. Internal Revenue Service's private activity regulations. Those regulations, subject to a number of limitations and restrictions, allow small manufacturers and non-profit corporations to finance capital assets with tax exempt bond proceeds.

FDFC's revenues are generated by fees charged for issuance of bonds, and the volume of bond issuance is directly impacted by general economic conditions including those conditions affecting manufacturers such as the demand for Florida manufactured goods, the amount of Florida factory utilization, and the age and efficiency of capital equipment utilized in production.¹⁹

The FDFC is governed by a Board of Directors composed of five members serving four-year terms, appointed by the Governor, and subject to confirmation by the Senate.

¹⁷ Section 403.503(14), F.S.

¹⁸ See, for example, "Solar farm to rise over 3 square miles in Ariz." <http://www.msnbc.msn.com/id/23464740/> (280 megawatt solar farm covering 3 square miles).

¹⁹ FDFC Annual Report for the 2008-2009, p. 5.

Federal Department of Energy 1705 Guaranteed Loan Program

The loan guarantee solicitation announcement from the U.S. Department of Energy (DOE) Loan Guarantee Program Office describes the 1705 guaranteed loan program as follows: Section 1705 of Title XVII of the Energy Policy Act of 2005, 22 U.S.C. 16511-16514 was created to authorize a new program for rapid deployment of renewable energy and electric power transmission projects. The primary purposes of the Recovery Act are job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization. The Section 1705 Program is designed to address the current economic conditions of the nation, in part, through renewable and transmission projects. The Recovery Act provides that approximately \$5,965,000,000 in appropriated funds be made available until expended to pay the credit subsidy costs of loan guarantees issued for certain renewable energy systems, electric transmission systems and leading edge biofuels projects. The face value of the debt guaranteed is limited to no more than eighty percent of total project costs and the borrower and other principals involved in the project must have made or will make a significant equity investment in the project.²⁰

According to DOE's *Request for Information (RFI): DE-SOL-0001302 October 29, 2009*, DOE wants information on development finance organizations (DFOs) regarding any innovative and collaborative lending implementation mechanisms that utilize regional, local, or other partnerships. DFOs will be required to provide direct debt or guarantees of debt in an amount equal to at least five percent of the total project debt for the life of the project.

The FDFC filed a response to the RFI, to participate in DOE's program, on behalf of the Florida Finance Network, which was formed several years ago when the Florida Development Finance Corporation joined with Florida First Capital Finance Corporation and Florida Export Finance Corporation (two corporations that were created as government sponsored entities and later spun out as private corporations). Under this application, the Florida Finance Network would supply the core loan originating, underwriting, and servicing for the DOE program, with FDFC as the lead entity. This application was approved by DOE. Participation in the program depends upon the state funding the five percent loan guarantee requirement.

Effect of Proposed Changes

The bill amends the FDFC statutory sections to allow for participation in the DOE 1705 Guaranteed Loan Program as a development finance organization. It changes the definition of the term "guaranty fund" from the "Revenue Bond Guaranty Reserve Account" to the "Energy, Technology and Economic Development Guaranty Fund."

The bill deletes the authorization to function within the limits of any public agency with which it has entered into an interlocal agreement, replacing this with the limitation of the state corporate limits. It authorizes the FDFC to issue bonds or other evidence of indebtedness for the purpose of financing capital projects which promote economic development within the state. It allows the FDFC to accept funds from the state, a county, or other public agency. It deletes references to cities and counties, which would allow the FDFC to operate state wide.

The bill authorizes the FDFC to guaranty debt service payments for bonds or other indebtedness and limits these guarantees to no more than five percent of the total aggregate principal amount of bonds or other indebtedness relating to any one capital project. It authorizes use of the guaranty program in conjunction with any federal guaranty programs described in Section 406 of the American Recovery and Reinvestment Act of 2009, and requires that all policies, procedures, and regulations of the program that are used in conjunction with such a federal program comply with the federal requirements. It deletes obsolete language relating to the State Transportation Trust Fund.

Other Matters

²⁰ Department of Energy website: <http://www.lgprogram.energy.gov/2009-CPLX-TRANS-sol.pdf>.

The bill provides a severability clause.

B. SECTION DIRECTORY:

Section 1. Amends s. 377.601, F.S., relating to legislative intent.

Section 2. Amends s. 212.08, F.S., extending the expiration date of the sales and use tax exemption.

Section 3. Amends s. 220.192, F.S., extending the expiration date of the renewable energy technologies investment tax credit and creating a credit for investments in solar systems.

Section 4. Amends s. 220.193, F.S., extending the expiration date of the Florida renewable energy production credit.

Section 5. Amends s. 366.02, F.S., revising the definition of "public utility."

Section 6. Creates s. 366.90, F.S., providing a statement of legislative intent.

Section 7. Amends s. 366.91, F.S., relating to renewable energy.

Section 8. Amends s. 366.92, F.S., relating to Florida renewable energy policy.

Section 9. Provides a severability clause.

Section 10. Amends s. 403.503, F.S., revising the definition of "electrical power plant."

Section 11. Amends s. 288.9602, F.S., revising findings and declaration of necessity.

Section 12. Amends s. 288.9603, F.S., revising definitions.

Section 13. Amends s. 288.9604, F.S., revising the intent of the "Florida Development Finance Corporation."

Section 14. Amends s. 288.9605, F.S., revising corporation powers.

Section 15. Amends s. 288.9606, F.S., revising the processes for issuance of revenue bonds

Section 16. Amends s. 288.9607, F.S., providing limitations regarding indebtedness.

Section 17. Amends s. 288.9608, F.S., creating the Energy, Technology and Economic Development Guaranty Fund.

Section 18. Amends s. 288.9609, F.S., providing for bonds as legal investments.

Section 19. Amends s. 288.9610, F.S., providing for annual reports of the Florida Development Finance Corporation.

Section 20. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Sales and Use Tax Exemption for Renewable Energy Technologies

	<u>FY 2010-2011</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Hydrogen fuel cells	(\$1 million)	(\$1 million)	(\$1 million)
Biodiesel and ethanol	(\$1 million)	(\$1 million)	(\$1 million)
Total	(\$2 million)	(\$2 million)	(\$2 million)

Renewable Energy Technologies Investment Tax Credit (Corporate)

	<u>FY 2010-2011</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Hydrogen vehicles	(\$3 million)	(\$3 million)	(\$3 million)
Hydrogen fuel cells	(\$1.5 million)	(\$1.5 million)	(\$1.5 million)
Biodiesel and ethanol	(\$6 million)	(\$6 million)	(\$6 million)
Solar systems	(\$7.5 million)	(\$7.5 million)	(\$7.5 million)
Total	(\$18 million)	(\$18 million)	(\$18 million)

Florida Renewable Energy Production Credit (Corporate)

	<u>FY 2010-2011</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Renewable Production	(\$5 million)	(\$5 million)	(\$5 million)
Total	\$5 million	\$5 million	\$5 million

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Required Purchases of Renewable Energy

The bill revises the definition of "full avoided cost" for purposes of sales made by entities that meet certain operating requirements. To the extent that these provisions of the bill require utilities to pay renewable energy producers more than "full avoided cost" as it is currently calculated, the bill should encourage investment in the production of additional renewable energy for sale to public utilities, which may create some private sector job growth. However, to the extent that these same provisions require utilities to pay renewable energy producers more than "full avoided cost" as it is currently calculated,

the bill will increase utility costs which will be passed through to utility ratepayers. If utility costs and rates increase under this scenario, the calculation of "full avoided cost" will also increase because that calculation, under the bill, is based on a percentage of retail rates. While this may encourage additional investment in renewable energy, it would further increase utility costs and rates. Unless payments are fixed based on "full avoided cost" at the time of contract or are based on some other mechanism that eliminates the effects of rate increases caused by these purchases on future payments, payments to eligible renewable energy producers could escalate in a continuous loop.²¹ Because the bill does not limit the amount of capacity and energy that a utility must purchase from entities that qualify for the new "full avoided cost" payment, the potential impact on utility costs and rates is limited only by the amount of renewable energy resources available that meet the operating requirements set forth in the bill.

It is not clear what rate impact these provisions would have compared to a scenario in which the utility produces or purchases electrical power to meet its capacity and energy needs. In addition, the bill does not require that the utility have a need for the capacity, energy, or both from the purchase of renewable energy under these provisions.

Recovery of Discretionary Utility Costs to Produce and Purchase Renewable Energy

The bill authorizes public utilities to recover the costs to produce or purchase up to 735 megawatts of renewable energy statewide, provided that a utility may not recover costs in excess of its full avoided cost (as calculated under current law) in an amount that exceeds, at any time, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2009. The costs to be recovered must be computed using a method that averages the revenue requirements of the facility or purchase over its economic life. A utility's eligible costs will be recovered from its ratepayers through the existing environmental cost recovery clause established in s. 366.8255, F.S.

Based on revenue figures from annual reports provided to the PSC, the bill would allow each public utility to recover up to the following amounts to produce or purchase renewable energy in addition to any amounts that do not exceed each utility's avoided cost:

Florida Power & Light Company	\$225,200,000 (plus amounts that do not exceed avoided cost)
Progress Energy Florida	\$94,980,000 (plus amounts that do not exceed avoided cost)
Tampa Electric Company	\$43,040,000 (plus amounts that do not exceed avoided cost)
Gulf Power Company	\$23,420,000 (plus amounts that do not exceed avoided cost)

The rate impact to each utility's customers would depend on the amount of renewable energy the utility chooses to produce or purchase under the cost cap, the number of customers across which the utility can spread the costs, the manner in which costs are allocated among customers, and whether the renewable energy helps the utility avoid the need for electrical power that it otherwise would have produced or purchased.

Limited Exception for Retail Sales of Electricity

The bill exempts from the definition of "public utility" a developer of a solar energy generation facility that is no larger than 2 megawatts and is located on the premises of a host consumer, other than a multi-family residential building, for purposes of sale to the host consumer for consumption only on the premises. The bill specifically authorizes such sales. Thus, the bill should encourage investment in such solar generation facilities. As noted in the Effect of Proposed Changes section of this analysis, the bill attempts to limit the impact of lost revenues from customers who choose this option on the rates of remaining utility customers. The bill does not, however, establish a cap on the total amount of capacity eligible for non-utility providers to serve.

²¹ The bill strikes existing references to a contract, so it is not clear if this issue can be resolved through contract language. The PSC may be able to address this issue through the rulemaking authority granted by the bill.

Loan Guarantee Program

Participation in the federal DOE guaranteed loan program could result in increased energy-related economic development in Florida.

D. FISCAL COMMENTS:

Loan Guarantee Program

To implement the provision, the state is required to appropriate funding to draw down a certain amount of federal funds, and the participation is contingent upon funding to guarantee five percent of the debt for a qualifying project. According to the FECC, if \$5 million were appropriated, approximately \$80-\$100 million in federal funds would be accessible for loan guarantees. The staff of the Florida Energy and Climate Commission has identified a potential funding source which is the monies that may be deobligated due to the termination of approved grant projects that were not, or unsuccessfully, implemented. The actual amount that will be appropriated is unknown at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the PSC to establish requirements by rule relating to required purchases of renewable energy from entities meeting certain operating requirements.

The bill requires the PSC to adopt rules related to implementation of the limited exception for retail sales of electricity by non-utility solar developers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On page 29, line 802, the bill provides a cross-reference to s. 366.51, which does not exist. The correct reference should be to s. 366.051, F.S. This technical correction can be addressed when the bill is prepared for filing.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

29 consumption only on the premises; requiring the commission
 30 to adopt rules and make reports; providing a severability
 31 clause; amending s. 403.503, F.S.; exempting solar
 32 electrical generating facilities from the certification
 33 requirements of the Florida Electrical Power Plant Siting
 34 Act; amending s. 288.9602, F.S., regarding findings and
 35 declarations of necessity to enhance economic activity in
 36 the state; amending s. 288.9603, F.S.; amending
 37 definitions; amending s. 288.9604, F.S.; amending the
 38 description of the Florida Development Finance
 39 Corporation; amending s. 288.9605, F.S.; clarifying the
 40 powers of the corporation; amending s. 288.9606, F.S.;
 41 amending the processes for issuance of revenue bonds;
 42 amending s. 288.9607, F.S.; providing that any guaranty
 43 shall not exceed five percent of the total aggregate
 44 principal amount of bonds or other indebtedness relating
 45 to any one capital project; amending s. 288.9608, F.S.;
 46 creating the Energy, Technology and Economic Development
 47 Guaranty Fund; amending s. 288.9609, F.S.; providing for
 48 bonds as legal investments; amending s. 288.9610, F.S.;
 49 providing for annual reports of Florida Development
 50 Finance Corporation; providing an effective date.

51
 52 Be It Enacted by the Legislature of the State of Florida:

53
 54 Section 1. Section 377.601, Florida Statutes, is amended
 55 to read:
 56 377.601 Legislative intent.—

57 (1) It is the intent of the Legislature to ensure an
 58 adequate and reliable supply of energy for Florida in a manner
 59 that promotes the health and welfare of the public, promotes
 60 sustainable economic growth, and minimizes and mitigates adverse
 61 impacts. The Legislature also intends that governance of energy
 62 policy within Florida be efficiently directed toward achieving
 63 these purposes. ~~The Legislature finds that the state's energy~~
 64 ~~security can be increased by lessening dependence on foreign~~
 65 ~~oil; that the impacts of global climate change can be reduced~~
 66 ~~through the reduction of greenhouse gas emissions; and that the~~
 67 ~~implementation of alternative energy technologies can be a~~
 68 ~~source of new jobs and employment opportunities for many~~
 69 ~~Floridians. The Legislature further finds that the state is~~
 70 ~~positioned at the front line against potential impacts of global~~
 71 ~~climate change. Human and economic costs of those impacts can be~~
 72 ~~averted by global actions and, where necessary, adapted to by a~~
 73 ~~concerted effort to make Florida's communities more resilient~~
 74 ~~and less vulnerable to these impacts. In focusing the~~
 75 ~~government's policy and efforts to benefit and protect our~~
 76 ~~state, its citizens, and its resources, the Legislature believes~~
 77 ~~that a single government entity with a specific focus on energy~~
 78 ~~and climate change is both desirable and advantageous. Further,~~
 79 ~~the Legislature finds that energy infrastructure provides the~~
 80 ~~foundation for secure and reliable access to the energy supplies~~
 81 ~~and services on which Florida depends. Therefore, there is~~
 82 ~~significant value to Florida consumers that comes from~~
 83 ~~investment in Florida's energy infrastructure that increases~~
 84 ~~system reliability, enhances energy independence and~~

85 ~~diversification, stabilizes energy costs, and reduces greenhouse~~
 86 ~~gas emissions.~~

87 (2) In furtherance of these purposes, energy policies of
 88 the State of Florida shall be implemented through effective,
 89 efficient, and certain governance, and shall be guided by the
 90 following goals, in order of priority:

- 91 (a) Ensuring an affordable energy supply;
- 92 (b) Ensuring adequate supply and capacity;
- 93 (c) Ensuring a secure and reliable energy supply;
- 94 (d) Minimizing energy cost volatility;
- 95 (e) Minimizing negative impacts of energy production on
 96 Florida's environment, social fabric, and the public health and
 97 welfare;
- 98 (f) Maximizing economic synergies for Florida associated
 99 with energy policy;

100 (g) Reducing the net export of energy expenditures; and

101 (3) It is the policy of the State of Florida to:

102 (a) Develop and promote the effective use of energy in the
 103 state, discourage all forms of energy waste, and recognize and
 104 address the potential of global climate change wherever
 105 possible.

106 (b) Play a leading role in developing and instituting
 107 energy management programs aimed at promoting energy
 108 conservation, energy security, and the reduction of greenhouse
 109 gas emissions.

110 (c) Include energy considerations in all state, regional,
 111 and local planning.

112 (d) Utilize and manage effectively energy resources used

113 within state agencies.

114 (e) Encourage local governments to include energy
115 considerations in all planning and to support their work in
116 promoting energy management programs.

117 (f) Include the full participation of citizens in the
118 development and implementation of energy programs.

119 (g) Consider in its decisions the energy needs of each
120 economic sector, including residential, industrial, commercial,
121 agricultural, and governmental uses, and reduce those needs
122 whenever possible.

123 (h) Promote energy education and the public dissemination
124 of information on energy and its environmental, economic, and
125 social impact.

126 (i) Encourage the research, development, demonstration,
127 and application of alternative energy resources, particularly
128 renewable energy resources.

129 (j) Consider, in its decisionmaking, the social, economic,
130 and environmental impacts of energy-related activities,
131 including the whole-life-cycle impacts of any potential energy
132 use choices, so that detrimental effects of these activities are
133 understood and minimized.

134 (k) Develop and maintain energy emergency preparedness
135 plans to minimize the effects of an energy shortage within
136 Florida.

137 Section 2. Paragraph (ccc) of subsection (7) of section
138 212.08, Florida Statutes, is amended to read:

139 212.08 Sales, rental, use, consumption, distribution, and
140 storage tax; specified exemptions.—The sale at retail, the

141 rental, the use, the consumption, the distribution, and the
 142 storage to be used or consumed in this state of the following
 143 are hereby specifically exempt from the tax imposed by this
 144 chapter.

145 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 146 entity by this chapter do not inure to any transaction that is
 147 otherwise taxable under this chapter when payment is made by a
 148 representative or employee of the entity by any means,
 149 including, but not limited to, cash, check, or credit card, even
 150 when that representative or employee is subsequently reimbursed
 151 by the entity. In addition, exemptions provided to any entity by
 152 this subsection do not inure to any transaction that is
 153 otherwise taxable under this chapter unless the entity has
 154 obtained a sales tax exemption certificate from the department
 155 or the entity obtains or provides other documentation as
 156 required by the department. Eligible purchases or leases made
 157 with such a certificate must be in strict compliance with this
 158 subsection and departmental rules, and any person who makes an
 159 exempt purchase with a certificate that is not in strict
 160 compliance with this subsection and the rules is liable for and
 161 shall pay the tax. The department may adopt rules to administer
 162 this subsection.

163 (ccc) Equipment, machinery, and other materials for
 164 renewable energy technologies.—

- 165 1. As used in this paragraph, the term:
- 166 a. "Biodiesel" means the mono-alkyl esters of long-chain
 167 fatty acids derived from plant or animal matter for use as a
 168 source of energy and meeting the specifications for biodiesel

169 and biodiesel blends with petroleum products as adopted by the
 170 Department of Agriculture and Consumer Services. Biodiesel may
 171 refer to biodiesel blends designated BXX, where XX represents
 172 the volume percentage of biodiesel fuel in the blend.

173 b. "Ethanol" means an anhydrous denatured alcohol produced
 174 by the conversion of carbohydrates meeting the specifications
 175 for fuel ethanol and fuel ethanol blends with petroleum products
 176 as adopted by the Department of Agriculture and Consumer
 177 Services. Ethanol may refer to fuel ethanol blends designated
 178 EXX, where XX represents the volume percentage of fuel ethanol
 179 in the blend.

180 c. "Hydrogen fuel cells" means equipment using hydrogen or
 181 a hydrogen-rich fuel in an electrochemical process to generate
 182 energy, electricity, or the transfer of heat.

183 2. The sale or use of the following in the state is exempt
 184 from the tax imposed by this chapter:

185 a. ~~Hydrogen-powered vehicles, materials incorporated into~~
 186 ~~hydrogen-powered vehicles, and hydrogen-fueling stations, up to~~
 187 ~~a limit of \$2 million in tax each state fiscal year for all~~
 188 ~~taxpayers.~~

189 ~~b.~~ Commercial stationary hydrogen fuel cells, up to a
 190 limit of \$1 million in tax each state fiscal year for all
 191 taxpayers.

192 b. e. Materials used in the distribution of biodiesel
 193 (B10-B100) and ethanol (E10-E100), including fueling
 194 infrastructure, transportation, and storage, up to a limit of \$1
 195 million in tax each state fiscal year for all taxpayers.

196 Gasoline fueling station pump retrofits for ethanol (E10-E100)

197 distribution qualify for the exemption provided in this sub-
 198 subparagraph.

199 3. The Florida Energy and Climate Commission shall provide
 200 to the department a list of items eligible for the exemption
 201 provided in this paragraph.

202 4.a. The exemption provided in this paragraph shall be
 203 available to a purchaser only through a refund of previously
 204 paid taxes. An eligible item is subject to refund one time. A
 205 person who has received a refund on an eligible item shall
 206 notify the next purchaser of the item that such item is no
 207 longer eligible for a refund of paid taxes. This notification
 208 shall be provided to each subsequent purchaser on the sales
 209 invoice or other proof of purchase.

210 b. To be eligible to receive the exemption provided in
 211 this paragraph, a purchaser shall file an application with the
 212 Florida Energy and Climate Commission. The application shall be
 213 developed by the Florida Energy and Climate Commission, in
 214 consultation with the department, and shall require:

215 (I) The name and address of the person claiming the
 216 refund.

217 (II) A specific description of the purchase for which a
 218 refund is sought, including, when applicable, a serial number or
 219 other permanent identification number.

220 (III) The sales invoice or other proof of purchase showing
 221 the amount of sales tax paid, the date of purchase, and the name
 222 and address of the sales tax dealer from whom the property was
 223 purchased.

224 (IV) A sworn statement that the information provided is

225 accurate and that the requirements of this paragraph have been
 226 met.

227 c. Within 30 days after receipt of an application, the
 228 Florida Energy and Climate Commission shall review the
 229 application and shall notify the applicant of any deficiencies.
 230 Upon receipt of a completed application, the Florida Energy and
 231 Climate Commission shall evaluate the application for exemption
 232 and issue a written certification that the applicant is eligible
 233 for a refund or issue a written denial of such certification
 234 within 60 days after receipt of the application. The Florida
 235 Energy and Climate Commission shall provide the department with
 236 a copy of each certification issued upon approval of an
 237 application.

238 d. Each certified applicant shall be responsible for
 239 forwarding a certified copy of the application and copies of all
 240 required documentation to the department within 6 months after
 241 certification by the Florida Energy and Climate Commission.

242 e. A refund approved pursuant to this paragraph shall be
 243 made within 30 days after formal approval by the department.

244 f. The Florida Energy and Climate Commission may adopt the
 245 form for the application for a certificate, requirements for the
 246 content and format of information submitted to the Florida
 247 Energy and Climate Commission in support of the application,
 248 other procedural requirements, and criteria by which the
 249 application will be determined by rule. The department may adopt
 250 all other rules pursuant to ss. 120.536(1) and 120.54 to
 251 administer this paragraph, including rules establishing
 252 additional forms and procedures for claiming this exemption.

253 g. The Florida Energy and Climate Commission shall be
 254 responsible for ensuring that the total amounts of the
 255 exemptions authorized do not exceed the limits as specified in
 256 subparagraph 2.

257 5. The Florida Energy and Climate Commission shall
 258 determine and publish on a regular basis the amount of sales tax
 259 funds remaining in each fiscal year.

260 6. This paragraph expires July 1, 2016 ~~2010~~.

261 Section 3. Subsections (1), (2), (4), and (5) of section
 262 220.192, Florida Statutes, are amended to read:

263 220.192 Renewable energy technologies investment tax
 264 credit.—

265 (1) DEFINITIONS.—For purposes of this section, the term:

266 (c) "Eligible costs" means:

267 1. Seventy-five percent of all capital costs, operation
 268 and maintenance costs, and research and development costs
 269 incurred between July 1, 2006, and June 30, 2016 ~~2010~~, up to a
 270 limit of \$3 million per state fiscal year for all taxpayers, in
 271 connection with an investment in hydrogen-powered vehicles and
 272 hydrogen vehicle fueling stations in the state, including, but
 273 not limited to, the costs of constructing, installing, and
 274 equipping such technologies in the state.

275 2. Seventy-five percent of all capital costs, operation
 276 and maintenance costs, and research and development costs
 277 incurred between July 1, 2006, and June 30, 2016 ~~2010~~, up to a
 278 limit of \$1.5 million per state fiscal year for all taxpayers,
 279 and limited to a maximum of \$12,000 per fuel cell, in connection
 280 with an investment in commercial stationary hydrogen fuel cells

281 in the state, including, but not limited to, the costs of
 282 constructing, installing, and equipping such technologies in the
 283 state.

284 3. Seventy-five percent of all capital costs, operation
 285 and maintenance costs, and research and development costs
 286 incurred between July 1, 2006, and June 30, 2016 ~~2010~~, up to a
 287 limit of ~~\$6.5~~ million per state fiscal year for all taxpayers,
 288 in connection with an investment in the production, storage, and
 289 distribution of biodiesel (B10-B100) and ethanol (E10-E100) in
 290 the state, including the costs of constructing, installing, and
 291 equipping such technologies in the state. Gasoline fueling
 292 station pump retrofits for ethanol (E10-E100) distribution
 293 qualify as an eligible cost under this subparagraph.

294 4. Fifty percent of all capital costs incurred between
 295 July 1, 2010, and June 30, 2016, in connection with an
 296 investment in solar energy systems in the state, up to a limit
 297 of \$2.5 million per system and up to a limit of \$7.5 million per
 298 state fiscal year for all taxpayers. To be eligible, such
 299 system must comply with state interconnection standards as
 300 provided by the Public Service Commission. The eligible costs
 301 shall be reapportioned equally over 5 years.

302 (f) "Solar energy systems" means equipment which provides
 303 for the collection and use of incident solar energy for water
 304 heating, space heating or cooling, or other applications which
 305 normally require or would require a conventional source of
 306 energy such as petroleum products, natural gas, or electricity
 307 and which performs primarily with solar energy. In such other
 308 systems in which solar energy is used in a supplemental way,

309 only those components which collect and transfer solar energy
 310 shall be included in this definition.

311 (g)~~(f)~~ "Taxpayer" includes a corporation as defined in
 312 paragraph (b) or s. 220.03.

313 (2) TAX CREDIT.—

314 (a) For tax years beginning on or after January 1, 2007, a
 315 credit against the tax imposed by this chapter shall be granted
 316 in an amount equal to the eligible costs defined in ss.

317 220.192(1)(c)1.-3. Such credits may be used in tax years
 318 beginning January 1, 2007, and ending December 31, 2016 ~~2010~~,
 319 after which the credit shall expire. If the credit is not fully
 320 used in any one tax year because of insufficient tax liability
 321 on the part of the corporation, the unused amount may be carried
 322 forward and used in tax years beginning January 1, 2007, and
 323 ending December 31, 2018 ~~2012~~, after which the credit carryover
 324 expires and may not be used. A taxpayer that files a
 325 consolidated return in this state as a member of an affiliated
 326 group under s. 220.131(1) may be allowed the credit on a
 327 consolidated return basis up to the amount of tax imposed upon
 328 the consolidated group. Any eligible cost for which a credit is
 329 claimed and which is deducted or otherwise reduces federal
 330 taxable income shall be added back in computing adjusted federal
 331 income under s. 220.13.

332 (b) For tax years beginning on or after January 1, 2010, a
 333 credit against the tax imposed by this chapter shall be granted
 334 in an amount equal to the eligible costs defined in s.
 335 220.192(1)(c)4. Such credits may be used in tax years beginning
 336 January 1, 2010, and ending December 31, 2016, after which the

337 credit shall expire. If the credit is not fully used in any one
 338 tax year because of insufficient tax liability on the part of
 339 the corporation, the unused amount may be carried forward and
 340 used in tax years beginning January 1, 2010, and ending December
 341 31, 2021, after which the credit carryover expires and may not
 342 be used. A taxpayer that files a consolidated return in this
 343 state as a member of an affiliated group under s. 220.131(1) may
 344 be allowed the credit on a consolidated return basis up to the
 345 amount of tax imposed upon the consolidated group. Any eligible
 346 cost for which a credit is claimed and which is deducted or
 347 otherwise reduces federal taxable income shall be added back in
 348 computing adjusted federal income under s. 220.13.

349 (4) TAXPAYER APPLICATION PROCESS.— To claim a credit under
 350 this section, each taxpayer must apply to the Florida Energy and
 351 Climate Commission ~~Department of Environmental Protection~~ for an
 352 allocation of each type of annual credit by the date established
 353 by the Florida Energy and Climate Commission ~~Department of~~
 354 ~~Environmental Protection~~. The application form may be
 355 established by the Florida Energy and Climate Commission
 356 ~~Department of Environmental Protection~~ and shall include an
 357 affidavit from each taxpayer certifying that all information
 358 contained in the application, including all records of eligible
 359 costs claimed as the basis for the tax credit, are true and
 360 correct. Approval of the credits under this section shall be
 361 accomplished on a first-come, first-served basis, based upon the
 362 date complete applications are received by the Florida Energy
 363 and Climate Commission ~~Department of Environmental Protection~~. A
 364 taxpayer shall submit only one complete application based upon

365 eligible costs incurred within a particular state fiscal year.
 366 Incomplete placeholder applications will not be accepted and
 367 will not secure a place in the first-come, first-served
 368 application line. If a taxpayer does not receive a tax credit
 369 allocation due to the exhaustion of the annual tax credit
 370 authorizations, then such taxpayer may reapply in the following
 371 year for those eligible costs and will have priority over other
 372 applicants for the allocation of credits.

373 (5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF
 374 CREDITS.—

375 (a) In addition to its existing audit and investigation
 376 authority, the Department of Revenue may perform any additional
 377 financial and technical audits and investigations, including
 378 examining the accounts, books, and records of the tax credit
 379 applicant, that are necessary to verify the eligible costs
 380 included in the tax credit return and to ensure compliance with
 381 this section. The Florida Energy and Climate Commission
 382 ~~Department of Environmental Protection~~ shall provide technical
 383 assistance when requested by the Department of Revenue on any
 384 technical audits or examinations performed pursuant to this
 385 section.

386 (b) It is grounds for forfeiture of previously claimed and
 387 received tax credits if the Department of Revenue determines, as
 388 a result of either an audit or examination or from information
 389 received from the Florida Energy and Climate Commission
 390 ~~Department of Environmental Protection~~, that a taxpayer received
 391 tax credits pursuant to this section to which the taxpayer was
 392 not entitled. The taxpayer is responsible for returning

393 forfeited tax credits to the Department of Revenue, and such
 394 funds shall be paid into the General Revenue Fund of the state.

395 (c) The Florida Energy and Climate Commission ~~Department~~
 396 ~~of Environmental Protection~~ may revoke or modify any written
 397 decision granting eligibility for tax credits under this section
 398 if it is discovered that the tax credit applicant submitted any
 399 false statement, representation, or certification in any
 400 application, record, report, plan, or other document filed in an
 401 attempt to receive tax credits under this section. The Florida
 402 Energy and Climate Commission ~~Department of Environmental~~
 403 ~~Protection~~ shall immediately notify the Department of Revenue of
 404 any revoked or modified orders affecting previously granted tax
 405 credits. Additionally, the taxpayer must notify the Department
 406 of Revenue of any change in its tax credit claimed.

407 (d) The taxpayer shall file with the Department of Revenue
 408 an amended return or such other report as the Department of
 409 Revenue prescribes by rule and shall pay any required tax and
 410 interest within 60 days after the taxpayer receives notification
 411 from the Florida Energy and Climate Commission ~~Department of~~
 412 ~~Environmental Protection~~ that previously approved tax credits
 413 have been revoked or modified. If the revocation or modification
 414 order is contested, the taxpayer shall file an amended return or
 415 other report as provided in this paragraph within 60 days after
 416 a final order is issued following proceedings.

417 (e) A notice of deficiency may be issued by the Department
 418 of Revenue at any time within 3 years after the taxpayer
 419 receives formal notification from the Florida Energy and Climate
 420 Commission ~~Department of Environmental Protection~~ that

421 | previously approved tax credits have been revoked or modified.
 422 | If a taxpayer fails to notify the Department of Revenue of any
 423 | changes to its tax credit claimed, a notice of deficiency may be
 424 | issued at any time.

425 | Section 4. Paragraphs (b) and (g) of subsection (3) of
 426 | section 220.193, Florida Statutes, are amended to read:

427 | 220.193 Florida renewable energy production credit.—

428 | (3) An annual credit against the tax imposed by this
 429 | section shall be allowed to a taxpayer, based on the taxpayer's
 430 | production and sale of electricity from a new or expanded
 431 | Florida renewable energy facility. For a new facility, the
 432 | credit shall be based on the taxpayer's sale of the facility's
 433 | entire electrical production. For an expanded facility, the
 434 | credit shall be based on the increases in the facility's
 435 | electrical production that are achieved after May 1, 2006.

436 | (b) The credit may be claimed for electricity produced and
 437 | sold on or after January 1, 2007. Beginning in 2008 and
 438 | continuing until 2017 ~~2011~~, each taxpayer claiming a credit
 439 | under this section must first apply to the department by
 440 | February 1 of each year for an allocation of available credit.
 441 | The department, in consultation with the commission, shall
 442 | develop an application form. The application form shall, at a
 443 | minimum, require a sworn affidavit from each taxpayer certifying
 444 | the increase in production and sales that form the basis of the
 445 | application and certifying that all information contained in the
 446 | application is true and correct.

447 | (g) Notwithstanding any other provision of this section,
 448 | credits for the production and sale of electricity from a new or

449 expanded Florida renewable energy facility may be earned between
450 January 1, 2007, and June 30, 2016 ~~2010~~. The combined total
451 amount of tax credits which may be granted for all taxpayers
452 under this section is limited to \$5 million per state fiscal
453 year.

454 Section 5. Subsection (1) of section 366.02, Florida
455 Statutes, is amended to read:

456 366.02 Definitions.—As used in this chapter:

457 (1) "Public utility" means every person, corporation,
458 partnership, association, or other legal entity and their
459 lessees, trustees, or receivers supplying electricity or gas
460 (natural, manufactured, or similar gaseous substance) to or for
461 the public within this state; but the term "public utility" does
462 not include either a cooperative now or hereafter organized and
463 existing under the Rural Electric Cooperative Law of the state;
464 a municipality or any agency thereof; any dependent or
465 independent special natural gas district; any natural gas
466 transmission pipeline company making only sales or
467 transportation delivery of natural gas at wholesale and to
468 direct industrial consumers; any entity selling or arranging for
469 sales of natural gas which neither owns nor operates natural gas
470 transmission or distribution facilities within the state; or a
471 person supplying liquefied petroleum gas, in either liquid or
472 gaseous form, irrespective of the method of distribution or
473 delivery, or owning or operating facilities beyond the outlet of
474 a meter through which natural gas is supplied for compression
475 and delivery into motor vehicle fuel tanks or other
476 transportation containers, unless such person also supplies

477 electricity or manufactured or natural gas. In addition, the
 478 term "public utility" does not include a developer of a solar
 479 energy generation facility located on the premises of a host
 480 consumer, other than a multi-family residential building, for
 481 purposes of sale to the host consumer for consumption only on
 482 the premises, limited to contiguous property owned or leased by
 483 the consumer, provided that the solar energy generation facility
 484 has a gross power rating of no greater than 2 megawatts.

485 Section 6. Section 366.90, Florida Statutes, is created to
 486 read:

487 366.90 Renewable energy for electricity production.—To
 488 further the energy policy goals established in s. 377.601, the
 489 Legislature finds that it is in the public interest to promote
 490 the development of renewable energy resources in this state, for
 491 purposes of electricity production, through the mechanisms
 492 established in ss. 366.91 and 366.92. Renewable energy resources
 493 have the potential to help diversify fuel types for electricity
 494 production, minimize the volatility of fuel costs, encourage
 495 investment within the state, and improve environmental
 496 conditions.

497 Section 7. Section 366.91, Florida Statutes, is amended to
 498 read:

499 366.91 Renewable energy.—

500 ~~(1) The Legislature finds that it is in the public~~
 501 ~~interest to promote the development of renewable energy~~
 502 ~~resources in this state. Renewable energy resources have the~~
 503 ~~potential to help diversify fuel types to meet Florida's growing~~
 504 ~~dependency on natural gas for electric production, minimize the~~

505 ~~volatility of fuel costs, encourage investment within the state,~~
 506 ~~improve environmental conditions, and make Florida a leader in~~
 507 ~~new and innovative technologies.~~

508 (1)~~(2)~~ As used in this section, the term:

509 (a) "Biomass" means a power source that is comprised of,
 510 but not limited to, combustible residues or gases from forest
 511 products manufacturing, waste, byproducts, or products from
 512 agricultural and orchard crops, waste or coproducts from
 513 livestock and poultry operations, waste or byproducts from food
 514 processing, recycling byproducts, urban wood waste, municipal
 515 solid waste, municipal liquid waste treatment operations, and
 516 landfill gas.

517 (b) "Customer-owned renewable generation" means an
 518 electric generating system located on a customer's premises that
 519 is primarily intended to offset part or all of the customer's
 520 electricity requirements with renewable energy.

521 (c) "Net metering" means a metering and billing
 522 methodology whereby customer-owned renewable generation is
 523 allowed to offset the customer's electricity consumption on
 524 site.

525 (d) "Renewable energy" means electrical energy produced
 526 from a method that uses one or more of the following fuels or
 527 energy sources: hydrogen produced from sources other than fossil
 528 fuels, biomass, solar energy, geothermal energy, wind energy,
 529 ocean energy, and hydroelectric power. The term includes the
 530 alternative energy resource, waste heat, from sulfuric acid
 531 manufacturing operations.

532 (3) (a) On or before July 1, 2010 ~~January 1, 2006~~, each

533 public utility must continuously offer to and shall a purchase
 534 ~~contract to producers of~~ renewable energy at full avoided cost,
 535 as defined in s. 366.91(6), upon request of a renewable energy
 536 producer that meets one or both of the operating requirements
 537 set forth in s. 366.91(5). The commission ~~may~~ shall establish by
 538 rule requirements relating to the purchase of renewable energy
 539 ~~capacity and energy~~ by public utilities from renewable energy
 540 producers and ~~may adopt rules to administer this section. The~~
 541 ~~contract shall contain payment provisions for energy and~~
 542 ~~capacity which are based upon the utility's full avoided costs,~~
 543 ~~as defined in s. 366.051; however, capacity payments are not~~
 544 ~~required if, due to the operational characteristics of the~~
 545 ~~renewable energy generator or the anticipated peak and off-peak~~
 546 ~~availability and capacity factor of the utility's avoided unit,~~
 547 ~~the producer is unlikely to provide any capacity value to the~~
 548 ~~utility or the electric grid during the contract term. Each~~
 549 ~~contract must provide a contract term of at least 10 years.~~
 550 Prudent and reasonable costs associated with the purchase of a
 551 renewable energy contract shall be recoverable recovered from
 552 the ratepayers of the purchasing ~~contracting~~ utility, without
 553 differentiation among customer classes, through the appropriate
 554 cost-recovery clause mechanism administered by the commission.
 555 (b) Effective July 1, 2010, a renewable energy producer
 556 that meets one or both of the operation requirements set forth
 557 in s. 366.91(5) shall be entitled to sell electric energy to a
 558 public utility at full avoided cost as set forth in s.
 559 366.91(6).

560 (4) On or before January 1, 2006, each municipal electric

561 utility and rural electric cooperative whose annual sales, as of
 562 July 1, 1993, to retail customers were greater than 2,000
 563 gigawatt hours must continuously offer a purchase contract to
 564 producers of renewable energy containing payment provisions for
 565 energy and capacity which are based upon the utility's or
 566 cooperative's full avoided costs, as determined by the governing
 567 body of the municipal utility or cooperative; however, capacity
 568 payments are not required if, due to the operational
 569 characteristics of the renewable energy generator or the
 570 anticipated peak and off-peak availability and capacity factor
 571 of the utility's avoided unit, the producer is unlikely to
 572 provide any capacity value to the utility or the electric grid
 573 during the contract term. Each contract must provide a contract
 574 term of at least 10 years.

575 (5) (a) A renewable energy producer that generates and
 576 delivers to the grid a fixed amount of electrical capacity at a
 577 rate of production such that the amount of energy produced per 1
 578 megawatt of fixed capacity is 7,000 megawatt hours or more per
 579 year shall be entitled to sell such fixed amount of capacity and
 580 energy to any public utility at full avoided costs.

581 (b) A renewable energy producer that generates electric
 582 energy using waste heat from sulfuric acid manufacturing
 583 operations, such that the amount of electric energy produced at
 584 the site per 1 megawatt of system generating capacity is 5,500
 585 megawatt hours or more per year and that exports less than 50
 586 percent of the total electric energy produced to the grid, shall
 587 be entitled to sell any excess energy, up to an amount equal to
 588 the energy used to serve its own requirements, to any public

589 utility at full avoided cost.

590 (6) The Legislature finds that, based on analysis of past,
 591 current, and future projections of retail electric rates, there
 592 is a high degree of correlation between retail electric rates of
 593 Florida public utilities and avoided cost. Specifically, the
 594 Legislature finds that 80 percent of the weighted average of
 595 firm service retail electric rates of each public utility,
 596 including all adjustment, recovery, and similar add-on charges,
 597 directly correlates with each utility's full avoided cost for
 598 acquiring energy from renewable energy producers that meet the
 599 operating requirements of s. 366.91(5), and is an
 600 administratively efficient, transparent, prudent, and preferred
 601 methodology for calculating full avoided cost. Therefore, the
 602 full avoided cost to which such renewable energy producers are
 603 entitled is and shall be the mathematical product of 0.80 and
 604 the weighted average of firm service retail electric rates in
 605 cents per kilowatt hour, including all adjustment, recovery, and
 606 similar add-on charges, of the purchasing utility.

607 (7)-(5) On or before January 1, 2009, each public utility
 608 shall develop a standardized interconnection agreement and net
 609 metering program for customer-owned renewable generation. The
 610 commission shall establish requirements relating to the
 611 expedited interconnection and net metering of customer-owned
 612 renewable generation by public utilities and may adopt rules to
 613 administer this section.

614 (8)-(6) On or before July 1, 2009, each municipal electric
 615 utility and each rural electric cooperative that sells
 616 electricity at retail shall develop a standardized

617 interconnection agreement and net metering program for customer-
 618 owned renewable generation. Each governing authority shall
 619 establish requirements relating to the expedited interconnection
 620 and net metering of customer-owned generation. By April 1 of
 621 each year, each municipal electric utility and rural electric
 622 cooperative utility serving retail customers shall file a report
 623 with the commission detailing customer participation in the
 624 interconnection and net metering program, including, but not
 625 limited to, the number and total capacity of interconnected
 626 generating systems and the total energy net metered in the
 627 previous year.

628 (9)~~(7)~~ Under the provisions of subsections (7) and (8) ~~(5)~~
 629 ~~and (6)~~, when a utility purchases power generated from biogas
 630 produced by the anaerobic digestion of agricultural waste,
 631 including food waste or other agricultural byproducts, net
 632 metering shall be available at a single metering point or as a
 633 part of conjunctive billing of multiple points for a customer at
 634 a single location, so long as the provision of such service and
 635 its associated charges, terms, and other conditions are not
 636 reasonably projected to result in higher cost electric service
 637 to the utility's general body of ratepayers or adversely affect
 638 the adequacy or reliability of electric service to all
 639 customers, as determined by the commission for public utilities,
 640 or as determined by the governing authority of the municipal
 641 electric utility or rural electric cooperative that serves at
 642 retail.

643 (10)~~(8)~~ A ~~contracting producer of~~ renewable energy
 644 producer must pay the actual costs of its interconnection with

645 the transmission grid or distribution system.

646 (11) Action by the commission pursuant to or associated
 647 with implementing this section shall not be deemed or construed
 648 to be an action relating to rates or service of utilities
 649 providing electric service.

650 Section 8. Section 366.92, Florida Statutes, is amended to
 651 read:

652 366.92 Florida renewable energy policy.-

653 ~~(1) It is the intent of the Legislature to promote the~~
 654 ~~development of renewable energy; protect the economic viability~~
 655 ~~of Florida's existing renewable energy facilities; diversify the~~
 656 ~~types of fuel used to generate electricity in Florida; lessen~~
 657 ~~Florida's dependence on natural gas and fuel oil for the~~
 658 ~~production of electricity; minimize the volatility of fuel~~
 659 ~~costs; encourage investment within the state; improve~~
 660 ~~environmental conditions; and, at the same time, minimize the~~
 661 ~~costs of power supply to electric utilities and their customers.~~

662 (1)(2) As used in this section, the term:

663 ~~(a) "Florida renewable energy resources" means renewable~~
 664 ~~energy, as defined in s. 377.803, that is produced in Florida.~~

665 ~~(a)(b)~~ "Provider" means a "utility" as defined in s.
 666 366.8255(1)(a).

667 ~~(b)(c)~~ "Renewable energy" means renewable energy as
 668 defined in s. 366.91(2)(d), that is produced in Florida.

669 ~~(d) "Renewable energy credit" or "REC" means a product~~
 670 ~~that represents the unbundled, separable, renewable attribute of~~
 671 ~~renewable energy produced in Florida and is equivalent to 1~~
 672 ~~megawatt-hour of electricity generated by a source of renewable~~

673 ~~energy located in Florida.~~

674 ~~(e) "Renewable portfolio standard" or "RPS" means the~~
 675 ~~minimum percentage of total annual retail electricity sales by a~~
 676 ~~provider to consumers in Florida that shall be supplied by~~
 677 ~~renewable energy produced in Florida.~~

678 ~~(3) The commission shall adopt rules for a renewable~~
 679 ~~portfolio standard requiring each provider to supply renewable~~
 680 ~~energy to its customers directly, by procuring, or through~~
 681 ~~renewable energy credits. In developing the RPS rule, the~~
 682 ~~commission shall consult the Department of Environmental~~
 683 ~~Protection and the Florida Energy and Climate Commission. The~~
 684 ~~rule shall not be implemented until ratified by the Legislature.~~
 685 ~~The commission shall present a draft rule for legislative~~
 686 ~~consideration by February 1, 2009.~~

687 ~~(a) In developing the rule, the commission shall evaluate~~
 688 ~~the current and forecasted levelized cost in cents per kilowatt~~
 689 ~~hour through 2020 and current and forecasted installed capacity~~
 690 ~~in kilowatts for each renewable energy generation method through~~
 691 ~~2020.~~

692 ~~(b) The commission's rule:~~

693 ~~1. Shall include methods of managing the cost of~~
 694 ~~compliance with the renewable portfolio standard, whether~~
 695 ~~through direct supply or procurement of renewable power or~~
 696 ~~through the purchase of renewable energy credits. The commission~~
 697 ~~shall have rulemaking authority for providing annual cost~~
 698 ~~recovery and incentive-based adjustments to authorized rates of~~
 699 ~~return on common equity to providers to incentivize renewable~~
 700 ~~energy. Notwithstanding s. 366.91(3) and (4), upon the~~

701 ~~ratification of the rules developed pursuant to this subsection,~~
 702 ~~the commission may approve projects and power sales agreements~~
 703 ~~with renewable power producers and the sale of renewable energy~~
 704 ~~credits needed to comply with the renewable portfolio standard.~~
 705 ~~In the event of any conflict, this subparagraph shall supersede~~
 706 ~~s. 366.91(3) and (4). However, nothing in this section shall~~
 707 ~~alter the obligation of each public utility to continuously~~
 708 ~~offer a purchase contract to producers of renewable energy.~~

709 ~~2. Shall provide for appropriate compliance measures and~~
 710 ~~the conditions under which noncompliance shall be excused due to~~
 711 ~~a determination by the commission that the supply of renewable~~
 712 ~~energy or renewable energy credits was not adequate to satisfy~~
 713 ~~the demand for such energy or that the cost of securing~~
 714 ~~renewable energy or renewable energy credits was cost~~
 715 ~~prohibitive.~~

716 ~~3. May provide added weight to energy provided by wind and~~
 717 ~~solar photovoltaic over other forms of renewable energy, whether~~
 718 ~~directly supplied or procured or indirectly obtained through the~~
 719 ~~purchase of renewable energy credits.~~

720 ~~4. Shall determine an appropriate period of time for which~~
 721 ~~renewable energy credits may be used for purposes of compliance~~
 722 ~~with the renewable portfolio standard.~~

723 ~~5. Shall provide for monitoring of compliance with and~~
 724 ~~enforcement of the requirements of this section.~~

725 ~~6. Shall ensure that energy credited toward compliance~~
 726 ~~with the requirements of this section is not credited toward any~~
 727 ~~other purpose.~~

728 ~~7. Shall include procedures to track and account for~~

729 ~~renewable energy credits, including ownership of renewable~~
 730 ~~energy credits that are derived from a customer-owned renewable~~
 731 ~~energy facility as a result of any action by a customer of an~~
 732 ~~electric power supplier that is independent of a program~~
 733 ~~sponsored by the electric power supplier.~~

734 ~~8. Shall provide for the conditions and options for the~~
 735 ~~repeal or alteration of the rule in the event that new~~
 736 ~~provisions of federal law supplant or conflict with the rule.~~

737 ~~(c) Beginning on April 1 of the year following final~~
 738 ~~adoption of the commission's renewable portfolio standard rule,~~
 739 ~~each provider shall submit a report to the commission describing~~
 740 ~~the steps that have been taken in the previous year and the~~
 741 ~~steps that will be taken in the future to add renewable energy~~
 742 ~~to the provider's energy supply portfolio. The report shall~~
 743 ~~state whether the provider was in compliance with the renewable~~
 744 ~~portfolio standard during the previous year and how it will~~
 745 ~~comply with the renewable portfolio standard in the upcoming~~
 746 ~~year.~~

747 ~~(2)(4) In order to demonstrate the feasibility and~~
 748 ~~viability of clean energy systems, Subject to the conditions set~~
 749 ~~forth in this subsection, the commission shall provide for full~~
 750 ~~cost recovery under the environmental cost-recovery clause of~~
 751 ~~all reasonable and prudent costs incurred by a provider to~~
 752 ~~produce or purchase renewable energy for purposes of supplying~~
 753 ~~electrical energy to its retail customers. ~~projects that are~~~~
 754 ~~~~zero greenhouse gas emitting at the point of generation, up to a~~~~
 755 ~~~~total of 110 megawatts statewide, and for which the provider has~~~~
 756 ~~~~secured necessary land, zoning permits, and transmission rights~~~~

757 ~~within the state. Such costs shall be deemed reasonable and~~
 758 ~~prudent for purposes of cost recovery so long as the provider~~
 759 ~~has used reasonable and customary industry practices in the~~
 760 ~~design, procurement, and construction of the project in a cost-~~
 761 ~~effective manner appropriate to the location of the facility.~~
 762 ~~The provider shall report to the commission as part of the cost-~~
 763 ~~recovery proceedings the construction costs, in-service costs,~~
 764 ~~operating and maintenance costs, hourly energy production of the~~
 765 ~~renewable energy project, and any other information deemed~~
 766 ~~relevant by the commission. Any provider constructing a clean~~
 767 ~~energy facility pursuant to this section shall file for cost~~
 768 ~~recovery no later than July 1, 2009.~~

769 (a) Providers may petition the commission, through the
 770 years 2010, 2011, 2012, and 2013, for recovery of costs to
 771 produce or purchase up to a total of 735 megawatts of renewable
 772 energy statewide, subject to the cost cap in paragraph (c). If a
 773 provider does not seek approval to produce or purchase the total
 774 amount of renewable energy capacity designated for a specific
 775 period under this paragraph, the remaining capacity designated
 776 for that time period shall be carried forward to the succeeding
 777 period but not beyond the end of calendar year 2013. Providers
 778 may petition the commission:

779 1. Through 2011, for recovery of costs to produce or
 780 purchase up to a total of 300 megawatts of renewable energy
 781 statewide and an additional 15 megawatts of rooftop or pole-
 782 mounted solar energy applications;

783 2. In 2012, for recovery of costs to produce or purchase
 784 up to an additional 200 megawatts of renewable energy statewide

785 and an additional 10 megawatts of rooftop or pole-mounted solar
 786 energy applications; and

787 3. In 2013, for recovery of costs to produce or purchase
 788 up to an additional 200 megawatts of renewable energy statewide
 789 and an additional 10 megawatts of rooftop or pole-mounted solar
 790 energy applications.

791 (b) A provider shall have sole discretion to determine the
 792 type and technology of the renewable energy resource that it
 793 intends to use. A provider shall also have sole discretion to
 794 determine whether to construct new renewable energy generating
 795 facilities, convert existing fossil fuel generating facilities
 796 to renewable energy generating facilities, or contract for the
 797 purchase of renewable energy from third-party generating
 798 facilities in Florida.

799 (c) For the production or purchase of renewable energy
 800 under this subsection, a provider shall be permitted to recover
 801 costs up to and in excess of its full avoided cost, as defined
 802 in s. 366.51 and approved by the commission, provided that
 803 recovery of costs in excess of the providers' full avoided cost
 804 shall not exceed, at any time, 2 percent of the provider's total
 805 revenues from retail sales of electricity for calendar year
 806 2009. For purposes of cost recovery under this subsection, costs
 807 shall be computed using a methodology that, for a renewable
 808 energy generating facility, averages the revenue requirements of
 809 the facility over its economic life and, for a renewable energy
 810 purchase, averages the revenue requirements of the purchase over
 811 the life of the contract.

812 (d) Cost recovery under this subsection shall be limited

813 to new construction or conversion projects for which
814 construction is commenced after the effective date of this act
815 and to purchases made after the effective date of this act. All
816 renewable energy projects for which costs have been approved by
817 the commission for recovery through the environmental cost
818 recovery clause prior to the effective date of this act shall
819 not be subject to or included in the calculation of the cost
820 cap.

821 (e) The costs incurred by a provider to produce or
822 purchase renewable energy under this subsection shall be deemed
823 to be prudent for purposes of cost recovery if the provider has
824 used reasonable and customary industry practices in the design,
825 procurement, and construction of the project in a cost-effective
826 manner for the type of renewable energy resource and appropriate
827 to the location of the facility.

828 (f) Subject to the cost cap in paragraph (c), the
829 commission shall allow a provider to recover the costs
830 associated with the production or purchase of renewable energy
831 under this subsection as follows:

832 1. For new renewable energy generating facilities, the
833 commission shall allow recovery of reasonable and prudent costs
834 including, but not limited to, the siting, licensing,
835 engineering, design, permitting, construction, operation, and
836 maintenance of such facilities, including any applicable taxes
837 and a return based on the provider's last authorized rate of
838 return.

839 2. For conversion of existing fossil fuel generating
840 facilities to renewable energy generating facilities, the

841 commission shall allow recovery of reasonable and prudent
 842 conversion costs, including the costs of retirement of the
 843 fossil fuel plant that exceed any amounts accrued by the
 844 provider for such purposes through rates previously set by the
 845 commission.

846 3. For purchase of renewable energy from third-party
 847 generating facilities in Florida, the commission shall allow
 848 recovery of reasonable and prudent costs associated with the
 849 purchase.

850 (g) In a proceeding to recover costs incurred under this
 851 subsection, a provider shall provide the commission all cost
 852 information, hourly energy production information, and other
 853 information deemed relevant by the commission with respect to
 854 each project.

855 (h) When a provider purchases renewable energy under this
 856 subsection at a cost in excess of its full avoided cost, the
 857 seller shall surrender to the provider all renewable attributes
 858 of the renewable energy purchased.

859 (i) Revenues derived from any renewable energy credit,
 860 carbon credit, or other mechanism that attributes value to the
 861 production of renewable energy, either existing or hereafter
 862 devised, received by a provider by virtue of the production or
 863 purchase of renewable energy for which cost recovery is approved
 864 under this subsection, shall be shared with the provider's
 865 ratepayers such that the ratepayers are credited no less than 75
 866 percent of such revenues.

867 (j) A renewable energy generating facility constructed or
 868 converted from an existing fossil fuel generating facility

869 pursuant to this subsection shall be exempt from the
 870 requirements of s. 403.519, and the commission shall not be
 871 required to submit a report for such projects under s.
 872 403.507(4)(a).

873 (3) Each provider shall, in its 10-year site plan
 874 submitted to the commission pursuant to s. 186.801, provide the
 875 following information:

876 (a) The amount of renewable energy resources the provider
 877 produces or purchases;

878 (b) The amount of renewable energy resources the provider
 879 plans to produce or purchase over the 10-year planning horizon
 880 and the means by which such production or purchases will be
 881 achieved; and

882 (c) A statement indicating how the production and purchase
 883 of renewable energy resources impact the provider's present and
 884 future capacity and energy needs.

885 (4)(a) A developer of solar energy generation may locate a
 886 solar energy generation facility on the premises of a host
 887 consumer, other than a multi-family residential building, for
 888 purposes of sale to the consumer for consumption only on the
 889 premises, provided that the solar energy generation facility has
 890 a gross power rating of no greater than 2 megawatts. For
 891 purposes of this subsection, the host consumer's premises shall
 892 be limited to contiguous property owned or leased by the
 893 consumer, without regard to interruptions in contiguity caused
 894 by easements, public thoroughfares, transportation rights-of-
 895 way, or utility rights-of-way.

896 (b) The commission shall adopt rules to implement this

897 subsection. In adopting such rules, the commission shall
 898 establish, at a minimum:

- 899 1. Requirements related to interconnection and metering;
- 900 2. A mechanism for setting rates for any service provided
 901 to the consumer by the utility if such service is required by
 902 the consumer, which rates shall ensure that the utility's
 903 general body of ratepayers does not subsidize any redundant
 904 utility generating capacity necessary to serve the consumer; and
- 905 3. Requirements for notice to the commission of the size
 906 and location of each renewable energy generation facility
 907 planned under this subsection, the identity and historical and
 908 projected load characteristics of each host consumer, and any
 909 other information deemed necessary by the commission to satisfy
 910 its obligations under s. 364.04(5).

911 (c) Beginning January 1, 2011, and no less often than
 912 every six months thereafter, the commission shall provide a
 913 report to the legislature of activity under this subsection,
 914 which shall address the impacts of such activity on the electric
 915 power grid of the state, individual utility systems, and each
 916 utility's general body of ratepayers, and shall include
 917 recommendations concerning implementation of this program.

918 (5) Each municipal electric utility and rural electric
 919 cooperative shall develop standards for the promotion,
 920 encouragement, and expansion of the use of renewable energy
 921 resources and energy conservation and efficiency measures. On or
 922 before April 1, 2009, and annually thereafter, each municipal
 923 electric utility and electric cooperative shall submit to the
 924 commission a report that identifies such standards.

925 (6) Nothing in this section and no action taken pursuant
 926 to this section shall be construed to impede or impair terms and
 927 conditions of existing contracts or serve as a basis for
 928 renegotiating or re-pricing existing contracts.

929 (7) The commission may adopt rules to administer and
 930 implement the provisions of this section.

931 Section 9. If any provision of this act or the application
 932 thereof to any person or circumstance is held invalid, the
 933 invalidity shall not affect other provisions or applications of
 934 the act which can be given effect without the invalid provision
 935 or applications, and to this end the provisions of this act are
 936 declared severable.

937 Section 10. Subsection (14) of section 403.503, Florida
 938 Statutes, is amended to read:

939 403.503 Definitions relating to Florida Electrical Power
 940 Plant Siting Act.—As used in this act:

941 (14) "Electrical power plant" means, for the purpose of
 942 certification, any steam ~~or solar~~ electrical generating facility
 943 using any process or fuel, including nuclear materials, except
 944 that this term does not include any steam ~~or solar~~ electrical
 945 generating facility of less than 75 megawatts in capacity or any
 946 solar electrical generating facility of any sized capacity
 947 unless the applicant for such a facility elects to apply for
 948 certification under this act. This term also includes the site;
 949 all associated facilities that will be owned by the applicant
 950 that are physically connected to the site; all associated
 951 facilities that are indirectly connected to the site by other
 952 proposed associated facilities that will be owned by the

953 applicant; and associated transmission lines that will be owned
 954 by the applicant which connect the electrical power plant to an
 955 existing transmission network or rights-of-way to which the
 956 applicant intends to connect. At the applicant's option, this
 957 term may include any offsite associated facilities that will not
 958 be owned by the applicant; offsite associated facilities that
 959 are owned by the applicant but that are not directly connected
 960 to the site; any proposed terminal or intermediate substations
 961 or substation expansions connected to the associated
 962 transmission line; or new transmission lines, upgrades, or
 963 improvements of an existing transmission line on any portion of
 964 the applicant's electrical transmission system necessary to
 965 support the generation injected into the system from the
 966 proposed electrical power plant.

967 Section 11. Section 288.9602, Florida Statutes, is amended
 968 to read:

969 288.9602 Findings and declarations of necessity.—The
 970 Legislature finds and declares that:

971 (1) There is a need to enhance economic activity in the
 972 ~~cities and counties of the state~~ by attracting manufacturing,
 973 development, redevelopment of brownfield areas, business
 974 enterprise management, and other activities conducive to
 975 economic promotion in order to provide a stronger, more
 976 balanced, and stable economy in the ~~cities and counties of the~~
 977 state.

978 (2) A significant portion of businesses located in the
 979 ~~cities and counties of the state~~ or desiring to locate in the
 980 ~~cities and counties of the state~~ encounter difficulty in

981 obtaining financing on terms competitive with those available to
 982 businesses located in other states and nations or are unable to
 983 obtain such financing at all.

984 (3) The difficulty in obtaining such financing impairs the
 985 expansion of economic activity and the creation of jobs and
 986 income in communities throughout the state.

987 (4) The businesses most often affected by these financing
 988 difficulties are small businesses critical to the economic
 989 development of ~~the cities and counties of~~ Florida.

990 (5) The economic well-being of the people in, and the
 991 commercial and industrial resources of, ~~the cities and counties~~
 992 ~~of~~ the state would be enhanced by the provision of financing to
 993 businesses on terms competitive with those available in the most
 994 developed financial markets worldwide.

995 (6) In order to improve the prosperity and welfare of ~~the~~
 996 ~~cities and counties of~~ this state and its inhabitants, to
 997 improve and promote the financing of projects related to the
 998 economic development of ~~the cities and counties of~~ this state,
 999 including redevelopment of brownfield areas, and to increase the
 1000 purchasing power and opportunities for gainful employment of
 1001 citizens of ~~the cities and counties of~~ this state, it is
 1002 necessary and in the public interest to facilitate the financing
 1003 of such projects as provided for in this act and to do so
 1004 without regard to the boundaries between counties,
 1005 municipalities, special districts, and other local governmental
 1006 bodies or agencies in order to more effectively and efficiently
 1007 serve the interests of the greatest number of people in the
 1008 widest area practicable.

1009 (7) In order to promote and stimulate development and
 1010 advance the business prosperity and economic welfare of ~~the~~
 1011 ~~cities and counties of~~ this state and its inhabitants; to
 1012 encourage and assist new business and industry in this state
 1013 through loans, investments, or other business transactions; to
 1014 rehabilitate and assist existing businesses; to stimulate and
 1015 assist in the expansion of all kinds of for profit and not for
 1016 profit business activity; and to create maximum opportunities
 1017 for employment, encouragement of thrift, and improvement of the
 1018 standard of living of the citizens of Florida, it is necessary
 1019 and in the public interest to facilitate the cooperation and
 1020 action between organizations, public and private, in the
 1021 promotion, development, and conduct of all kinds of for profit
 1022 and not for profit business activity in the state.

1023 (8) In order to efficiently and effectively achieve the
 1024 purposes of this act, it is necessary and in the public interest
 1025 to create a special development finance authority to cooperate
 1026 ~~and act in conjunction with public agencies of this state and~~
 1027 ~~local governments of this state, through interlocal agreements~~
 1028 ~~pursuant to the Florida Interlocal Cooperation Act of 1969,~~ in
 1029 the promotion and advancement of projects related to economic
 1030 development, including redevelopment of brownfield areas,
 1031 throughout the state.

1032 (9) The purposes to be achieved by the special development
 1033 finance authority through such projects and such financings of
 1034 business and industry in compliance with the criteria and the
 1035 requirements of this act are predominantly the public purposes
 1036 stated in this section, and such purposes implement the

1037 governmental purposes under the State Constitution of providing
 1038 for the health, safety, and welfare of the people, ~~including~~
 1039 ~~implementing the purpose of s. 10(c), Art. VII of the State~~
 1040 ~~Constitution and simultaneously provide new and innovative means~~
 1041 ~~for the investment of public trust funds in accordance with s.~~
 1042 ~~10(a), Art. VII of the State Constitution~~ of the State.

1043 Section 12. Section 288.9603, Florida Statutes, is amended
 1044 to read:

1045 288.9603 Definitions.—

1046 (1) "Act" means the Florida Development Finance
 1047 Corporation Act of 1993, and all acts supplemental thereto and
 1048 amendatory thereof.

1049 (2) "Amortization payments" means periodic payments, such
 1050 as monthly, semiannually, or annually, of interest on premiums,
 1051 if any, and installments of principal of revenue bonds as
 1052 required by an indenture of the corporation.

1053 (3) "Applicant" means the individual, firm, or
 1054 corporation, whether for profit or nonprofit, charged with
 1055 developing the project under the terms of the indenture of the
 1056 corporation.

1057 (4) "Cash equivalents" shall include letters of credit
 1058 issued by investment grade rated financial institutions or their
 1059 subsidiaries; direct obligations of the government of the United
 1060 States of America, or any agency thereof, or obligations
 1061 unconditionally guaranteed by the United States of America;
 1062 certificates of deposit issued by investment grade rated
 1063 financial institutions or their subsidiaries; and investments in
 1064 commercial paper which, at the time of acquisition by the

1065 corporation is accorded the highest rating by Standard & Poor's
 1066 Corporation, Moody's Investors Services, Inc., or any other
 1067 nationally recognized credit rating agency of similar standing,
 1068 provided that in each such case such investments shall be
 1069 convertible to cash as may be reasonably necessary for
 1070 application of such moneys as and when the same are to be
 1071 applied in accordance with the provisions of this act.

1072 (5) "Corporation" means the Florida Development Finance
 1073 Corporation.

1074 (6) "Debt service" shall mean for any bonds issued by the
 1075 corporation ~~and~~ or for any bonds or other form of indebtedness
 1076 for which a guaranty has been issued pursuant to ss. 288.9606,
 1077 288.9607, and 288.9608, for any period for which such
 1078 determination is to be made, the aggregate amount of all
 1079 interest charges due or which shall become due on or with
 1080 respect to such bonds or indebtedness during the period for
 1081 which such determination is being made, plus the aggregate
 1082 amount of scheduled principal payments due or which shall become
 1083 due on or with respect to such bonds or indebtedness during the
 1084 period for which such determination is being made. Scheduled
 1085 principal payments may include only principal payments that are
 1086 scheduled as part of the terms of the original bond or
 1087 indebtedness issue and that result in the reduction of the
 1088 outstanding principal balance of the bonds or indebtedness.

1089 (7) "Economic development specialist" means a resident of
 1090 the state who is professionally employed in the discipline of
 1091 economic development or industrial development.

1092 (8) "Financial institution" means any banking corporation

1093 or trust company, savings and loan association, insurance
 1094 company or related corporation, partnership, foundation, or
 1095 other institution engaged primarily in lending or investing
 1096 funds in this state.

1097 (9) "Maximum debt service" shall mean, for any period of 6
 1098 months or 1 year, as the case may be, during the life of any
 1099 bonds issued by the corporation and for which a guaranty has
 1100 been issued pursuant to ss. 288.9606, 288.9607, and 288.9608 and
 1101 for which such determination is being made, the maximum amount
 1102 of the debt service which is due or will become due during such
 1103 period of time on or with respect to such bonds. For the
 1104 purposes of calculating the amount of the maximum debt service
 1105 with respect to any bonds which bear interest at a variable
 1106 rate, the corporation shall utilize a fixed rate which it in its
 1107 reasonable discretion determines to be appropriate.

1108 (10) "Partnership" means Enterprise Florida, Inc.

1109 (11) "Guaranty agreement" means an agreement by and
 1110 between the corporation and an applicant ~~a public agency~~
 1111 pursuant to the provisions of s. 288.9607.

1112 (12) "Guaranty agreement fund" means the Energy,
 1113 Technology and Economic Development Revenue Bond ~~Guaranty~~
 1114 ~~Reserve Account~~ Fund established by the corporation pursuant to
 1115 s. 288.9608.

1116 (13) "Interlocal agreement" means an agreement by and
 1117 between the Florida Development Finance Corporation and a public
 1118 agency of this state, pursuant to the provisions of s. 163.01.

1119 (14) "Public agency" means a political subdivision,
 1120 agency, or officer of this state or of any state of the United

1121 States, including, but not limited to, state, government,
 1122 county, city, school district, single and multipurpose special
 1123 district, single and multipurpose public authority, metropolitan
 1124 or consolidated government, an independently elected county
 1125 officer, any agency of the United States Government, and any
 1126 similar entity of any other state of the United States.

1127 Section 13. Section 288.9604, Florida Statutes, is amended
 1128 to read:

1129 288.9604 Creation of the authority.-

1130 (1) ~~Upon a finding of necessity by a city or county of~~
 1131 ~~this state, selected pursuant to subsection (2),~~ There there is
 1132 created a public body corporate and politic known as the
 1133 "Florida Development Finance Corporation." The corporation shall
 1134 be constituted as a public instrumentality ~~of local government,~~
 1135 and the exercise by the corporation of the powers conferred by
 1136 this act shall be deemed and held to be the performance of an
 1137 essential public function. The corporation has the power to
 1138 function within the corporate limits of the State ~~any public~~
 1139 ~~agency with which it has entered into an interlocal agreement~~
 1140 ~~for any of the purposes of this act.~~

1141 ~~(2) A city or county of Florida shall be selected by a~~
 1142 ~~search committee of Enterprise Florida, Inc. This city or county~~
 1143 ~~shall be authorized to activate the corporation. The search~~
 1144 ~~committee shall be composed of two commercial banking~~
 1145 ~~representatives, the Senate member of the partnership, the House~~
 1146 ~~of Representatives member of the partnership, and a member who~~
 1147 ~~is an industry or economic development professional.~~

1148 (2) ~~(3)~~ Upon activation of the corporation, Tthe Governor,

1149 subject to confirmation by the Senate, shall appoint the board
 1150 of directors of the corporation, who shall be five in number.
 1151 The terms of office for the directors shall be for 4 years from
 1152 the date of their appointment. A vacancy occurring during a term
 1153 shall be filled for the unexpired term. A director shall be
 1154 eligible for reappointment. At least three of the directors of
 1155 the corporation shall be bankers who have been selected by the
 1156 Governor from a list of bankers who were nominated by Enterprise
 1157 Florida, Inc., and one of the directors shall be an economic
 1158 development specialist. The chairperson of the Florida Black
 1159 Business Investment Board shall be an ex officio member of the
 1160 board of the corporation.

1161 (3)~~(4)~~(a) A director shall receive no compensation for his
 1162 or her services, but is entitled to the necessary expenses,
 1163 including travel expenses, incurred in the discharge of his or
 1164 her duties. Each director shall hold office until his or her
 1165 successor has been appointed.

1166 (b) The powers of the corporation shall be exercised by
 1167 the directors thereof. A majority of the directors constitutes a
 1168 quorum for the purposes of conducting business and exercising
 1169 the powers of the corporation and for all other purposes. Action
 1170 may be taken by the corporation upon a vote of a majority of the
 1171 directors present, unless in any case the bylaws require a
 1172 larger number. Any person may be appointed as director if he or
 1173 she resides, or is engaged in business, which means owning a
 1174 business, practicing a profession, or performing a service for
 1175 compensation or serving as an officer or director of a
 1176 corporation or other business entity so engaged, within the

1177 state.

1178 (c) The directors of the corporation shall annually elect
 1179 one of their members as chair and one as vice chair. The
 1180 corporation may employ a president, technical experts, and such
 1181 other agents and employees, permanent and temporary, as it
 1182 requires and determine their qualifications, duties, and
 1183 compensation. For such legal services as it requires, the
 1184 corporation may employ or retain its own counsel and legal
 1185 staff. The corporation shall file with ~~the governing body of~~
 1186 ~~each public agency with which it has entered into an interlocal~~
 1187 ~~agreement and with the~~ Governor, the Speaker of the House of
 1188 Representatives, the President of the Senate, the Minority
 1189 Leaders of the Senate and House of Representatives, and the
 1190 Auditor General, on or before 90 days after the close of the
 1191 fiscal year of the corporation, a report of its activities for
 1192 the preceding fiscal year, which report shall include a complete
 1193 financial statement setting forth its assets, liabilities,
 1194 income, and operating expenses as of the end of such fiscal
 1195 year.

1196 (4)~~(5)~~ The board may remove a director for inefficiency,
 1197 neglect of duty, or misconduct in office only after a hearing
 1198 and only if he or she has been given a copy of the charges at
 1199 least 10 days prior to such hearing and has had an opportunity
 1200 to be heard in person or by counsel. The removal of a director
 1201 shall create a vacancy on the board which shall be filled
 1202 pursuant to subsection (3).

1203 Section 14. Section 288.9605, Florida Statutes, is amended
 1204 to read:

1205 288.9605 Corporation powers.—

1206 (1) The powers of the corporation created by s. 288.9604

1207 shall include all the powers necessary or convenient to carry

1208 out and effectuate the purposes and provisions of this act.

1209 (2) The corporation is authorized and empowered to:

1210 (a) Have perpetual succession as a body politic and

1211 corporate and adopt bylaws for the regulation of its affairs and

1212 the conduct of its business.

1213 (b) Adopt an official seal and alter the same at its

1214 pleasure.

1215 (c) Maintain an office at such place or places as it may

1216 designate.

1217 (d) Sue and be sued in its own name and plead and be

1218 impleaded.

1219 (e) Enter into interlocal agreements pursuant to s.

1220 163.01(7) with public agencies of this state for the exercise of

1221 any power, privilege, or authority consistent with the purposes

1222 of this act.

1223 (f) Issue, from time to time, revenue bonds, notes or

1224 other evidences of indebtedness, including, but not limited to,

1225 taxable bonds and bonds the interest on which is exempt from

1226 federal income taxation, for the purpose of financing and

1227 refinancing any capital projects which promote economic

1228 development within the State thereby benefitting the citizens

1229 for the State, including but not limited to those capital

1230 projects described in s. 159.27, for applicants and exercise all

1231 powers in connection with the authorization, issuance, and sale

1232 of bonds, subject to the provisions of s. 288.9606.

1233 (g) Issue bond anticipation notes in connection with the
 1234 authorization, issuance, and sale of such bonds, pursuant to the
 1235 provisions of s. 288.9606.

1236 (h) Make and execute contracts and other instruments
 1237 necessary or convenient to the exercise of its powers under the
 1238 act.

1239 (i) Disseminate information about itself and its
 1240 activities.

1241 (j) Acquire, by purchase, lease, option, gift, grant,
 1242 bequest, devise, or otherwise, real property, together with any
 1243 improvements thereon, or personal property for its
 1244 administrative purposes or in furtherance of the purposes of
 1245 this act. ~~, together with any improvements thereon.~~

1246 (k) Hold, improve, clear, or prepare for development any
 1247 such property.

1248 (l) Mortgage, pledge, hypothecate, or otherwise encumber
 1249 or dispose of any real or personal property.

1250 (m) Insure or provide for insurance of any real or
 1251 personal property or operations of the corporation or any
 1252 private enterprise against any risks or hazards, including the
 1253 power to pay premiums on any such insurance.

1254 (n) Establish and fund a guaranty fund in furtherance of
 1255 the purposes of this act.

1256 (o) Invest funds held in reserve or sinking funds or any
 1257 such funds not required for immediate disbursement in property
 1258 or securities in such manner as the board shall determine,
 1259 subject to the authorizing resolution on any bonds issued, and
 1260 to terms established in the investment agreement pursuant to ss.

1261 288.9606, 288.9607, and 288.9608, and redeem such bonds as have
 1262 been issued pursuant to s. 288.9606 at the redemption price
 1263 established therein or purchase such bonds at less than
 1264 redemption price, all such bonds so redeemed or purchased to be
 1265 canceled.

1266 (p) Borrow money and apply for and accept advances, loans,
 1267 grants, contributions, and any other form of financial
 1268 assistance from the Federal Government or the state, county, or
 1269 other public ~~agency body~~ or from any sources, public or private,
 1270 for the purposes of this act and give such security as may be
 1271 required and enter into and carry out contracts or agreements in
 1272 connection therewith; and include in any contract for financial
 1273 assistance with the Federal Government or the state, county, or
 1274 other public agency for, or with respect to, any purposes under
 1275 this act and related activities such conditions imposed pursuant
 1276 to federal laws as the county or municipality or other public
 1277 agency deems reasonable and appropriate which are not
 1278 inconsistent with the provisions of this act.

1279 (q) Make or have all surveys and plans necessary for the
 1280 carrying out of the purposes of this act, contract with any
 1281 person, public or private, in making and carrying out such
 1282 plans, and adopt, approve, modify, and amend such plans.

1283 (r) Develop, test, and report methods and techniques and
 1284 carry out demonstrations and other activities for the promotion
 1285 of any of the purposes of this act.

1286 (s) Apply for, accept, and utilize grants from the Federal
 1287 Government or the state, county, or other public agency
 1288 available for any of the purposes of this act.

1289 (t) Make expenditures necessary to carry out the purposes
1290 of this act.

1291 (u) Exercise all or any part or combination of powers
1292 granted in this act, or any powers in furtherance of this act
1293 which a local agency may exercise under the Florida Industrial
1294 Development Financing Act, ss. 159.25-159.431.

1295 (v) Enter into investment agreements with the Florida
1296 Black Business Investment Board concerning the issuance of bonds
1297 and other forms of indebtedness and capital for the purposes of
1298 ss. 288.707-288.714.

1299 (w) Determine the situations and circumstances for
1300 participation in partnerships by agreement with local
1301 governments, financial institutions, and others associated with
1302 the redevelopment of brownfield areas pursuant to the
1303 Brownfields Redevelopment Act for a limited state guaranty of
1304 revenue bonds, loan guarantees, or loan loss reserves.

1305 Section 15. Section 288.9606, Florida Statutes, is amended
1306 to read:

1307 288.9606 Issue of revenue bonds.—

1308 (1) ~~When authorized by a public agency pursuant to s.~~
1309 ~~163.01(7),~~ The corporation has power in its corporate capacity,
1310 in its discretion, to issue revenue bonds or other evidences of
1311 indebtedness ~~which a public agency has the power to issue,~~ from
1312 time to time to finance the undertaking of any purpose of this
1313 act and ss. 288.707-288.714, including, without limiting the
1314 generality thereof, the payment of principal and interest upon
1315 any advances for surveys and plans or preliminary loans, and has
1316 the power to issue refunding bonds for the payment or retirement

1317 | of bonds previously issued. Bonds issued pursuant to this
 1318 | section shall bear the name "Florida Development Finance
 1319 | Corporation Revenue Bonds." The security for such bonds may be
 1320 | based upon such revenues as are legally available. In
 1321 | anticipation of the sale of such revenue bonds, the corporation
 1322 | may issue bond anticipation notes and may renew such notes from
 1323 | time to time, but the maximum maturity of any such note,
 1324 | including renewals thereof, may not exceed 5 years from the date
 1325 | of issuance of the original note. Such notes shall be paid from
 1326 | any revenues of the corporation available therefor and not
 1327 | otherwise pledged or from the proceeds of sale of the revenue
 1328 | bonds in anticipation of which they were issued. Any bond, note,
 1329 | or other form of indebtedness issued pursuant to this act shall
 1330 | mature no later than the end of the 30th fiscal year after the
 1331 | fiscal year in which the bond, note, or other form of
 1332 | indebtedness was issued.

1333 | (2) Bonds issued under this section do not constitute an
 1334 | indebtedness within the meaning of any constitutional or
 1335 | statutory debt limitation or restriction, and are not subject to
 1336 | the provisions of any other law or charter relating to the
 1337 | authorization, issuance, or sale of bonds. Bonds issued under
 1338 | the provisions of this act are declared to be for an essential
 1339 | public and governmental purpose. Bonds issued under this act,
 1340 | the interest on which is exempt from income taxes of the United
 1341 | States, together with interest thereon and income therefrom, are
 1342 | exempted from all taxes, except those taxes imposed by chapter
 1343 | 220, on interest, income, or profits on debt obligations owned
 1344 | by corporations.

1345 (3) Bonds issued under this section ~~shall be authorized by~~
1346 ~~a public agency of this state pursuant to the terms of an~~
1347 ~~interlocal agreement~~; may be issued in one or more series; and
1348 shall bear such date or dates, be payable upon demand or mature
1349 at such time or times, bear interest rate or rates, be in such
1350 denomination or denominations, be in such form either with or
1351 without coupon or registered, carry such conversion or
1352 registration privileges, have such rank or priority, be executed
1353 in such manner, be payable in such medium of payments at such
1354 place or places, be subject to such terms of redemption, with or
1355 without premium, be secured in such manner, and have such other
1356 characteristics as may be provided by the corporation ~~interlocal~~
1357 ~~agreement issued pursuant thereto~~. Bonds issued under this
1358 section may be sold in such manner, either at public or private
1359 sale, and for such price as the corporation may determine will
1360 effectuate the purpose of this act.

1361 (4) In case a director whose signature appears on any
1362 bonds or coupons issued under this act ceases to be a director
1363 before the delivery of such bonds, such signature is,
1364 nevertheless, valid and sufficient for all purposes, the same as
1365 if such director had remained in office until such delivery.

1366 (5) In any suit, action, or proceeding involving the
1367 validity or enforceability of any bond issued under this act, or
1368 the security therefor, any such bond reciting in substance that
1369 it has been issued by the corporation in connection with any
1370 purpose of the act shall be conclusively deemed to have been
1371 issued for such purpose, and such purpose shall be conclusively
1372 deemed to have been carried out in accordance with the act. The

1373 complaint in any action to validate such bonds shall be filed
 1374 only in the Circuit Court for Leon County. The notice required
 1375 to be published by s. 75.06 shall be published only in Leon
 1376 County, and the complaint and order of the circuit court shall
 1377 be served only on the State Attorney of the Second Judicial
 1378 Circuit ~~and on the state attorney of each circuit in each county~~
 1379 ~~where the public agencies which were initially a party to the~~
 1380 ~~interlocal agreement are located.~~ Notice of such proceedings
 1381 shall be published in the manner and the time required by s.
 1382 75.06, in Leon County ~~and in each county where the public~~
 1383 ~~agencies which were initially a party to the interlocal~~
 1384 ~~agreement are located.~~ Obligations of the corporation pursuant
 1385 to a loan agreement as described in this subsection may be
 1386 validated as provided in chapter 75. The validation of at least
 1387 the first bonds approved by the corporation shall be appealed to
 1388 the Florida Supreme Court. ~~The complaint in the validation~~
 1389 ~~proceeding shall specifically address the constitutionality of~~
 1390 ~~using the investment of the earnings accrued and collected upon~~
 1391 ~~the investment of the minimum balance funds required to be~~
 1392 ~~maintained in the State Transportation Trust Fund to guarantee~~
 1393 ~~such bonds. If such proceeding results in an adverse ruling and~~
 1394 ~~such bonds and guaranty are found to be unconstitutional,~~
 1395 ~~invalid, or unenforceable, then the corporation shall no longer~~
 1396 ~~be authorized to use the investment of the earnings accrued and~~
 1397 ~~collected upon the investment of the minimum balance of the~~
 1398 ~~State Transportation Trust Fund to guarantee any bonds.~~

1399 (6) The proceeds of any bonds of the corporation may not
 1400 be used, in any manner, to acquire any building or facility that

1401 will be, during the pendency of the financing, used by, occupied
 1402 by, leased to, or paid for by any state, county, or municipal
 1403 agency or entity.

1404 Section 16. Section 288.9607, Florida Statutes, is amended
 1405 to read:

1406 288.9607 Guaranty of bond issues.—

1407 (1) The corporation is hereby authorized to approve or
 1408 deny, by a majority vote of the membership of the directors, a
 1409 guaranty of debt service payments for bonds or other
 1410 indebtedness used to finance any capital project which promotes
 1411 economic development within the state, including but not limited
 1412 to those capital projects for which revenue bonds have been or
 1413 will be the guaranty of any revenue bonds issued pursuant to
 1414 this act, provided that any such guaranty shall not exceed five
 1415 percent of the total aggregate principal amount of bonds or
 1416 other indebtedness relating to any one capital project. The
 1417 ~~guaranty may also be of the obligations of the corporation with~~
 1418 ~~respect to any letter of credit, bond insurance, or other form~~
 1419 ~~of credit enhancement provided by any person with respect to any~~
 1420 ~~revenue bonds issued by the corporation pursuant to this act.~~

1421 (2) Any applicant ~~for financing from the corporation,~~
 1422 requesting a guaranty of ~~the bonds issued by~~ the corporation
 1423 under this act must submit a guaranty application, in a form
 1424 acceptable to the corporation, together with supporting
 1425 documentation to the corporation as provided in this section.

1426 (3) All applicants which have entered into a guaranty
 1427 agreement with the corporation shall pay a guaranty premium on
 1428 such terms and at such rates as the corporation shall determine

1429 prior to the issuance of the guaranty bonds. The corporation may
 1430 adopt such guaranty premium structures as it deems appropriate,
 1431 including, without limitation, guaranty premiums which are
 1432 payable one time upon the issuance of the guaranty bonds or
 1433 annual premiums payable upon the outstanding principal balance
 1434 of bonds or other indebtedness which is guaranteed from time to
 1435 time. The premium payment may be collected by the corporation
 1436 from any ~~the~~ lessee of the project involved, from the applicant,
 1437 or from any other payee of any ~~the~~ loan agreement involved.

1438 (4) All applications for a guaranty must acknowledge that
 1439 as a condition to the issuance of the guaranty, the corporation
 1440 may require that the financing must be secured by a mortgage or
 1441 security interest on the property acquired which will have such
 1442 priority over other liens on such property as may be required by
 1443 the corporation, and that the financing must be guaranteed by
 1444 such person or persons with such ownership interest in the
 1445 applicant as may be required by the corporation.

1446 (5) Personal financial records, trade secrets, or
 1447 proprietary information of applicants delivered to or obtained
 1448 by the corporation shall be confidential and exempt from the
 1449 provisions of s. 119.07(1).

1450 (6) If the application for a guaranty is approved by the
 1451 corporation, the corporation and the applicant shall enter into
 1452 a guaranty agreement. In accordance with the provisions of the
 1453 guaranty agreement, the corporation guarantees to use the funds
 1454 on deposit in its Energy, Technology and Economic Development
 1455 Guaranty Fund Revenue Bond Guaranty Reserve Account to meet debt
 1456 service amortization payments on the bonds or indebtedness as

1457 they become due, in the event and to the extent that the
 1458 applicant is unable to meet such payments ~~in accordance with the~~
 1459 ~~terms of the bond indenture when called to do so by the trustee~~
 1460 ~~of the bondholders,~~ or to make similar payments to reimburse any
 1461 person which has provided credit enhancement for the bonds and
 1462 which has advanced funds to meet such debt service amortization
 1463 payments as they become due, provided that such guaranty of the
 1464 corporation shall be limited to five percent of the total
 1465 aggregate principal amount of bonds or other indebtedness
 1466 relating to any one capital project.. If the applicant defaults
 1467 on debt service bond amortization payments, the corporation may
 1468 use funds on deposit in the Energy, Technology and Economic
 1469 Development Guaranty Fund Revenue Bond Guaranty Reserve Account
 1470 to pay insurance, maintenance, and other costs which may be
 1471 required for the preservation of any capital project or other
 1472 collateral security for any bond or indebtedness issued to
 1473 finance a capital project for which debt service payments have
 1474 been guaranteed by the corporation, issued by the corporation,
 1475 ~~or to otherwise protect the reserve account from loss, or to~~
 1476 ~~minimize losses to the reserve account, in each case in such~~
 1477 manner as may be deemed necessary and advisable by the
 1478 corporation.

1479 (7) (a) ~~The corporation is authorized to enter into an~~
 1480 ~~investment agreement with the Department of Transportation and~~
 1481 ~~the State Board of Administration concerning the investment of~~
 1482 ~~the earnings accrued and collected upon the investment of the~~
 1483 ~~minimum balance of funds required to be maintained in the State~~
 1484 ~~Transportation Trust Fund pursuant to s. 339.135(6)(b). Such~~

1485 ~~investment shall be limited as follows:~~

1486 ~~1. Not more than \$4 million of the investment earnings~~
 1487 ~~earned on the investment of the minimum balance of the State~~
 1488 ~~Transportation Trust Fund in a fiscal year shall be at risk at~~
 1489 ~~any time on one or more bonds or series of bonds issued by the~~
 1490 ~~corporation.~~

1491 ~~2. The investment earnings shall not be used to guarantee~~
 1492 ~~any bonds issued after June 30, 1998, and in no event shall the~~
 1493 ~~investment earnings be used to guarantee any bond issued for a~~
 1494 ~~maturity longer than 15 years.~~

1495 ~~3. The corporation shall pay a reasonable fee, set by the~~
 1496 ~~State Board of Administration, in return for the investment of~~
 1497 ~~such funds. The fee shall not be less than the comparable rate~~
 1498 ~~for similar investments in terms of size and risk.~~

1499 ~~4. The proceeds of bonds, or portions thereof, issued by~~
 1500 ~~the corporation for which a guaranty has been or will be issued~~
 1501 ~~pursuant to s. 288.9606, s. 288.9608, or this section used to~~
 1502 ~~make loans to any one person, including any related interests,~~
 1503 ~~as defined in s. 658.48, of such person, shall not exceed 20~~
 1504 ~~percent of the principal of all such outstanding bonds of the~~
 1505 ~~corporation issued prior to the first composite bond issue of~~
 1506 ~~the corporation, or December 31, 1995, whichever comes first,~~
 1507 ~~and shall not exceed 15 percent of the principal of all such~~
 1508 ~~outstanding bonds of the corporation issued thereafter, in each~~
 1509 ~~case determined as of the date of issuance of the bonds for~~
 1510 ~~which such determination is being made and taking into account~~
 1511 ~~the principal amount of such bonds to be issued. The provisions~~
 1512 ~~of this subparagraph shall not apply when the total amount of~~

1513 ~~all such outstanding bonds issued by the corporation is less~~
 1514 ~~than \$10 million. For the purpose of calculating the limits~~
 1515 ~~imposed by the provisions of this subparagraph, the first \$10~~
 1516 ~~million of bonds issued by the corporation shall be taken into~~
 1517 ~~account.~~

1518 ~~5. The corporation shall establish a debt service reserve~~
 1519 ~~account which contains not less than 6 months' debt service~~
 1520 ~~reserves from the proceeds of the sale of any bonds, or portions~~
 1521 ~~thereof, guaranteed by the corporation.~~

1522 ~~6. The corporation shall establish an account known as the~~
 1523 ~~Revenue Bond Guaranty Reserve Account, the Guaranty Fund. The~~
 1524 ~~corporation shall deposit a sum of money or other cash~~
 1525 ~~equivalents into this fund and maintain a balance of money or~~
 1526 ~~cash equivalents in this fund, from sources other than the~~
 1527 ~~investment of earnings accrued and collected upon the investment~~
 1528 ~~of the minimum balance of funds required to be maintained in the~~
 1529 ~~State Transportation Trust Fund, not less than a sum equal to 1~~
 1530 ~~year of maximum debt service on all outstanding bonds, or~~
 1531 ~~portions thereof, of the corporation for which a guaranty has~~
 1532 ~~been issued pursuant to ss. 288.9606, 288.9607, and 288.9608. In~~
 1533 ~~the event the corporation fails to maintain the balance required~~
 1534 ~~pursuant to this subparagraph for any reason other than a~~
 1535 ~~default on a bond issue of the corporation guaranteed pursuant~~
 1536 ~~to this section or because of the use by the corporation of any~~
 1537 ~~such funds to pay insurance, maintenance, or other costs which~~
 1538 ~~may be required for the preservation of any project or other~~
 1539 ~~collateral security for any bond issued by the corporation, or~~
 1540 ~~to otherwise protect the Revenue Bond Guaranty Reserve Account~~

1541 ~~from loss while the applicant is in default on amortization~~
 1542 ~~payments, or to minimize losses to the reserve account in each~~
 1543 ~~case in such manner as may be deemed necessary or advisable by~~
 1544 ~~the corporation, the corporation shall immediately notify the~~
 1545 ~~Department of Transportation of such deficiency. Any~~
 1546 ~~supplemental funding authorized by an investment agreement~~
 1547 ~~entered into with the Department of Transportation and the State~~
 1548 ~~Board of Administration concerning the use of investment~~
 1549 ~~earnings of the minimum balance of funds is void unless such~~
 1550 ~~deficiency of funds is cured by the corporation within 90 days~~
 1551 ~~after the corporation has notified the Department of~~
 1552 ~~Transportation of such deficiency.~~

1553 ~~(b) Unless specifically prohibited in the General~~
 1554 ~~Appropriations Act, the earnings accrued and collected upon the~~
 1555 ~~investment of the minimum balance of funds required to be~~
 1556 ~~maintained in the State Transportation Trust Fund may continue~~
 1557 ~~to be used pursuant to paragraph (a).~~

1558 ~~(c)~~ The guaranty shall not be a general obligation of the
 1559 corporation or of the state, but shall be a special obligation,
 1560 which constitutes the investment of a public trust fund. In no
 1561 event shall the guaranty constitute an indebtedness of the
 1562 corporation, the State of Florida, or any political subdivision
 1563 thereof within the meaning of any constitutional or statutory
 1564 limitation. Each guaranty agreement shall have plainly stated on
 1565 the face thereof that it has been entered into under the
 1566 provisions of this act and that it does not constitute an
 1567 indebtedness of the corporation, the state, or any political
 1568 subdivision thereof within any constitutional or statutory

1569 limitation, and that neither the full faith and credit of the
 1570 State of Florida nor any of its revenues is pledged to meet any
 1571 of the obligations of the corporation under such guaranty
 1572 agreement. Each such agreement shall state that the obligation
 1573 of the corporation under the guaranty shall be limited to the
 1574 funds available in the Energy, Technology and Economic
 1575 Development Guaranty Fund Revenue Bond Guaranty Reserve Account
 1576 as authorized by this section.

1577
 1578 ~~The corporation shall include, as part of the annual report~~
 1579 ~~prepared pursuant to s. 288.9610, a detailed report concerning~~
 1580 ~~the use of guaranteed bond proceeds for loans guaranteed or~~
 1581 ~~issued pursuant to any agreement with the Florida Black Business~~
 1582 ~~Investment Board, including the percentage of such loans~~
 1583 ~~guaranteed or issued and the total volume of such loans~~
 1584 ~~guaranteed or issued.~~

1585 (8) In the event the corporation does not approve the
 1586 application for a guaranty, the applicant shall be notified in
 1587 writing of the corporation's determination that the application
 1588 not be approved.

1589 (9) The membership of the corporation is authorized and
 1590 directed to conduct such investigation as it may deem necessary
 1591 for promulgation of regulations to govern the operation of the
 1592 guaranty program authorized by this section. The regulations may
 1593 include such other additional provisions, restrictions, and
 1594 conditions as the corporation, after its investigation referred
 1595 to in this subsection, shall determine to be proper to achieve
 1596 the most effective utilization of the guaranty program. This may

1597 include, without limitation, a detailing of the remedies that
 1598 must be exhausted by ~~the~~ bondholders, ~~or~~ a trustee acting on
 1599 their behalf, or other credit provided prior to calling upon the
 1600 corporation to perform under its guaranty agreement and the
 1601 subrogation of other rights of the corporation with reference to
 1602 the capital project and its operation or the financing in the
 1603 event the corporation makes payment pursuant to the applicable
 1604 guaranty agreement. The regulations promulgated by the
 1605 corporation to govern the operation of the guaranty program may
 1606 ~~shall~~ contain specific provisions with respect to the rights of
 1607 the corporation to enter, take over, and manage all financed
 1608 properties upon default. These regulations shall be submitted by
 1609 ~~set forth the respective rights of~~ the corporation to the
 1610 Governor's Energy Office for approval ~~and the bondholders in~~
 1611 ~~regard thereto.~~

1612 (10) The guaranty program described in this section may be
 1613 used by the corporation in conjunction with any federal guaranty
 1614 programs described in Section 406 of the American Recovery and
 1615 Reinvestment Act of 2009, as may be supplemented and amended
 1616 from time to time. All policies and procedures or regulations
 1617 of the guaranty program promulgated by the corporation, to the
 1618 extend such guaranty program of the corporation will be used in
 1619 conjunction with a federal guaranty program described in Section
 1620 406 of the American Recovery and Reinvestment Act of 2009, shall
 1621 be consistent with Section 406 of the American Recovery and
 1622 Reinvestment Act of 2009, as may be supplemented and amended
 1623 from time to time.

1624 Section 17. Section 288.9608, Florida Statutes, is amended
 1625 to read:

1626 288.9608 Creation and funding of the Energy, Technology
 1627 and Economic Development Guaranty Fund guaranty account.-

1628 (1) ~~The corporation shall establish a debt service reserve~~
 1629 ~~account which contains not less than 6 months' debt service~~
 1630 ~~reserves from the proceeds of the sale of any bonds guaranteed~~
 1631 ~~by the corporation. Funds in such debt service reserve account~~
 1632 ~~shall be used prior to funds in the Revenue Bond Guaranty~~
 1633 ~~Reserve Account established in subsection (2). The corporation~~
 1634 ~~shall make best efforts to liquidate collateralized property and~~
 1635 ~~draw upon personal guarantees, and shall utilize the Revenue~~
 1636 ~~Bond Guaranty Reserve Account prior to use of supplemental~~
 1637 ~~funding for the Guaranty Reserve Account under the provisions of~~
 1638 ~~subsection (3).~~

1639 (2)(a) The corporation shall establish an account known as
 1640 the Energy, Technology and Economic Development Guaranty Fund
 1641 ~~Revenue Bond Guaranty Reserve Account~~. The corporation is
 1642 authorized to shall deposit monies a sum of money or other cash
 1643 equivalentents into this fund and maintain a balance in this fund,
 1644 from general revenue funds of the State as may be authorized for
 1645 such purpose, or any other designated funding sources not
 1646 inconsistent with state law ~~sources other than the State~~
 1647 ~~Transportation Trust Fund, not less than a sum equal to 1 year~~
 1648 ~~of maximum debt service on all outstanding bonds, or portions~~
 1649 ~~thereof, of the corporation for which a guaranty has been issued~~
 1650 ~~pursuant to ss. 288.9606, 288.9607, and 288.9608.~~

1651 (2)(b) If the corporation determines that the moneys in

1652 the Guaranty agreement fund ~~Fund~~ are not sufficient to meet the
 1653 obligations of the Guaranty agreement fund ~~Fund~~, the corporation
 1654 is authorized to use the necessary amount of any available
 1655 moneys that it may have which are not needed for, then or in the
 1656 foreseeable future, or committed to other authorized functions
 1657 and purposes of the corporation. Any such moneys so used may be
 1658 reimbursed out of the Guaranty agreement fund ~~Fund~~ if and when
 1659 there are moneys therein available for the purpose.

1660 (3)(e) The determination of when additional moneys will be
 1661 needed for the Guaranty agreement fund ~~Fund~~, the amounts that
 1662 will be needed, and the availability or unavailability of other
 1663 moneys shall be made solely by the corporation in the exercise
 1664 of its discretion. ~~However, supplemental funding for the~~
 1665 ~~Guaranty Fund as described in subsection (3) shall be made in~~
 1666 ~~accordance with the investment agreement of the corporation and~~
 1667 ~~the Department of Transportation and the State Board of~~
 1668 ~~Administration.~~

1669 ~~(3)(a) If the corporation determines that the funds in the~~
 1670 ~~Guaranty Fund will not be sufficient to meet the present or~~
 1671 ~~reasonably projected obligations of the Guaranty Fund, due to a~~
 1672 ~~default on a loan made by the corporation from the proceeds of a~~
 1673 ~~bond issued by the corporation which is guaranteed pursuant to~~
 1674 ~~s. 288.9607(7), no later than 90 days before amortization~~
 1675 ~~payments are due on such bonds, the corporation shall notify the~~
 1676 ~~Secretary of Transportation and the State Board of~~
 1677 ~~Administration of the amount of funds required to meet, as and~~
 1678 ~~when due, all amortization payments for which the Guaranty Fund~~
 1679 ~~is obligated. The Secretary of Transportation shall immediately~~

1680 ~~notify the Speaker of the House of Representatives, the~~
 1681 ~~President of the Senate, and the chairs of the Senate and House~~
 1682 ~~Committees on Appropriations of the amount of funds required,~~
 1683 ~~and the projected impact on each affected year of the adopted~~
 1684 ~~work program of the Department of Transportation.~~

1685 ~~(b) Within 30 days of the receipt of notification from the~~
 1686 ~~corporation, the Department of Transportation shall submit a~~
 1687 ~~budget amendment request to the Executive Office of the Governor~~
 1688 ~~pursuant to chapter 216, to increase budget authority to carry~~
 1689 ~~out the purposes of this section. Upon approval of said~~
 1690 ~~amendment, the department shall proceed to amend the adopted~~
 1691 ~~work program, if necessary, in accordance with the amendment.~~
 1692 ~~Within 60 days of the receipt of notification, and subject to~~
 1693 ~~approval of the budget authority, the Secretary of~~
 1694 ~~Transportation shall transfer, subject to the amount available~~
 1695 ~~from the source described in paragraph (c), the amount of funds~~
 1696 ~~requested by the corporation required to meet, as and when due,~~
 1697 ~~all amortization payments for which the Guaranty Fund is~~
 1698 ~~obligated. Any moneys so transferred shall be reimbursed to the~~
 1699 ~~Department of Transportation, with interest at the rate earned~~
 1700 ~~on investment by the State Treasury, from the funds available in~~
 1701 ~~the Guaranty Fund or as otherwise available to the corporation.~~

1702 ~~(c) Pursuant to s. 288.9607(7), the Secretary of~~
 1703 ~~Transportation and the State Board of Administration may make~~
 1704 ~~available for transfer to the Guaranty Fund, earnings accrued~~
 1705 ~~and collected upon the investment of the minimum balance of~~
 1706 ~~funds required to be maintained in the State Transportation~~
 1707 ~~Trust Fund. However, the earnings accrued and collected upon the~~

1708 ~~investment of the minimum balance of funds required to be~~
 1709 ~~maintained in the State Transportation Trust Fund which shall be~~
 1710 ~~subject to transfer shall be limited to those earnings accrued~~
 1711 ~~and collected on the investment of the minimum balance of funds~~
 1712 ~~required to be maintained in the State Transportation Trust Fund~~
 1713 ~~for the fiscal year in which the notification is received by the~~
 1714 ~~secretary and fiscal years thereafter.~~

1715 ~~(4) If the corporation receives supplemental funding for~~
 1716 ~~the Guaranty Fund under the provisions of this section, then any~~
 1717 ~~proceeds received by the corporation with respect to a loan in~~
 1718 ~~default, including proceeds from the sale of collateral for such~~
 1719 ~~loan, enforcement of personal guarantees or other pledges to the~~
 1720 ~~corporation to secure such loan, shall first be applied to the~~
 1721 ~~obligation of the corporation to repay the Department of~~
 1722 ~~Transportation pursuant to this section. Until such repayment is~~
 1723 ~~complete, no new bonds may be guaranteed pursuant to this~~
 1724 ~~section.~~

1725 ~~(5) Prior to the use of the guaranty provided in this~~
 1726 ~~section, and on an annual basis, the corporation must certify in~~
 1727 ~~writing to the State Board of Administration and the Secretary~~
 1728 ~~of Transportation that it has fully implemented the requirements~~
 1729 ~~of this section and s. 288.9607 and the regulations of the~~
 1730 ~~corporation.~~

1731 Section 18. Section 288.9609, Florida Statutes, is amended
 1732 to read:

1733 288.9609 Bonds as legal investments.—All banks, trust
 1734 companies, bankers, savings banks and institutions, building and
 1735 loan associations, savings and loan associations, investment

1736 companies, and other persons carrying on a banking and
 1737 investment business; all insurance companies, insurance
 1738 associations, and other persons carrying on an insurance
 1739 business; and all executors, administrators, curators, trustees,
 1740 and other fiduciaries may legally invest any sinking funds,
 1741 moneys, or other funds belonging to them or within their control
 1742 in any bonds or other obligations issued by the corporation
 1743 ~~pursuant to an interlocal agreement with a public agency of this~~
 1744 ~~state.~~ Such bonds and obligations shall be authorized security
 1745 for all public deposits. It is the purpose of this section to
 1746 authorize all persons, political subdivisions, and officers,
 1747 public and private, to use any funds owned or controlled by them
 1748 for the purchase of any such bonds or other obligations. Nothing
 1749 contained in this section with regard to legal investments shall
 1750 be construed as relieving any person of any duty of exercising
 1751 reasonable care in selecting securities.

1752 Section 19. Section 288.9610, Florida Statutes, is amended
 1753 to read:

1754 288.9610 Annual reports of Florida Development Finance
 1755 Corporation.—By December 1 of each year, the Florida Development
 1756 Finance Corporation shall submit to the Governor, the President
 1757 of the Senate, the Speaker of the House of Representatives, the
 1758 Senate Minority Leader, and the House Minority Leader, ~~and the~~
 1759 ~~city or county activating the Florida Development Finance~~
 1760 ~~Corporation~~ a complete and detailed report setting forth:

- 1761 (1) The evaluation required in s. 11.45(3)(j).
- 1762 (2) The operations and accomplishments of the Florida
- 1763 Development Finance Corporation, including the number of

1764 | businesses assisted by the corporation.

1765 | (3) Its assets and liabilities at the end of its most
 1766 | recent fiscal year, including a description of all of its
 1767 | outstanding revenue bonds.

1768 | Section 20. This act shall take effect July 1, 2010.