# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EUP 09-03 Alternative Energy and Energy Efficiency
**SPONSOR(S):** Energy & Utilities Policy Committee
**TIED BILLS:** None. **IDEN./SIM. BILLS:** None.

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Energy & Utilities Policy Committee | 23 Y, 0 N | Keating, Whittier | Collins |
| 1) | | | | |
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## SUMMARY ANALYSIS

The bill amends laws relating to alternative energy and energy efficiency. Specifically, the bill:

- Provides that a project for biofuel processing, renewable energy generation, or bioenergy cultivation and production qualifies as an industrial, agricultural, or silvicultural use under local comprehensive land use plans, and no special exemption or permit is required for operating one of these facilities within an area zoned for one of those uses.
- Provides that when property receiving an agricultural classification contains a solar energy facility or biofuel processing facility under the same ownership, the portion of the property consisting of the solar energy facility or biofuel processing facility must be assessed separately.
- Replaces outdated references to the Department of Environmental Protection with the current and appropriate entity title of the Florida Energy and Climate Commission within the state revenue law regarding confidentiality and information sharing and within the corporate income tax section dealing with renewable energy technologies investment tax credit.
- Amends the definition of renewable energy in s. 366.91, F.S., to add electrical energy produced from biodiesel.
- Defines the term “combined heat and power system,” amends the definition of renewable energy in s. 366.92, F.S., to add waste heat thermal energy produced by a new combined heat and power system used to produce biofuel and any associated co-products, and provides that this thermal energy is eligible for a renewable energy credit under a renewable portfolio standard.
- Provides that a consumptive use permit for water approved for cultivating agricultural products on 1,000 acres or more for the purpose of producing renewable energy shall be granted for a term of at least 25 years commensurate with the foreseeable life of the renewable energy generating facility.
- Removes the requirement for solar electrical generating facilities to receive certification under the Florida Electrical Power Plant Siting Act.
- Makes a project eligible for expedited permitting and comprehensive plan amendments if it results in the production of biofuels cultivated on 1,000 acres or more, or in the construction of a biofuel or biodiesel processing facility or renewable energy generation facility.
- Provides that an inspection charge of one-eighth cent per gallon be applied to “alternative fuel containing alcohol as described in s. 525.01(1)(c)1. or 2.”
- Limits local governments to requiring a single permit, permit application, and permit fee for the installation of a single engineered system that is covered by a single warranty and requires the permit fee to be based on the time required to review the application and issue the permit.
- Directs the Florida Energy and Climate Commission to prepare a report concerning energy efficiency practices for low-income households and rental housing.

The bill’s fiscal impact is discussed in the Fiscal Comments section.

## 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:

### LAND USE CLASSIFICATION FOR BIOFUEL PROCESSING AND RENEWABLE ENERGY GENERATION FACILITIES (ss. 125.01095 and 166.0446, F.S.)

#### Present Situation

Section 125.0112, F.S., establishes the powers and duties of county governments. These powers and duties include the power to prepare and enforce comprehensive plans for development of the county and to establish, coordinate, and enforce zoning and business regulations as necessary to protect the public.[1] Section 166.021, F.S., establishes the powers of municipalities. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law.[2] Municipal purpose is defined as any activity or power which may be exercised by the state of its political subdivisions.[3] Accordingly, municipalities may adopt and enforce land use regulations.

To make biofuel processing and biomass generating facilities economically feasible, the facilities must often be sited on or near the land from which the feedstock for the facility is produced. Costs to transport the feedstock can reduce the cost-effectiveness of these facilities. Currently, local land use plans may require a property owner to obtain an amendment to the plan, a special exemption, or some similar relief to allow the combination of industrial, agricultural, and/or silvicultural land uses on a site that the owner intends to use for purposes of biofuel processing or biomass generation.

#### Effect of Proposed Changes

The bill creates ss. 125.01095 and 166.0446, F.S., to provide that construction and operation of a biofuel processing facility or renewable energy generating facility,[4] and the cultivation and production of

[1] Section 125.01(1)(g) and (h), F.S.
[2] Section 166.021(1), F.S.
[3] Section 166.021(1), F.S.
[4] The bill references s. 366.91(2)(d), F.S., which defines renewable energy as "electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations." 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

bioenergy,[5] are each a valid industrial, agricultural, or silvicultural use permitted within such land use categories of a local comprehensive land use plan and for purposes of any local zoning regulation. The bill provides that a local comprehensive land use plan may not require the owner or operator of a biofuel processing facility or renewable energy generating facility to obtain an amendment, special exemption, use permit, waiver, or variance, or to pay any special fee over $1,000 to operate in an area zoned for industrial, agricultural, or silvicultural use.

In other words, the bill provides that a project for biofuel processing, renewable energy generation, or bioenergy cultivation and production qualifies as an industrial, agricultural, or silvicultural use under any local comprehensive land use plan, and no special exemption or permit is required for operating one of these facilities within any area zoned for any one of those uses.

In addition, the bill provides that construction and operation of a facility and related improvements on a portion of property subject to these provisions shall not affect the remainder of the property's classification as agricultural for assessment purposes.

**ASSESSMENT OF AGRICULTURAL LANDS (s. 193.461, F.S.)**

**Present Situation**

Section 193.461, F.S., governs the assessment of agricultural lands by property appraisers. Section 193.461(3)(d), F.S., provides that when property receiving an agricultural classification contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage must be assessed separately to qualify for a homestead exemption. There is no provision in s. 193.461, F.S., for separately assessing biofuel processing or renewable energy facilities on agricultural property. As noted above, to make biofuel processing and biomass generating facilities economically feasible, the facilities must often be sited on or near the land from which the feedstock for the facility is produced.

**Effect of Proposed Changes**

The bill creates s. 193.461(3)(e), F.S., to provide that when property receiving an agricultural classification contains a solar energy facility or biofuel processing facility under the same ownership, the portion of the property consisting of the solar energy facility or biofuel processing facility must be assessed separately. This provision will allow agricultural land upon which such facilities are sited to maintain an agricultural classification to the extent that the land is still used for agriculture.

**CONFIDENTIALITY AND INFORMATION SHARING (s. 213.053, F.S.) and RENEWABLE ENERGY TECHNOLOGIES INVESTMENT TAX CREDIT (s. 220.192, F.S.)**

**Present Situation**

The Florida Energy and Climate Commission (FECC or commission) was created by the Legislature in 2008, through HB 7135 (s. 377.6015, F.S.), to provide a single entity that would develop, coordinate, and implement energy policies for the state. The bill combined a majority of the energy-area duties and responsibilities of the State Energy Office within the Department of Environmental Protection, and the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds for the administration of the Florida Energy Commission into the FECC. The commission was placed in the Executive Office of the Governor.

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livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

[5] The bill references s. 570.957(1)(a), F.S., which defines bioenergy as "useful, renewable energy produced from organic matter. Organic matter may either be used directly as a fuel, processed into liquids and gases, or be a residue of processing and conversion."

## Effect of Proposed Changes

The bill replaces outdated references to the Department of Environmental Protection with the current and appropriate entity title of the Florida Energy and Climate Commission within the state revenue law regarding confidentiality and information sharing (s. 213.053, F.S.) and within the corporate income tax section dealing with renewable energy technologies investment tax credit (s. 220.192, F.S.).

## RENEWABLE ENERGY (ss. 366.91 and 366.92, F.S.)

## Present Situation

During the 2008 Regular Session, the Legislature amended s. 366.92, F.S., in HB 7135,[6] directing the Public Service Commission to adopt rules to establish a renewable portfolio standard (RPS), in consultation with the Department of Environmental Protection (DEP) and the Florida Energy and Climate Commission. The RPS rule would require each investor-owned electric utility (IOU) to supply a percentage of retail electricity sales from renewable energy resources located in Florida. The PSC submitted a draft rule to the Legislature on January 30, 2009.

Section 366.91(2)(d), F.S., defines renewable energy as "electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations." This definition is referenced in s. 366.92, F.S., for purposes of establishing the types of energy that: (1) can be supplied to satisfy an RPS; and (2) are eligible for a renewable energy credit under an RPS.

## Effect of Proposed Changes

The bill expands the definition of renewable energy in s. 366.91(2)(d), F.S., to include electrical energy produced from biodiesel. In addition, the bill amends s. 366.92, F.S., to define the term "combined heat and power system" as a system that simultaneously or sequentially generates electricity and thermal energy from the same primary energy source. The bill amends the definition of renewable energy in s. 366.92, F.S., to include, in addition to electrical energy produced by an energy source defined in s. 366.91(2)(d), waste heat thermal energy produced by a new combined heat and power system used to produce biofuel and any associated co-products. The bill provides that this thermal energy is eligible for a renewable energy credit under an RPS. One credit would be provided for every 3.412 million British thermal units (Btu) of such thermal energy.

## DURATION OF PERMITS FOR CONSUMPTIVE USE OF WATER (s. 373.236, F.S.)

## Present Situation

Pursuant to s. 373.219, F.S., the governing board of each water management district or the Department of Environmental Protection (DEP) may require permits for consumptive use of water and may impose reasonable conditions as necessary to assure that the water use is consistent with the district's overall objectives and is not harmful to the water resources of the area.[7] Section 373.236, F.S., provides that such permits shall be granted for a period of 20 years, if requested for that period of time and if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. Otherwise, permits may be issued for shorter durations which reflect the period for which reasonable assurances can be provided. The governing

[6] Chapter 2008-227, Laws of Florida.
[7] A permit is not required for domestic consumption of water by individual users.

board of the water management district (or DEP) may base the duration of permits on a reasonable system of classification according to source of supply or type of use, or both.

Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board of the water management district or DEP, in addition to any conditions required with the permit, may require a compliance report every 5 years during the term of a permit. The report must contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met.[8] Section 373.243(4), F.S., provides that the district or DEP may revoke a permit for nonuse of the water supply allowed by the permit for a period of 2 years or more unless the user can prove that the nonuse was due to extreme hardship caused by factors beyond the user's control.

**Effect of Proposed Changes**

The bill amends s. 373.236, F.S., to create subsection (6). This new provision states that a consumptive use permit approved for a renewable energy generating facility or for cultivating agricultural products on 1,000 acres or more for use in the production of renewable energy[9] shall be granted for a term of at least 25 years commensurate with the foreseeable life of the renewable energy generating facility. The new provision requires the holder of such a permit to provide a compliance report every 5 years during the term of the permit to maintain reasonable assurance that the initial conditions for permit issuance are met. The bill provides that such a permit may not be revoked pursuant to s. 373.243(4), F.S.

**DEFINITIONS RELATING TO FLORIDA ELECTRICAL POWER PLANT SITING ACT (s. 403.503, F.S.)**

**Present Situation**

Sections 403.501-403.518, F.S., are known as the "Florida Electrical Power Plant Siting Act" ("PPSA"). The PPSA states:

> It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life and will not unduly conflict with the goals established by the applicable local comprehensive plans. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public.

To achieve this goal, the PPSA establishes a "one-stop" certification process for certain power plants. DEP administers the process, and several affected agencies provide input in the certification proceeding concerning matters within their respective jurisdictions.[10] Before the certification hearing

[8] Section 373.236(4), F.S.
[9] The bill references the definition of "renewable energy" contained in s. 366.91(2)(d), F.S.
[10] The Department of Community Affairs must prepare a report with recommendations addressing the proposed plant's impact, based on the degree to which the electrical power plant is consistent with the applicable portions of the state comprehensive plan, emergency management, and other such matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed electrical power plant with applicable strategic regional policy plans or local comprehensive plans and land development regulations. The water management district must prepare a report addressing the proposed plant's impact on water resources, regional water supply planning, and district-owned lands and works. Each affected local government must prepare a report addressing the consistency of the proposed electrical power plant with all applicable local ordinances, regulations, standards, or criteria, including any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means. The Fish and Wildlife Conservation Commission must prepare a report addressing matters within its jurisdiction. Each regional planning council must prepare a report containing recommendations addressing the proposed plant's impact, based on the degree to

can go forward, the Public Service Commission must determine the need for the proposed plant under s. 403.519, F.S.

Section 403.503(14), F.S., defines "electrical power plant," for the purpose of certification under the PPSA, as any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except for any such electrical generating facility less than 75 megawatts in capacity. This term also includes the site and all associated facilities that will be owned by the applicant that are physically connected to the site, including transmission lines used to connect the electrical power plant to the existing transmission network.

**Effect of Proposed Changes**

The bill redefines "electrical power plant" to remove solar electrical generating facilities from the definition, thus removing the requirement for solar electrical generating facilities to receive certification under the PPSA.

Currently, none of the solar electrical generating facilities in Florida have required certification under the PPSA. Florida Power & Light 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.[11] 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.

**EXPEDITED PERMITTING FOR BIOFUEL AND RENEWABLE ENERGY PROJECTS (s. 403.973, F.S.)**

**Present Situation**

Section 403.973, F.S., provides a process for expedited permitting and comprehensive plan amendments for specified projects. Section 403.973(3)(a), F.S., provides that the Governor, through the Office of Tourism, Trade, and Economic Development (OTTED), shall direct the creation of regional permit action teams, for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by these projects. If the primary purpose of a project is to produce electrical power, then the project is ineligible for review under this process, unless the production of electricity is incidental and not the primary function of the project.[12]

The law provides that the regional teams shall be established through memoranda of agreement between OTTED and the heads of specified agencies, including voluntarily participating municipalities and counties.[13] At the option of a participating local government, appeals of its approval for a project may be made pursuant to the summary hearing provisions of s. 120.574(14), F.S., or pursuant to other appellate processes available to the local government. The local government's decision to enter into a summary hearing must be made as provided in s. 120.574 or in the memorandum of agreement.

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which the electrical power plant is consistent with the applicable provisions of the strategic regional policy plan adopted pursuant to chapter 186 and other matters within its jurisdiction. The Department of Transportation must address the proposed plant's impact on matters within its jurisdiction.

[11] 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).

[12] Section 403.973(19)(b)2., F.S.

[13] Section 403.973(4), F.S., lists the agencies as follows: the Department of Environmental Protection, the Department of Community Affairs, the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, and voluntarily participating municipalities and counties.

## Effect of Proposed Changes

The bill amends s. 403.973, F.S., to include, as a project eligible for the expedited permitting and comprehensive plan amendment process, any project that results in the production of biofuels cultivated on 1,000 acres or more, or a project that results in the construction of a biofuel or biodiesel processing facility or renewable energy generation facility.

The bill provides that regional teams established pursuant to the section will be established through the execution of memoranda of agreement developed by the applicant and OTTED. The agencies that are parties to the agreement under existing law would instead provide input into development of the agreement.

The bill provides that appeals of a local government's approval for a project must be conducted pursuant to the summary hearing provisions of s. 120.574, F.S., pursuant to s. 403.973(14), F.S., and must be consolidated with a challenge of any applicable state actions.

## INSPECTION FEES (s. 525.09, F.S.)

## Present Situation

In 2008, the Legislature enacted HB 7135, which provided that beginning on December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline. Blended gasoline is defined as a "mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume." The ethanol portion may be derived from any agricultural source.

In accordance with s. 525.02, F.S., the Department of Agriculture and Consumer Services (DACS) is required to collect and analyze petroleum fuel samples from all fuel sold, offered, or exposed for sale in Florida, which includes ethanol, before it has been blended with gasoline to create ten percent blends or E85. As a result of these fuels entering Florida's motor fuel marketplace, the DACS' Bureau of Petroleum Inspection has modified its field inspection and expanded laboratory testing procedures and equipment to accommodate fuel quality and measurement standards pertaining to the presence of ethanol blended fuels.[14]

According to the DACS, Florida currently consumes approximately 8.7 billion gallons of gasoline annually. Beginning December 31, 2010 (effective date of the 9 to 10 percent ethanol-blend mandate), Florida will be required to use approximately 870 million gallons of ethanol in its gasoline supply, through the blending of all gasoline with nine to ten percent ethanol.

The DACS asserts that the addition of this ethanol into Florida's motor fuel supply will result in a loss of inspection fees collected by the DACS of "approximately $1.1 million (as ethanol is not currently subject to the petroleum inspection fee), despite the [DACS] obligation to incur costs associated with the sampling and analysis of ethanol and ethanol blended fuels. Further, this loss will increase as E85 becomes more prevalent in the motor fuel marketplace, resulting in a loss of 85 percent of the fees that are associated with E85 fuel sold within this state compared to unblended gasoline."

## Effect of Proposed Changes

Section 525.09(1), F.S., provides that for the purpose of defraying the expenses incident to inspecting, testing, and analyzing petroleum fuels in the state, there be paid to the department a charge of one-eighth cent per gallon on all of the following for sale or use in the state:

- Gasoline;
- Kerosene (except when used as aviation turbine fuel); and
- #1 fuel oil.

[14] Correspondence with DACS, March 21, 2009.

The bill adds "alternative fuel containing alcohol as described in s. 525.01(1)(c)1. or 2."[15] to the above list.

With the looming deadline of the December 31, 2010, 9 to 10 percent ethanol blend mandate, the DACS asserts that the addition of ethanol into Florida's motor fuel supply will result in a loss of inspection fees collected by the DACS of "approximately $1.1 million (as ethanol is not currently subject to the petroleum inspection fee)." By adding ethanol to fuels subject to the inspection fee, the DACS will be able to adequately fund the inspection program, which sustains itself through these fees.

**BUILDING PERMIT APPLICATION TO LOCAL GOVERNMENT (s. 553.792, F.S.)**

**Present Situation**

Section 553.792(1), F.S., provides the following requirements of local governments with regard to building permit applications:

- Within 10 days of an applicant submitting an application to a local government, the government is to advise the applicant of what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government.

- If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted.

- Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information.[16]

- The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

Subsection (2) specifies that the above requirements apply to the following building permit applications:
- accessory structure;
- alarm permit;
- nonresidential buildings less than 25,000 square feet;
- electric;
- irrigation permit;
- landscaping;
- mechanical;
- plumbing;
- residential units other than a single family unit;
- multifamily residential not exceeding 50 units;
- roofing;
- signs;

[15] According to s. 525.01(1)(c) 1. and 2., F.S., "Alternative fuel" means:
1. Methanol, denatured ethanol, or other alcohols;
2. Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, or other alcohols with gasoline or other fuels, or such other percentage, but not less than 70 percent, as determined by the department by rule, to provide for requirements relating to cold start, safety, or vehicle functions.

[16] While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force major or other extraordinary circumstance.

- site-plan approvals and subdivision plats not requiring public hearings or public notice; and
- lot grading and site alteration associated with the permit application set forth in this subsection.

Subsection (1) does not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specifies different timeframes for review of local building permit applications.

According to representatives from the solar industry, installing a single solar system has only required a single permit and inspection from most local governments. The industry now claims that some local governments are requiring multiple permits and inspections, and many are requiring additional ones that the builders or contractors are not aware of prior to the inspectors "showing up." The requirements are proving to be costly and time consuming for all involved.[17] The type of permits required for solar installations could include plumbing, electrical, roofing, or structural.

**Effect of Proposed Changes**

The bill amends s. 553.792, F.S., which addresses building permit applications submitted to local governments. It adds subsection (3), which limits local governments to requiring a single permit, permit application, and permit fee for the installation of a single engineered system that is covered by a single warranty and requires the permit fee to be based on the time required to review the application and the permit, and the number of inspections required.

## ENERGY-EFFICIENCY PRACTICES FOR LOW-INCOME HOUSEHOLDS AND RENTAL HOUSING

**Present Situation**

The Florida Energy and Climate Commission (FECC or commission) was created by the Legislature in 2008, through HB 7135 (s. 377.6015, F.S.), to provide a single entity that would develop, coordinate, and implement energy policies for the state. The bill combined a majority of the energy-area duties and responsibilities of the State Energy Office within the Department of Environmental Protection, and the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds for the administration of the Florida Energy Commission into the FECC. The commission was placed in the Executive Office of the Governor.

In accordance with s. 377.6015, F.S., the commission is comprised of nine members, seven of which are appointed by the Governor for 3-year terms. The other two positions are to be appointed, one each, by the Commissioner of Agriculture and the Chief Financial Officer (CFO). The Governor is to select from three people nominated by the Florida Public Service Commission Nominating Council (Nominating Council) for each seat on the commission. In addition, the Commissioner of Agriculture and the CFO are each to select from three people nominated by the Nominating Council. The Governor is to select a chair from one of the nine people appointed to the commission.

The commission must meet at least six times a year and a commission member must be an expert in one or more of the following fields:

- Energy,
- Natural resource conservation,
- Economics,
- Engineering,
- Finance,
- Law,
- Transportation and land use,
- Consumer protection,

[17] Written correspondence from Bruce Kershner, Executive Director of the Florida Solar Energy Industries Association, Inc., March 20, 2009.

- State energy policy, or
- Another field which is substantially related to the duties and functions of the commission.

**Low-Income Residential Energy Use**

In 2008, the Florida Legislature directed the Department of Community Affairs (DCA) to develop a set of legislative proposals needed to address the affordability of home energy for low-income residential customers. CS/HB 697 (Chapter 2008-191, L.O.F.) directed DCA to work with the Florida Energy Affordability Coalition (FLEAC) and identify proposals that:

- support customer health, safety, and well-being;
- maximize available financial and energy-conservation assistance;
- improve the quality of service to customers seeking assistance; and
- educate customers to make informed decisions regarding energy use and conservation.[18]

The DCA and the FLEAC identified concerns associated with reviewing Florida's low-income household residents and energy affordability.[19]

***The following information was obtained from the DCA/FLEAC report:*** [20]

*1.* *The energy affordability gap is growing among low and moderate income Floridians.*

One way to measure the economic impact of home energy burden is by calculating the difference between what low- and moderate-income households can afford to pay and their home energy bill, known as the home *energy affordability gap*. In dollars, these numbers are staggering. In 2002, Florida's home energy affordability gap was estimated to be $876 million. In 2007, that gap rose to $1.78 billion. On average, each low-income household in Florida received a home energy bill in 2007 that was $999 *more* than the household could afford to pay.

*2.* *Low-income households spend a significantly larger percent of their income on home energy.*

While the average American family spends 4 to 6 percent of their household income on energy, low-income households spend a far larger percent. The home energy burden for Florida's low-income households has significantly increased since 2002. For the poorest Floridians, those with incomes below 50% of the federal poverty level, the home energy burden has grown from 39% in 2002 to 51% in 2007.

*3.* *Existing energy assistance does not adequately address Florida's energy affordability gap.*

The Low-Income Home Energy Assistance Program (LIHEAP) funded by U. S. Department of Health and Human Services (HHS) and administered by the DCA...is the single largest funding source for low-income energy bill payment assistance and weatherization in Florida. Historically, with the exception of the one-time influx of FFY 2009 funding as part of the economic stimulus package, funding has averaged between $25 and $30 million each year. *This provides assistance for only 3-5% of the 2.8 million potentially eligible households.*

*4.* *Low-income people disproportionately live in older, less energy efficient homes.*

Low-income people disproportionately live in older, energy inefficient homes. The up-front cost of increasing the efficiency of the home is usually beyond their means.

[18] DCA/FLEAC: Energy Affordability Proposals for Florida, January 2009, p. 1.
[19] Their process began with a workshop on July 17, 2008, at which FLEAC participants identified and ranked more than 50 potential strategies to use in addressing the causes and consequences of unaffordable home energy. The DCA staff worked with a smaller FLEAC working group to consolidate and elaborate the identified priorities and a revised list of proposals was then submitted to the FLEAC for review and comment.
[20] DCA/FLEAC: Energy Affordability Proposals for Florida, January 2009, pp. 3-5.

In addition, low-income households tend to be renters and have less control over the energy efficiency of their residences. There is little incentive for the landlord to cover the cost of energy efficiency improvements to the property.[21]

5. *Low-income households must make difficult and dangerous decisions to pay their utility bill.*

High energy burdens among older, low-and moderate-income households, exposes them to the risks of going without adequate heating or cooling, frequently resulting in adverse health and safety outcomes, including premature death.

The 2005 National Energy Assistance Directors Association Survey of LIHEAP participants found that in order to pay their utility bill, respondents reported not filling prescriptions or going without food.

6. *Often the low-income households are on a fixed income.*

The households at the lowest income level are often on a fixed income from social security, disability or retirement. When energy prices escalate, their incomes do not keep pace. They have less flexibility in their budgets to address increases in energy costs.

7. *Current energy deposits and penalties make the situation more challenging.*

Although it is understandable why utility companies require deposits and late payment penalties, this ineffective policy exacerbates the difficulties faced by households who already cannot afford the home energy they need. In the long run, none of the parties involved, the customer, the utility company [n]or the social service agency are benefited.

8. *Significant weather-related power outages illustrate the necessity of home energy.*

A consistent source of home energy is essential to health and safety. Not only is energy used to heat and cool our homes, but also for preserving food and medicines, lighting security, operating medical devices, heating water and telecommunication.

9. *Inability to pay utility bills often leads to housing instability.*

Often when low-income households are unable to pay their utility bill, they move or become homeless. This is disruptive to the family, affects children's physical and mental health, as well as long-term behavioral, developmental and educational outcomes. Utility companies and landlords may be left with uncollectible bills. In this scenario, no one has been well served.

**Effect of Proposed Changes**

The bill directs the Florida Energy and Climate Commission (Commission) to prepare a report, to be submitted to the President of the Senate and the Speaker of the House of Representatives by February 1, 2010, that does the following:

(a) Identifies methods of increasing energy-efficiency practices among low-income households,[22] and, at a minimum, identifies energy-efficiency programs currently offered to low-income households in this state by:

[21] Florida's Weatherization Assistance Program (WAP) is the only statewide program that conducts technically advanced energy audits and furnishes energy conservation repairs to low-income households. Typically, LIHEAP provides from $3 to $4 million per year to WAP and the U. S. Department of Energy (DOE) appropriates $1.8 - $2.0 million per year. With these funds, fewer than 1,500 homes can be weatherized statewide each year.

[22] Section 420.9071(19), F.S., defines "low income person" or "low-income household" as "one or more natural persons or a family that has a total annual gross household income that does not exceed 80 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever amount is greatest. With respect to rental units, the low-income household's annual income at the time of initial occupancy may not exceed 80 percent of the area's median income adjusted for family size. While

- community action agencies,
- community-based organizations, and
- utility companies.

It is also to identify similar programs offered to low-income households in other states.

(b) Determines the statewide impact of improving the level of energy efficiency of rental housing properties, including, but not limited to, the:

- environmental benefits of the improvements, and
- potential fiscal impact on property tenants, owners, and landlords and the economy.

The commission is to consider the relative equity and economic efficiency of the cost share for such energy-efficiency improvements.

(c) Provides recommendations to effect more energy-efficiency practices among low-income household residents.

B. SECTION DIRECTORY:

**Section 1.** Creates s. 125.01095, F.S., relating to land use classifications for biofuel processing facilities and renewable energy generation facilities.

**Section 2.** Creates s. 166.0446, F.S., relating to land use classifications for biofuel processing facilities and renewable energy generation facilities.

**Section 3.** Amends s. 193.461, F.S., relating to classification and assessment of agricultural lands.

**Section 4.** Amends s. 193.462, F.S., to conform a cross-reference.

**Section 5.** Amends s. 213.053, F.S., relating to confidentiality and information sharing.

**Section 6.** Amends s. 220.192, F.S., relating to renewable energy technologies investment tax credit.

**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.** Amends s. 373.236, F.S., relating to duration of permits and compliance reports.

**Section 10.** Amends s. 403.503, F.S., definitions relating to Florida Electrical Power Plant Siting Act.

**Section 11.** Amends s. 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

**Section 12.** Amends s. 525.09, F.S., relating to inspection fees.

**Section 13.** Amends s. 553.792, F.S., relating to building permit applications to local government.

**Section 14.** Provides for a report from the Florida Energy and Climate Commission on increasing energy-efficiency in low-income households and rental housing.

**Section 15.** Provides an effective date of July 1, 2009, except as otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments section.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may streamline land use determinations for certain biofuel processing and renewable energy generation facilities, which may reduce permitting time and costs for operators of such facilities. The bill would allow for expedited permitting and local comprehensive land use plan amendments for certain biofuel processing and renewable energy generation facilities, which may reduce permitting time and costs for operators of such facilities.

D. FISCAL COMMENTS:

With the looming deadline of the December 31, 2010, 9 to 10 percent ethanol blend mandate, the Department of Agriculture and Consumer Services (DACS) asserts that the addition of this ethanol into Florida's motor fuel supply will result in a loss of inspection fees collected by the DACS of "approximately $1.1 million (as ethanol is not currently subject to the petroleum inspection fee)." By adding ethanol to fuels subject to the inspection fee, the DACS will be able to adequately fund the inspection program, which sustains itself through these fees.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES