

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENUS 11-01 Energy Incentives and Initiatives

SPONSOR(S): Energy & Utilities Subcommittee

TIED BILLS: None. **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------------------|--|
| Orig. Comm.: Energy & Utilities Subcommittee | 15 Y, 0 N | Keating Whittier | Collins |

SUMMARY ANALYSIS

The bill revises existing statements of legislative intent with respect to Florida's energy policy and the development of renewable energy, encourages public utilities to produce or purchase renewable energy, and transfers the Florida Energy Office from the Executive Office of the Governor to the Department of Agriculture and Consumer Services. Specifically, 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;
- Consolidates existing statements of legislative intent with respect to development of renewable energy;
- Authorizes public utilities, subject to specified conditions, to recover the costs to produce or purchase renewable energy, 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, on an annual basis, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2010;
- Exempts solar electrical generating facilities from the Florida Electrical Power Plant Siting Act;
- Abolishes the Florida Energy and Climate Commission;
- Provides for a Type Two Transfer of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Florida Energy and Climate Commission from the Executive Office of the Governor to the Department of Agriculture and Consumer Services; and
- Provides for a Type Two Transfer of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumer Services.

The bill does not have a significant impact on state or local governments. See Fiscal Analysis & Economic Impact Statement for details.

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.

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.

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 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.

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 those 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 proposed statement of intent provides:

The purpose of the state’s energy policy is to ensure an affordable, adequate, and reliable supply of energy for the state in a manner that promotes the health and welfare of the public, promotes sustainable economic growth, and minimizes and mitigates any adverse impacts. The Legislature intends that governance of the state’s energy policy be efficiently directed toward achieving this purpose.

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. Further, the bill establishes in s. 377.601, F.S., a prioritized statement of goals to guide the implementation of this policy through effective, efficient, and reliable governance. In order of priority, these goals are:

- Ensuring an affordable energy supply.
- Ensuring adequate supply and capacity.
- Ensuring a secure and reliable energy supply.
- Minimizing energy cost volatility.
- Minimizing the negative impacts of energy production on the state’s environment, social fabric, and the public health and welfare.
- Maximizing economic synergies for the state associated with its energy policy.
- Reducing the net export of energy expenditures.

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:

In furtherance of the energy policy goals established in s. 377.601, 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. The Legislature further finds that renewable energy resources have the potential to help diversify fuel types to alleviate the state’s growing dependency on natural gas and other fossil fuels for the production of electricity, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make the state a leader in new and innovative technologies.

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.

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.¹ As a result, Florida Power & Light Company (FPL) has constructed two solar photovoltaic projects (the DeSoto Next Generation Solar Energy Center and the Space Coast Next Generation Solar Energy Center, with a capacity of 25 MW and 10 MW respectively) and a hybrid solar thermal facility (the Martin Next Generation Solar Energy Center, capable of producing 75 MW) that is the nation's first and world's largest of its type. 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 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.² 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.³

Effect of Proposed Changes

The bill authorizes public utilities to recover the costs to produce or purchase renewable energy, 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, on an annual basis, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2010. The costs to be recovered must be computed using a method that, for purchases, reflects the actual annual revenue requirements contracted for payment for the purchase of renewable capacity and energy from a nonutility renewable generator or, for construction or conversion projects, reflects the revenue requirements using conventional regulatory accounting for a utility-owned renewable generator. 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.⁴

The bill establishes a limited time frame for utilities to commence projects for which cost recovery may be provided. On the front end, the bill limits cost recovery to new construction or conversion projects for which construction is commenced after July 1, 2011, and to purchases made after that date. On the back end, the bill allows public utilities to petition the PSC only through July 1, 2015, to request recovery of eligible costs over the useful life of a project to produce renewable energy or over the term of a contract to purchase renewable energy.

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, provided that at least 20 percent of the total capacity for which the utility is permitted cost recovery in a calendar year must be from renewable energy resources other than solar energy. The bill includes provisions to address potential timing issues associated with the availability of these nonsolar, renewable resources. The bill also provides the utility sole discretion to determine whether to construct a facility itself, convert an existing fossil fuel facility, or contract for the purchase of renewable energy.

¹ Chapter 2008-227, L.O.F.

² 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.

³ Section 366.06(1), F.S.

⁴ 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 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 demonstrates to the PSC that the project is the most cost-effective alternative for the type of renewable energy resource selected by the utility and that the utility has used reasonable and customary industry practices in the design, procurement, and construction of the project.

The bill provides that at least 5 percent of the total costs of solar generation for which a provider is permitted recovery in any calendar year must be dedicated to the utility's demand-side renewable energy system incentive program approved by the commission pursuant to s. 366.82, F.S. In 2008, the Legislature amended s. 366.82, F.S., to require the PSC, among other things, to adopt appropriate goals for increasing the development of demand-side renewable energy systems. The PSC implemented this requirement by requiring investor-owned electric utilities to establish pilot programs to encourage solar water heating and solar PV technologies. The PSC capped expenditures for these programs at 10 percent of the average annual amount recovered by the utility through the Energy Conservation Cost Recovery clause (through which conservation and efficiency program costs are recovered) in the previous five years.⁵ The bill would supplement these pilot programs for utilities that choose to produce or purchase solar energy.

If a majority of the costs of the energy-producing components incorporated into a renewable energy project are from components manufactured in Florida, the utility is entitled to a rate of return on the project of not less than 50 basis points (.5%) above the utility's last authorized rate of return on equity approved by the PSC.

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 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, except when such revenues are derived from credits received by virtue of utility purchases of renewable energy from unaffiliated, third-party generating facilities no larger than 2 megawatts in capacity.

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.

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.⁶ The Department of Environmental Protection administers the process, and several affected agencies provide input in the certification proceeding concerning matters within their respective jurisdictions. For purposes of certification under the 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.⁷

⁵ Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, and 080413-EG.

⁶ Section 403.502, F.S.

⁷ Section 403.503(14), F.S.

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 removes 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 Siting Act. As noted above, Florida Power & Light Company has constructed 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 Siting Act. 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 Siting Act. 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.

Governance of State Energy Policy

Present Situation

History of the Florida Energy and Climate Commission / State Energy Office

In response to the energy crisis in the 1970s, the State Energy Office was established by the Legislature in 1975. Over the years, it has been housed in the Department of Administration, the Department of Community Affairs, the Department of Environmental Protection, and, most recently, the Executive Office of the Governor.

In 2006, the Legislature established the Florida Energy Commission, as an arm of the Legislature, to develop recommendations for legislation to establish a state energy policy. The recommendations of the commission were to be based on the guiding principles of reliability, efficiency, affordability, and diversity.⁸

During the 2007 Legislative Session, the issue of fragmentation of energy policy governance began to be raised. At that time, there were many public sector entities playing a role in developing, implementing, or coordinating some aspect of Florida’s energy policies: the Florida Energy Office within the Department of Environmental Protection, the Department of Community Affairs, the Florida Building Commission, the Department of Agriculture and Consumer Services, the Department of Management Services, the Department of Financial Services, the Public Service Commission, the Florida Energy Commission, and a host of colleges and universities.

To begin addressing the fragmentation issue, the 2007 Legislature passed CS/HB 7123, which included the creation of a 12-member Energy Policy Governance Task Force to study and recommend a unified approach to developing and implementing the state’s energy policies. The bill, however, was vetoed by Governor Crist on June 20, 2007, and the task force was not created.

Subsequent to the veto, in its 2007 report, the Florida Energy Commission noted,

What does need to occur is the deletion of redundancies and streamlining of the process to create a smooth flow of responsibilities with accountability across agencies or entities with a strong focus on effectiveness. The new commission would be the State’s premier energy policy formulating board, making recommendations to the Governor and the Legislature and implementing the programs statutorily assigned to it.⁹

⁸ Former s. 377.901(5), F.S.

⁹ *2007 Recommendations to the Florida Legislature Volume 1*, Florida Energy Commission, 2007, p. 20.

In response to this recommendation and others, in 2008, the Legislature established the Florida Energy and Climate Commission (Commission or FECC) as the state entity for recommending, implementing, and coordinating Florida's energy policy and for coordinating all federal energy programs delegated to the state. The measure, in effect, merged the Department of Environmental Protection's Florida Energy Office with the Legislature's Florida Energy Commission and administratively placed the new entity within the Executive Office of the Governor.

The FECC is comprised of nine members: seven appointed by the Governor and one each by the Chief Financial Officer and the Commissioner of Agriculture, all subject to Senate confirmation. A 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, state energy policy, or another field substantially related to the duties and functions of the Commission. By law, the Governor selects the chair of the Commission. These Commissioners are not salaried employees, but are reimbursed per diem for travel, if needed.

In 2009, the Senate failed to confirm the membership of the Commission, which resulted in a provision being placed in the Implementing 2009-2010 General Appropriations Act (SB 2602) extending the term of office of each Commissioner until the 2010 Regular Session. In 2010, the Senate confirmed the membership of the Commission.

The Commission is required to meet at least six times a year and may employ staff and counsel, as needed. As of March 2011, the Commission has met or convened via conference-call approximately 31 times since its inception.

Pursuant to ss. 377.6015(5), 377.701, and 377.703(2) and (3), F.S., the Commission is charged with a variety of responsibilities, such as administering various grant programs and specific financial incentive programs; developing a fair and equitable petroleum allocation plan for the state; performing or coordinating the functions of any federal energy programs delegated to the state and coordinating efforts to seek federal support for state energy activities; administering the Coastal Energy Impact Program; completing annual assessments of the efficacy of Florida's Energy and Climate Change Action Plan and providing recommendations to the Governor and the Legislature each year to improve the results; and developing, coordinating, and promoting a comprehensive research plan for state programs, consistent with state energy policy.

The Commission is required to serve as an advocate for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions. The director of the Florida Energy Systems Consortium is directed to consult with and report to the FECC.¹⁰ Further, the Commission is charged with helping Florida build an energy efficient economy through programs to encourage energy conservation and promote the use of alternative energy sources.

Effects of the American Recovery and Reinvestment Act of 2009 on the Commission

In 2009, the federal government, through the American Recovery and Reinvestment Act of 2009 (ARRA) provided stimulus monies to qualifying states for energy-related programs.¹¹ Under the ARRA, Florida received approximately \$176 million to be administered by the Florida Energy and Climate Commission over a three-year period (2009-2012). This allocation was a substantial increase to the Energy Office programs which, prior to ARRA, had a recent (2006-2008) average funding level of approximately \$20 million.¹² In order to offer grants, rebates, and loans to residents and businesses

¹⁰ In 2008, the Legislature created the Florida Energy Systems Consortium, pursuant to s. 1004.648, F.S., to promote collaboration among experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state.

¹¹ http://www.recovery.gov/About/Pages/The_Act.aspx

¹² *Governor's Energy Office & Florida Energy & Climate Commission Agency Summary*, p. 15. Document can be accessed from the following Commission website:

http://myfloridaclimate.com/climate_quick_links/florida_energy_climate_commission/the_commission/meetings_and_workshops/january_14_2011_conference_call

throughout Florida, the Commission initiated over 18 programs and received program approval from the U.S. Department of Energy and funding authorization from the Florida Legislature to distribute the stimulus dollars.

According to the Commission, the Governor's Energy Office is in various stages of administering the ARRA-funded grant programs, which include the following processes that must be completed for each of the approximately 172 new grant awards:

- Application review and validation;
- Award approval and notification;
- Grant/contract development;
- Grant/contract execution; and
- Grant/contract implementation.

In addition, there are approximately 18 sub-grants currently open and being managed from previous funding cycles.¹³

The Commission notes that the ARRA "also includes an unprecedented level of accountability and transparency reporting on both expenditures and results. These requirements have significantly increased the administrative workload for staff managing projects funded with ARRA grant dollars and have consumed significant management resources and time."¹⁴

With regard to the impact that the ARRA-funded programs through the Governor's Energy Office are having on the Executive Office of the Governor, the Commission has calculated that the number of financial transactions completed in a month for the Governor's Energy Office is approximately equal to the total amount of other financial transactions completed for the entire Executive Office of the Governor annually.¹⁵

In the *Governor's Energy Office and Florida Energy and Climate Commission Agency Summary*, which was released in January 2011, the Commission notes the following:

Prior to the American Recovery and Reinvestment Act of 2009 (ARRA), the focus and responsibilities of the Governor's Energy Office¹⁶ were primarily related to energy policy and legislation. With the recent allocation of over \$175 million in ARRA funding, the focus has changed and the primary role and function of the Energy Office is grant management.

Energy-Related Programs within the Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS or Department) has programs whose purpose is to address energy and environmental issues. The Department administers the statutory Farm-to-Fuel Initiative "to enhance the market for and promote the production and distribution of renewable energy from Florida grown crops, agricultural wastes and residues, and other biomass and to enhance the value of agricultural products or expand agribusiness in the state."¹⁷ It administers the Florida Renewable Fuel Standard, which requires that all gasoline sold in the state, with exceptions, contain a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume.¹⁸

¹³ Correspondence with Florida Energy and Climate Commission staff on March 10, 2011.

¹⁴ *Governor's Energy Office & Florida Energy & Climate Commission Agency Summary*, p. 15. Document can be accessed from the following Commission website:

http://myfloridaclimate.com/climate_quick_links/florida_energy_climate_commission/the_commission/meetings_and_workshops/january_14_2011_conference_call

¹⁵ *Id.*, p. 17.

¹⁶ The "Governor's Energy Office" refers to the office that houses the staff that supports the Commission.

¹⁷ Section 570.954, F.S.

¹⁸ Sections 526.201-526.207, F.S.

In 2006, the Legislature created the Farm-to-Fuel Grants Program within the DACS to provide matching grants for demonstration, commercialization, and research and development projects relating to bioenergy. In FY 07-08, the Legislature appropriated \$25 million for this program.

The Renewable Energy Technologies Grants Program (created in 2006 and originally administered by the Florida Energy Office within the Department of Environmental Protection), was expanded and renamed the Renewable Energy and Energy-Efficient Technologies Grants Program in 2008.¹⁹ The program provides matching grants for demonstration, commercialization, and research and development projects relating to renewable energy technologies and innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings. The provision stipulates that the FECC coordinate and actively consult with the Department of Agriculture and Consumer Services during the review and approval process of grants relating to bioenergy projects for renewable energy technology. A portion of appropriations for this program have exclusively been for bioenergy projects in FY 06-07 and FY 08-09.²⁰

In addition to the energy-related programs that the DACS currently administers, the Department also sponsors an annual Farm-to-Fuel Summit, in which “industry leaders in agriculture, energy, academia and government who want to make Florida a leader in the production of renewable energy” gather to share information and accelerate efforts to promote the production of renewable energy in the state.²¹

Low-Income Home Energy Assistance Program within the Department of Community Affairs

The Department of Community Affairs’ (DCA) Low-Income Home Energy Assistance Program (also known as LIHEAP) provides federal money directly to non-profit agencies and local governments so they can assist low-income families with home cooling and heating costs.²² Specifically, the DCA:

- Applies for funding from the Federal Government and distributes it to local agency providers;
- Monitors local agency providers to ensure that they administer the funding in compliance with state and federal laws and rules; and
- Provides technical assistance to local agency providers to help them comply with the requirements.²³

The DCA does not determine who qualifies for assistance.

Applicants must apply within the county they reside. Low-income families, for these purposes, are those whose total household income does not exceed the federal household income limits or are currently receiving the following assistance:

- Supplemental Security Income
- Food Stamps
- Applied for and are currently eligible for Community Services Block Grant.²⁴

Weatherization Assistance Program within the Department of Community Affairs

The Department of Community Affairs’ Weatherization Assistance Program (program) provides grants to non-profit agencies, local governments, community action agencies, and Indian tribes to provide specific program services for low-income families in Florida,²⁵ however, the total household income may not be more than 200 percent above the national poverty level. The mission of the program is to

¹⁹ The Renewable Energy and Energy-Efficient Technologies Grants Program is currently administered by the FECC.

²⁰ In \$15 million with at least \$5 million required to fund bioenergy projects in FY 06-07 and \$15 million (\$7 million for renewable energy and energy-efficient technology projects and \$8 million for bioenergy projects) in FY 08-09.

²¹ <http://www.florida-agriculture.com/news/06-17-10.htm>

²² <http://www.dca.state.fl.us/fhcd/liheap/index.cfm>

²³ <http://www.dca.state.fl.us/fhcd/liheap/index.cfm>

²⁴ <http://www.dca.state.fl.us/fhcd/liheap/LIHEAPInfo.cfm#appeal>

²⁵ Preference is given to elderly (60 years-plus) or physically disabled residents, families with children under 12, and households with repeated high utility bills (high energy burden).

reduce the monthly energy burden on low-income households by improving the energy efficiency of the home.

The program is funded annually by the U.S. Department of Energy and receives supplemental funding from the U.S. Department of Health and Human Services. As estimated by the U.S. Department of Energy, these services save the weatherization customers an average of \$358 annually and return an average of \$2.69 in energy and non-energy related benefits for every dollar invested.²⁶

Types of assistance that the program provides include the following:²⁷

- Address air infiltration with weather stripping, caulking, thresholds, minor repairs to walls, ceilings and floors, and window and door replacement;
- Install attic and floor insulation (floors in northern Florida counties only);
- Install attic ventilation;
- Apply solar reflective coating to manufactured homes;
- Install solar screens;
- Repair or replace inefficient heating and cooling units; and
- Repair or replace water heaters.²⁸

Effect of Proposed Changes

The bill abolishes the Florida Energy and Climate Commission (FECC) and transfers all of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the FECC from the Executive Office of the Governor to the Department of Agriculture and Consumer Services.

It further transfers all of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Low-Income Home Energy Assistance Program (also known as LIHEAP) and the Weatherization Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumer Services.

The bill repeals the following obsolete provisions:

- The Solar Energy System Incentives Program
- The sales and use tax exemption for equipment, machinery, and other materials used for renewable energy technologies
- The responsibility of consumer conciliatory conferences under DACS, if such conferences are required pursuant to federal law and the requirement that DACS prepare and update lists of sources for energy conservation products or services and of financial institutions offering energy conservation loans, if such lists are required pursuant to federal law.²⁹
- The requirement that the FECC perform a study of life-cycle greenhouse gas emissions associated with renewable fuels by December 31, 2010.

The bill makes conforming changes to applicable statutes and cross-references.

B. SECTION DIRECTORY:

Section 1. Amends s. 377.601, F.S., revising legislative intent.

Section 2. Creates s. 366.90, F.S., providing legislative findings.

²⁶ <http://www.dca.state.fl.us/fhcd/wap/index.cfm>

²⁷ The extent of services to be provided depends on available funding.

²⁸ Id.

²⁹ This unused provision was adopted in 1980 and last amended in 1991. There is no known federal law providing this mandate.

Section 3. Amends s. 366.92, F.S., revising Florida's renewable energy policy.

Section 4. Amends s. 403.503, F.S., amending definitions.

Section 5. Provides for a Type Two Transfer of the Florida Energy and Climate Commission within the Executive Office of the Governor to the Department of Agriculture and Consumers Services.

Section 6. Provides for a Type Two Transfer of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program within the Department of Community Affairs to the Department of Agriculture and Consumers Services.

Section 7. Amends s. 163.03, F.S., conforming provisions regarding the weatherization assistance program within the Department of Community Affairs.

Section 8. Amends s. 212.05, F.S., correcting a cross-reference.

Section 9. Amends s. 213.053, F.S., conforming provisions regarding information-sharing with the Department of Revenue.

Section 10. Amends s. 220.192, F.S., conforming provisions regarding the Renewable Energy Technologies Investment Tax Credit Program.

Section 11. Amends s. 288.1089, F.S., conforming provisions regarding the Innovation Incentive Program.

Section 12. Amends s. 288.9607, F.S., conforming provisions regarding the federal Section 1705 Loan Guarantee Program.

Section 13. Amends s. 366.82, F.S., conforming provisions regarding the Florida Energy Efficiency and Conservation Act.

Section 14. Amends s. 377.6015, F.S., conforming provisions relating to the Florida Energy and Climate Commission to assign powers and duties to the Department of Agriculture and Consumer Services.

Section 15. Amends s. 377.602, F.S., conforming definitions.

Section 16. Amends s. 377.603, F.S., conforming provisions regarding energy data collection, rule-making, and preparation of reports.

Section 17. Amends s. 377.604, F.S., conforming provisions regarding required reports of energy resources used as fuel.

Section 18. Amends s. 377.605, F.S., conforming provisions regarding use of existing information.

Section 19. Amends s. 377.606, F.S., conforming provisions regarding records.

Section 20. Amends s. 377.608, F.S. conforming provisions regarding prosecution of cases by the state attorney.

Section 21. Amends s. 377.701, F.S., conforming provisions regarding petroleum allocation and conservation.

Section 22. Amends s. 377.703, F.S., conforming provisions regarding additional functions.

Section 23. Amends s. 377.801, F.S., correcting a reference.

Section 24. Amends s. 377.802, F.S., revising intent language.

Section 25. Amends s. 377.803, F.S., revising definitions.

Section 26. Amends s. 377.804, F.S., conforming provisions regarding the Renewable Energy and Energy-Efficient Technologies Grants Program.

Section 27. Amends s. 377.807, F.S., conforming provisions regarding the Energy-Efficient Appliance Rebate Program.

Section 28. Amends s. 377.808, F.S., conforming provisions regarding the Florida Green Government Grants Act.

Section 29. Amends s. 377.809, F.S., conforming provisions regarding the Energy Economic Zone Pilot Program.

Section 30. Amends s. 403.44, F.S., conforming provisions regarding the Florida Climate Protection Act.

Section 31. Amends s. 409.508, F.S., reassigning administration of the Low-Income Home Energy Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumer Services.

Section 32. Amends s. 409.509, F.S., reassigning administration of the Weatherization Assistance Program from the Department of Community Affairs to the Department of Agriculture and Consumer Services.

Section 33. Amends s. 570.954, F.S., revising the Farm-to-Fuel Initiative.

Section 34. Amends s. 1004.648, F.S., conforming provisions regarding the Florida Energy Systems Consortium.

Section 35. Amends s. 212.08(7)(ccc), F.S., removing an obsolete provision relating to the sales and use tax exemption for equipment, machinery, and other materials used for renewable energy technologies.

Section 36. Amends s. 570.074, F.S., renaming an office within the Department of Agriculture and Consumer Services.

Section 37. Repeals s. 366.85, F.S., relating to the Division of Consumer Services within the Department of Agriculture and Consumer Services, s. 377.806, F.S., relating to the Solar Energy System Incentives Program, and s. 526.207, F.S., relating to a study of life-cycle greenhouse gas emissions.

Section 38. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Recovery of Discretionary Utility Costs to Produce and Purchase Renewable Energy

The bill authorizes public utilities to recover the costs to produce or purchase renewable energy, 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, on an annual basis, 2 percent of the utility's total revenues from retail sales of electricity for calendar year 2010.

Based on 2010 revenue figures provided by the PSC, the bill would allow each public utility, on an annual basis, to recover up to the following amounts (2% of total 2010 retail revenues) to produce or purchase renewable energy above the utility's avoided cost:

| | |
|-------------------------------|---------------|
| Florida Power & Light Company | \$206,081,856 |
| Progress Energy Florida | \$100,489,159 |
| Tampa Electric Company | \$42,779,957 |
| Gulf Power Company | \$27,510,405 |

According to the PSC, customer rate impacts would be between 0.2 and 0.3 cents per kilowatt-hour. The PSC provided the following table which estimates, for different customer classes based on different usage levels, the **maximum monthly rate impact for each utility if the utility were to reach the maximum of the 2 percent cost cap:**

| Utility | Residential kW = N/A kWh = 1,200 | Small Commercial kW = N/A kWh = 1,500 | Medium Commercial kW = 75 kWh = 15,000 | Large Commercial kW = 500 kWh = 150,00 |
|--------------------|--|---|--|--|
| FPL | \$2.42 | \$3.00 | \$30.00 | \$300.00 |
| Progress | \$3.32 | \$4.20 | \$42.00 | \$420.00 |
| Tampa Elec. | \$2.63 | \$3.30 | \$33.00 | \$330.00 |
| Gulf | \$2.95 | \$3.75 | \$37.50 | \$375.00 |
| Average | \$2.83 1.95% of bill | \$3.56 2.1% of bill | \$35.63 2.0% of bill | \$356.30 2.3% of bill |

The actual rate impact will vary, up to the amounts presented above, based on whether a utility chooses to produce or purchase renewable energy pursuant to the provisions of the bill and, if so, the projects that the utility undertakes. It may be difficult for a utility to reach the maximum of the cost cap due to the scale of these projects.

If a utility chooses to pursue a project to construct a facility itself or to convert an existing fossil fuel facility, the associated rate impact will diminish over the life of such facilities to reflect the declining revenue requirements for such facilities, in accordance with conventional regulatory accounting.

The bill provides that at least 5 percent of the total costs of solar generation for which a provider is permitted recovery in any calendar year must be dedicated to the utility's demand-side renewable energy system incentive program approved by the commission pursuant to s. 366.82, F.S. These programs help fund customer-owned solar PV and solar thermal units. Thus, this provision may stimulate additional installation and sales of such units. The total amount dedicated to these programs through the bill depends entirely on whether a utility chooses to produce or purchase solar energy and,

if so, the cost of the amount it produces or purchases. These costs would be recovered through the mechanism established by the bill, i.e., within the overall 2% cost cap.

The bill also provides an incentive to utilities, in the form of an increased rate of return on a renewable energy project, if a majority value of the energy-producing components incorporated into the project are manufactured in Florida. While this provision could increase the rate impact on the customers of a utility with a qualifying project, it may also encourage investment in manufacturing plants in the state.

D. FISCAL COMMENTS:

Governance of State Energy Policy

There are 15 fulltime equivalent employees (FTEs) and \$2,149,516 in the operating budget for FY 2011-2012 that will be transferred from the Florida Energy and Climate Commission within the Executive Office of the Governor to the Department of Agriculture and Consumer Services. The remainder of the program is funded through federal funds. As of March 28, 2011, there are \$95,161,474 of American Recovery and Reinvestment Act of 2009 funds for the Commission's Fixed Capital Outlay projects that will be transferred with the program.

The Public Services and Energy Initiatives budget entity, within the Department of Community Affairs, includes 18 FTEs and a total of \$1,890,254 in administrative funding. This budget entity is responsible for the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program. However, in addition to these two programs, this budget entity also is responsible for the Community Services Block Grant, which provides grants to local governments and not-for-profit entities to provide a variety of antipoverty services such as emergency health, food, housing, day care, transportation assistance; housing counseling; financial management assistance; nutrition programs including federal surplus food distribution, community gardening projects, food banks, job counseling, placement and training services, and homeless prevention programs. This bill does not propose to move the Community Services Block Grant to the Department of Agriculture and Consumer Services.

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 transfers applicable rule-making authority from the Florida Energy and Climate Commission and the Department of Community Affairs (for the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program) to the Department of Agriculture and Consumer Services.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES