The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL:	CS/SB 992
INTRODUCER:	Communications, Energy, and Public Utilites and Senator Diaz de la Portilla
SUBJECT:	Renewable Energy
DATE:	April 20, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.			GA	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill authorizes the Florida Development Finance Corporation to use the loan guaranty program created in Part IX of Chapter 288, Florida Statutes, in conjunction with any federal guaranty programs described in Section 406 of the American Recovery and Reinvestment Act of 2009. It establishes by statute the amount that is to be paid to renewable energy producers meeting specified criteria as avoided costs. It provides for full cost recovery for renewable energy projects that are approved by the Public Service Commission (PSC or commission) after consideration of specified criteria and exempts these projects from the existing statutory determination of need requirements. It provides for PSC review and approval of proposals for such projects. Finally, it provides for cost recovery for purchases of renewable energy meeting specified critiera.

The bill substantially amends the following sections of the Florida Statutes: 288.9602, 288.9603, 288.9604, 288.9605, 288.9606, 288.9607, 288.9608, 288.9609, 288.9610, 366.02, 366.91, 366.92, and 403.503.

It also creates section 366.921 of the Florida Statutes.

II. Present Situation:

Capital Development

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 five billion nine hundred sixty five million dollars ($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.[1]

According to DOE's request for information, RFI: DE-SOL-0001302 dated 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. DOE requires DFOs 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.

Additionally, the Florida Development Finance Corporation (FDFC or corporation), which is discussed below, filed a response to the RFI, essentially an application 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 FDFC's 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 passage of this bill to effectively enable FDFC participation and upon funding the five percent loan guarantee requirement.

Chapter 288, Part IX

The FDFC was created by ss. 288.9602-288.9610, F.S., as a state authorized issuer of industrial revenue bonds. The FDFC has an independent Board of Directors appointed by the Governor and confirmed by the Senate. The FDFC is staffed by Enterprise Florida, and it operates through inter-local agreements with political subdivisions (cities, counties, and authorities). The FDFC

[1] http://www.lgprogram.energy.gov/2009-CPLX-TRANS-sol.pdf

has no direct statewide authority. Since inception, the FDFC has issued bonds totaling hundreds of millions in support of Florida businesses, including for profit and not-for-profit companies.

As a practical matter, the FDFC is contacted by multiple businesses with economic development projects, none of whom can obtain financing on their own. The FDFC aggregates this finance need and the potential revenue streams from which to make payment, issues bonds, which are purchased by banks and others who couldn't make the loans to the individual businesses, and then the FDFC loans the proceeds to the businesses. The loan payments then are used to pay the bond interest and ultimately to pay the bonds.

Section 288.9602, F.S., provides legislative findings and declarations of necessity for the creation of the FDFC. Greatly condensed, the stated legislative findings are that:

- There is a need to attract manufacturing and other activities to the state's cities and counties to provide them with a stronger, more balanced, and stable economy.
- A significant portion of businesses located or desiring to locate in the state either are unable to obtain financing or encounter difficulty in obtaining financing on terms competitive with that available in other states.
- This difficulty impairs the expansion of economic activity and the creation of jobs.
- The economic well-being of the state, its political subdivisions, and its citizens would be enhanced by providing competitive financing to businesses.
- It is necessary and in the public interest to facilitate the financing of economic development projects without regard to political boundaries to:
    - improve the prosperity and welfare of the cities and counties and their inhabitants;
    - improve and promote the financing of economic development projects; and
    - increase the purchasing power and opportunities for gainful employment of citizens of the cities and counties.
- Furthermore, it is necessary and in the public interest to facilitate the cooperation and action between organizations, public and private, in the promotion, development, and conduct of all kinds of business activity in the state to:
    - promote and stimulate development and advance the business prosperity and economic welfare of the cities and counties of this state and its inhabitants;
    - to encourage and assist new business and industry in this state through loans, investments, or other business transactions;
    - to rehabilitate and assist existing businesses;
    - to stimulate and assist in the expansion of all kinds of business activity; and
    - to create maximum opportunities for employment, encouragement of thrift, and improvement of the standard of living of the citizens of Florida.
- In order to achieve these purposes, it is necessary and in the public interest to create a special development finance authority to cooperate and act in conjunction with public agencies of this state and local governments of this state, through interlocal agreements in the promotion and advancement of economic development projects throughout the state.
- Finally, these purposes implement the governmental purposes under the State Constitution of providing for the health, safety, and welfare of the people, including implementing the purpose of s. 10(c), Art. VII of the State Constitution and simultaneously provide new and innovative means for the investment of public trust funds in accordance with s. 10(a), Art. VII of the State Constitution.

Section 288.9604, F.S., provides for the creation of the FDFC, which has been accomplished, and for its operations. The Governor appoints the five-member corporate board of directors, subject to Senate confirmation. The term of office is four years, and a vacancy occurring during a term is filled for the unexpired term. At least three of the directors must be bankers selected by the Governor from a list of bankers nominated by Enterprise Florida, Inc. One of the directors must be an economic development specialist. The chairperson of the Florida Black Business Investment Board is an ex officio member of the board. Directors receive no compensation but are entitled to expenses.

The powers of the corporation are exercised by the board. A majority of the directors constitutes a quorum, and action may be taken upon a vote of a majority of the directors present, unless in any case the bylaws require a larger number.

The directors annually elect one of their members as chair and one as vice chair. The corporation may employ a president, technical experts, and such other agents and employees, permanent and temporary, as it requires and determine their qualifications, duties, and compensation. For such legal services as it requires, the corporation may employ or retain its own counsel and legal staff.

The corporation must file with the Governor, the President of the Senate, and the Speaker of the House of Representatives, on or before 90 days after the close of its fiscal year, a report of its activities for the preceding fiscal year, including a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of the fiscal year.

Section 288.9605, F.S., gives the corporation all powers necessary or convenient to carry out and effectuate the purposes of the act, which expressly include the power to:

- borrow money and accept any form of financial assistance from the Federal Government or the state, county, or other public body or from any sources, public or private, for the purposes of the act and give such security as may be required and enter into and carry out contracts or agreements in connection therewith;
- enter into interlocal agreements with local governments to implement the act;
- issue revenue bonds for the purpose of financing and refinancing capital projects;
- establish and fund a guaranty fund; and
- invest funds held in reserve in such manner as the board shall determine and redeem such bonds as have been issued.

Section 288.9606, F.S., provides for the issuance of revenue bonds. The FDFC can issue revenue bonds when authorized to do so by a public agency pursuant to an interlocal agreement. The interlocal agreement is to establish the terms of bonds; however, bonds must mature no later than 30 years after they were issued.

Section 288.9607, F.S., provides for the corporation's authority to make guaranties relating to issued bonds. Any applicant for financing from the corporation may request that the corporation guarantee the bonds. To make such a request, the applicant must submit a guaranty application, in a form acceptable to the corporation, together with supporting documentation. The corporation will approve or deny the request by a majority vote of the membership of the directors. If the board approves the guaranty agreement, the applicant must pay a guaranty premium on such

terms and at such rates as the corporation determines. Under the guaranty agreement, the corporation guarantees to use the funds on deposit in its Revenue Bond Guaranty Reserve Account to meet amortization payments on the bonds as they become due in the event and to the extent that the applicant is unable to meet such payments. All applications for a guaranty must acknowledge that as a condition to the issuance of the guaranty, the financing must be secured by a mortgage or security interest on the property acquired that will have such priority over other liens on such property as may be required by the corporation, and which financing must be guaranteed by such person or persons with such ownership interest in the applicant as may be required by the corporation.

Section 288.9608, F.S., provides for the creation and funding of the guaranty account.

The corporation must establish a debt service reserve account containing a balance of not less than 6 months' debt service reserves from the proceeds of the sale of any bonds guaranteed by the corporation. It is also required to establish an account known as the Revenue Bond Guaranty Reserve Account, the Guaranty Fund, into which it must deposit and maintain a balance of not less than a sum equal to 1 year of maximum debt service on all outstanding bonds, or portions thereof, of the corporation for which a guaranty has been issued.

Funds in the debt service reserve account must be used prior to funds in the Guaranty Fund, and the corporation must make best efforts to liquidate collateralized property and draw upon personal guaranties. If the corporation determines that the moneys in the Guaranty Fund are not sufficient to meet the obligations of the Guaranty Fund, the corporation is authorized to use the necessary amount of any available moneys that it may have which are not needed, then or in the foreseeable future, or committed to other authorized functions and purposes of the corporation. Any such moneys so used may be reimbursed out of the Guaranty Fund if and when there are moneys therein available for the purpose. If the corporation determines that the funds in the Guaranty Fund will not be sufficient to meet the present or reasonably projected obligations of the Guaranty Fund, due to a default on a loan made by the corporation from the proceeds of a guaranteed bond, no later than 90 days before amortization payments are due on such bonds, the corporation must notify the State Board of Administration of the amount of funds required to meet, as and when due, all amortization payments for which the Guaranty Fund is obligated.

Section 288.9609, F.S., provides that bonds issued by the corporation are legal investments for all banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking and investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries.

Section 288.9610, F.S. requires that, by December 1 of each year, the corporation submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a complete and detailed report including a summary of its operations and accomplishments, including the number of businesses assisted, and its assets and liabilities at the end of its most recent fiscal year, including a description of all its outstanding revenue bonds.

Section 288.9614, F.S., authorizes Enterprise Florida, Inc., to take any action it deems necessary to achieve the purposes of the act in partnership with private enterprises, public agencies, and other organizations, including, but not limited to, efforts to address the long-term debt needs of small-sized and medium-sized firms, to address the needs of microenterprises, to expand availability of venture capital, and to increase international trade and export finance opportunities for firms critical to achieving the purposes of the act.

Section 288.9618, F.S., authorizes the Office of Tourism, Trade, and Economic Development, subject to specific appropriations, to contract with some appropriate not-for-profit or governmental organization for any action the office deems necessary to foster the development of microenterprises in the state. As used within this section, microenterprises are extremely small business enterprises, which enable low and moderate income individuals to achieve self-sufficiency through self-employment. Microenterprise programs are those that provide at least one of the following: small amounts of capital, business training, and technical assistance.

Renewable Energy

Avoided Costs

Section 366.051, F.S., requires each electric utility[2] in whose service area a cogenerator or small power producer is located to purchase all electricity offered for sale by the cogenerator or small power producer. Alternatively, the cogenerator or small power producer may sell the electricity to any other electric utility in the state. The commission is required to establish guidelines relating to these purchases by public utilities[3] and may set rates at which a public utility must purchase the energy. In fixing these rates, the commission must authorize a rate equal to the purchasing utility's full avoided costs. A utility's "full avoided costs" are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, the utility would generate itself or purchase from another source. The commission may use a statewide avoided unit when setting full avoided capacity costs.

Subsection 366.91(2)(c), F.S., defines the term "net metering" to mean a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on site.[4]

[2] The term "electric utility" includes investor-owned utilities, municipal utilities, and cooperative utilities. s. 366.02(2), F.S.
[3] The definition of the term "public utility" expressly excludes municipal and cooperative utilities. s. 366.02(1), F.S.
[4] This definition could include both "net metering" and "net purchase and sale" as those terms are defined by the U.S. Department of Energy. DOE describes "net purchase and sale" transactions as those where two uni-directional meters are installed—one records electricity drawn from the grid, the other records excess electricity fed back into the grid, with customer paying retail and the utility purchases at its avoided cost (wholesale rate). It describes "net metering" as an arrangement in which a single, bi-directional meter is used to record both electricity taken from the grid and excess electricity fed back into the grid. The meter spins forward as electricity is taken from the grid and backward as the excess is fed into the grid. If, at the end of the month, the customer has used more electricity than it has produced, it pays retail price for the balance. If the customer has produced more than it has used, the utility generally pays for the extra at its avoided cost. It notes that the real benefit of net metering is that the utility essentially pays retail price for the electricity fed back into the grid. It also notes that some utilities now allow carryover of the credit balance from month to month, with a netting at the end of the year. http://www.energysavers.gov/your_home/electricity/index.cfm/mytopic=10600

Subsection 366.91(3), F.S., requires that each public utility continuously offer a purchase contract to producers of renewable energy. The contract must contain payment provisions for energy and capacity which are based upon the utility's full avoided costs (as discussed above); however, 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 producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Each contract must provide a contract term of at least 10 years. Prudent and reasonable costs associated with a renewable energy contract are to be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery clause mechanism administered by the commission. The commission must establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers and may adopt rules to administer these provisions.

Renewable portfolio standard rules

Subsection 366.92(3), F.S., was enacted in 2008. It requires the commission to adopt rules for a renewable portfolio standard (RPS) requiring each provider to supply renewable energy to its customers directly, by procuring, or through renewable energy credits. It provides that the rule cannot be implemented until ratified by the Legislature and requires the commission to present a draft rule for legislative consideration by February 1, 2009. The PSC presented its Draft Renewable Portfolio Standard Rule report on January 30, 2009.[5] RPS legislation was filed in the 2009 Regular Session, but did not pass. The language is now obsolete as the PSC has completed its report and the legislative review has been accomplished. Additionally, should any legislator wish to use the PSC recommendations as the basis for future legislation, it is available.

Full cost recovery for IOU renewable energy facilities

Subsection 366.92(4), F.S., requires the PSC to provide for full cost recovery under the environmental cost-recovery clause of all reasonable and prudent costs incurred by an investor-owned utility[6] (IOU) for renewable energy projects that are zero greenhouse gas emitting at the point of generation, up to a total of 110 megawatts statewide, and for which the provider has secured necessary land, zoning permits, and transmission rights within the state. The costs must be deemed reasonable and prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility. Pursuant to this subsection, Florida Power and Light is constructing three solar projects: a 25 megawatt solar photovoltaic project in Desoto County; a 75 megawatt solar thermal project co-located with an existing combined-cycle power plant in Martin County; and a 10 megawatt solar photovoltaic project located at Kennedy Space Center.

[5] http://www.floridapsc.com/utilities/electricgas/RenewableEnergy/2009_FPSC_Draft_RPS_Rule.pdf#xml=http://www.psc.state.fl.us/search/pdfhi.aspx?query=renewable+portfolio&pr=default&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&mode=&opts=&cq=&id=49833a9511

[6] Subsection 366.92(2)(b), F.S., defines the term "provider" to mean a "utility" as defined in s. 366.8255(1)(a), F.S., which defines this term to mean "any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter."

Power Plant Siting Act & determination of need

Sections 403.501-403.518, F.S., are the "Florida Electrical Power Plant Siting Act." Subsection 403.503(14), F.S., defines the term "electrical power plant" to mean any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity. Section 403.519, F.S., requires that the power plant siting process begin with a determination of the need for that power plant by the PSC. The commission is the sole forum for the determination of need. In making its determination, the commission is required to take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available. The commission must also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant creates a presumption of public need and necessity.

III. Effect of Proposed Changes:

Economic Development

Sections 1-9 of the bill amend Part IX of chapter 288, Florida Statutes, on capital development. Part IX provides for the creation and operations of the Florida Development Finance Corporation. Speaking broadly, the bill enables the FDFC to participate in the Department of Energy 1705 Guaranteed Loan Program as a development finance organization, providing low-cost financing for energy-related economic development projects.

Section 1 amends s. 288.9602, F.S., to delete references to cities and counties, a part of a series of related changes that would allow the FDFC to operate state wide.

Section 2 amends s. 288.9603, F.S., on definitions, primarily to change the definition of the term "guaranty fund" from the Revenue Bond Guaranty Reserve Account to the Energy, Technology and Economic Development Guaranty Fund.

Section 3 amends s. 288.9604, F.S., on creation of the FDFC to delete language on how the FDFC was to be created.

Section 4 amends s. 288.9605, F.S., on the FDFC corporate powers. It adds the authority 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 another public agency.

Section 5 amends s. 288.9606, F.S., on issuance of bonds. It adds a new subsection to authorize the FDFC to issue revenue bonds or other evidences of indebtedness without local government

authorization to: finance the undertaking of any project within the state which promotes renewable energy; finance the undertaking of any project within the state which is a project contemplated or allowed under Section 406 of the American Recovery and Reinvestment Act of 2009, as may be supplemented and amended from time to time; and, if permitted by federal law, to finance property assessed clean energy projects within the state.

Section 6 amends s. 288.9607, F.S., on guaranty of bond issues. It authorizes the FDFC to guaranty debt service payments for bonds or other indebtedness and limits these guaranties 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.

Section 7 amends s. 288.9608, F.S., on the guaranty account, changing it to the Energy, Technology and Economic Development Guaranty Fund. It authorizes deposit into the fund of general revenue funds so authorized and any other funds not inconsistent with state law. It deletes additional obsolete language relating to the Transportation Trust Fund.

Section 8 amends s. 288.9609, F.S., on bonds as legal investments, to delete references to cities and counties, part of changes that would allow the FDFC to operate state wide.

Section 9 amends s. 288.9610, F.S., on annual reports to delete references to cities and counties, part of changes that would allow the FDFC to operate state wide.

Renewable Energy

Section 10 amends s. 366.92(1), F.S., the definition of "public utility" to exempt from this definition a developer of a solar energy generation facility:

- whose facility has a gross power rating of no greater than 2 megawatts;
- who sells electricity at retail to one customer only and only for use by that customer on the premises or contiguous property owned or leased by the customer; and
- whose facility is located on the premises of the customer, excluding a multifamily residential building.

This is essential to allowing these developers to make retail sales without being a regulated utility. The provisions authorizing such sales are set forth in section 12.

Section 11 of the bill amends s. 366.91, F.S., on renewable energy. It provides legislative findings. It amends the definition of the term "net metering" to mean a metering and billing methodology whereby a renewable energy producer that is a consumer of electricity at a single location, or at multiple locations within a single public utility's service area, and that operates customer-owned renewable generation, is entitled:

- to use electricity delivered to the utility to offset the electric energy and demand based charges including all adjustment, recovery and similar such add-on charges, for which it is billed by the public utility during each billing period; and
- to designate the amount or amounts to be offset at each metering point.

It amends the definition of the term "renewable energy" to include electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

The bill amends subsection 366.91(3), F.S., which currently requires that each public utility continuously offer a purchase contract to all producers of renewable energy. It replaces this requirement with a requirement that each public utility purchase renewable energy from only those producers that meet specified criteria. The criteria are that the renewable energy producer either:

- Generates and delivers to the 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; or
- Generates electric energy using waste heat from sulfuric acid manufacturing operations, such that the amount of electric 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 fifty percent of the total electric energy produced to the grid.

A renewable energy producer that meets the first criteria can sell the fixed amount of capacity and energy to any public utility at full avoided costs, as newly defined. A producer that meets the second criteria can sell any excess energy, up to an amount equal to the energy used to serve its own requirements, to any public utility at full avoided cost, as newly defined.

The bill defines the term avoided cost, for purposes of renewable energy producers meeting one of these two criteria, as the mathematical product of 0.80 and the weighted average of firm service retail electric rates in cents per kilowatt hour, including all adjustment, recovery and similar such add-on charges, of the purchasing utility. It establishes legislative findings that "eighty percent of the weighted average of firm service retail electric rates of each public utility, including all adjustment, recovery and similar such add-on charges, directly correlates with each utility's full avoided cost for acquiring energy from [these] renewable energy producers."

The bill provides that "Action by the commission pursuant to or associated with implementing this section shall not be deemed or construed to be an action relating to rates or service of utilities providing electric service." Section 3 of Article V, Florida Constitution, provides for appellate review by the supreme court of actions of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service, when provided by general law. Section 366.10, F.S., provides for this appellate review by the Supreme Court of any action of the PSC relating to rates or service of utilities providing electric or gas service. This amendment has the effect of vesting appellate jurisdiction of PSC action involving implementation of this section in the First District Court of Appeal instead of the Florida Supreme Court.

Section 12 amends s. 366.92, F.S. The bill deletes obsolete language requiring the PSC to adopt rules establishing a renewable portfolio standard by February 1, 2009.

The bill also expands the existing authority for IOUs to obtain full cost recovery of costs related to clean energy projects to up to a total of 300 MW approved in 2010 and up to an additional 200 MW more approved annually in 2011 and 2012, plus up to 5 MW for hydroelectric

application for 2010 and up to 10 MW annually for 2010, 2011, and 2012 for rooftop or pole-mounted solar energy applications. Any megawatts allowed for approval for a specific year that remain unapproved at the end of that year are carried forward to the next year. The bill also makes a legislative finding of need for these renewable energy resources, which expressly replaces the requirement for such a determination by the PSC.

Included in the 700 megawatts is cost recovery for renewable energy purchased from a qualifying facility and produced from small-scale renewable energy generation in size from 1 kilowatt to 2 megawatts of up to 75 megawatts statewide for the year 2011, 50 megawatts for the year 2012, and 50 megawatts for the year 2013. These costs shall be deemed reasonable and prudent if the PSC adopts rules establishing reasonable costs associated with harvesting and generating various renewable energy fuel types and provides a suitable return for producers. The rules must establish differentiated rates for different fuel types.

The bill authorizes a developer of solar energy generation to make retail sales of electricity to a single customer if specified conditions are met. These conditions are that the facility have a gross power rating of no greater than 2 megawatts; that the facility be located on the customer's premises (with multifamily residential buildings excluded); and that the sale be only to the customer and only consumed on the premises. For these purposes, the host consumer's premises shall be 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 commission must adopt rules to administer this provision that establish, at a minimum: requirements related to interconnection and metering; a mechanism for setting rates for any service provided to the consumer by the utility if such service is required by the consumer, which rates shall ensure that the utility's general body of ratepayers do not subsidize any redundant utility generating capacity necessary to serve the consumer; and requirements for notice to the commission of the size and location of each renewable energy generation facility planned under this subsection, the identity and historical and projected load characteristics of each host consumer, and any other information deemed necessary by the commission to satisfy its obligations under s. 364.04(5), F.S., on electric grid oversight. Beginning January 1, 2011, and no less often than every 6 months thereafter, the commission must provide a report to the Legislature of the activity under this subsection, which shall address the impacts of such activity on the electric power grid of the state, individual utility systems, and each utility's general body of ratepayers, and shall include recommendations concerning implementation of this program.

The bill exempts proposed power plants from the determination of need requirement of s. 403.519, F.S., if the proposed facility: had a pending site certification application seeking approval for up to 100 net megawatts of renewable energy projects on or before December 31, 2009; or files a site certification application before January 1, 2011, for an expansion of an existing renewable energy electric generating facility, subject to a total of up to 200 net megawatts statewide, which is owned by a local governmental entity.

Revenues derived from any renewable energy credit, carbon credit, or other mechanism that attributes value to the production of renewable energy, either existing or hereafter devised, received by a provider by virtue of the production or purchase of renewable energy for which

cost recovery is approved under this section, shall be shared with the provider's ratepayers such that the ratepayers are credited no less than 75 percent of such revenues.

Section 13 of the bill creates s. 366.921, F.S., to provide the process by which PSC approval is sought for the projects discussed immediately above. The bill requires providers of Florida renewable energy resources to acquire PSC approval before the construction, conversion, licensing, and operation of a facility producing such resources or the purchase of capacity or energy from a facility producing such resources. It sets out a list of factors that the PSC must consider in determining whether to approve the petition, including whether the:

- Proposal for the facility requires the use of reasonable and customary industry practices in the design, engineering, procurement, and construction of the project in a cost-effective manner appropriate to the proposed technology and location of the facility.
- Entity, including a provider, which would engineer, design, and construct the proposed facility has the requisite technical and financial qualifications, expertise, and capability.
- Entity, including a provider, which would operate the proposed facility has the requisite technical qualifications, expertise, and capability.
- Provider has submitted the project to competitive bid to ensure that it is the most cost-effective alternative that meets the criteria of this section and that the projected costs are reasonable and prudent for this type of project.
- Proposal includes mechanisms to keep costs from increasing above the projected amount.

The PSC must schedule a formal administrative hearing on a petition within 10 days after the date of the filing, and it must vote on the petition within 90 days after such filing.

The commission's final order approving a facility must include express authorization for annual cost recovery pursuant to ss. 366.92 and 366.8255, F.S. However, under no circumstances may the total costs of all projects approved under this section for any provider result in a retail price increase in excess of an amount equal to $1 per 1,000 kilowatt hours.

Any new or converted generating facility that uses woody biomass as its fuel stock must ensure that a minimum of 85 percent of its fuel stock is supplied from urban wood waste, logging residuals, and short-rotation energy crops. The commission may not approve costs for recovery without ensuring that this fuel stock limit is met. For these purposes, the term:

- "Short-rotation energy crops" means plant species whose rotation from planting to harvest is 8 years or less and generally include eucalyptus, poplar, energy cane, elephant grass, switch grass, or other fast growing plants.
- "Woody biomass" means woody material and wood residues of all types.

Section 14 amends s. 403.503(14), F.S., which defines the term "electrical power plant" for purposes of the requirement of obtaining a determination of need before constructing such a plant. The bill deletes solar power from this definition.

Section 15 provides for full cost recovery for any competitively procured purchased power agreement for solar power which was voluntarily executed by an investor-owned utility on or before March 1, 2009. Costs under such a contract are presumed prudently incurred and the costs

exceeding the utility's full avoided costs for the purchased power are recoverable through the environmental cost recovery clause if:

- A petition for approval of the purchased power agreement was filed with the commission on or before April 1, 2009;
- The solar energy provider meets all the requirements of the Federal Energy Regulatory Commission and applicable utility requirements for interconnection with the public utility transmission system;
- The solar generating facility is located in Florida; and
- The investor-owned utility is entitled to all environmental attributes associated with the solar energy generation.

The commission shall immediately consider and approve such agreements.

Section 16 provides that the bill takes effect upon becoming a law.

Other Potential Implications:

The Federal Public Utilities Regulatory Policy Act (PURPA) prohibits requiring a utility to pay more than its avoided costs for energy purchased from a cogenerator or small power producer. Both federal law (16 U.S.C. 824a-3(d).) and state law (s. 366.051, F.S.) define the term "avoided cost" as the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. This language requires that the avoided cost paid represent costs actually avoided by the utility due to the purchase, not simply costs similar in nature to those the utility would have incurred in producing or otherwise purchasing the electricity. For example, the cogenerator or small power producer would have capital costs similar to those the purchasing utility incurred in building a power plant, but unless the purchase actually avoids the utility incurring costs, which would not happen in the case of a utility plant already built, there is no avoided cost for this cost element. It is not clear whether the avoided cost proxy created in this bill meets the PURPA requirement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Capital Development

The provisions on the FDFC enable participation in the federal DOE guaranteed loan program and could provide millions of dollars for investment in energy-related economic development in Florida. This participation is contingent upon funding to guarantee five percent of the debt for a qualifying project. Enterprise Florida recommends that a minimum of $4 million be appropriated for this purpose. The Governor's Energy Office has identified funds that are being returned to general revenue from monies rescinded from approved projects that were not implemented. The amount of these reversions is estimated to be as much as $7 million. If the Legislature approves, these monies could be redeployed in the guaranty fund and be used to precipitate economic development and energy related projects consistent with the original intent of the funding.

According to Enterprise Florida, participation in the 1705 program would:

- Allow negotiation of finance terms regardless of the location of the project within the state;
- Simplify multi-jurisdictional projects;
- Improve Florida's competitiveness with other states;
- Continue to allow the issuance of bonds by cities or counties;
- Streamline bond approval and issuance;
- Leverage federal funds to help get more projects done in Florida and speed job creation; and
- Improve the economic situation for small business finance, which is important for an innovation economy.

Ratepayer impact of renewable energy provisions

IOU ratepayers will have to pay any increase in avoided cost payments to purchase energy and capacity from renewable energy producers that qualify for the new avoided cost payment of 80 percent of the weighted average of firm service retail electric rates, plus specified adjustments and add-ons. Insufficient information is available as to the difference between the amounts currently being paid as avoided costs and the amounts that would be paid under the bill as avoided costs, plus as to the number of kilowatt hours that would be purchased, to allow even an approximation of the amount of the actual cost.

IOU ratepayers will also have to pay any increase in utility costs due to approved utility-owned renewable energy projects or purchases. The cost of the projects authorized under s. 366.92(4), F.S., are limited by s. 366.921(4), F.S., to no more than an amount equal to

$1 per 1,000 kilowatt hours. The average residential monthly usage is 1,200 kilowatt hours, so the rate impact of these projects would be limited to $1.20 for these customers. The actual cost depends on actual kilowatt hours of electricity produced and sold from these facilities.

These costs may be offset to some extent by the requirement in s. 366.92(10), F.S., that revenues derived from any renewable energy credit, carbon credit, or other mechanism that attributes value to the production of renewable energy, either existing or hereafter devised, received by a provider by virtue of the production or purchase of renewable energy for which cost recovery is approved under this subsection, shall be shared with the provider's ratepayers such that the ratepayers are credited no less than 75 percent of such revenues. The actual offset depends on a utility selling renewable energy credits or carbon credits, which may never happen, and on the number of credits sold and the sale price. The actual revenue cannot be approximated.

However, the cost recovery for the purchase authorized in section 15 is not subject to either the cost cap or the revenue sharing requirement. Insufficient information is available as to the difference between the amount currently being paid as avoided costs and the amount that would be paid under the contract, plus as to the number of kilowatt hours that would be purchased, to allow even an approximation of the amount of the actual cost.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on April 20, 2010:

The committee substitute replaces a shell bill stating intent to revise laws relating to energy with the above-discussed proposed revisions to energy law.

B. Amendments:

None.