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 Budget Committee

BILL: CS/CS/SB 2094

INTRODUCER: Budget Committee; Agriculture Committee; Communications, Energy, and Public Utilities Committee; and Communications, Energy, and Public Utilities Committee

SUBJECT: Energy

DATE: March 1, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.	Weidenbenner	Buford	AG	**Fav/CS**
3.	Cote	Rhodes	BC	**Fav/CS**
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:

This bill includes the following provisions.

- Requires that the Public Service Commission (PSC or Commission), in reviewing a ten-year site plan, also review specified information on renewable energy;
- Authorizes a local government to use revenues from the local option infrastructure surtax to provide financial assistance to owners of residential or commercial property who make energy efficiency improvements to their property and defines what is included in the term "energy efficiency improvement";
- Reinstates a sales tax exemption for equipment, machinery, and other materials used in the distribution of renewable fuels for motor vehicles, up to a limit of $1 million in tax each state fiscal year for all taxpayers, with payment on a first-come, first-served basis, based upon the date complete applications are received;
- Amends the renewable energy technologies investment tax credit, limiting it to investments in renewable fuels for motor vehicles made between July 1, 2012 and June 30, 2016, increasing the limit on the tax credit from $6.5 million to $10 million per state fiscal year for

all taxpayers, and providing that each applicant is eligible to receive up to $1 million in tax credits;
- Amends the Florida renewable energy production credit such that each applicant is eligible to receive up to $1 million in tax credits per state fiscal year for electricity produced between January 1, 2013 and June 30, 2016, providing that the credits will be determined with priority, as specified, if the credits applied for exceed the $5 million limit;
- Requires that the Department of Management Services (DMS) coordinate with the Department of Agriculture and Consumer Services (DACS) to further develop a state energy management plan;
- Clarifies that any electrical utility company "as defined in s. 366.02(2), F.S." is excluded from the definition of "target industry business", and therefore the qualified target industry business tax refund is available to renewable energy producers who only sell electricity to a utility at wholesale, if they meet the other requirements;
- Deletes language in section 366.92, F.S., relating to adopting rules for a renewable energy portfolio standard;
- Exempts electric vehicle charging stations from regulation by the PSC under chapter 366;
- Provides a definition for "alternative fuel" and uses that term in the definitions for "blended gasoline" and "unblended gasoline" so that other alternative fuels are accorded the same treatment as fuel ethanol in the state's regulation of renewable fuels, and requires the DACS to compile a list of retail fuel stations that sell or offer unblended gasoline and post the information on its website;
- Provides for permitting for the cultivation of algae and blue-green algae;
- Requires the DACS to conduct a comprehensive statewide forest inventory;
- Requires the Office of Energy, within the DACS, in consultation with specified entities, to develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures and post the information on its website; and
- Requires the PSC to evaluate and prepare a report on the Florida Energy Efficiency and Conservation Act statutes and determine whether they remain in the public interest. The bill appropriates $250,000 from the Florida Public Service Regulatory Trust Fund for the report.

The bill takes effect July 1, 2012.

The bill substantially amends the following sections of the Florida Statutes: 170.01, 186.801, 212.055, 212.08, 220.192, 220.193, 255.257, 288.106, 526.203, and 581.083.

The bill creates section 366.94, Florida Statutes.

II. Present Situation:

Ten-year site plan review

Section 186.801, F.S., requires each electric utility to submit to the PSC a 10-year site plan in which the utility estimates its power-generating needs and the general location of its proposed power plant sites. The 10-year plan must be submitted and reviewed not less frequently than every 2 years. The PSC then has nine months to make a preliminary study of the plan and

classify it as "suitable" or "unsuitable" for planning purposes. The PSC may suggest alternatives to the plan.

The commission's findings are made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings under the PPSA; however, it is expressly recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission, and, a complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, constitutes an amendment to the 10-year site plan.

In its "preliminary study" of each 10-year site plan, the commission must review:

- The need, including the need as determined by the commission, for electrical power in the area to be served.
- The effect on fuel diversity within the state.
- The anticipated environmental impact of each proposed electrical power plant site.
- Possible alternatives to the proposed plan.
- The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.
- The extent to which the plan is consistent with the state comprehensive plan.
- The plan with respect to the information of the state on energy availability and consumption.

Local Government Infrastructure Surtax[1]

Section 212.055(2)(a)1., F.S., provides that the Local Government Infrastructure Surtax must be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the members of the county's governing body and approved by voters in a countywide referendum. If the proposal to levy the surtax is approved by a majority of the electors, the levy takes effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.[2]

All counties are eligible to levy this surtax.[3] During the 2012 calendar year, three counties[4] will be levying at the 0.5 percent rate and 15 counties[5] will be levying at the 1 percent rate.

[1] For more information see the *2011 Local Government Financial Information Handbook*, by The Florida Legislature's Office of Economic and Demographic Research, October 2011.
[2] If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the pre-July 1, 1992, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.
[3] The Local Government Infrastructure Surtax is one of four surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combine rate of 1 percent.
[4] The following counties levy at the 0.5 percent rate: Duval, Flagler, and Hillsborough.
[5] The following counties all levy at the 1 percent rate: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, and Wakulla.

Generally, school districts, counties and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest to finance, plan, and construct infrastructure, to acquire land for public recreation, conservation, or protection of natural resources, or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.[6] Additional spending authority exists for select counties.[7]

Sales tax exemption

Section 212.08, F.S., provides for specific sales and use tax exemptions. In 2008, the Legislature created s. 212.08(7)(ccc), F.S., a sales tax exemption for equipment, machinery, and other materials used in the distribution of biodiesel and ethanol fuels. It automatically expired on July 1, 2010.

Renewable energy technologies investment tax credit

Enacted in 2008, section 220.192, F.S., provides for the renewable energy technologies investment tax credit taken against corporate income tax. . The credit was for tax years beginning on or after January 1, 2007, and the credits could be used in years beginning January 1, 2007, and ending December 31, 2010, after which the credit expired. The credit was in an amount equal to the "eligible costs," which were defined as seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of:

- $3 million per state fiscal year for all taxpayers in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state;
- $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state; and
- $6.5 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost.

The terms "biodiesel" and "ethanol" are defined by cross-reference to former s. 212.08(7)(ccc), F.S., the now-expired sales tax exemption discussed above.

[6] Section 212.055(2)(d), F.S.
[7] Section 212.055(2), F.S.

Florida renewable energy production credit

Enacted in 2008, section 220.193, F.S., provides for the Florida renewable energy production credit taken against corporate income tax. The section applied to tax years beginning on and after January 1, 2007 and provided an annual credit against the corporate income tax based on the taxpayer's production and sale of electricity from a new or expanded Florida renewable energy facility. For a new facility, the credit was based on the taxpayer's sale of the facility's entire electrical production. For an expanded facility, the credit was based on the increases in the facility's electrical production that were achieved after May 1, 2006. The credit was $0.01 for each kilowatt-hour of electricity produced and sold by the taxpayer to an unrelated party during a given tax year.

Credits could be earned between January 1, 2007, and June 30, 2010. The combined total amount of tax credits which could be granted for all taxpayers under this section was limited to $5 million per state fiscal year. If the amount of credits applied for in a year exceeded $5 million, DOR was to award to each applicant a prorated amount based on each applicant's increased production and sales and the increased production and sales of all applicants. If the credit was not fully used in one year because of insufficient tax liability on the part of the taxpayer, the unused amount could be carried forward for a period not to exceed 5 years.

A taxpayer claiming credit under this section could not claim a credit under s. 220.192, F.S., discussed immediately above. A taxpayer claiming credit under s. 220.192 could not claim a credit under this section.

Florida renewable fuel standards

The Legislature has made a finding that it is vital to the public interest and to the state's economy to establish a market and the necessary infrastructure for renewable fuels in this state by requiring that all gasoline offered for sale in this state include a percentage of agriculturally derived, denatured ethanol. The Legislature has also made a finding that the use of renewable fuel reduces greenhouse gas emissions and dependence on imports of foreign oil, improves the health and quality of life for Floridians, and stimulates economic development and the creation of a sustainable industry that combines agricultural production with state-of-the-art technology.[8] By definition in the Florida statutes, fuel ethanol is derived from the conversion of carbohydrates.[9] This definition does not include biomass or other alternative fuels derived from agricultural sources, thereby precluding these types of fuels from participating in certain benefits accorded to ethanol fuel.

Energy management in state buildings

Section 255.257, F.S., requires each state agency to collect data on energy consumption and cost for state-owned facilities and metered state-leased facilities of 5,000 net square feet or more. The data is to be used to determine the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. Collected data must be reported annually to the DMS in a format prescribed by the DMS.

[8] Section 102, ch. 2008-277, Laws of Florida.
[9] Section 526.203(1)(c), F.S.

The DMS is required to develop a state energy management plan consisting of, but not limited to, the following elements:

- Data-gathering requirements;
- Building energy audit procedures;
- Uniform data analysis procedures;
- Employee energy education program measures;
- Energy consumption reduction techniques;
- Training program for state agency energy management coordinators; and
- Guidelines for building managers.

The plan must include a description of actions that state agencies are required to take to reduce consumption of electricity and nonrenewable energy sources used for space heating and cooling, ventilation, lighting, water heating, and transportation.

All state agencies are required to adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings. No state agency can enter into new leasing agreements for office space that does not meet Energy Star building standards, except when the appropriate state agency head determines that no other viable or cost-effective alternative exists. All state agencies must develop energy conservation measures and guidelines for new and existing office space where state agencies occupy more than 5,000 square feet. These conservation measures must focus on programs that may reduce energy consumption and, when established, provide a net reduction in occupancy costs.

Tax refund program for qualified target industry businesses

Section 288.106, F.S., on the tax refund program for qualified target industry businesses, provides a tax refund program for qualified target industry businesses. The legislative findings state that:

- Retaining and expanding existing businesses in the state, encouraging the creation of new businesses in the state, attracting new businesses from outside the state, and generally providing conditions favorable for the growth of target industries creates high-quality, high-wage employment opportunities for residents of the state and strengthens the state's economic foundation;
- Incentives that are narrowly focused in application and scope tend to be more effective in achieving the state's economic development goals; and
- Higher-wage jobs reduce the state's share of hidden costs, such as public assistance and subsidized health care associated with low-wage jobs.

Therefore, the Legislature declared that it is the policy of the state to encourage the growth of higher-wage jobs and a diverse economic base by providing state tax refunds to qualified target industry businesses that originate or expand in the state or that relocate to the state.

The amount of the refund is $3,000 multiplied by the number of jobs created or $6,000 multiplied by the number of jobs if the project is located in a rural community or an enterprise zone. A qualified target industry business gets additional tax refund payments of:

- $1,000 multiplied by the number of jobs if the jobs pay an annual average wage of at least 150 percent of the average private sector wage in the area, or equal to $2,000 multiplied by the number of jobs if the jobs pay an annual average wage of at least 200 percent of the average private sector wage in the area;
- $1,000 multiplied by the number of jobs if the local financial support is equal to that of the state's incentive award; and
- $2,000 multiplied by the number of jobs if the business falls within one of the designated high-impact sectors or increases exports of its goods through a seaport or airport in the state by at least 10 percent in value or tonnage in each of the years that the business receives a tax refund under this section.

The statute does not expressly include renewable energy businesses either in the definition of the term "target industry business" or the substantive provisions, however, it does imply that they are included in that the definition includes a requirement that the market and resource must be independent, stating that "The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis, except for businesses in the renewable energy industry." The definition goes on, however, to expressly exclude "any electrical utility company." Reportedly, this exclusionary language has been interpreted to include any business that sells electricity, even to a utility at wholesale: this interpretation prevents a renewable energy producer from taking advantage of this tax refund in conjunction with either s. 366.051, F.S., (cogeneration; small power production) or s. 366.91(3) or (4), F.S., (standard offer purchase contract).

Permitting process for introduction or release of nonnative plants

Section 581.083, F.S., provides for the permitting process for the introduction or release of plant pests, noxious weeds, or organisms affecting plant life or cultivation of nonnative plants. The section prohibits the introduction into or release within this state of any plant pest, noxious weed, genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state as an injurious pest, parasite, or predator of other organisms, or any arthropod. The introduction or release of nonnative plants is only allowed under a special permit issued by the Division of Plant Industry within DACS, which is the sole issuing agency for such special permits.

Except for research projects approved by DACS, no permit for any organism can be issued unless DACS has determined that the parasite, predator, or biological control agent is specific to a target organism or plant and not likely to become a pest of plants or other beneficial organisms. DACS may rely on findings of the Department of Environmental Protection, the United States Department of Agriculture, and other agencies in making any determination about organisms used for biological control.

A person may not cultivate a nonnative plant, including a genetically engineered plant or a plant that has been introduced, for purposes of fuel production or purposes other than agriculture in

plantings greater in size than 2 contiguous acres, except under a special permit. A permit is not required if the department determines, in conjunction with the Institute of Food and Agricultural Sciences at the University of Florida, that the plant is not invasive..

Each permitholder must maintain for each separate growing location a bond or a certificate of deposit in an amount determined by the department, but not less than 150 percent of the estimated cost of removing and destroying the cultivated plants. The amount of the bond or certificate of deposit may be increased or decreased, upon order of the department, at any time if the department finds such change to be warranted by the cultivating operations of the permitholder.

Energy Efficiency and Conservation

Florida Energy Efficiency and Conservation Act

Sections 366.80-366.85 and 403.519 constitute the "Florida Energy Efficiency and Conservation Act (FEECA)."

Energy conservation cost recovery is authorized in s. 366.82(11), F.S. Section 366.82, F.S., requires that the Commission adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems,[10] specifically including goals designed to:

- Increase the conservation of expensive resources, such as petroleum fuels,
- Reduce and control the growth rates of electric consumption,
- Reduce the growth rates of weather-sensitive peak demand, and
- Encourage development of demand-side renewable energy resources.[11]

The Commission may allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base.

In establishing the goals, the Commission must consider the:

- Costs and benefits to customers participating in the measure;
- Costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions;
- Need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems; and
- Costs imposed by state and federal regulations on the emission of greenhouse gases. s. 366.82(3), F.S.[12]

[10]The term "demand-side renewable energy" is defined as a system located on a customer's premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer's electricity requirements provided such system does not exceed 2 megawatts. This element of the requirement was added in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.

[11] These goals were added to the statute in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.

[12] These considerations were also added in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.

Following adoption of goals, the Commission is to require each utility[13] to develop plans and programs to meet the overall goals. If the Commission disapproves a plan, it must specify the reasons for disapproval, and the utility must resubmit its modified plan within 30 days. Prior approval by the Commission is required to modify or discontinue a plan, or part thereof, which has been approved. If any utility has not implemented its programs and is not substantially in compliance with the provisions of its approved plan at any time, the Commission must adopt programs required for that utility to achieve the overall goals. Utility programs may include variations in rate design, load control, cogeneration, residential energy conservation subsidy, or any other measure within the jurisdiction of the Commission which the Commission finds likely to be effective.

The Commission may change the goals for reasonable cause. In addition, it may require modifications or additions to a utility's plans and programs at any time it is in the public interest, and, in approving plans and programs for cost recovery, the Commission has the flexibility to modify or deny plans or programs that would have an undue impact on the costs passed on to customers.[14] The time period to review the goals, however, cannot exceed 5 years. After the programs and plans to meet those goals are completed, the Commission must determine what further goals, programs, or plans are warranted and, if so, must adopt them.

Each utility over which the Commission has ratesetting authority must estimate its costs and revenues for conservation programs and implementation of its plan for the immediately following 6-month period. Reasonable and prudent unreimbursed costs projected to be incurred, or any portion of such costs, may be added to the rates which would otherwise be charged by a utility upon approval by the Commission. Following each 6-month period, each utility must report the actual results for that period to the Commission, and the difference, if any, between actual and projected results must be taken into account in succeeding periods.

The Commission may authorize financial rewards for those utilities that exceed their goals and financial penalties for those that fail to meet their goals.[15]

Recent PSC Proceedings

The PSC began the process of implementing this amended law on June 4, 2008.[16] The parties to the proceedings to set the overall goals were: all of the seven FEECA utilities (Florida Power and Light Company (FPL), Progress Energy Florida (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), Orlando Utilities Company (OUC), and Jacksonville Electric Authority (JEA)), the Natural Resources Defense Council (NRDC), the Southern Alliance for Clean Energy (SACE), ITRON (a company hired by the preceding nine parties to conduct an assessment of the technical potential for energy and peak demand savings from energy efficiency, demand response, and customer-scale renewable energy), the Florida Energy and Climate Commission (FECC), the Florida Industrial Power

[13] The utilities subject to FEECA are the five regulated utilities (FPL, PEF, Gulf, TECO, and FPUC) and the Orlando Utilities Commission and JEA.
[14] s. 366.82(7), F.S., also added in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.
[15] s. 366.82(8),(9), F.S., added in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.
[16] The commission had already begun a series of workshops on new FEECA goals on November 29, 2007.

Users Group (FIPUG), and the Florida Solar Coalition (FSC). The final order[17] addressed many issues, one of the most significant of which was the question of which cost-effectiveness tests were required under the amended statute.

There were two primary points of contention relating to the applicable test. The first was whether to exclude "measures" (or proposed methods of achieving conservation or efficiency gains) that had a participant payback period of two years or less. Consideration of "free riders" is required under Rule 25-17.0021(3), F.A.C. Free riders are those who have an economic incentive to take the steps involved in the proposed measure without being paid an additional utility incentive; they are an issue because it is a given that program funds will always be limited and allowing free riders to receive utility incentive funds impairs the efficiency of the incentive program. The PSC has consistently allowed the use of a two-year payback exclusion to exclude free riders since October 25, 1994.[18] Nonetheless, in this instance, due to concerns "that the utilities' use of the two-year payback criteria [sic] had the effect of screening out a substantial amount of savings" the Commission ordered FPL, PEF, Gulf, and TECO to include in their residential goals "the top-ten energy savings measures that were screened-out by the two-year criterion."[19]

The second issue was whether to consider and apply the ratepayer impact measure test (RIM) or the total resource cost test (TRC). The Commission determined that the primary difference between the two was that the RIM test took into consideration the incentives and the utility's lost revenues, whereas the TRC test does not. The effect of this is twofold.[20] The RIM test addresses the potential for a disproportionate economic impact between participating and nonparticipating customers. This can happen because a participating customer will purchase less electricity due to participation in the conservation or efficiency program, and may also receive an additional financial incentive from the utility, while a non-participating customer will not have the same reduction in use; so with both paying the increased cost of electricity, the non-participating customer experiences a greater rate increase impact.[21] Typically, it is those who are economically unable to participate in programs and who experience this disproportionate impact.[22] The TRC test does not address this disparity. Additionally, the RIM test considers a utility's lost revenues. Utilities have a fixed cost of providing safe, reliable service. When revenues go down because fewer kilowatt hours of electricity were consumed, the utility may have to make up the difference by requesting an increase in rates in order to maintain a reasonable return on equity.[23] The TRC test also leaves out this consideration. Ultimately, the Commission "approve[d] goals

[17] Order No. PSC-09-0855-FOF-EG, ISSUED: December 30, 2009, in the combined proceedings of In re: Commission review of numeric conservation goals (Florida Power & Light Company), Docket No. 080407-EG; In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.); Docket No. 080408-EG, In re: Commission review of numeric conservation goals (Tampa Electric Company), Docket No. 080409-EG; In re: Commission review of numeric conservation goals (Gulf Power Company), Docket No. 080410-EG; In re: Commission review of numeric conservation goals (Florida Public Utilities Company), Docket No. 080411-EG; In re: Commission review of numeric conservation goals (Orlando Utilities Commission), Docket No. 080412-EG; and In re: Commission review of numeric conservation goals (JEA), Docket No. 080413-EG.
[18] *Id*., page 9.
[19] *Id*.
[20] *Id*., page14.
[21] *Id*., page 25.
[22] *Id*.
[23] *Id*.

based on the unconstrained E-TRC test for FPL, PEF, TECO, Gulf, and FPUC" to achieve more "robust" conservation goals.[24]

Upon setting the overall goals, the Commission addressed each individual utility's proposed plan. It approved plans for the two large municipal utilities (OUC and JEA) and the three smaller investor-owned utilities (Gulf, TECO, and FPUC). However, in attempting to get final approval on the plans for the two larger investor-owned utilities (FPL and PEF), concerns over undue customer costs grew to the point that on July 26, 2011, the Commission rejected the proposed plans and approved modified plans. The Southern Alliance for Clean Energy has filed a notice it will appeal this decision to the Florida Supreme Court.[25]

An issue not expressly acknowledged or directly addressed in the goal-setting proceedings lies at the heart of many of the other issues and disputes: what is the goal of FEECA? There are two positions.

The first is represented by the historic application of the FEECA statute: a utility's planning for additional generating resources was considered when setting FEECA goals and the goal was to offset some or all of that planned new generation with conservation or efficiency methods that could be implemented at a cost no higher than that to bring the planned electric plant into service. As stated by one expert witness, "In all five [of the previous] FEECA goals-setting proceedings, the Commission has recognized the desirability of establishing DSM goals based upon the utilities' planning processes and has used the measures of avoided costs from those processes as the basis for measuring customer benefits."[26] Further, "Over the many years and numerous FEECA proceedings, the Commission has steadfastly maintained that DSM goals be established that minimize rate impacts, minimize cross-subsidies between customers, and integrate with utility-identified capacity needs."[27] The witness noted that:

> The legislative intent of FEECA placed special importance on reducing weather-sensitive peak demand over simply reducing growth rates of electric consumption. This indicates that the legislative authors were particularly focused on slowing the growth in peak demand, which defers the need for new capacity and offers other benefits besides managing fuel costs. This enables all customers to benefit, not just the program participants.[28, 29]

The second position is that the goal is a reduction of kilowatt hours of usage, that the amount of conservation and efficiency to be sought is not limited by the amount of planned resources to be offset, and that program cost is not a consideration as ultimately overall cost to the consumer will

[24] *Id*., page 15.
[25] http://www.floridapsc.org/library/FILINGS/12/00349-12/00349-12.pdf
[26] Direct Testimony & Exhibit of: James W. Dean, In re: Florida Power & Light Company's Petition for Approval of Numeric Conservation goals, Docket No. 080407-EG, page 6.
[27] *Id*., page 8.
[28] *Id*.
[29] This approach also acts as an analogue to the "full avoided costs" purchase price limitation for energy purchases from third party energy producers. The avoided cost limitation prevents ratepayers from paying a higher price that in effect subsidizes non-utility energy producers. This application of FEECA and the RIM test prevents some ratepayers from subsidizing a disproportionate benefit to other ratepayers.

be reduced. For example, NRDC/SACE argued that consideration of the impact on rates does not belong in the goal-setting process and that customers are more interested in their monthly utility bills than in rates and would benefit most if energy efficiency programs are widely available.[30]

In its goal-setting order, the PSC appears to have shifted toward the second position by applying a cost test that will result in more conservation and efficiency measures and higher costs than in past proceedings, plus requiring use of some measures that have a payback period of two years or less. In the proceedings to approve the plans of FPL and PEF, however, it appears to have shifted back toward the first position.

Efficiency and Conservation outside FEECA

Most FEECA efficiency and conservation measures involve improving property owned by a single ratepayer. Additionally, many of the potential improvements fall within the "free rider" exclusion of a participant payback period of two years or less. Therefore, questions arise as to the relative costs and benefits of addressing these property owners directly, through education or incentives, instead of through FEECA, the utilities, and the PSC.[31]

III. Effect of Proposed Changes:

Section 1 amends s. 186.801, F.S., to require that the PSC, in reviewing a ten-year site plan, also review the following:

- The amount of renewable energy resources the provider produces or purchases.
- The amount of renewable energy resources the provider plans to produce or purchase over the 10-year planning horizon and the means by which such production or purchases will be achieved.
- A statement indicating how the production and purchase of renewable energy resources impact the provider's present and future capacity and energy needs.

Section 2 amends s. 212.055, F.S., to authorize a local government to use revenues from the local option infrastructure surtax to provide financial assistance to owners of residential or commercial property who make energy efficiency improvements to their property and to define what is included in the term "energy efficiency improvement".

Section 3 amends s. 212.08, F.S., reinstating the sales tax exemption for equipment, machinery, and other materials used in the distribution of renewable fuels that automatically expired on July 1, 2010. It creates the exemption as a new paragraph (7)(hhh). The bill exempts from the sale or use tax materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100) and other renewable fuels, including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for biodiesel (B10-B100) and ethanol (E10-E100) and other renewable fuels distribution

[30] PSC goal-setting order, page 24.

[31] For a discussion on this and related issues, see Issue Brief 2009-309, REVIEW OF FACTORS TO BE CONSIDERED IN MAKING FURTHER CHANGES TO ENERGY POLICY, The Florida Senate, Committee on Communications and Public Utilities, October 2008.

qualify for the exemption. Payment is on a first-come, first-served basis, based upon the date complete applications are received, and incomplete placeholder applications will not be accepted and will not secure a place in the first-come, first-served application line. This exemption expires July 1, 2016.

Section 4 amends s. 220.192, F.S., reinstating the biofuel portion of the renewable energy technologies investment tax credit taken against corporate income tax for another four years, and expanding it to include materials used in the distribution of other renewable fuels, up to a limit of $10 million in taxes each state fiscal year for all taxpayers. The credit is capped at $1 million per taxpayer per fiscal year.

The bill defines "renewable fuel" as fuel produced from biomass that is used to replace or reduce the quantity of fossil fuel present in motor fuel or diesel fuel. "Biomass" means biomass as defined in s. 366.91, F.S..

The credit can be used for tax years beginning on or after January 1, 2013, and will be granted in an amount equal to seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2012 and June 30, 2016. In the event of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used until December 31, 2018. The Department of Agriculture and Consumer Services and the Department of Revenue are to jointly administer the program

Section 5 amends s. 220.193, F.S., reinstating the Florida renewable energy production credit taken against corporate income tax for electricity produced and sold between January 1, 2013 and June 30, 2016. The tax credit is equal to $0.01 for each kilowatt-hour of electricity produced and sold by a new or expanded Florida renewable energy facility during a given tax year up to a limit of $5 million in taxes each state fiscal year for all taxpayers. Each applicant is eligible to receive up to $1 million in tax credits per state fiscal year.

The term "expanded facility" is amended to include a Florida renewable energy facility that increases its electrical production and sale by more than 5 percent above the facility's electrical production and sale during the 2011 calendar year. The term "new facility" is amended to include a Florida renewable energy facility that has had an expansion operationally placed in service after May 1, 2006, and whose cost exceeded 50 percent of the assessed value of the facility immediately before the expansion.

Beginning in 2014 and continuing until 2017, each taxpayer claiming a credit must first apply for an allocation of available credit. In the event of insufficient tax liability on the part of the corporation, the unused amount may be carried forward for a period not to exceed 5 years. The Department of Revenue is directed to administer the program.

If the amount of credits applied for each year exceeds $5 million, credits will be awarded based on the following priority:

1. An applicant who places a new facility in operation after May 1, 2012, will be granted credits first, up to a maximum of $250,000 each, with remaining credits to be granted pursuant to subparagraph 3., but if there are insufficient funds authorized to grant all credits, credits

granted under this subparagraph will be prorated based upon each applicant's qualified production and sales as a percentage of total qualified production and sales of all applicants in this category for the year;

2. An applicant who does not qualify under subparagraph 1., but who claims a credit of $50,000 or less will be granted credits next, and if there are insufficient funds authorized to grant all credits, credits will be prorated based upon each applicant's qualified production and sales as a percentage of total qualified production and sales of all applicants in this category for the year.

3. An applicant who does not qualify under subparagraph 1. or subparagraph 2. and an applicant whose credits have not been fully awarded under subparagraph 1 will be awarded credits from remaining authorized funds. If there are insufficient funds to grant all remaining credits, credits will be prorated based upon each applicant's remaining claims for qualified production and sales as a percentage of total remaining claims for qualified production and sales of all applicants in this category for the year.

Section 6 amends s. 255.257, F.S., on energy management in buildings occupied by state agencies, to require that DMS coordinate with DACS to further develop the state energy management plan.

Section 7 amends s. 288.106, F.S., on the tax refund program for qualified target industry businesses, to provide that the exclusion of "any electrical utility" from the definition of "target industry business," and therefore the tax refund, only applies to a utility "as defined in s. 366.02(2)," thereby allowing renewable energy producers who only sell electricity to a utility at wholesale to be eligible for the tax refund, if they meet the other requirements.

Section 8 amends s. 366.92, F.S., to delete definitions and language relating to adopting rules for a renewable energy portfolio standard.

Section 9 creates s. 366.94, F.S., on electric vehicle charging stations, to provide that providing electric vehicle charging service to the public does not constitute the retail sale of electricity for the purposes of this chapter and the rates, terms and conditions of electric vehicle charging services are not subject to regulation under this chapter regardless of the provider.

DACS is to adopt rules to provide definitions, methods of sale, labeling requirements and price posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.

The PSC is directed to conduct a study of the effects of the charging stations on energy consumption in the state as well as the effects on the grid. The PSC is also to investigate the feasibility of using off-grid solar photovoltaic power as a source of electricity for the electric vehicle charging stations.

The bill provides for parking violations.

Section 10 amends s. 526.203, F.S., to define "alternative fuel" as fuel produced from biomass, as defined in s. 366.91, F.S., that is used to replace or reduce the quantity of fossil fuel present in a petroleum fuel, and that meets the specifications adopted by DACS. It adds this term to the statutory definitions for "blended gasoline" and "unblended gasoline." DACS is required to compile a list of retail fuel stations that sell or offer to sell unblended gasoline and post the list on its website.

Section 11 amends s. 581.083, F.S., on DACS permitting process for introduction or release of nonnative plants. The bill adds algae and blue-green algae to the list of plants a person may not cultivate in plantings greater in size than 2 contiguous acres without a DACS special permit. It deletes the language about cultivating such plants "for purposes of fuel production or purposes other than agriculture."

It amends the language on an exemption from the permit requirement to say that a permit isn't required if, based on experience or research data, the nonnative plant, algae, or blue green algae, does not pose a known threat of becoming an invasive species or a pest of plants or native fauna under Florida conditions and subsequently exempts the plant by rule.

The bill allows, in addition to a bond or a certificate of deposit, any other type of security allowed in adopted rule that will provide financial assurance of cost recovery for the removal of a planting.

The bill decreases the bond requirement from "not less than 150 percent of the estimated cost" to "not more than 150 percent of the estimated cost." It also provides specific guidance on reduction of a bond requirement, providing that the amount may be decreased or removed when a decrease in the cultivating operations of the permitholder occurs or research or practical field knowledge and observation indicates low risk of invasiveness by the nonnative species. Factors that may be considered for change include multiple years or cycles of successful large-scale contained cultivation, no observation of plant, algae, or blue green algae escape from managed areas, or science-based evidence that established or approved adjusted cultivation practices will provide a similar level of containment of the nonnative plant, algae, or blue green algae.

Section 12 requires DACS to conduct a comprehensive statewide forest inventory analysis and study, utilizing Geographic Information System, to identify where available biomass is located, determine the available biomass resources, and ensure forest sustainability within the state. The department must submit the results of the study to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than July 1, 2013.

Section 13 requires the Office of Energy, within DACS, in consultation with the PSC, the Florida Building Commission, and the Florida Energy Systems Consortium, to develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures. The department is required to post the information on its website by July 1, 2013.

Section 14 requires the PSC to evaluate and prepare a report on the Florida Energy Efficiency and Conservation Act statutes and determine whether they remain in the public interest. The evaluation must consider the costs to ratepayers, the incentives and disincentives associated with

the statutes, and whether the programs create benefits without undue burden on the customer. The models and methods used to determine conservation goals shall be specifically addressed in the report. The commission must submit the report to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than January 31, 2013. The bill appropriates $250,000 from the Florida Public Service Regulatory Trust Fund for the report.

Section 15 provides an effective date of July 1, 2012.

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:

The Revenue Estimating conference estimated the bill will reduce state and local government revenues by the following amounts:

Sales and Use Tax Exemption for Renewable Technologies

Impact	FY 2012-13 Cash	FY 2012-13 Annualized	FY 2013-14 Cash	FY 2014-15 Cash	FY 2015-16 Cash
State Impact-GR	($0.8 m)	($0.8 m)	($0.8 m)	($0.8 m)	($0.8 m)
Local Impact	($0.2 m)	($0.2 m)	($0.2 m)	($0.2 m)	($0.2 m)
Total Impact	($1.0 m)	($1.0 m)	($1.0 m)	($1.0 m)	($1.0 m)

Renewable Energy Technologies Investment Tax Credit

Impact	FY 2012-13 Cash	FY 2012-13 Annualized	FY 2013-14 Cash	FY 2014-15 Cash	FY 2015-16 Cash
State Impact-GR	($1.0 m)	($10.0 m)	($4.2 m)	($6.3 m)	($8.4 m)

Florida Renewable Energy Production Credit

Impact	FY 2012-13 Cash	FY 2012-13 Annualized	FY 2013-14 Cash	FY 2014-15 Cash	FY 2015-16 Cash
State Impact-GR	($0.0 m)	($5.0 m)	($1.3 m)	($5.0 m)	($5.0 m)

B. Private Sector Impact:

The requirement that DACS' Office of Energy, in consultation with the PSC, the Florida Building Commission, and the Florida Energy Systems Consortium, develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures and post it on the DACS website should educate consumers, both individuals and businesses, on their possible savings regarding energy efficiency. This may result both in savings to those who utilize the information and revenue for those selling the necessary products and services to accomplish the efficiency projects.

The requirement that the PSC evaluate and report on the Florida Energy Efficiency and Conservation Act statutes and determine whether they remain in the public interest may result in changes to these statutes or their implementation, which may have an economic impact, positive or negative, on ratepayers.

The clarification to the statute on the tax refund program for qualified target industry businesses, s. 288.106, F.S., will allow renewable energy producers who only sell electricity to a utility at wholesale to be eligible for the tax refund, if they meet the other requirements of the statute.

The provisions exempting electric vehicle charging stations from regulation by the PSC under chapter 366 may allay fears of regulation and bring these stations on-line quicker.

The provisions for DACS permitting for introduction or release of algae and blue-green algae should make it easier for entities wanting to use these plants as foodstocks for biofuels to do so, creating more businesses and jobs.

The provisions reinstating and revising the tax exemption and tax credits has the potential to benefit eligible applicants in an amount up to $16 million in each state fiscal year during the existence of the programs.

C. Government Sector Impact:

DACS states that it currently has the resources to conduct the comprehensive statewide forest inventory, so long as it is done using the Geographic Information System method.

Additional resources may be required to accomplish the requirements for:

- The DMS and DACS to adopt rules and forms for the development of the state energy management plan including standard and uniform benchmarking requirements as a measure to evaluate the energy efficiency of state owned and leased buildings; and
- The Office of Energy, within DACS, in consultation with the Florida Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium, to develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures.

The bill provides an appropriation of $250,000 from the Florida Public Service Regulatory Trust Fund for the Public Service Commission, in consultation with the Department of Agriculture and Consumer Services, to contract for an independent evaluation of the Florida Energy Efficiency and Conservation Act.

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/CS/CS by Budget Committee on March 1, 2012:

- removes the section of the bill authorizing municipalities to impose special assessments on property;
- authorizes a local government to use revenues from the local government infrastructure surtax to provide loans, grants or rebates to both residential and commercial property owners for energy efficiency improvements;
- amends the ending date for which investments in renewable fuels can be made in order to claim the renewable energy technologies investment tax credit;
- limits the Florida renewable energy production credit to $1 million per applicant per state fiscal year and provides that the credits will be determined with priority, as specified, if the credits applied for exceed the $5 million limit;
- requires DMS to coordinate with DACS to further develop a state energy management plan;
- deletes language in section 366.92, F.S, relating to adopting rules for a renewable energy portfolio standard;
- requires DACS to compile a list of retail fuel stations that sell or offer unblended gasoline and post the information on its website; and
- provides an appropriation of $250,000 from the Florida Public Service Regulatory Trust Fund for the report on the Florida Energy Efficiency and Conservation Act statutes.

CS/CS by Agriculture Committee on February 13, 2012:

- defines “alternative fuel” as a fuel produced from biomass as defined in the Florida statutes and references this term in the definitions for “blended gasoline” and “unblended gasoline.”

CS by Communications, Energy, and Public Utilities on February 6, 2012:

- authorizes a municipality to pay a public utility the additional costs of renewable energy in excess of the utility’s full avoided costs; and

- authorizes a local government to provide financial assistance to owners of residential property who make energy efficiency improvements to or install renewable energy devices on the residential property and defines what is included in the term renewable energy devices.

B. Amendments:

None.