SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Ways and Means Committee

BILL: CS/CS/CS/SB 888

INTRODUCER: Ways and Means Committee, Communications and Public Utilities Committee, Environmental Preservation Committee, Senator Constantine and others

SUBJECT: Energy

DATE: April 17, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Branning	Kiger	EP	**Fav/CS**
3.	Herring	Coburn	WM	**Fav/CS**
4.				
5.				
6.				

I. Summary:

The committee substitute:

- Creates the Florida Energy Commission to develop recommendations for legislation on a state energy policy;
- Transfers the energy office from the Department of Environmental Protection to the Florida Energy Commission;
- Requires the Public Service Commission to direct a study of the electric transmission grid and report the results;
- Requires the Energy Commission to develop a comprehensive state climate action plan;
- Provides financial incentives for renewable energy technologies, energy efficient appliances, solar energy, biodiesel and ethanol, and biomass;
- Includes the effect of fuel diversity in considerations of 10-year site plans;
- Revises the safety standard for public utility transmission facilities;
- Revises both the Florida Electrical Power Siting Act and the Transmission Line Siting Act to streamline and shorten time frames by combining completeness and sufficiency; eliminating mandatory land use and certification hearings; and changing deadlines;
- Revises the process for a determination of need for a nuclear power plant, specifying petition content requirements and criteria for the determination;
- Exempts nuclear power plants from the requirement of a competitive bid for a power supply before beginning the certification and determination of need processes;
- Provides for recovery of pre-construction costs for a nuclear power plant;
- Directs the Public Service Commission to consider fuel diversity and reliability in determining the need for a proposed electric power plant; and

- Requires the Department of Environmental Protection to report on the state's leadership by example in energy conservation and efficiency.

The bill has a substantial fiscal impact in 2006-2007, including over $11 million in General Revenue..

The bill substantially amends the following sections of the Florida Statutes: 212.08, 213.053, 220.02, 220.13, 186.801, 366.04, 366.05, 403.503, 403.504, 403.5055, 403.506, 403.5064, 403.5065, 403.5066, 403.507, 403.508, 403.509, 403.511, 403.5115, 403.513, 403.516, 403.517, 403.5175, 403.518, 403.519, 403.52, 403.521, 403.522, 403.523, 403.524, 403.525, 403.5251, 403.5252, 403.526, 403.527, 403.5271, 403.5272, 403.5275, 403.528, 403.529, 403.531, 403.5312, 403.5315, 403.5365, 403.537, 373.441, 403.061, 403.0876, and 403.809.

The bill creates the following sections of the Florida Statutes: 220.192, 220.195, 377.801, 377.802, 377.803, 377.804, 377.805, 377.8055, 377.806, 403.50663, 403.50665, 403.5112, 403.5113, 377.93, 403.5317, 403.5363, and 570.954. The bill repeals the following sections of the Florida Statutes: 403.5067, 403.5253 and 403.5369.

II. Present Situation:

On November 10, 2005, Governor Bush by executive order called for the creation of the 2005 Florida Energy Forum to develop the state's energy plan. The executive order[1] stated that:

- Florida ranks fifth nationally in the amount of energy consumed per capita and third in total energy consumption in the U.S.
- Florida's need for electrical generation is expected to grow by approximately 58 percent between 2002 and 2020.
- Florida uses 8.6 million gallons of gasoline per year, and consumption is growing 300 million gallons per year.
- Less than one percent of Floridians own automobiles that use alternative fuels.
- Current trends indicate Florida's dependence on natural gas to generate electricity will continue to increase.
- Florida annually produces less than one percent of crude oil production and depends almost exclusively on other states and countries for supplies of oil.
- Catastrophic hurricane seasons in 2004 and 2005 have underscored Florida's vulnerability to disruptions in energy supply and the resulting impacts to Florida's economy, environment, and quality of life.
- The Governor's Office and the Governor's executive agencies are leading Florida's conservation efforts by adopting multi-phased, event-based, cost-effective, efficient practices, which include, but are not limited to, replacing some traditional motor vehicles with hybrid vehicles, eliminating the use of non-essential equipment and appliances, turning off all lights, computers, and office equipment while not in use, and adjusting thermostats in state buildings.

The panel host for the Energy Forum was Secretary of the Department of Environmental Protection (DEP). Panel participants included utility representatives, Public Service Commission

[1] Executive Order Number 05-241

and Public Counsel representatives, oil and gas representatives, state legislative representatives, local government representatives, a representative from the National Nuclear Security Administration, environmental representatives, and business representatives. The purpose of the Energy Forum was to prepare Florida's Energy Plan. As a result of the activities of the Energy Forum, the report, *Florida's Energy Plan*, was issued on January 17, 2006, by the DEP.

The report contains recommendations for achieving a diverse and reliable energy future that is built on the underlying principles of conservation and efficiency. Those recommendations describe administrative actions for immediate implementation, proposals for legislative action during the 2006 Legislative Session and policy improvements that will enhance electric power generation and transportation fuel supply to help provide energy stability over the long-term.[2]

The recommendations included, but were not limited to:

- Streamlining and expediting the siting and permitting of generation resources by revising the provisions of the Florida Electrical Power Plant Siting Act.
- Streamlining and expediting the siting and permitting of electrical transmission and distribution resources by revising the provisions of the Transmission Line Siting Act.
- Incorporating the siting of substations into the Transmission Line Siting Act.
- Promoting fuel diversity, fuel supply reliability and energy security.
- Facilitating additional fuel delivery mechanisms in Florida for power generation.
- Establishing an energy council to provide policy advice and counsel to the Governor, Speaker of the House of Representatives, and President of the Senate.
- Expediting state performance contracting with energy service companies.
- Promoting awareness of energy conservation and alternative energy technologies.
- Providing grant funding for research and demonstration projects associated with the development and implementation of renewable energy systems. Expanding solar, hydrogen, biomass, wind, ocean current and other emerging technologies.
- Identifying alternative energy production and distribution industries as Qualified Target Industries[3].
- Providing consumer rebates for purchases of energy efficient ENERGY STAR™ appliances.
- Providing sales and corporate tax incentives for the manufacture, purchase, and use of fuel cells for supplemental and backup power.
- Facilitating additional and diverse petroleum supply and distribution mechanisms into and within Florida.
- Encouraging fueling stations to cooperatively adopt a system modeled after the Florida WARN System to facilitate the relocation and use of generators to reestablish service.
- Providing grant funding for applied research and demonstration projects associated with the development and implementation of alternative fuel vehicles and other emerging technologies.
- Providing sales and corporate income tax credits for hydrogen vehicles and fueling infrastructure.

[2] Florida's Energy Plan, January 17, 2006, Department of Environmental Protection, page 10.
[3] As provided in s. 288.106, F.S., a qualified target industry is one that has been approved for certain tax refunds by the Office of Tourism, Trade, and Economic Development in consultation with Enterprise Florida, Inc.

- Providing corporate, sales, and income tax incentives to improve production, develop distribution infrastructure, and increase availability of clean fuels, including biodiesel and ethanol.[4]

The Florida Energy Office is the state's primary center for energy policy and is administratively housed in the DEP. In addition to developing and implementing Florida's energy policy, the Energy Office coordinates all federal energy programs delegated to the state, including energy supply, demand, conservation and allocation.[5]

The Energy Office also coordinates fuel supply and requests for fuel from local governments, law enforcement, and healthcare facilities throughout the state during hurricanes.

The Florida Electrical Power Plant Siting Act (ss. 403.501-403.518, F.S.) was created in 1973 to provide a centralized permitting process for electrical power plants. The intent of the act, as stated in s. 403.502, F.S., is to balance the increasing demands for electrical power plant location and operation with the broad interests of the public. The act seeks courses of action that will assure the citizens of Florida that the operation safeguards are technically sufficient to provide for their welfare and protection. Also, the act seeks to assure a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state. As provided in s. 403.503, F.S., the act applies to all electrical power plants except that the term "electrical power plant" does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under the act.

The Florida Transmission Line Siting Act (ss. 403.52-403.5365, F.S.) was created in 1980 to create a centralized and coordinated permitting process for the location and maintenance of transmission lines. The act generally applies to any transmission line except a transmission line certified pursuant to the Florida Electrical Power Plant Siting Act. The act also does not apply to certain transmission lines for which development approval has been obtained under ch. 380, F.S.; transmission line development in which all construction is limited to established rights-of-way; and transmission lines which are less than 15 miles in length or which do not cross a county line, unless the applicant has elected to apply for certification under the act.

The federal Public Utilities Regulatory Policy Act of 1978, Public Law 95-617 (92 Stat. 3117), required electric utilities to purchase any electricity generated by a cogenerator or a small power producer where a small power producer was someone who used renewable fuels. The utility was to pay "incremental cost" for the power. Incremental cost was defined as:

> The cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

[4] Id.
[5] www.dep.state.fl.us/energy/

The Florida legislature gave the Florida Public Service Commission authority to implement such provisions at 366.051, F.S. The statute adopts the term "avoided cost" but it is defined in the same terms as the incremental cost in the Federal Act. The utility pays the small power producer/cogenerator no more than what it would cost the utility to generate the electricity. In 2005, the Legislature passed 366.91, F.S., to encourage renewable energy and again defined the payment to renewable generators as avoided cost.

The notion of avoided cost reflects what it would cost the utility to generate electric energy with the next power plant that must be built to serve load. By equating the payments to cogenerators and small power producers to the utility's actual cost, the utility customers are held harmless. Thus, such a standard is meant to encourage alternative generation while ensuring that electric rates are not higher due to the purchase of such energy.

III. Effect of Proposed Changes:

Section 1 creates the Florida Energy Commission and locates it within the Office of Legislative Services for administrative purposes. The commission will have 19 members, 9 voting members and 10 nonvoting members. The voting members are appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, each of whom will appoint 3 members. The legislative appointments are made in consultation with the minority leaders. The voting members have 4-year terms; however, to establish staggered terms for the initial appointments, each appointing official appoints one member to a 2-year term, one member to a 3-year term, and one member to a 4-year term.

A voting member must be an expert in energy, natural resource conservation, economics, engineering, finance, law, consumer protection, state energy policy, or another field substantially related to the duties and functions of the commission, and the commission membership must fairly represent these fields. Additionally, a voting member cannot have specified financial interests or employment relationships.

The nonvoting members consist of:

- The Chair of the Florida Public Service Commission;
- The Public Counsel;
- The Commissioner of Agriculture;
- The Secretary of the Department of Environmental Protection;
- The Secretary of the Department of Community Affairs;
- The Secretary of the Department of Transportation;
- The Secretary of Health;
- The Director of the Office of Insurance Regulation;
- The Chair of the State Board of Education; and
- The Director of the Florida Solar Energy Center.

The Governor selects the commission chair. Meetings are to be held around the state, at the call of the chair, but the commission must meet at least twice a year. Voting members serve without compensation, but are to be entitled to reimbursement for per diem and travel expenses as provided by s. 112.061, F.S. Nonvoting members serve at the expense of the entity they represent.

The commission may employ staff to assist in performance of its duties, including an executive director, an attorney, a communications person, and an executive assistant. Additionally, agencies whose heads serve as non-voting members must supply staff and resources as necessary to provide information needed by the commission. The commission may appoint focus groups to work on specific issues.

The commission is to develop recommendations for legislation to establish a state energy policy based on the guiding principles of reliability, efficiency, affordability, and diversity. The bill sets out lists of specific issues the commission is to consider relating to fossil fuels used to generate electricity, fuel diversity and alternative energy technology, demand side management and efficiency, transmission and distribution facilities, the relationship between energy and growth management, research, development, and deployment of new or alternative energy technologies, fossil fuels for motor vehicles, alternative fuels for motor vehicles, and research, development, and deployment of these alternative fuels.

The commission is required to report annually, no later than December 31 of each year, to the Governor, Cabinet, the President of the Senate, and the Speaker of the House of Representatives on its progress and recommendations, including draft legislation. The commission's initial report must: identify incentives for research, development, or deployment projects involving the goals and issues set forth herein; set forth recommendations on improvements to the electricity transmission and distribution system including recommended incentives to encourage utilities and local governments to work together in good faith on under ground utility issues; set forth the appropriate test for the Public Service Commission to use in determining which energy efficiency programs are cost effective and should be implemented, together with the rationale in selecting the test; and, set forth a plan of action, together with a timetable, for addressing the remaining issues.

The commission is to continually review the statewide energy policy and recommend any necessary changes or improvements to the Legislature.

Also, the commission must submit, by December 31, 2007, a report to the Governor, the Cabinet, the President of the Senate, and the Speaker of the House of Representatives, which recommends consensus-based public-involvement processes to reduce greenhouse gas emissions in this state and to make such reductions and related economic, energy, and environmental co-benefits a state priority. The report must include steps and a schedule for the development of a comprehensive state climate action plan with statewide greenhouse-gas-reduction goals and a range of specific policy options for all economic sectors to be developed through a public-involvement process, including transportation and land use; power generation; residential, commercial, and industrial activities; waste management; agriculture and forestry; emissions-reporting system; and public education. The committee substitute specifies what the climate action plan must include.

Section 2 transfers, by a type two transfer[6], the state energy program (known as the Energy Office) from the Department of Environmental Protection to the Florida Energy Commission. The transfer includes all statutory powers, duties, functions, rules, records, personnel, property,

[6] S. 20.06(2), F.S.

and unexpended balances of appropriations, allocations, and other funds associated with the program.

Section 3 requires the Public Service Commission (PSC) to direct a study of the transmission grid reliability, including hardening of infrastructure, and report to the Governor, the Senate President, and the Speaker of the House by March 1, 2007. It also requires the PSC to conduct a study to determine what should be done to enhance the reliability of the transmission and distribution systems during extreme weather, including considering underground installation. These studies do not limit the existing jurisdiction of the PSC and is not to be construed to delay or defer any current or future PSC docket.

Section 4 creates s. 377.801, F.S., the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 5 creates s. 377.802, F.S., to provide that the purpose of the Florida Renewable Energy Technologies and Energy Efficiency Act is to provide matching grants to stimulate capital investment in the state and to enhance the market for and promote the statewide utilization of renewable energy technologies. The act is also intended to provide incentives for energy-efficient appliances and rebates for installations of solar energy equipment in residential and commercial buildings.

Section 6 creates s. 377.803, F.S., to define the following terms: "act"; "approved metering equipment"; "commission"; "department"; "Energy Star qualified appliance"; "person"; "renewable energy"; "renewable energy technology"; "solar energy system"; "solar photovoltaic system"; and "solar thermal system."

Section 7 creates s. 377.804, F.S., to establish the Renewable Energy Technologies Grants Program in the Department of Environmental Protection (DEP). Specifies who may receive matching grants for renewable energy technology demonstration, commercialization, research, and development projects. Provides the factors which are to be considered in awarding the grants.

Section 8 creates s. 377.805, F.S., to provide for the establishment of the Energy Efficient Appliance Rebate Program in DEP and to provide for financial incentives for the purchase of Energy Star qualified appliances. Except during the time period designated as an energy-efficient product sales tax holiday, any resident of the state who purchases a new Energy Star qualified appliance from July 1, 2006, through June 30, 2010, from a retail store in the state is eligible for a rebate of a portion of the purchase prices of that appliance. A person is limited to one rebate per type of appliance per year. The total dollar amount of all rebates is subject to the total amount of appropriations in any fiscal year for this program.

Section 9 creates s. 377.8055, F.S., to designate the period from 12:01 a.m., October 5, through midnight October 11 of each year from 2006 to 2009 as Energy Efficiency Week and to provide the sales tax on a new energy-efficient product with a selling price of $1,500 or less will not be collected during that time. The section also provides definitions, limits the application to a purchase for noncommercial home or personal use, and makes a violation of the purchase restrictions a violation of the unfair and deceptive trade practices act.

Section 10 creates s. 377.806, F.S., to create the Florida Solar Energy Incentives Program. A Solar Photovoltaic Incentive Program is created to provide rebates of expenditures made by the owner or tenant for a solar photovoltaic system that is installed after July 1, 2006, and that will be interconnected. Provides eligibility requirements. Provides that the initial rebate amount will be set at $4 per watt and will decrease by 50 cents per watt each year for 5 years. If the solar equipment is manufactured within the state, the initial rebate amount is $5. The maximum allowable rebate per solar photovoltaic system installation is $20,000 for a residence and $!00,000 for a business, publicly owned or operated facility, or a facility owned or operated by a private, nonprofit organization.

A Solar Thermal Incentive Program is created to provide rebates for the installation of a solar thermal system that is installed after July 1, 2006. Provides eligibility requirements. Provides for the following rebate amounts:

- $300 for a residence. If the solar collector is manufactured in Florida, the rebate amount is $500.
- $15 per 1,000 BTU as certified by the Florida Solar Energy Center for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, nonprofit organization. The maximum rebate amount is $5,000. An approved metering system is required.

The Florida Solar Energy Center will certify the performance of solar equipment sold and installed in Florida.

Section 11 amends s. 212.08, F.S., to provide for an exemption from the sales tax for equipment, machinery, and other materials for renewable energy technologies. The following is exempt from the sales tax:

- Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to $2 million in tax each fiscal year;
- Commercial stationary hydrogen fuel cells, up to $1 million in tax each fiscal year; and
- Materials used in the distribution of biodiesel and ethanol, including fueling infrastructure, transportation, and storage, up to $1 million in tax each fiscal year. The costs of retrofitting a gasoline fueling station pump for ethanol distribution qualifies for the exemption.

The DEP is required to determine and to publish on a regular basis the amount of sales tax exemptions remaining each fiscal year. This exemption is repealed July 1, 2010.

Section 12 amends s. 213.053, F.S., to allow the Department of Revenue to share certain information with the DEP.

Section 13 amends s. 220.02, F.S., to provide for a cross-reference.

Section 14 creates s. 220.192, F.S., to provide for a renewable energy technologies investment tax credit against the corporate income tax. Defines “biodiesel”; “eligible costs”; “ethanol”; and “hydrogen.”

For tax years beginning on or after January 1, 2007, allows for a credit against the corporate income tax in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2007, through December 31, 2010, after which the credit will expire.

Section 15 amends s. 220.13, F.S., to provide a cross-reference.

Section 16 amends s. 186.801, F.S., to require the PSC to consider, when reviewing each public utility's 10-year site plan, the effect on fuel diversity within the state.

Section 17 amends s. 366.04, F.S., to provide that the minimum safety standards that the PSC may adopt for transmission and distribution facilities is the current standard, the National Electrical Safety Code.

Section 18 amends s. 366.05, F.S., to authorize the PSC to adopt safety standards exceeding this code. It also authorizes the PSC to include in its review of the energy grid a consideration of any inadequacies in fuel diversity or fuel supply reliability.

Sections 19 amends s. 403.503, F.S., to revise certain definitions. "Application" is amended to mean the documents required by the DEP to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information.

"Completeness" means that the application has addressed all applicable sections of the prescribed application format, and those sections are sufficient in comprehensiveness of data or in quality of information to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare certain reports.

"Electrical power plant" is amended to exclude any steam or solar electric generating facility of less than 75 megawatts in capacity unless the applicant elects to apply for certification under the Power Plant Siting Act. The term includes associated facilities, including offsite facilities, to be owned or operated by the applicant which directly support the construction and operation of the electrical power plant and which are physically connected to the power plant site or which are directly connected to the power plant site by other proposed associated facilities to be owned or operated by the applicant such as fuel unloading facilities, pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities, water or wastewater transport pipelines, construction, maintenance and access roads, railway lines necessary for transport of construction equipment or fuel for the operation of the facility. The term also includes associated transmission lines owned or operated by the applicant which connect the power plant to an existing transmission network or rights-of-way to which the applicant intends to connect. Additionally, associated facility may include, at the applicant's option, offsite associated facilities that will not be owned by the applicant, offsite associated facilities that are owned by the applicant but which are not directly connected to the electrical power plant site, or new transmission lines or upgrades of existing lines necessary to support the generation injected into the system from the proposed plant.

"Licensee" means an applicant that has obtained a certification order the subject project.

"Right-of-way" includes any land necessary for the construction and maintenance of a connected associated linear facility as owned by or proposed to be certified by the applicant.

"Ultimate site capacity" means the maximum generating capacity for a site as certified by the board.

Section 20 amends s. 403.504, F.S., regarding the powers of DEP. Currently DEP has the power to adopt rules setting forth environmental precautions to be followed in relation to the location and operation of a power plant. The bill adds to this the construction of a power plant.

The DEP is authorized to issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction. The DEP may act as clerk for the siting board. The DEP may administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility. The DEP may issue emergency orders on behalf of the board for licensed facilities.

Section 21 amends s. 403.5055, F.S., relating to the application for a permit under the federally approved state National Pollutant Discharge Elimination System (NPDES) Program, to provide that if available at the time the department issues its project analysis, the department must include in its written project analysis copies of the department's proposed action pursuant to a NPDES permit. The department may not issue or deny the NPDES permit in advance of the issuance of the electric power plant certification unless required to do so by the provisions of federal law. When possible, a hearing on a NPDES permit will be conducted in conjunction with the certification hearing.

Section 22 amends s. 403.506, F.S., to provide that the provisions of the Power Plant Siting Act do not apply to any unit capacity extension of 35 megawatts or less of an existing exothermic reactor cogeneration unit that was exempt from act when originally built. However, this exemption does not apply if the unit uses oil or natural gas for purposes other than to start the unit. Certain new construction of electrical power plants or expansion is prohibited unless certain conditions are met.

Section 23 amends s. 403.5064, F.S., to establish the formal date of filing a certification application and the beginning of the certification review process. Copies of the application must be distributed within 5 days by the applicant to any additional agencies entitled to notice and copies of the application.

Within 7 days after the filing of the proposed schedule, the administrative law judge (ALJ) must issue an order establishing a schedule for the matters addressed in the department's proposed schedule. Provides for notice of the filing of the application.

Section 24 amends s. 403.5065, F.S., to provide that the ALJ is to have all powers and duties granted to ALJs by ch. 120, F.S., and the DEP rules.

Section 25 amends s. 403.5066, F.S., relating to the determination of completeness. Within 30 days after filing of an application, the affected agencies must file a statement with DEP containing each agency's recommendations on the completeness of the application. Within 40

days after the filing of an application, the DEP is required to file a statement with the Division of Administrative Hearings, with the applicant, and with all parties declaring its position regarding completeness of the application. The DEP's statement must be based upon consultation with the affected agencies.

If the application is declared incomplete, the applicant, within 15 days, must file with the DEP:

- A withdrawal of the application;
- A statement agreeing to supply the additional information necessary to make the application complete. The additional information is required to be provided within 30 days after the issuance of the DEP's statement concerning completeness. The time schedules may not be tolled if the applicant makes the application complete within 30 days after issuance of the DEP's completeness statement.
- A statement contesting the DEP's determination of incompleteness; or
- A statement agreeing with the DEP and requesting additional time beyond 30 days to provide the information necessary to make the application complete.

The parties to a hearing on completeness are specified.

No later than 15 days after the applicant files the additional information, each affected agency may submit a recommendation on whether the agency believes the application is complete.

Section 26 creates s. 403.50663, F.S., to authorize each local government within whose jurisdiction the power plant is proposed to be sited, to hold one informational public meeting in addition to the hearings specifically authorized on any matter associated with the electric power plant proceeding. The informational meeting must be held by the local government within 70 days after the application is filed. If the local government does not hold the meeting, the regional planning council will hold the meeting. The purpose of an informational public meeting is for the local government or regional planning council to further inform the public about the proposed electric power plant or associated facilities, obtain comments from the public, and formulate its recommendation with respect to the proposed electric power plant. Informational public meetings are to be held solely at the option of each local government or regional planning council, however, the bill states that it is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the certification proceedings are encouraged to attend; however, no party other than the applicant and DEP is required to attend. A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 5 days prior to the meeting. The failure to hold an informational public meeting or the procedure used for the informational public meeting are not grounds for the alteration of any time limitation or grounds to deny or condition certification.

Section 27 creates s. 403.50665, F.S., to require that the applicant include with the application a statement concerning the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed. Within 80 days after the application is filed, each local government must file a determination with DEP, the applicant, the ALJ, and all parties on the consistency of the site or any directly associated facilities within their jurisdiction with existing land use plans and zoning ordinances which were in effect on the date the application was filed. The applicant must publish notice of

the determination in a prescribed manner. If any substantially affected person wishes to dispute the local government's determination, he or she must file a petition with the department within 15 days of the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1), F.S., apply. If a substantially affected person wishes to dispute the local government' determination, a petition may be filed within 15 days after the publication of notice of the local government's determination. The time period may be altered upon an agreement between the applicant, the local government, and the DEP. If it is determined by the local government that the proposed site or directly associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority cannot thereafter change these land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 28 repeals s. 403.5067, F.S., which provides for a determination of sufficiency of the application, which is made a part of the determination of completeness in the bill.

Section 29 amends s. 403.507, F.S., to change the date on which each affected agency must submit a preliminary statement of issues to DEP from 60 days after distribution of the complete application to 40 days after the application has been determined to be complete. The committee substitute also changes the date for affected agencies to prepare reports and submit them to DEP and the applicant from within 150 days after distribution of the complete application to no later than 100 days after the determination of completeness. The committee substitute deletes a requirement that the PSC file a report on the determination of need for the power plant at this time, instead requiring that report 150 days from the date the application is filed. It requires that the water management district's report contain the impact on water resources, on regional water supply planning, and on district-owned lands and works. The committee substitute deletes a requirement that each affected local government's report address the consistency of the proposed power plant with adopted local comprehensive plans and land development regulations. It requires that the Department of Transportation report on the impact of proposed power plant and matters within its jurisdiction. The committee substitute also deletes a requirement that DEP prepare or contract for studies on the impact of the proposed plant on specified items. The committee substitute revises the requirements for each report as to variances. Currently, each report must contain all information on variances, exemptions, and exceptions or other relief which may be required. The committee substitute changes this to require that each report contain a notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, or exception or other relief is necessary for the proposed power plant to be certified, and provides that failure to provide this notice is a waiver of such a requirement. Reduces the time in which agencies must initiate the activities in this section from 30 days to 15 days. No later than 150 days after the application is filed, the PSC will prepare a report as to the present and future need for electric generating capacity to be supplied by the proposed electrical power plant. Reduces the time in which the DEP has to prepare a project analysis from 240 days to 130 days.

Section 30 amends s. 403.508, F.S., regarding land use and certification hearings. The committee substitute provides that if a petition for hearing on land use has been filed, the ALJ is required to conduct a land use hearing in the county of the proposed site or directly associated facility not

later than 30 days after the department's receipt of the petition. The place of the hearing must be as close as possible to the proposed site or directly associated facility. If a petition is filed, the hearing must be held regardless of the status of the completeness of the application. Provides that incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances. Provides for notice of the hearing. If the ALJ determines that the proposed site is not consistent with existing land use plans and zoning ordinances, he may receive evidence of any changes that would render the proposed site consistent and in compliance with the local land use plans and zoning ordinances.

If the proposed site conforms with existing land use plans and zoning ordinances, the local planning authority may not change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed power plant on the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

The board (Governor and Cabinet) may under certain circumstances authorize an amendment to rezoning, a variance, or other approval to the adopted land use plan and zoning ordinance required to render the proposed site consistent with local land use plans and zoning ordinances.

Provides for notice of the certification hearing and notice of the deadline for filing the notice of intent to be a party. The Department of Transportation is specifically added to the list of parties to the proceeding. The order of presentation at the certification hearing is specified. At the conclusion of the certification hearing, the ALJ is required to submit to the board a recommended order no later than 45 days after the filing of the hearing transcript.

No sooner than 29 days before the certification hearing, the DEP or the applicant may request the ALJ to cancel the hearing and relinquish jurisdiction to the DEP if all parties stipulate that no disputed issues of fact exist, and if sufficient time remains to publish the notice of cancellation at least 3 days before the hearing. The ALJ must issue an order granting or denying the request within 5 days. Parties may submit proposed recommended orders to the DEP no later than 10 days after the ALJ issues an order relinquishing jurisdiction. The applicant must bear the costs associated with the hearing.

When possible, any hearing on a federally approved or delegated program permit must be conducted in conjunction with the certification hearing.

Section 31 amends s. 403.509, F.S., to provide that if the ALJ relinquishes jurisdiction, within 40 days thereafter the DEP Secretary must issue a written order granting or denying the application and stating the reasons for the decision. If the ALJ does not relinquish jurisdiction, the application proceeds to the board as under current law. The committee substitute establishes criteria to be used by the siting board or the DEP Secretary in determining whether an application should be approved in whole, approved with modifications or conditions, or denied, including whether, and the extent to which, the location of electric power plant and directly associated facilities and their construction and operation will:

- Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.
- Comply with applicable nonprocedural requirements of agencies.

- Be consistent with applicable local government comprehensive plans and land development regulations.
- Meet the electrical energy needs of the state in an orderly and timely fashion.
- Provide a reasonable balance between the need for the facility and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources as a result of the construction and operation of the facility.
- Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

The applicant is required to seek any necessary interest in state lands the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund from the board of trustees or the governing board of the water management district before, during, or after the certification proceeding.

Section 32 amends s. 403.511, F.S., to provide that the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the DEP or any agency which were expressly considered during the proceeding, including, but not limited to, any site-specific criteria, standards, or limitations under local land use or zoning approvals which affect the proposed power plant or its site.

The certification and any order on land use and zoning is in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency, except for permits issued pursuant to any federally delegated or approved permit program. No term or condition of a site certification may be interpreted to supersede or control the provisions of a Title V air operation permit.

Electrical power plants are subject to the federal coastal consistency review program.

Section 33 creates s. 403.5112, F.S., to provide for the filing of a notice of a certified corridor route. Within 60 days after certification of a directly associated linear facility pursuant to the power plant siting act, the applicant must file with DEP and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route. The notice consists of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and must state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk must record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to DEP and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within that county, whichever is sooner.

Section 34 creates s. 403.5113, F.S., to provide that if, subsequent to certification by the board (Governor and Cabinet), a licensee proposes any material change to the application, the licensee must submit a written request for amendment and a description of the proposed change to the application to DEP. Within 30 days after the receipt of the request for the amendment, DEP must determine whether the proposed change to the application requires a modification of the conditions of certification. If DEP concludes that the change would not require a modification of the conditions of certification, DEP must provide written notification of the approval of the

proposed amendment to the licensee, all agencies, and all other interested parties. If DEP concludes that the change would require a modification of the conditions of certification, DEP must provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516, F.S.

Section 35 amends s. 403.5115, F.S., to require that certain notices be published by the applicant.

- Notice of the filing of a notice of intent within 21 days after the filing of the notice.
- Notice of the filing of the application, including a description of the proceedings, within 21 days after the date of the application filing.
- Notice of the land use determination within 15 days after the determination is filed.
- Notice of the land use hearing no later than 15 days before the hearing.
- Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party at least 65 days before the date set for the certification hearing.
- Notice of the cancellation of the hearing, no later than 3 days before the date of the originally scheduled certification hearing.
- Notice of modification when required by the department:
    - Within 21 days after receipt of a request for modification.
    - If a hearing is to be conducted in response to the request for modification, then notice must be published no later than 30 days before the hearing.
- Notice of a supplemental application.
- Notice of existing site certification.

The department is required to arrange for the publication of the following notices:

- Notice of the filing of the notice of intent within 15 days after receipt of the notice.
- Notice of the filing of the application, no later than 21 days after the application filing.
- Notice of the land use determination within 15 days after the determination is filed.
- Notice of the land use hearing before the ALJ no later than 15 days before the hearing.
- Notice of the land use hearing before the board, if applicable.
- Notice of the certification hearing at least 65 days before the date set for the certification hearing.
- Notice of the hearing before the board, if applicable.
- Notice of stipulations, proposed agency action, or petitions for modifications.

Section 36 amends s. 403.513, F.S., to provide that separate appeals of the certification order and of any DEP permit issued pursuant to a federally delegated or approved program may be consolidated when possible, as opposed to the current requirement that they be consolidated.

Section 37 amends s. 403.516, F.S., to provide that DEP may modify specific conditions of site certification which are inconsistent with the terms of any federally delegated or approved permit, and may do so without further notice if notice has been given under the federally delegated or approved program.

Section 38 amends s. 403.517, F.S., to provide that supplemental applications may be submitted for certification of the construction and operation of power plants to be located on previously certified sites. The applications will include all new directly associated facilities that support the

construction and operation of the electric power plant. The review must use the same procedures and notices as for an initial application. The time limits for processing of a complete supplemental application will be designated by the department commensurate with the scope of the supplemental application.

Section 39 amends s. 403.5175, F.S., to provide that applications for electrical power plant site certification are to be processed and reviewed using the same procedural steps and notices required for an application for a new facility.

Section 40 amends s. 403.518, F.S., relating to fees and their disposition. Currently the statute provides for 20 percent of the application fee or $25,000, whichever is greater, to be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The committee substitute changes this to: 5 percent for the initial duties associated with an application for certification, an additional 5 percent if a land use hearing is held, and an additional 10 percent if a certification hearing is held, which corresponds with the changes making a land use hearing and certification hearing before an ALJ optional. Current law requires that DEP reimburse governmental agencies for preparing reports and studies. The committee substitute authorizes these agencies preparing reports or participating in a land use hearing to submit a written request for reimbursement containing an accounting of expenses incurred.

Section 41 provides that any application for power plant certification pursuant to the Power Plant Siting Act will be processed under the provisions of law applicable at the time the application is filed, except that the provisions relating to cancellation of the certification hearing under s. 403.508(6), F.S., the provisions relating to the final disposition of the application and issuance of the written order by the secretary, and notice of the cancellation of the certification hearing under 403.5115, F.S., may apply to any application for power plant certification.

Section 42 amends s. 403.519, F.S., relating to the exclusive forum for determination of need for a proposed power plant. Current law requires that the PSC publish notice of the determination of need proceeding in a newspaper of general circulation in each county in which the proposed power plant will be located at least 45 days prior to the scheduled date for the hearing. The committee substitute changes this to require that the applicant give this notice at least 21 days prior to the hearing, and requires that the PSC give notice as specified in chapter 120, F.S.,[7] at least 21 days prior to the scheduled hearing date. The bill also provides that in making its determination of the need for the power plant, the PSC is to consider the need for fuel diversity and supply reliability.

In making a determination of need for a nuclear power plant, the PSC would be required to hold a hearing within 90 days after the petition is filed and to issue its order within 135 days of the date of filing. The PSC is to consider the need for electric system reliability and integrity, including fuel diversity; the need for base-load generation; and the need for adequate electricity

[7] Section 120.525(1), F.S., provides that except in the case of emergency meetings, each agency shall give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Weekly not less than 7 days before the event.

at a reasonable cost. The bill sets out requirements for the contents of the petition, and the factors the PSC is to consider in making its determination.

The bill also provides that Rule 25-22.082, Florida Administrative Code, does not apply to a nuclear power plant, including provisions for cost recovery, and that an applicant for a determination of need for such a power plant is not required to secure competitive proposals for a power supply before applying for a certificate and filing a petition for a determination of need.

The PSC's determination of need for a nuclear plant creates a presumption of public need and necessity. Any review of the order is to be accomplished by the Supreme Court as expeditiously as practicable, giving precedence over matters not accorded similar precedence by law.

Section 43 creates s. 366.93, F.S., to provide for recovery of pre-construction costs of a nuclear power plant. "Cost" is defined to include all capital investments, including rate of return on those investments, any taxes, and all expenses, including operational and maintenance expenses, that are related to the siting, licensing, design, construction or operation of the nuclear plant. "Pre-construction" is defined as the period of time after site selection through and including the date of completion of clearing of the site. The PSC is required to establish rules creating alternative cost recovery mechanisms for these costs. The mechanisms are to be designed to promote utility investment and allow for the recovery in rates of all prudently incurred costs. When the plant is placed into service, on-going costs are to be recovered by an increase in base rates. If the utility does not complete construction of the plant, it is still allowed to recover all prudent pre-construction and construction costs incurred following the determination of need for the plant.

Section 44 amends s. 403.52, F.S., to change the short title of the act, the Transmission Line Siting Act, to the Florida Electric Transmission Line Siting Act.

Section 45 amends s. 403.521, F.S., to make reference to the operation of electric transmission lines, to recognize that they are critical infrastructure facilities, and that they have an effect upon the reliability of the electric power system, the environment, and land use.

Section 46 amends s. 403.522, F.S., which provides definitions relating to the act. The most significant changes include:

- Revising the definition of "completeness" to include the current definition of "sufficiency" to reflect that DEP will now be determining sufficiency of filings at the time of determining their completeness.
- Revising the definition of "electric utility" to include regional transmission organizations, operators of independent transmission systems, or other transmission organizations approved by the Federal Energy Regulatory Commission or the PSC for the operation of transmission facilities.

Section 47 amends s. 403.523, F.S., to authorize DEP to issue final orders in certification proceedings where the ALJ relinquishes jurisdiction, to act as clerk for the siting board, and to issue emergency orders on behalf of the board.

Section 48 amends s. 403.524, F.S., relating to applicability and exemptions. Currently development of a transmission line in which all construction is limited to established rights-of-ways

is exempt from the act. For rights-of-way other than for transmission lines, the term includes rights-of-way created both before or after October 1, 1983. For transmission rights-of-way, the term includes only those rights-of-way created before that date. The bill changes this, so that established rights-of-way includes rights-of-way established at any time for roads, highways, railroads, gas, water, oil, electricity, sewage, or any other public purpose which were established at any time. For transmission line rights-of-way, established rights-of-way must have been established at least five years before notice of the start of construction of the new line. If an established transmission line right-of-way is relocated to accommodate a public project, the date of establishment of the original transmission right-of-way continues to apply to the relocation project for purposes of the exemption.

Section 49 amends s. 403.525, F.S., relating to administrative law judges, moving the provision on the administrative law judge's powers and duties from s. 403.527(6), F.S., to this section.

Section 50 amends s. 403.5251, F.S., relating to distribution of the application and schedules. The bill establishes the formal date of filing the application as the date on which the applicant submits copies of the application to DEP and all affected agencies and submits the application fee to DEP. Currently DEP must prepare a schedule for the certification process within 7 days after determining that the application is complete. The bill changes this to within 15 days after the formal date of application filing. Within 7 days after the proposed schedule is filed, the ALJ must issue an order establishing a schedule.

Section 51 amends s. 403.5252, F.S., to consolidate the current determination of completeness and determination of sufficiency. Within 30 days after distribution of an application, the affected agencies must file a statement with DEP with recommendations as to whether the application is complete. Within 7 days after receipt of the completeness statement of all agencies, DEP must state its position on completeness. If DEP declares the application to be incomplete, the applicant has 14 days to file a withdrawal of the application, provide additional information to make the application complete, contest the determination of incompleteness, or agree with the determination and request additional time to provide the necessary information. The statutory parties to a hearing on an issue of completeness include the applicant, DEP, and any agency having jurisdiction over the issue in dispute. Any substantially affected person wishing to become a party must file a motion no later than 10 days prior to the date of the hearing. If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to DEP, no later than 14 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 21 days after receipt of the additional information from the applicant, DEP must determine whether the additional information makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options listed above as often as is necessary to resolve the dispute.

Section 52 amends s. 403.526, F.S., to change the date on which each affected agency must submit a preliminary statement of issues to DEP from 60 days after distribution of the complete application to 50 days after the filing of the application. The committee substitute requires that the Department of Transportation report on the impact of proposed transmission lines or corridors on roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction. The committee substitute also requires the PSC to prepare a report containing its findings as to the determination of need and any comments with respect to any other subject within its jurisdiction. Each report must

contain a notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, or exception or other relief is necessary for the proposed power plant to be certified, and provides that failure to provide this notice is a waiver of such a requirement.

Section 53 amends s. 403.527, F.S., to provide that no later than 145 days after the application is filed, the ALJ must conduct a certification hearing at a central location in proximity to the proposed transmission line or corridor. Parties to the proceeding are:

- The applicant.
- DEP.
- The PSC.
- The Department of Community Affairs.
- The Fish and Wildlife Conservation Commission.
- The Department of Transportation.
- Each water management district in the jurisdiction of which the proposed transmission line or corridor is to be located.
- The local government.
- The regional planning council.

Any party except the applicant or DEP may waive its right to participate in these proceedings. If any listed party fails to file a notice of its intent to be a party on or before the 30th day before the certification hearing, that party is deemed to have waived its right to be a party unless its participation would not prejudice the rights of any party to the proceeding.

Upon the filing with the ALJ of a notice of intent to be a party by an agency, corporation, or association specified in the bill, or upon the filing of a petition for intervention by specified persons, no later than 30 days before the date set for the certification hearing, those entities or persons may also be parties to the proceeding.

One public hearing where members of the public who are not parties to the certification hearing may testify must be held within the boundaries of each county, at the option of any local government. A local government wanting to have a hearing must notify the ALJ and all parties not later than 21 days after the application has been determined complete. If a filing for an alternate corridor is accepted for consideration by the department and the applicant, any newly affected local government must notify the ALJ and all parties not later than 10 days after the data concerning the alternate corridor has been determined complete as to whether the local government wishes to have such a public hearing. The local government is responsible for providing the location of the public hearing if held separately from the certification hearing.

Within 5 days after notification, the ALJ must determine the date of the public hearing, which must be held before or during the certification hearing. If two or more local governments within one county request a public hearing, the hearing must be consolidated so that only one public hearing is held in any county. The location of a consolidated hearing is to be determined by the ALJ.

If a local government does not request a public hearing within 21 days after the application has been determined complete, persons residing within the jurisdiction of the local government may testify during that portion of the certification hearing at which public testimony is heard.

At the conclusion of the certification hearing, the ALJ must, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 45 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings.

No later than 25 days before the certification hearing, the department or the applicant may request that the ALJ cancel the certification hearing and relinquish jurisdiction to DEP if all parties to the proceeding stipulate that no disputed issues of material fact will be raised at the certification hearing. The ALJ must issue an order granting or denying the request within 5 days. If the ALJ grants the request, DEP and the applicant must publish notices of the cancellation of the certification hearing. If the administrative law judge grants the request, DEP must prepare and issue a final order. Parties may submit proposed final orders to DEP no later than 10 days after the ALJ issues an order relinquishing jurisdiction.

Section 54 amends s. 403.5271, F.S., relating to alternate corridors. Current law provides that any party may propose an alternate corridor no later than 50 days before the originally scheduled certification hearing. The committee substitute changes this to no later than 45 days before. Agencies reviewing the proposed alternate corridor must advise DEP of any issues concerning completeness no later than 15 days after submittal of data to the agencies. If DEP determines that the data is not complete, the party proposing the alternate corridor must file additional data within 14 days. If DEP determines that the data is still incomplete, this constitutes a withdrawal of the proposed alternate corridor. The party proposing an alternate corridor has the burden of proving that the corridor can be certified.

Section 55 amends s. 403.5272, F.S., relating to informational public meetings. Existing statutory language limits the authority to conduct early public meetings to local governments. The committee substitute authorizes regional planning councils to conduct these public meetings.

Section 56 amends s. 403.5275, F.S., to provide that amendments made before certification must be sent to the ALJ and all parties.

Section 57 amends s. 403.528, F.S., to provide that a comprehensive application encompassing more than one proposed transmission line may be good cause for alteration of time limits.

Section 58 amends s. 403.529, F.S., relating to final disposition of the application. The committee substitute provides that if the ALJ has relinquished jurisdiction, the DEP Secretary must issue or deny the certification within 40 days of relinquishment and state the reasons for the decision. If the ALJ does not relinquish jurisdiction, the board (Governor and Cabinet) must act upon the application within 60 days, as opposed to the current 30 days, after receipt of the ALJ's recommended order. The committee substitute adds to the criteria to be considered in determining whether to approve an application for the operation of the proposed transmission line, to include consideration of whether the proposed line will meet the electrical needs of the state in an economical fashion, and whether it will effect a reasonable balance between the need for the line as a means of providing reliable, economically efficient electric energy and the impact on the public and the environment resulting from the construction, operation, and maintenance of the line.

Section 59 amends s. 403.531, F.S., to provide that the certification is in lieu of any license, permit, or similar document required by any state, regional, or local agency.

Section 60 amends s. 403.5312, F.S., to require that after a transmission line route is certified, the applicant must file notice of the certified route for a transmission line with DEP.

Section 61 amends s. 403.5315, F.S., to provide that a modification of a certification may be commenced by the licensee or by DEP on its own initiative. If objections are raised to a proposed modification or if DEP denies the proposed modification, the licensee may file a request for a hearing.

Section 62 creates s. 403.5317, F.S., to provide for post-certification amendments. If, subsequent to certification by the board, a licensee proposes any material change to the application or prior amendments, the licensee must submit to DEP a written request for amendment and description of the proposed change to the application. If DEP concludes that the change would not require a modification of the conditions of certification, it is to notify, in writing, the licensee, all agencies, and all parties of the approval of the proposed amendment. If DEP concludes that the change would require a modification of the conditions of certification, it is to notify the licensee that the proposed change to the application requires a request for modification.

Section 63 creates s. 403.5363, F.S., to consolidate public notice provisions from existing sections of the act.

Section 64 amends s. 403.5365, F.S., relating to fees. Currently the statute provides for 20 percent of the application fee to be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The committee substitute changes this to: 5 percent for the initial duties associated with an application for certification and an additional 10 percent if a certification hearing is held.

Section 65 amends s. 403.537, F.S., to require that the applicant give notice at least 21 days prior to the hearing, and requires that the PSC give notice as specified in chapter 120 at least 21 days prior to the scheduled hearing date. The committee substitute also provides that the PSC is the sole forum in which to determine the need for a transmission line and that the need cannot be raised or be the subject of review in any other proceeding.

Sections 66, 67, 68, and 69 amend ss. 373.411(3), 403.061, 403.0876, and 403.809(3)(b), F.S., to conform references to the re-named Florida Electric Transmission Line Siting Act.

Section 70 repeals s. 403.5253, F.S., relating to the sufficiency determination, as this is made a part of the determination of completeness, and s. 403.5369, F.S., which provides that the act does not apply to any application for certification of an electrical power plant or transmission line corridor which has been determined to be complete prior to July 3, 1990.

Section 71 creates s. 570.954, F.S., to create the Farm to Fuel Program within the Department of Agriculture and Consumer Services (DACS) to promote the use of Florida crops and biomass to produce bioenergy. The program is to provide grants for research, development, and

demonstration of commercial applications of bioenergy technology. The bill sets out criteria to obtain a grant.

Section 72 creates s. 220.195, F.S., to create a farm to fuel production tax credit against corporate income tax for in-state producers of ethanol or biodiesel.

Section 73 requires that by November 1, 2006, DEP report to the Governor, the Senate President, and the Speaker of the House on the state's leadership by example in energy conservation and efficiency, including a description of state programs and the costs of implementation and the current and projected energy and cost savings.

Section 74 provides that, for the 2006-2007 fiscal year, the sum of $3,587,000 in non-recurring funds is appropriated from the General Revenue Fund and $6,413,000 in non-recurring funds is appropriated from the Grants and Donations Trust Fund in the Department of Environmental Protection for the purpose of funding the Renewable Energy Technologies Grants program authorized in section 377.804.

Section 75 provides that, for the 2006-2007 fiscal year, the sum of $5,500,000 in non-recurring funds is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the purpose of funding the Farm to Fuel Grants program authorized in section 570.954.

Section 76 provides that, for the 2006-2007 fiscal year, the sum of $2.5 million in non-recurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding commercial and consumer solar rebates authorized in section 377.802.

Section 77 provides that the sum of $61,379 in non-recurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of producing a taxpayer information publication for a sales tax holiday for the purchase of energy-efficient products as authorized by section 377.8055, Florida Statutes, for the 2006-2007 fiscal year.

Section 78 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or reduce the percent of state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Sales Tax Holiday for Energy-Efficient Products (section 9, s. 377.8055, F.S.)

This bill provides an exemption for the sales and use tax on the sale, for personal use, of energy-efficient products having a selling price of $1,500 or less per product during the period from 12:01 a.m., October 5, 2006 through midnight, October 11, in 2006, 2007, 2008, and 2009.

HB 347 and SB 762 contain the same provision, except limited to 2006. An impact conference on January 13, 2006 on the sales tax holiday in those two bills estimated the fiscal impact below for 2006. This staff analysis assumes the same impact in the three subsequent years.

	2006-2007	2007-2008	2008-2009	2009-2010
General Revenue	($2.2M)	same as	same as	same as
State Trust	(insignificant)	2006-07	2006-07	2006-07
Total State Impact	($2.2M)			
Revenue Sharing	($0.1M)			
Local Gov't Half Cent	($0.2M)			
Local Option	($0.2M)			
Total Local Impact	($0.5M)			
Total Impact	($2.7M)	($2.7M)	($2.7M)	($2.7M)

Energy technologies tax credit and exemption (section 14, s. 220.192, F.S.)
The official impact conference estimate for the energy technologies tax exemption and credit provisions of HB 1473, which is substantially similar to this bill, is:

	2006-2007	2007-2008	2008-2009	2009-2010
General Revenue:				
Corporate	($5.5M)	($11.0M)	same as	same as
Sales Tax	($3.3M)	($3.3M)	2007-2008	2007-2008
State Trust	(insignificant)	(insignificant)		
Total State Impact	($8.8M)	($14.3M)		
Revenue Sharing	($0.1M)	($0.1M)		
Local Gov't Half Cent	($0.3M)	($0.3M)		
Local Option	($0.3M)	($0.3M)		
Total Local Impact	($0.7M)	($0.7M)		

Total Impact	($9.5M)	($15M)

These numbers include the provisions of the bill that provide:

- A sales and use tax exemption for hydrogen powered vehicles, materials used in the manufacture of hydrogen powered vehicles, and hydrogen fueling stations with a limit of $2 million.
- A sales and use tax exemption for commercial stationary fuel cells with a limit of $1 million.
- A sales and use tax exemption for materials used in the distribution of alternative fuels including fueling infrastructure, transportation and storage with a limit of $1 million.
- A corporate income tax credit of 75 percent of all capital costs, operation and maintenance costs, and research and development costs incurred between 7/1/2006 and 6/30/2010, up to a limit of $3 million per fiscal year, 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.
- A corporate income tax credit of 75 percent of all capital costs, operation and maintenance costs, and research and development costs incurred between 7/1/2006 and 6/30/2010, up to a limit of $1.5 million per fiscal year, 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.
- A corporate income tax credit of 75 percent of all capital costs, operation and maintenance costs, and research and development costs incurred between 7/1/2006 and 6/30/2010, up to a limit of $6.5 million per fiscal year, in connection with an investment in the production and distribution of alternative fuel in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

Ethanol and biodiesel tax credit (section 72, s. 220.195, F.S.)
The official impact conference estimate for the tax credits for ethanol and biodiesel producers located in Florida of SB 1388, which are substantially similar to this bill, is:

	2006-2007	2007-2008 and subsequent years
General Revenue	(indeterminate)	(indeterminate)
Total State Impact	(indeterminate)	(indeterminate)
Total Local Impact	-----	-----
Total Impact	(indeterminate)	(indeterminate)

The tax credit is 20 cents per gallon produced. The bill provides for a July 1, 2010 repeal of the tax credits.

While the official fiscal estimate is "indeterminate," two ethanol production facilities are currently in the planning stages, one at Port Manatee and one at Tampa's Port Sutton. Each is expected to produce 40 million gallons. At full production capacity, there

facilities would qualify for $16 million a year in tax credits under this provision of the bill.

B. Private Sector Impact:

Private citizens, corporate entities, and businesses would benefit from the various tax and rebate provisions in the bill.

The bill provides for a rebate on a portion of the cost of an Energy Star-qualified appliance purchased between July 1, 2006, and June 30, 2010. The person receiving the rebate is limited to one rebate/year. The amount of the rebate is not specified in the bill. How much of the cost of the appliance would be eligible as a rebate is unknown. The bill limits the total amount of the rebates in any given year to the total amount that may be appropriated for that purpose during the fiscal year. This rebate is not available during the sales tax holiday on energy-efficient products.

Rebates are provided for expenditures made to install a solar photovoltaic system. The maximum amount for a residence is $20,000 and $100,000 for a business or nonprofit organization.

Rebates are provided for the installation of a solar thermal system. The amount is $300 for a residence ($500 if the collector is manufactured in Florida), and $15 per 1,000 BTU for a business or nonprofit organization up to $5,000.

The bill also provides a sales tax exemption on certain equipment, machinery and other materials for renewable energy technologies. The items that qualify for the exemption include hydrogen-powered vehicles and associated materials in an amount up to $2 million each fiscal year and materials used in the distribution of biodiesel and ethanol in an amount up to $1 million each fiscal year. It is not known how many persons would qualify for this exemption, nor the individual amount of the exemption per person. (See the estimate of the fiscal impact on the state in section "V.A. Tax/Fee Issues" above.)

Section 14 of the bill provides exemptions from the corporate income tax for certain capital costs, operational and maintenance costs, research and development costs for renewable energy technologies if such costs are incurred between July 1, 2006, and June 30, 2010. It is not known how much a single person or entity would qualify for in any given fiscal year. The bill does limit the percentage of costs allowed to be claimed for the credit. The bill caps the total amount of the credits in any given fiscal year. (See the estimate of the fiscal impact on the state in section "V.A. Tax/Fee Issues" above.)

C. Government Sector Impact:

APPROPRIATIONS ISSUES:

The bill includes four appropriations:

Section 74.
To the Department of Environmental Protection
For the Renewable Energy Technologies Grants Program (s. 377.804, F.S.)

	2006-2007
From the General Revenue Fund (non-recurring)	$3,587,000
From the Grants and Donations Trust Fund (non-recurring)	$6,413,000

Section 75.
To the Department of Agriculture and Consumer Services
For the Farm to Fuel Grants Program (s. 570.954, F.S.)

	2006-2007
General Revenue (non-recurring)	$5,500,000

Section 76.
To the Department of Environmental Protection
For commercial and consumer solar rebates (s. 377.802, F.S.)

	2006-2007
From the General Revenue Fund (non-recurring)	$2,500,000

Section 77.
To the Department of Revenue
For the production of taxpayer information on the sales tax holiday for energy-efficient products (s. 377.8055, F.S.)

	2006-2007
From the General Revenue Fund (non-recurring)	$ 61,379

Section 40 amends s. 403.518, F.S., on power plant siting act fees and their disposition. Currently the statute provides for twenty percent of the application fee or $25,000, whichever is greater, to be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The bill changes this to: five percent for the initial duties associated with an application for certification, an additional 5 percent if a land use hearing is held, and an additional 10 percent if a certification hearing is held. Similarly, section 64 amends s. 403.5365, F.S., relating to transmission line siting act fees. Currently the statute provides for 20 percent of the application fee to be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The bill changes this to: 5 percent for the initial duties associated with an application for certification and an additional 10 percent if a certification hearing is held. These fee changes appear to correspond to procedural hearing changes which may result in a reduced workload for the ALJ. The net effect on the amount of fees collected is indeterminable.

VI. Technical Deficiencies:

Section 72 creates s. 220.195, F.S., which may be challenged by alternative fuel producers located outside of Florida on the grounds that it unconstitutionally favors in-state producers and Florida-grown commodities. In McKesson v. Florida, 492 U.S. 18 (1990), the U.S. Supreme

Court invalidated a statute that provided a tax preference for alcoholic beverages produced in Florida using specified products commonly grown in Florida and ordered a refund of all taxes paid in excess of the preference amount. See also, Bacchus Imports v. Hawaii, 468 U.S. 263 (1984), where a similar statute favoring commodities grown in-state was invalidated. This bill provides for a corporate income tax credit equal to 20 cents per gallon for those taxpayers who produce ethanol or biodiesel in Florida using Florida-grown commodities.

Section 14 establishes the renewable energy tax credit under s. 220.192, F.S., but limits the amount of corporate income tax credits that can be granted in any one year. The Department of Environmental Protection is responsible for certifying these credits, but no mechanism is in place for determining which applicant will receive the credit when there are more applicants than credits.

Because the bill is effective upon becoming law, the provisions of section 15 will be immediately applicable for corporate income tax return, as long as the tax year ends after the effective date of this law. DOR may not have sufficient time to issue rules or to modify its forms and instructions. Because the Florida corporate income tax starts with federal taxable income from which business expenses have previously been deducted, taxpayers are usually required to add back business expenses deducted in an amount equal to the credit claimed so that taxpayers do not receive a double tax benefit – a deduction and a credit.

In section 26, newly created subsection 403.50663(4), F.S., provides that "the failure to hold an informational public meeting or the procedure used for the informational public meeting are not for the alteration of any time limitation or grounds to deny or condition certification." It probably should say that neither the failure to hold a meeting nor the procedure used at a meeting are grounds for alteration of a time limit.

In section 71, newly created s. 570.954, F.S., creates the Food to Fuel program to promote the use of Florida crops and biomass to produce bioenergy. The bill defines "biomass" but does not define "bioenergy."

DOR may not be able to verify if the farm to fuel production tax credit created in Section 72 is correctly claimed. A corporate income tax credit is claimed on a return filed in the following year, and an audit of a return usually occurs one or two years thereafter. Several years after the fact, an auditor would have to determine the amount of ethanol or biodiesel that was produced at a facility and whether or not such product came from Florida-grown commodities.

Taxpayers producing biodiesel and ethanol may not be aware that they are required by Chapter 206, Florida Statutes, to register and meet the requirements for biodiesel manufacturers, motor fuel producers, ethanol blenders, etc.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.