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 Governmental Operations Committee

BILL:	CS/SB 316
INTRODUCER:	Governmental Operations Committee and Senator Constantine
SUBJECT:	Energy Use
DATE:	March 6, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	**Fav/CS**
2.			EP	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill modifies the Florida Energy Conservation in Buildings Act to include sustainable materials, and requires that state buildings be constructed to meet energy-efficient building standards. The bill requires agencies to identify projects suitable for guaranteed energy performance savings contracts, to be prioritized by the Department of Management Services (DMS). The bill also gives DMS additional duties with regard to fuel use by the state fleet.

The bill makes modifications to provisions governing guaranteed energy performance savings contracts, allowing energy-related cost savings measures to be included, and clarifying terms that must be included in such contracts.

The bill creates the Lead by Example Initiative to help state and local governments save on energy costs, and the Green Schools Pilot Project to incorporate energy-efficient building standards into school construction.

The bill mandates that state agencies and school districts use biofuels as a certain percentage of their fuel usage. By January 1, 2011, state agencies must purchase biodiesel as 20 percent of their total diesel fuel purchases, and purchase ethanol as 20 percent of total fuel for use in

flex-fuel vehicles. By January 1, 2009, school districts must purchase biodiesel as 20 percent of their total diesel fuel purchases, and contractors providing transportation services to districts for its pupils must also meet the biodiesel requirements, for contracts entered into after July 1, 2008.

This bill creates two unnumbered sections of the Florida Statutes, creates sections 377.907 and 1013.441, and amends sections 255.251, 255.252, 255.253, 255.254, 255.255, 286.16, 287.063, 287.064, and 489.145 of the Florida Statutes.

II. Present Situation:

Florida Energy Forum

On November 10, 2005, Governor Bush by executive order[1] called for the creation of the 2005 Florida Energy Forum to develop the state's energy plan. The panel host for the Energy Forum was Secretary of the Department of Environmental Protection (DEP). Panel participants included utility representatives, Public Service Commission 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 establishing an energy council to provide policy advice and counsel to the Governor, Speaker of the House of Representatives, and President of the Senate.

The Florida Energy Commission

In 2006, the Legislature created the Florida Energy Commission (commission) to establish a state energy policy.[3] The commission was created within the Office of Legislative Services for administrative purposes. The commission has 9 members, of which four each are appointed by the President of the Senate and the Speaker of the House of Representatives, and one of which is jointly appointed.

A 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 member cannot have specified financial interests or employment relationships.

The nonvoting members consist of the following, or his or her designee, who may provide information and advice at the request of the chair:

[1] Executive Order Number 05-241
[2] Florida's Energy Plan, January 17, 2006, Department of Environmental Protection, page 10.
[3] Section 377.901, F.S., codifying s. 8, Ch. 2006-230, L.O.F.

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

Meetings are to be held around the state, at the call of the chair, but the commission must meet at least twice a year. 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.

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. The commission may form advisory groups to provide information 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 commission is to continually review the statewide energy policy and recommend any necessary changes or improvements to the Legislature.

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 for conservation of all forms of energy; and, set forth a plan of action, together with a timetable, for addressing the remaining issues.

The recommendations must be developed considering the following:

- The state should have a reliable electric supply with adequate reserves.
- The transmission and delivery of electricity should be reliable.
- The generation, transmission, and delivery of electricity should be accomplished with the least detriment to the environment and public health.
- The generation, transmission, and delivery of electricity should be accomplished compatibly with the goals for growth management.
- Electricity generation, transmission, and delivery facilities should be reasonably secure from damage, taking all factors into consideration, and recovery from damage should be prompt.
- Electric rates should be affordable, as to base rates and all recovery-clause additions, with sufficient incentives for utilities to achieve this goal.
- The state should have a reliable supply of motor vehicle fuels, both under normal circumstances and during hurricanes and other emergency situations.
- In-state research, development, and deployment of alternative energy technologies and alternative motor vehicle fuels should be encouraged.

- When possible, the resources of the state should be used in achieving the goals enumerated in this subsection.
- Consumers of energy should be encouraged and given incentives to be more efficient in their use of energy.

The statute provides that it is the specific intent of the Legislature that nothing in this section in any way changes the powers, duties, and responsibilities of the Public Service Commission or the powers, duties, and responsibilities assigned by the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, F.S.

The commission released its recommendations in December, 2007. Recommendation 7 suggested that the Legislature "require agencies to use ethanol and biodiesel when locally available,"[4] and the draft legislation implementing Recommendation 7 added to the powers and duties of Department of Management Services (DMS) to "require the use of ethanol and biodiesel when locally available…."[5]

Energy Policymaking in Florida

Currently, the state energy policy is addressed by three separate entities - the Florida Energy Commission, the "Florida Energy Office," and the Governor's Action Team on Energy and Climate Change.

The "Florida Energy Office" is not specifically created or designated in the Florida Statutes, but s. 377.703, F.S., provides duties for the Department of Environmental Protection (DEP) with regard to the development of a state energy policy. Referencing s. 377.703, F.S., DEP identifies the Florida Energy Office as "the state's primary center for energy policy under Governor Charlie Crist." [6]

The third entity addressing energy policy was created by Executive Order No. 07-128. The Florida Governor's Action Team on Energy and Climate Change (Action Team) was created to "develop a comprehensive Energy and Climate Change Action Plan that will fully achieve or surpass Executive Order targets for greenhouse gas reductions specified in Executive Order 07-127." Those targets were to reduce greenhouse gas emissions to 2000 levels by 2017; to 1990 levels by 2025; and to 80 percent of 1990 levels by 2050. The Action Team released Phase 1 of its report on November 1, 2007. The report reiterated the mandate in Executive Order No. 07-126 that "all state agencies and departments under the direction of the Governor shall use ethanol and biodiesel fuels when locally available," and recommended that "appropriate actions required by Executive Order 07-126 be extended by statute to all state government operations."[7]

Biofuels

According to the U.S. Department of Energy, biofuels are liquid, solid, or gaseous fuels derived from renewable biological sources. Biodiesel is a biologically derived diesel fuel substitute created by chemically reacting vegetable oils or animal fats with alcohol.[8] Ethanol is currently

[4] Recommendations to the Florida Legislature by the Florida Energy Commission, Volume I, page 30.
[5] Recommendations to the Florida Legislature by the Florida Energy Commission, Volume II, page 17.
[6] www.dep.state.fl.us/energy/ , last referenced on February 26, 2008.
[7] Florida's Energy and Climate Change Action Plan Pursuant to Executive Order 07-128, page 42.
[8] http://genomicsgtl.energy.gov/biofuels/transportation.shtml, last referenced on February 28, 2008.

made primarily from the starch in corn grain; it is most commonly used as an additive for petroleum-based fuels to reduce toxic air emissions and increase octane.[9] Energy content of E85 is 70 percent that of gasoline, so about 1.4 gallons of E85 are needed to displace one gallon of gasoline.[10]

In October 2007, the U.S. Department of Energy, in its quarterly *Clean Cities Alternative Fuel Report*, reported average fuel price per gallon, and price per unit of energy content, as follows:

	Nationwide Average Price	**Nationwide Average Price in Dollars per Million Btu**
Gasoline (Regular)	$2.76	$23.95
Diesel	$3.11	$24.13
Ethanol (E85)	$2.40	$29.40
Biodiesel (B20)	$3.08	$24.39

Recent media reports have chronicled some debate surrounding ethanol.[11] Proponents of ethanol posit that ethanol will reduce greenhouse gas emissions, strengthen U.S.-based farming, and reduce reliance on foreign oil. Recent studies have suggested that when taking into account the new land needed to grow food, when food crops are diverted to fuel crops, ethanol production could actually increase greenhouse gasses.[12]

Overview of the Guaranteed Energy Performance Savings Contracting Act

In 1994, the Legislature enacted the Guaranteed Energy Savings Program,[13] later amended[14] to become the Guaranteed Energy Performance Savings Contracting Act. The program permits agencies, defined as "the state, a municipality, or a political subdivision," to enter into a guaranteed energy performance savings contract, under specified circumstances.[15]

The purpose of a guaranteed energy savings contract is for a guaranteed energy performance savings contractor [16] to significantly reduce the energy or operating costs of an agency facility. A "guaranteed energy performance savings contract" is defined as:

[A] contract for the evaluation, recommendation, and implementation of energy conservation measures, which, at a minimum, shall include:

[9] http://www.eere.energy.gov/consumer/renewable_energy/biomass/index.cfm/mytopic=50002, last referenced on February 28, 2008.
[10] http://genomicsgtl.energy.gov/biofuels/ethanol_quick_facts.shtml, last referenced on February 28, 2008.
[11] "Are Florida Ethanol Plants Worth It?" St. Pete Times, March 2, 2008.
[12] *Id.*
[13] Ch. 94-112, L.O.F., codified at s. 489.145, F.S.
[14] Ch. 2001-81, L.O.F.
[15] Section 489.145(4), F.S.
[16] Section 489.145(3)(e), F.S.: A "guaranteed energy performance savings contractor" is a person or business that is licensed under chapters 471 or 481, F.S., or this chapter, and is experienced in the analysis, design, implementation, or installation of energy conservation measures through energy performance contracts.

- The design and installation of equipment to implement one or more of such measures and, if applicable, operation and maintenance of such measures.
- The amount of any actual annual savings that meet or exceed total annual contract payments made by the agency for the contract.
- The finance charges incurred by the agency over the life of the contract.[17]

An "energy conservation measure" is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs and includes, but is not limited to:

- Insulation of the building structure and systems within the building.
- Storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.
- Automatic energy control systems.
- Heating, ventilating, or air-conditioning system modifications or replacements.
- Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system, which, at a minimum, must conform to the applicable state or local building code.
- Energy recovery systems.
- Cogeneration systems that produce steam or forms of energy such as heat and electricity, for use primarily within a facility or complex of facilities.
- Energy conservation measures that provide long-term operating cost reductions and significantly reduce Btu consumed.
- Renewable energy systems, such as solar, biomass, or wind systems.
- Devices that reduce water consumption or sewer charges.
- Storage systems, such as fuel cells and thermal storage.
- Generating technologies, such as microturbines.
- Any other repair, replacement, or upgrade of existing equipment.[18]

In order for an agency to consider entering a guaranteed energy savings contract, it must first obtain a report from a qualified provider that estimates the anticipated reduction in energy or operating costs.[19] The agency and contractor may enter a separate agreement to pay for the report. However, the agency need not pay for the report unless the report indicates that the energy cost savings will be equal to or greater than the cost of the energy conservation measure and the measure is installed. The agency may then enter the contract only if it finds that the amount it would spend on the energy conservation measures is unlikely to exceed its savings in energy and operating costs for 20 years from the date of installation. This determination must be made based on the life-cycle cost calculations provided in s. 255.255, F.S.

[17] Section 489.145(3)(d), F.S.
[18] Section 489.145(3)(b), F.S.
[19] Section 489.145(4), F.S.

The qualified provider must be selected in compliance with s. 287.055, F.S., which sets forth competitive bidding requirements for agencies wishing to procure professional architectural, engineering, or surveying and mapping services. However, if fewer than three firms are qualified to perform the required services, the competitive bidding requirements in ss. 287.055(4)(b) and 287.057, F.S., do not apply. The agency must publicly notice the meeting in which it intends to award the contract.

The guaranteed energy performance contract may provide for financing, including tax exempt financing by a third party. The third-party financing contract may be separate from the guaranteed energy performance contract. It must include provisions that the third-party financier is not granted rights or privileges that exceed the rights and privileges of the guaranteed energy performance savings contractor. In calculating the amount the agency will finance, the agency is permitted to reduce that amount by grants, rebates, or capital funding. However, when calculating the life-cycle cost, the agency may not apply grants, rebates, or capital funding.

The contract must contain the following provisions:

- A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.
- A provision that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency.
- A requirement that the qualified contractor provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.
- Provision for an allocation of any excess savings among the parties.
- The contractor must provide an annual reconciliation of the cost savings, and if there is a shortfall in expected savings, the contractor is liable.
- The contract must provide that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency. At least ten percent of the price must be paid within two years from the date of complete installation and acceptance by the agency. The remaining costs are to be paid at least quarterly, not to exceed a 20 year term, based on life-cycle cost calculations.
- A statement that the term of any contract expires at the end of each fiscal year, but may be automatically renewed, subject to the agency making sufficient annual appropriations based upon realized savings.
- A statement that the contract does not constitute a debt, liability, or obligation of the state.[20]

The Department of Management Services may, within available resources, provide technical assistance to state agencies contracting for energy conservation measures, and engage in other activities to promote such contracting. The Chief Financial Officer (CFO) may develop model contracts and related documents for use by state agencies. In addition, the CFO requires state agencies to submit contracts to the Department of Financial Services for its approval.

[20] Section 489.145(4) and (5), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 255.251, F.S., renaming the "Florida Energy Conservation in Buildings Act of 1974" as the "Florida Energy Conservation *and Sustainable* Buildings Act."

Section 2 amends the findings and intent section of the Act in s. 255.252, F.S. Some outdated information is deleted, and the phrase "sustainable materials" is added. The bill provides that state buildings must meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, Green Building Initiative's Green Globes rating system, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services (DMS).

The bill adds a subsection requiring each state agency to compile a list of all state-owned buildings in its inventory that it determines are suitable for a guaranteed energy performance savings contract. The list must be submitted to DMS by December 31, 2008, and must be developed from the list of state-owned facilities over 5,000 square feet for which the agency is responsible for paying the utilities and expenses related to energy use. By March 1, 2009, and in consultation with each department secretary or director, DMS must evaluate each agency's facilities suitable for energy conservation projects, and develop an energy efficiency project schedule. The schedule must provide a deadline for guaranteed energy performance savings contract improvements to be made.

Section 3 amends the definitions section of the Act in s. 255.253, F.S., adding definitions for "sustainable building" and "sustainable building rating."

Sections 4 and 5 amend the provisions of the Act addressing life-cycle costs, ss. 255.254 and 255.255, F.S., by requiring consideration of sustainable building ratings prior to construction, and requiring DMS to adopt rules relating to sustainable building ratings.

Section 6 amends the provisions governing deferred-payment commodity contracts in s. 287.063, F.S., deleting a subparagraph that provided that agencies could not obligate an annualized amount of payments in excess of current operating capital outlay appropriations. The bill adds a provision that the payment term may not exceed the useful life of the equipment unless the contract provides for the replacement or extension of the useful life of the equipment during the term of the loan. The bill provides that the annualized amount of a deferred payment contract must be supported from available recurring funds.

Section 7 amends provisions concerning the consolidated financing of deferred-payment purchases in s. 287.064, F.S., adding a provision that repayment terms may not exceed 20 years for energy conservation measures defined in s. 489.145, F.S., excluding costs for training, operation, and maintenance. The contractor must provide for the replacement or extension of the useful life of the equipment during the term of the contract.

Section 8 amends s. 287.16, F.S., relating to the powers and duties of DMS with regard to the state fleet. The bill adds provisions that require DMS to:

- Asses the transportation-related energy use of all state agencies;

- Require scheduled vehicle maintenance on all agency and state fleet motor vehicles, measuring compliance through the Equipment Management Information System, with annual reports to the Legislature;
- Require the use of ethanol and biodiesel when locally available and to encourage the development of renewable fuel fueling facilities for both public and private sector motor vehicles;
- Conduct an inventory to determine what percentage of state vehicles are flexible fuel or hybrid vehicles;
- Purchase over the next three years only those vehicles with the greatest fuel efficiency in a given class, exempting special purpose, law enforcement, and heavy duty vehicles.

Section 9 creates s. 377.907, F.S., the Lead by Example Initiative. It requires the Florida Energy Commission to develop recommendations to promote energy efficiency and clean energy technologies to the public and private sectors. The recommendations must include that all new state buildings must be built in compliance with LEED, Green Globes, Florida Green Building Coalition Standards, or any other nationally recognized and verified energy efficiency building standard. The commission must recommend energy efficient operating policies for state buildings to be implemented by the Florida Energy Office or appropriate state agency. The commission must submit its first recommendations to the Legislature by December 31, 2009.

Section 10 amends the guaranteed energy performance savings contracting provisions of s. 489.145, F.S. The bill deletes language in the findings section defining what constitutes energy conservation measures. The bill expands the definition of "guaranteed energy performance savings contract" (ESCO) to include "energy-related operational saving measures," which is not further defined. It adds a provision that an ESCO may include allowable cost avoidance. Actual computed cost savings must meet or exceed the estimated cost savings provided in program approval, and baseline adjustments used in calculations must be specified in the contract. Financing for such contracts must be provided under the authority of s. 287.064, F.S., and the Office of the Chief Financial Officer (CFO) must review proposals to ensure that the most effective financing is being used. Straight-line amortization for the term of the loan must be used.

The bill provides that a proposed contract or lease submitted to the CFO for approval must include:

- Supporting information including narrative describing and justifying the need, baseline for current costs, estimated cost savings, projected equipment purchases, estimated contract costs, and return on investment calculation;
- Documentation supporting recurring funds requirements;
- Approval by agency head or their designee;
- An agency measurement and verification plan.

These contracts must be supported from available recurring funds appropriated to the agency in an appropriation category that the CFO has determined is appropriate or the Legislature has designated. The CFO may not approve any contract that does not meet the requirements of this section.

Section 11 creates a new section 1013.441, F.S., the Green Schools Pilot Project, which establishes for selected school districts the incorporation of LEED silver-level or Green Globes two-globe rating or better standards for new educational building construction projects, and when feasible, every educational building renovation project. The bill requires the Department of Education to develop, by August 1, 2008, an application process for school districts to participate in the pilot project. School districts selected for the pilot project must meet certain standards. From funds appropriated for the purpose, the department must distribute to each participating school district an amount sufficient to fund the additional costs required to meet the LEED or Green Globes certification standards for one complete school. Participating districts must annually report to the department on the expenditure of funds, and these reports must be open to inspection and examination by the Auditor General. Participating districts must return to the department any funds that are improperly expended, or if the school does not obtain the certification. Each participating school district must report to the Governor, Legislature, and Commissioner of the Department of Education on the effects Green Schools has on school operations.

Section 12 of the bill mandates use of biodiesel and ethanol in the state fleet. The bill requires that a certain percentage of diesel fuel purchases must be biodiesel, by certain dates, and subject to availability, as follows:

Date	**Biodiesel % of Total Diesel**
July 1, 2009	5
January 1, 2010	10
January 1, 2011	20

The bill also mandates that ethanol purchases make up a certain percentage of fuel purchased for state-owned flex-fuel vehicles, subject to availability, as follows:

Date	**Ethanol % of Total Flex-Fuel**
July 1, 2009	5
January 1, 2010	10
January 1, 2011	20

The bill requires DMS to administer the section, and to annually report to the Legislature on biodiesel and ethanol use in the state fleet, including gallons purchased since July 1, 2008, the average price of biodiesel and ethanol, and a description of fleet performance.

Section 13 mandates the use of biodiesel by school districts. The bill requires that by January 1, 2009, at least 20 percent of total diesel fuel purchases for use by school districts must be biodiesel fuel, subject to availability. If a school district contracts with another public or private entity to provide transportation services for any of its pupils, the biodiesel use requirement must be part of the contract, for all contracts entered into on or after July 1, 2008.

The bill takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would create demand for biodiesel and ethanol fuels, so producers and distributors of such fuels should experience increased revenues. This will be a direct function of the inability of the current supply to meet the new statutory demand. This expectation of demand could signal the need for capital formation to expand the supply and would act as an incentive for industry expansion. It is inherent in such transactions that the cost of refined petroleum products stay at high levels and the cost of agricultural commodities stay at low levels to make the blending of the two sources a viable financial investment.

C. Government Sector Impact:

The Department of Education has suggested that the requirement that school districts use biodiesel could cost Florida's school districts up to $230,000 extra per day ($41,400,000 annually), depending on the price differential with diesel and whether a federal subsidy for biodiesel is continued.

State agencies could also see an increase in costs, to the extent that biofuels cost more than fuels currently used. Those costs are indeterminate, and depend on fuel usage and the cost differential, if any, between non-biofuels and biofuels.

The bill gives duties to DMS with regard to coordination of fuel usage and development of renewable fuel facilities. DMS may need additional resources to absorb those duties as this expansion of agency mission is a new responsibility requiring different levels of expertise.

VI. Technical Deficiencies:

On line 680, the bill refers to state fleet "biodiesel" usage, but subsection (2) contains provisions for ethanol usage. It would add clarity to replace "biodiesel" on line 680 with "biofuel," as biodiesel and ethanol are both biofuels. The same change could be made on line 698, for the same reason.

VII. Related Issues:

In the amendments to chapter 255, the bill provides that building standards must meet three specified building standards, or a "nationally recognized, high performance green building rating system as approved" by DMS. This appears to describe a rating system without naming it specifically, even though the other three standards are named. The bill thus delegates to DMS the duty to pick a fourth building standard, without defining what "high performance" means.

Lines 139-158 create a new subsection (5) in s. 255.252, F.S., which is the findings and intent section of the Florida Energy Conservation in Buildings Act. The new subsection creates specific duties for agencies and DMS, which might be better placed in a substantive provision of the Act.

On lines 150-153, the bill requires that DMS evaluate "each agency's facilities suitable for energy conservation projects" to determine a project schedule, but it is unclear if DMS is doing a new review, or using the list of projects suitable for guaranteed energy performance savings contracts required by agencies on line 141.

Lines 314-315 mandate that DMS require "use of ethanol and biodiesel when locally available," which appear to directly contradict the usage requirements of section 12 of the bill. The directives regarding biofuels need to be reconciled.

At lines 315-316, the bill gives DMS the duty to "encourage the development of renewable fuel fueling facilities for… private sector motor vehicles." This appears well beyond DMS's current duties, and may overlap with the duties of other agencies.

Lines 334-339 require the Florida Energy Commission to issue recommendations that all new state buildings be built in compliance with LEED, Green Globes, Florida Green Building Coalition Standards, or any other nationally recognized and verified energy efficiency building standard. It is unclear whether this recommendation applies to local governments. Additionally, lines 114-119 already require that buildings "financed by the state" must meet these standards. These provisions may need to be clarified and reconciled.

By adding the undefined phrase "energy-related operational saving measures" to the definition of "guaranteed energy performance savings contract," in lines 412-413, the bill potentially greatly expands the types of measures that might qualify for these types of contracts. It is unclear what types of measures this phrase is meant to encompass.

The bill requires in lines 664-665 that reports made by school districts participating in the Green Schools Pilot Program "must be open to inspection and examination by the Auditor General."

Such reports are public records unless exempted, and the Auditor General currently has general authority to audit governmental entities.[21]

According to DMS, some state agencies have been reluctant to use biodiesel blends greater than 5 percent, fearing that doing so may void manufacturer warranties. DMS also suggested that E-10 blend ethanol is not as corrosive as E-85 blend ethanol, and that requiring use of the higher blend ethanol might require an upgrade to state-owned tanks and pumps.

In lines 685, 689 and 701, the bill mandates specific percentages of biofuel usage "subject to availability," but the phrase is not defined. Biofuels available only from out of state suppliers, or at high cost, would therefore be considered "available," and would have to be purchased, regardless of origin or cost.

Though DMS has some duties with regard to state-owned vehicles, the actual use of fleet vehicles is determined by the agencies.[22] Accordingly, coordination of fuel usage by and among individual agencies could be a substantial undertaking.

VIII. Additional Information:

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

CS by Governmental Operations on March 6, 2008:

- Modifies the Florida Energy Conservation in Buildings Act, to require state buildings to be built in accordance with energy-efficient building standards, and require agencies to identify projects suitable for energy savings contracts.
- Creates new duties for the Department of Management Services with regard to fuel use by state vehicles, by requiring DMS to assess transportation-related energy use by state agencies, require use of biofuels when locally available, and purchase only vehicles that have the greatest fuel efficiency in their class.
- Creates the Lead by Example Initiative to help state and local governments reduce energy costs.
- Creates the Green Schools Pilot Project to incorporate energy-efficient building standards into school construction.
- Modifies provisions relating to guaranteed energy performance savings contracts, to expand the types of projects which are suitable, extend the length of time over which deferred-payment purchases can be repaid, and specify materials which must be included with such contracts in order to be approved.

B. Amendments:

None.

[21] Section 11.45(3), F.S.
[22] Section 287.17(1), F.S.