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Proposed Committee Substitute by the Committee on Communications, Energy, and Public Utilities

A bill to be entitled

An act relating to renewable energy; amending s. 366.91, F.S.; providing legislative intent and findings; amending definitions; deleting requirement that each public utility continuously offer a purchase contract to all producers of renewable energy; requiring that each public utility purchase renewable energy from producers that meet specified criteria; establishing by statute the amount that is to be paid to such renewable energy producers as avoided cots; amending s. 366.92, F.S.; deleting provisions requiring that the Public Service Commission adopt rules for a renewable portfolio standard; requiring that the commission provide for full cost recovery for certain renewable energy projects; requiring the commission to approve certain renewable energy projects; providing exemptions from determination of need requirements; providing that certain legislative determinations constitute a public need and necessity and fulfill certain determination of need requirements; creating s. 366.921, F.S.; providing legislative findings; requiring that a petition filed by a provider for approval of a facility producing a Florida renewable energy resource comply with certain criteria; specifying the criteria to be considered by the commission in approving a petition for such facility; requiring that the commission’s final order

approving a facility include authorization for annual cost recovery; amending s. 403.503, F.S.; redefining the term "electrical power plant" for purposes of the Florida Electrical Power Plant Siting Act to exclude solar electrical generating facilities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 366.91, Florida Statutes, is amended to read:

366.91 Renewable energy.—

(1) The Legislature finds that ~~it is in the public interest to promote the development of renewable energy resources in this state.~~ renewable energy resources have the potential to help diversify fuel types to mitigate ~~meet~~ Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, preserve and create jobs, improve environmental conditions, displace and reduce the consumption of fossil fuels in the generation of electricity, and make Florida a leader in new and innovative technologies.

(2) The Legislature further finds and declares that:

(a) it is in the public interest to vigorously promote the production of renewable energy within the state;

(b) there is a current and ongoing need for electricity generated from renewable energy resources;

(c) based on analysis of past, current, and future projections of retail electric rates, there is a high degree of

correlation between retail electric rates of Florida public utilities and avoided cost; and

(d) this section shall be liberally construed in order to robustly promote and encourage the production of renewable energy in Florida.

(2) As used in this section, the term:

(a) "Biomass" means a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

(b) "Customer-owned renewable generation" means any and all ~~an~~ electric generating system or systems located on a customer's premises that ~~is primarily intended to~~ offset part or all of the customer's electricity requirements with renewable energy.

(c) "Net metering" means a metering and billing methodology whereby a renewable energy producer that is a consumer of electricity at a single location, or at multiple locations within a single public utility's service area, and that operates customer-owned renewable generation, is entitled:~~customer-owned renewable generation is allowed to offset the customer's electricity consumption on site.~~

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


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2. to designate the amount or amounts to be offset at each metering point.

(d) "Renewable energy" means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations.

(3)(a) On or before July 1, 2010 ~~January 1, 2006~~, each public utility must continuously offer to and shall ~~a~~ purchase ~~contract to producers of~~ renewable energy at full avoided cost, as defined in s. 366.91(6), upon request of a renewable energy producer that meets one or both of the operating requirements set forth in s.366.91(5). The commission may ~~shall~~ establish by rule requirements relating to the purchase of renewable energy ~~capacity and energy~~ by public utilities from renewable energy producers ~~and may adopt rules to administer this section~~. ~~The contract shall contain payment provisions for energy and capacity which are based upon the utility's full avoided costs, as defined in s. 366.051; however, capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Each contract must provide a contract term of at least 10 years.~~ Prudent and reasonable costs associated with the purchase of ~~a~~ renewable energy ~~contract~~ shall be recoverable ~~recovered~~ from


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the ratepayers of the purchasing ~~contracting~~ utility, without differentiation among customer classes, through the appropriate cost-recovery clause mechanism administered by the commission.

(b) Effective July 1, 2010, a renewable energy producer that meets one or both of the operation requirements set forth in s. 366.91(5) shall be entitled to sell electric energy to a public utility at full avoided cost as set forth in s. 366.91(6).

(4) On or before January 1, 2006, each municipal electric utility and rural electric cooperative whose annual sales, as of July 1, 1993, to retail customers were greater than 2,000 gigawatt hours must continuously offer a purchase contract to producers of renewable energy containing payment provisions for energy and capacity which are based upon the utility's or cooperative's full avoided costs, as determined by the governing body of the municipal utility or cooperative; however, capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Each contract must provide a contract term of at least 10 years.

(5) Operating requirements:

(a) A renewable energy producer that generates and delivers to the grid a fixed amount of electrical capacity at a rate of production such that the amount of energy produced per 1 megawatt of fixed capacity is 7,000 megawatt hours or more per year shall be entitled to sell such fixed amount of capacity and


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energy to any public utility at full avoided costs.

(b) A renewable energy producer that generates electric energy using waste heat from sulfuric acid manufacturing operations, such that the amount of electric energy produced at the site per 1 megawatt of system generating capacity is 5,500 megawatt hours or more per year and that exports less than fifty percent of the total electric energy produced to the grid, shall be entitled to sell any excess energy, up to an amount equal to the energy used to serve its own requirements, to any public utility at full avoided cost.

(6) Avoided cost:

It has been found and determined that eighty percent of the weighted average of firm service retail electric rates of each public utility, including all adjustment, recovery and similar such add-on charges, directly correlates with each utility's full avoided cost for acquiring energy from renewable energy producers that meet the operating requirements of s. 366.91(5), and is an administratively efficient, transparent, prudent and preferred methodology for calculating full avoided cost. The full avoided cost to which all renewable energy producers are entitled is and shall be the mathematical product of 0.80 and the weighted average of firm service retail electric rates in cents per kilowatt hour, including all adjustment, recovery and similar such add-on charges, of the purchasing utility.

(7) ~~(5)~~ On or before January 1, 2009, each public utility shall develop a standardized interconnection agreement and net metering program for all customer-owned renewable generation. The commission shall establish requirements relating to the expedited interconnection and net metering of customer-owned

renewable generation by public utilities and may adopt rules to administer this section.

(8) ~~(6)~~ On or before July 1, 2009, each municipal electric utility and each rural electric cooperative that sells electricity at retail shall develop a standardized interconnection agreement and net metering program for customer-owned renewable generation. Each governing authority shall establish requirements relating to the expedited interconnection and net metering of customer-owned generation. By April 1 of each year, each municipal electric utility and rural electric cooperative utility serving retail customers shall file a report with the commission detailing customer participation in the interconnection and net metering program, including, but not limited to, the number and total capacity of interconnected generating systems and the total energy net metered in the previous year.

(9) ~~(7)~~ Under the provisions of subsections (7) and (8) ~~(5) and (6)~~, when a utility purchases power generated from biogas produced by the anaerobic digestion of agricultural waste, including food waste or other agricultural byproducts, net metering shall be available at a single metering point or as a part of conjunctive billing of multiple points for a customer at a single location, so long as the provision of such service and its associated charges, terms, and other conditions are not reasonably projected to result in higher cost electric service to the utility's general body of ratepayers or adversely affect the adequacy or reliability of electric service to all customers, as determined by the commission for public utilities, or as determined by the governing authority of the municipal


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electric utility or rural electric cooperative that serves at retail.

(10) ~~(8)~~ A ~~contracting producer of~~ renewable energy producer must pay the actual costs of its interconnection with the transmission grid or distribution system.

(11) Action by the commission pursuant to or associated with implementing this section shall not be deemed or construed to be an action relating to rates or service of utilities providing electric service.

Section 2. Section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

(1) It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.

(2) As used in this section, the term:

(a) "Florida renewable energy resources" means renewable energy, as defined in s. 377.803, that is produced in Florida.

(b) "Provider" means a "utility" as defined in s. 366.8255(1)(a).

(c) "Renewable energy" means renewable energy as defined in s. 366.91(2)(d).

~~(d) "Renewable energy credit" or "REC" means a product that represents the unbundled, separable, renewable attribute of~~


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~~renewable energy produced in Florida and is equivalent to 1 megawatt-hour of electricity generated by a source of renewable energy located in Florida.~~

~~(c) "Renewable portfolio standard" or "RPS" means the minimum percentage of total annual retail electricity sales by a provider to consumers in Florida that shall be supplied by renewable energy produced in Florida.~~

~~(3)The commission shall adopt rules for a renewable portfolio standard requiring each provider to supply renewable energy to its customers directly, by procuring, or through renewable energy credits. In developing the RPS rule, the commission shall consult the Department of Environmental Protection and the Florida Energy and Climate Commission. The rule shall not be implemented until ratified by the Legislature. The commission shall present a draft rule for legislative consideration by February 1, 2009.~~

~~(a)In developing the rule, the commission shall evaluate the current and forecasted levelized cost in cents per kilowatt hour through 2020 and current and forecasted installed capacity in kilowatts for each renewable energy generation method through 2020.~~

~~(b)The commission's rule:~~

~~1.Shall include methods of managing the cost of compliance with the renewable portfolio standard, whether through direct supply or procurement of renewable power or through the purchase of renewable energy credits. The commission shall have rulemaking authority for providing annual cost recovery and incentive-based adjustments to authorized rates of return on common equity to providers to incentivize renewable energy.~~


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~~Notwithstanding s. 366.91(3) and (4), upon the ratification of the rules developed pursuant to this subsection, the commission may approve projects and power sales agreements with renewable power producers and the sale of renewable energy credits needed to comply with the renewable portfolio standard. In the event of any conflict, this subparagraph shall supersede s. 366.91(3) and (4). However, nothing in this section shall alter the obligation of each public utility to continuously offer a purchase contract to producers of renewable energy.~~

~~2.Shall provide for appropriate compliance measures and the conditions under which noncompliance shall be excused due to a determination by the commission that the supply of renewable energy or renewable energy credits was not adequate to satisfy the demand for such energy or that the cost of securing renewable energy or renewable energy credits was cost prohibitive.~~

~~3.May provide added weight to energy provided by wind and solar photovoltaic over other forms of renewable energy, whether directly supplied or procured or indirectly obtained through the purchase of renewable energy credits.~~

~~4.Shall determine an appropriate period of time for which renewable energy credits may be used for purposes of compliance with the renewable portfolio standard.~~

~~5.Shall provide for monitoring of compliance with and enforcement of the requirements of this section.~~

~~6.Shall ensure that energy credited toward compliance with the requirements of this section is not credited toward any other purpose.~~

~~7.Shall include procedures to track and account for~~


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~~renewable energy credits, including ownership of renewable energy credits that are derived from a customer-owned renewable energy facility as a result of any action by a customer of an electric power supplier that is independent of a program sponsored by the electric power supplier.~~

~~8.Shall provide for the conditions and options for the repeal or alteration of the rule in the event that new provisions of federal law supplant or conflict with the rule.~~

~~(c)Beginning on April 1 of the year following final adoption of the commission's renewable portfolio standard rule, each provider shall submit a report to the commission describing the steps that have been taken in the previous year and the steps that will be taken in the future to add renewable energy to the provider's energy supply portfolio. The report shall state whether the provider was in compliance with the renewable portfolio standard during the previous year and how it will comply with the renewable portfolio standard in the upcoming year.~~

(3)(a) ~~(4) In order to demonstrate the feasibility and viability of clean energy systems,~~ The commission shall provide for full cost recovery under the environmental cost-recovery clause of all reasonable and prudent costs incurred by a provider for renewable energy projects that result in a net decrease of ~~are zero~~ greenhouse gas emitted in this state ~~emitting at the point of generation, up to a total of 110 megawatts statewide,~~ and for which the provider has secured necessary land, zoning permits, and transmission rights within the state.

(b) Such costs shall be deemed reasonable and prudent for

purposes of cost recovery so long as the provider has obtained approval for the renewable energy project pursuant to s. 366.921 ~~used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility~~. The provider shall report to the commission as part of the cost-recovery proceedings the construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy project, and any other information deemed relevant by the commission. ~~Any provider constructing a clean energy facility pursuant to this section shall file for cost recovery no later than July 1, 2009~~.

(4) Pursuant to the approval process under s. 366.921, the commission shall approve up to a total of 700 megawatts of renewable energy projects for the years 2010, 2011, and 2012, with up to a total of 300 megawatts approved in 2010 and up to an additional 200 megawatts approved annually in 2011 and 2012, as part of new renewable energy projects and an additional 35 megawatts, with up to 15 megawatts annually for 2010 and up to 10 megawatts annually for 2011 and 2012, for rooftop or area lighting solar energy applications in addition to megawatts attributable to renewable energy projects approved by the commission for cost recovery before January 1, 2010. Any megawatts for renewable energy projects designated for approval for a specific year that remain available at the end of the calendar year shall be carried forward to the succeeding year. Notwithstanding s. 403.519, the Legislature finds that there is need for these renewable energy resources. This legislative finding shall serve as the need determination required under s.


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403.519 and as the commission's agency report under s. 403.507(4)(a).

(5) Each municipal electric utility and rural electric cooperative shall develop standards for the promotion, encouragement, and expansion of the use of renewable energy resources and energy conservation and efficiency measures. On or before April 1, 2009, and annually thereafter, each municipal electric utility and electric cooperative shall submit to the commission a report that identifies such standards.

(6) ~~Nothing in~~ This section does not ~~shall be construed to~~ impede or impair terms and conditions of existing contracts.

(7) Any economic benefit received or obtained by a utility, other than revenue from sales of electricity, as a result of construction of a project under this section, including revenue or benefits relating to renewable energy credits or carbon credits, must be shared between the utility and its ratepayers, with the utility receiving 25 percent and the ratepayers receiving 75 percent. Any costs associated with receiving or obtaining the economic benefit are to be paid from the utility's 25 percent.

(8) ~~(7)~~The commission may adopt rules to administer ~~and implement the provisions of~~ this section.

Section 3. Section 366.921, Florida Statutes, is created to read:

366.921 Renewable energy; approval process.—

(1) Providers of renewable energy under s. 366.92(4) must acquire commission approval before the construction, licensing, and operation of a facility producing such resources or the purchase of capacity or energy from a facility producing such

resources.

(2) Upon the filing by a provider of a petition for approval of a facility, the commission shall schedule a formal administrative hearing within 10 days after the filing of the petition and vote on the petition within 90 days after such filing.

(3) In determining whether to approve the petition, the commission shall consider whether the:

(a) Proposal for the facility requires the use of reasonable and customary industry practices in the design, engineering, procurement, and construction of the project in a cost-effective manner appropriate to the proposed technology and location of the facility.

(b) Entity, including a provider, which would engineer, design, and construct the proposed facility has the requisite technical and financial qualifications, expertise, and capability.

(c) Entity, including a provider, which would operate the proposed facility has the requisite technical qualifications, expertise, and capability.

(d) Provider has submitted the project to competitive bid to ensure that it is the most cost-effective alternative that meets the criteria of this section and that the projected costs are reasonable and prudent for this type of project.

(e) Proposal includes mechanisms to keep costs from increasing above the projected amount.

(4) The commission’s final order approving a facility shall include express authorization for annual cost recovery pursuant to ss. 366.8255 and 366.92 of the costs determined under this

section. However, under no circumstances may the total costs of all projects approved under this section for any provider result in a retail price increase in excess of an amount equal to $1 per 1,000 kilowatt hours.

Section 4. Subsection (14) of section 403.503, Florida Statutes, is amended to read:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.—As used in this act:

(14) "Electrical power plant" means, for the purpose of certification, any steam ~~or solar~~ electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam ~~or solar~~ electrical generating facility of less than 75 megawatts in capacity or any solar electrical generating facility of any sized capacity unless the applicant for such a facility elects to apply for certification under this act. This term also includes the site; all associated facilities that will be owned by the applicant that are physically connected to the site; all associated facilities that are indirectly connected to the site by other proposed associated facilities that will be owned by the applicant; and associated transmission lines that will be owned by the applicant which connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect. At the applicant's option, this term may include any offsite associated facilities that will not be owned by the applicant; offsite associated facilities that are owned by the applicant but that are not directly connected to the site; any proposed terminal or intermediate substations or substation expansions connected to the associated

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transmission line; or new transmission lines, upgrades, or improvements of an existing transmission line on any portion of the applicant's electrical transmission system necessary to support the generation injected into the system from the proposed electrical power plant.

Section 5. This act shall take effect upon becoming a law.