The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 2094

INTRODUCER: Communications, Energy, and Public Utilities Committee and Communications, Energy, and Public Utilities Committee

SUBJECT: Energy

DATE: February 2, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.			AG	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [x] Statement of Substantial Changes

B. AMENDMENTS........................ [ ] Technical amendments were recommended

[ ] Amendments were recommended

[ ] Significant amendments were recommended

I. Summary:

The bill:

- authorizes a municipality to pay a public utility the additional costs of renewable energy in excess of the utility's full avoided costs;
- requires that the Public Service Commission (PSC or commission), in reviewing a ten-year site plan, also review specified information on renewable energy;
- authorizes a local government to provide financial assistance to owners of residential property who make energy efficiency improvements to or install renewable energy devices on the residential property and defines what is included in the term renewable energy devices;
- recreates and amends a prior sales tax exemption for materials used in the distribution of renewable fuels for motor vehicles, up to a limit of $1 million in tax each state fiscal year for all taxpayers, with payment on a first-come, first-served basis, based upon the date complete applications are received;
- revives and amends the renewable energy technologies investment tax credit, limiting it to investments in renewable fuels for motor vehicles, increasing the limit on the tax credit from

up to $6.5 million to up to $10 million per state fiscal year for all taxpayers, and providing that each applicant is eligible to receive up to $1 million in tax credits;
- revives and amends the Florida renewable energy production credit such that each applicant is eligible to receive up to $500,000 in tax credits;
- requires that the Department of Management Services (DMS) coordinate with the Department of Agriculture and Consumer Services (DACS) in adopting rules and forms for the development of the state energy management plan, and requires that the plan include standard and uniform benchmarking requirements as a measure to evaluate the energy efficiency of state owned and leased buildings;
- clarifies that that the exclusion of “any electrical utility” from the definition of “target industry business”, and therefore the tax benefits, only applies to a utility “as defined in s. 366.02(2)”, thereby allowing renewable energy producers who only sell electricity to a utility at wholesale to be eligible for the tax refund, if they meet the other requirements;
- exempts electric vehicle charging stations from regulation by the PSC under chapter 366 and provides for regulation in building and sales;
- provides for DACS permitting for introduction or release of algae and blue-green algae, clarifies existing language on an exemption from the permit requirement, and provides additional guidance for decreasing the required bond;
- requires DACS to conduct a comprehensive statewide forest inventory;
- requires the Office of Energy, within DACS, in consultation with specified entities, to develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures and post the information on its website; and
- requires the PSC to evaluate and prepare a report on the Florida Energy Efficiency and Conservation Act statutes and determine whether they remain in the public interest.

The bill takes effect July 1, 2012.

The bill substantially amends the following sections of the Florida Statutes: 170.01, 186.801, 212.055, 212.08, 220.192, 220.193, 255.257, 288.106, and 581.083. It also creates section 366.94 of the Florida Statutes.

II. Present Situation:

Ten-year site plan review

Section 186.801, F.S., requires each electric utility to submit to the PSC a 10-year site plan in which the utility estimates its power-generating needs and the general location of its proposed power plant sites. The 10-year plan must be submitted and reviewed not less frequently than every 2 years. The PSC then has nine months to make a preliminary study of the plan and classify it as “suitable” or “unsuitable” for planning purposes. The PSC may suggest alternatives to the plan.

The commission’s findings are made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings under the PPSA; however, it is expressly recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission, and, a complete

application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, constitutes an amendment to the 10-year site plan.

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

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

<u>Sales tax exemption</u>

Section 212.08, F.S., provides for sales and use tax. In 2008, the Legislature created s. 212.08(7)(ccc), F.S., a sales tax exemption for equipment, machinery, and other materials for renewable energy technologies. It automatically repealed on July 1, 2010.

<u>Renewable energy technologies investment tax credit</u>

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

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

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

Florida renewable energy production credit

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

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

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

Energy management in state buildings

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

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

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

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

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

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

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

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

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

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

The statute does not expressly include renewable energy businesses either in the definition of the term "target industry business" or the substantive provisions, however, it does imply that they are included in that the definition includes a requirement that the market and resource must be

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

Exclusive forum for determination of need for a proposed power plant

Section 403.519, F.S., on exclusive forum for determination of need for a proposed power plant, requires that in determining the need for a proposed power plant, the commission is to take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, *the need for fuel diversity and supply reliability*, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

Permitting process for introduction or release of nonnative plants

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

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

A person may not cultivate a nonnative plant, including a genetically engineered plant or a plant that has been introduced, for purposes of fuel production or purposes other than agriculture in plantings greater in size than 2 contiguous acres, except under a special permit. Such a permit shall not be required if the department determines, in conjunction with the Institute of Food and Agricultural Sciences at the University of Florida, that the plant is not invasive and subsequently exempts the plant by rule.

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

the department finds such change to be warranted by the cultivating operations of the permitholder.

Energy Efficiency and Conservation

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

Energy conservation cost recovery is authorized in s. 366.82(11), F.S. Section 366.82, F.S., requires that the Commission adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems,[1] specifically including goals designed:

- to increase the conservation of expensive resources, such as petroleum fuels,
- to reduce and control the growth rates of electric consumption,
- to reduce the growth rates of weather-sensitive peak demand, and
- to encourage development of demand-side renewable energy resources.[2]

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

In establishing the goals, the Commission must consider:

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

Following adoption of goals, the Commission is to require each utility[4] to develop plans and programs to meet the overall goals. If the Commission disapproves a plan, it must specify the reasons for disapproval, and the utility must resubmit its modified plan within 30 days. Prior approval by the Commission is required to modify or discontinue a plan, or part thereof, which has been approved. If any utility has not implemented its programs and is not substantially in compliance with the provisions of its approved plan at any time, the Commission must adopt programs required for that utility to achieve the overall goals. Utility programs may include variations in rate design, load control, cogeneration, residential energy conservation subsidy, or any other measure within the jurisdiction of the Commission which the Commission finds likely to be effective.

[1]The term "demand-side renewable energy" is defined as a system located on a customer's premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer's electricity requirements provided such system does not exceed 2 megawatts. This element of the requirement was added in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.
[2] These goals were added to the statute in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.
[3] These considerations were also added in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.
[4] The utilities subject to FEECA are the five regulated utilities (FPL, PEF, Gulf, TECO, and FPUC) and the Orlando Utilities Commission and JEA.

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

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

The Commission may authorize financial rewards for those utilities that exceed their goals and financial penalties for those that fail to meet their goals.[6]

Recent PSC Proceedings

The PSC began the process of implementing this amended law on June 4, 2008.[7] The parties to the proceedings to set the overall goals were: all of the seven FEECA utilities (FPL, PEF, TECO, Gulf, FPUC, OUC, and JEA), the Natural Resources Defense Council (NRDC), the Southern Alliance for Clean Energy (SACE), ITRON (a company hired by the preceding nine parties to conduct an assessment of the technical potential for energy and peak demand savings from energy efficiency, demand response, and customer-scale renewable energy), the Florida Energy and Climate Commission (FECC), the Florida Industrial Power Users Group (FIPUG), and the Florida Solar Coalition (FSC). The final order[8] addressed many issues, one of the most significant of which was the question of which cost-effectiveness tests were required under the amended statute.

There were two primary points of contention relating to the applicable test. The first was whether to exclude "measures" (or proposed methods of achieving conservation or efficiency gains) that had a participant payback period of two years or less. Consideration of "free riders" is required under Rule 25-17.0021(3), F.A.C. Free riders are those who have an economic incentive to take the steps involved in the proposed measure without being paid an additional utility incentive; they are an issue because it is a given that program funds will always be limited and allowing free riders to receive utility incentive funds impairs the efficiency of the incentive program. The PSC has consistently allowed the use of a two-year payback exclusion to exclude free riders since October 25, 1994.[9] Nonetheless, in this instance, due to

[5] s. 366.82(7), F.S., also added in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.
[6] s. 366.82(8),(9), F.S., added in 2008 by HB 7135; s. 39, ch. 2008-227, Laws of Florida.
[7] The commission had already begun a series of workshops on new FEECA goals on November 29, 2007.
[8] Order No. PSC-09-0855-FOF-EG, ISSUED: December 30, 2009, in the combined proceedings of In re: Commission review of numeric conservation goals (Florida Power & Light Company), Docket No. 080407-EG; In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.); Docket No. 080408-EG, In re: Commission review of numeric conservation goals (Tampa Electric Company), Docket No. 080409-EG; In re: Commission review of numeric conservation goals (Gulf Power Company), Docket No. 080410-EG; In re: Commission review of numeric conservation goals (Florida Public Utilities Company), Docket No. 080411-EG; In re: Commission review of numeric conservation goals (Orlando Utilities Commission), Docket No. 080412-EG; and In re: Commission review of numeric conservation goals (JEA), Docket No. 080413-EG.
[9] *Id.*, page 9.

concerns "that the utilities' use of the two-year payback criteria [sic] had the effect of screening out a substantial amount of savings" the Commission ordered FPL, PEF, Gulf, and TECO to include in their residential goals "the top-ten energy savings measures that were screened-out by the two-year criterion."[10]

The second issue was whether to consider and apply the ratepayer impact measure test (RIM) or the total resource cost test (TRC). The Commission determined that the primary difference between the two was that the RIM test took into consideration the incentives and the utility's lost revenues, whereas the TRC test does not. The effect of this is twofold.[11] The RIM test addresses the potential for a disproportionate economic impact between participating and nonparticipating customers. This can happen because a participating customer will purchase less electricity due to participation in the conservation or efficiency program, and may also receive an additional financial incentive from the utility, while a non-participating customer will not have the same reduction in use; so with both paying the increased cost of electricity, the non-participating customer experiences a greater rate increase impact.[12] Typically, it is those who are economically unable to participate in programs and who experience this disproportionate impact.[13] The TRC test does not address this disparity. Additionally, the RIM test considers a utility's lost revenues. Utilities have a fixed cost of providing safe, reliable service. When revenues go down because fewer kilowatt hours of electricity were consumed, the utility may have to make up the difference by requesting an increase in rates in order to maintain a reasonable return on equity.[14] The TRC test also leaves out this consideration. Ultimately, the Commission "approve[d] goals based on the unconstrained E-TRC test for FPL, PEF, TECO, Gulf, and FPUC" to achieve more "robust" conservation goals.[15]

Upon setting the overall goals, the Commission addressed each individual utility's proposed plan. It approved plans for the two large municipal utilities (OUC and JEA) and the three smaller investor-owned utilities (Gulf, TECO, and FPUC). However, in attempting to get final approval on the plans for the two larger investor-owned utilities (FPL and PEF), concerns over undue customer costs grew to the point that on July 26, 2011, the Commission rejected the proposed plans and approved modified plans. The Southern Alliance for Clean Energy has filed a notice it will appeal this decision to the Florida Supreme Court.[16]

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

The first is represented by the historic application of the FEECA statute: a utility's planning for additional generating resources was considered when setting FEECA goals and the goal was to offset some or all of that planned new generation with conservation or efficiency methods that could be implemented at a cost no higher than that to bring the planned electric plant into service. As stated by one expert witness, "In all five [of the previous] FEECA goals-setting proceedings, the Commission has recognized the desirability of establishing DSM goals based upon the utilities' planning processes and has used the measures of avoided costs from those processes as the basis for measuring customer benefits."[17] Further, "Over the many years and

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[10] *Id.*
[11] *Id.*, page14.
[12] *Id.*, page 25.
[13] *Id.*
[14] *Id.*
[15] *Id.*, page 15.
[16] http://www.floridapsc.org/library/FILINGS/12/00349-12/00349-12.pdf
[17] Direct Testimony & Exhibit of: James W. Dean, In re: Florida Power & Light Company's Petition for Approval of Numeric Conservation goals, Docket No. 080407-EG, page 6.

numerous FEECA proceedings, the Commission has steadfastly maintained that DSM goals be established that minimize rate impacts, minimize cross-subsidies between customers, and integrate with utility-identified capacity needs."[18] The witness noted that:

> The legislative intent of FEECA placed special importance on reducing weather-sensitive peak demand over simply reducing growth rates of electric consumption. This indicates that the legislative authors were particularly focused on slowing the growth in peak demand, which defers the need for new capacity and offers other benefits besides managing fuel costs. This enables all customers to benefit, not just the program participants.[19, 20]

The second position is that the goal is a reduction of kilowatt hours of usage, that the amount of conservation and efficiency to be sought is not limited by the amount of planned resources to be offset, and that program cost is not a consideration as ultimately overall cost to the consumer will be reduced. For example, NRDC/SACE argued that consideration of the impact on rates does not belong in the goal-setting process and that customers are more interested in their monthly utility bills than in rates and would benefit most if energy efficiency programs are widely available.[21]

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

Efficiency and Conservation outside FEECA

Most FEECA efficiency and conservation measures involve improving property owned by a single ratepayer. Additionally, many of the potential improvements fall within the "free rider" exclusion of a participant payback period of two years or less. Therefore, questions arise as to the relative costs and benefits of addressing these property owners directly, through education or incentives, instead of through FEECA, the utilities, and the PSC.[22]

III. Effect of Proposed Changes:

Section 1 amends s. 170.01, F.S., to authorize a municipality to pay a public utility the additional costs of renewable energy in excess of the utility's full avoided costs pursuant to an agreement with the utility. As the avoided cost standard of s. 366.051, F.S., is relevant only to renewable energy purchased from non-utility third party renewable energy producers, this appears to apply

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[18] *Id*., page 8.
[19] *Id*.
[20] This approach also acts as an analogue to the "full avoided costs" purchase price limitation for energy purchases from third party energy producers. The avoided cost limitation prevents ratepayers from paying a higher price that in effect subsidizes non-utility energy producers. This application of FEECA and the RIM test prevents some ratepayers from subsidizing a disproportionate benefit to other ratepayers.
[21] PSC goal-setting order, page 24.
[22] For a discussion on this and related issues, see Issue Brief 2009-309, REVIEW OF FACTORS TO BE CONSIDERED IN MAKING FURTHER CHANGES TO ENERGY POLICY, The Florida Senate, Committee on Communications and Public Utilities, October 2008.

only to re-sales of renewable energy purchased by a public utility from such a renewable energy producer and then sold to a municipality.

Section 2 amends s. 186.801, F.S., to require that the PSC, in reviewing a ten-year site plan, also review the following:

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

Section 3 amends s. 212.055, F.S., to authorize a local government to provide financial assistance to owners of residential property who make energy efficiency improvements to or install renewable energy devices on the residential property and to define what is included in the term renewable energy devices.

Section 4 amends s. 212.08, F.S., on sales and use tax, to revive the sales tax exemption for equipment, machinery, and other materials for renewable energy technologies that automatically repealed on July 1, 2010. It creates the exemption as a new paragraph (7)(hhh). The bill exempts from the sale or use tax materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100) and other renewable fuels, including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for biodiesel (B10-B100) and ethanol (E10-E100) and other renewable fuels distribution qualify for the exemption. Payment is on a first-come, first-served basis, based upon the date complete applications are received, and that incomplete placeholder applications will not be accepted and will not secure a place in the first-come, first-served application line.

Section 5 amends s. 220.192, F.S., on the renewable energy technologies investment tax credit against corporate income tax, to:

- delete all references to hydrogen-powered vehicles and fuel cells;
- revise the provisions on biodiesel and ethanol to make them effective for the period of July 1, 2012, through June 30, 2016;
- increase the limit on the tax credit from up to $6.5 million to up to $10 million per state fiscal year for all taxpayers; and to include renewable fuel;
- provide that each applicant is eligible to receive up to $1 million in tax credits;
- define the term renewable fuel; and
- conform the time periods for use of the tax credit, including the carry-over period.

Section 6 amends s. 220.193, F.S., on the Florida renewable energy production credit against corporate income tax, to revive the credit by revising the dates so that:

- the electricity production and sales that is relevant for the term expanded facility is that of the 2011 calendar year;
- a new facility is one operationally placed in service after May 1, 2012;
- for an expanded facility, the credit is to be based on the increases in the facility's electrical production that are achieved after May 1, 2012;

- credits may be earned between January 1, 2013 and June 30, 2016; and
- the provisions on claiming a credit apply beginning in 2014 and continuing until 2017.
- The bill also provides that each applicant is eligible to receive up to $500,000 in tax credits. The present cap of $5 million per year is maintained.

Section 7 amends s. 255.257, F.S., on energy management in buildings occupied by state agencies, to require that DMS coordinate with DACS in adopting rules and forms for the development of the state energy management plan. It requires that the plan include standard and uniform benchmarking requirements as a measure to evaluate the energy efficiency of state owned and leased buildings and Standard and Uniform data analysis and reporting procedures. It changes the criteria from "5,000 net square feet or more" to "5,000 net square feet or more of conditioned space." Finally, the bill requires that each agency adopt a standard and uniform state wide sustainable building rating system.

Section 8 amends s. 288.106, F.S., on the tax refund program for qualified target industry businesses, to provide that the exclusion of "any electrical utility" from the definition of "target industry business", and therefore the tax benefits, only applies to a utility "as defined in s. 366.02(2)", thereby allowing renewable energy producers who only sell electricity to a utility at wholesale to be eligible for the tax refund, if they meet the other requirements.

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

The Florida Building Commission is to adopt rules for building and electrical codes, local permitting, and installation of electric vehicle charging stations, in coordination with the DACS and the PSC. Development of these standards is expressly preempted to the state. DACS is to adopt rules to provide definitions, methods of sale, labeling requirements and price posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.

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

The bill provides for parking violations.

Section 10 amends s. 581.083, F.S., on DACS permitting process for introduction or release of nonnative plants. The bill adds algae and blue-green algae to the list of plants a person may not cultivate in plantings greater in size than 2 contiguous acres without a DACS special permit. It deletes the language about cultivating such plants "for purposes of fuel production or purposes other than agriculture."

It amends the language on an exemption from the permit requirement to say that a permit isn't required if, based on experience or research data, the nonnative plant, algae, or blue green algae,

does not pose a known threat of becoming an invasive species or a pest of plants or native fauna under Florida conditions and subsequently exempts the plant by rule.

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

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

Section 11 requires DACS to conduct a comprehensive statewide forest inventory analysis and study, utilizing Geographic Information System, to identify where available biomass is located, determine the available biomass resources, and ensure forest sustainability within the state. The department must submit the results of the study to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than July 1, 2013.

Section 12 requires the Office of Energy, within DACS, in consultation with the PSC, the Florida Building Commission, and the Florida Energy Systems Consortium, to develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures. The department is required to post the information on its website by July 1, 2013.

Section 13 requires the PSC to evaluate and prepare a report on the Florida Energy Efficiency and Conservation Act statutes and determine whether they remain in the public interest. The evaluation must consider the costs to ratepayers, the incentives and disincentives associated with the statutes, and whether the programs create benefits without undue burden on the customer. The models and methods used to determine conservation goals shall be specifically addressed in the report. The commission must submit the report to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than January 31, 2013.

Section 14 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The provisions recreating or reviving the tax exemption and tax credits will result in reductions in sales and corporate income tax revenues of:

- up to a limit of $1 million in tax each state fiscal year for all taxpayers for the sales tax exemption for materials used in the distribution of renewable fuels for motor vehicles;
- up to $10 million per state fiscal year for all taxpayers for the renewable energy technologies investment tax credit; and
- up to $5 million per year for the Florida renewable energy production credit.

B. Private Sector Impact:

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

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

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

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

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

The provisions requiring the PSC to consider the need "to improve the balance of power plant fuel diversity and reduce Florida's dependence on natural gas" could have impacts on electric rates. There is a need to consider the need for fuel diversity and fuel supply reliability, and the apparent intent of this language is to give heightened importance to this need. The question is how much more weight will be given this consideration than the others listed, and how this change may impact rates.

C. Government Sector Impact:

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

Additional resources may be required to accomplish the requirements for:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

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

- authorizes a municipality to pay a public utility the additional costs of renewable energy in excess of the utility's full avoided costs; and
- authorizes a local government to provide financial assistance to owners of residential property who make energy efficiency improvements to or install renewable energy devices on the residential property and defines what is included in the term renewable energy devices.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.