

By Senator Bennett

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1                                   A bill to be entitled  
2       An act relating to renewable energy; amending s.  
3       366.92, F.S.; revising legislative intent regarding  
4       the state's renewable energy policy; deleting  
5       provisions requiring that the Public Service  
6       Commission adopt rules for a renewable portfolio  
7       standard; requiring that the commission provide for  
8       full cost recovery; allowing each provider of Florida  
9       renewable energy resources to build such resources,  
10      convert existing fossil fuel generation plants to a  
11      renewable energy resource, or purchase renewable  
12      energy to recover costs; providing that each provider  
13      may purchase or produce renewable energy having  
14      capacity or energy costs in excess of the fully  
15      avoided cost limitations; specifying such cost  
16      limitations; providing for renewable attributes;  
17      providing guidelines for full cost recovery; providing  
18      caveats; amending s. 366.8255, F.S.; revising the  
19      definition of the term "environmental laws or  
20      regulations" to include any federal or state law  
21      requiring an electric utility to provide electricity  
22      from renewable energy; revising the definition of the  
23      term "environmental compliance costs" to conform to  
24      changes made by the act; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28       Section 1. Section 366.92, Florida Statutes, is amended to  
29       read:

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30 366.92 Florida renewable energy policy.—

31 (1) In order to stimulate the state's economy, encourage  
32 businesses to invest in clean technologies, and foster research,  
33 development, manufacturing, construction, and jobs in new and  
34 renewable energy, it is the intent of the Legislature to promote  
35 the development of renewable energy; protect the economic  
36 viability of Florida's existing renewable energy facilities;  
37 diversify the types of fuel used to generate electricity in  
38 Florida; lessen Florida's dependence on natural gas and fuel oil  
39 for the production of electricity; minimize the volatility of  
40 fuel costs; encourage investment within the state; improve  
41 environmental conditions; and, at the same time, minimize the  
42 costs of renewable power supply to electric utilities and their  
43 customers. It is the further intent of the Legislature that all  
44 prudently incurred costs of renewable energy shall be  
45 recoverable from electric utility customers through the  
46 environmental cost-recovery clause.

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

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

50 (b) "Provider" means a "utility" as defined in s.  
51 366.8255(1) (a) .

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

54 ~~(d) "Renewable energy credit" or "REC" means a product that~~  
55 ~~represents the unbundled, separable, renewable attribute of~~  
56 ~~renewable energy produced in Florida and is equivalent to 1~~  
57 ~~megawatt-hour of electricity generated by a source of renewable~~  
58 ~~energy located in Florida.~~

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~~(e) "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. 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~~

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~~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 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~~

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117 ~~electric power supplier that is independent of a program~~  
118 ~~sponsored by the electric power supplier.~~

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

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

132 ~~(3)-(4)~~ In order to promote the development of Florida  
133 renewable energy resources and the delivery of renewable energy  
134 in the state, pending the adoption of final renewable energy  
135 portfolio standards under federal or state law ~~demonstrate the~~  
136 ~~feasibility and viability of clean energy systems, the~~  
137 ~~commission shall provide for full cost recovery under the~~  
138 ~~environmental cost-recovery clause of all reasonable and prudent~~  
139 ~~costs incurred by a provider~~ of Florida renewable energy  
140 resources ~~for renewable energy projects that are zero greenhouse~~  
141 ~~gas emitting at the point of generation, up to a total of 110~~  
142 ~~megawatts statewide, and for which the provider has secured~~  
143 ~~necessary land, zoning permits, and transmission rights within~~  
144 ~~the state. Pursuant to this section, a provider may build~~  
145 Florida renewable energy resources, convert existing fossil fuel

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146 generation plants to a Florida renewable energy resource, or  
147 purchase renewable energy. Such providers shall recover all  
148 reasonable and prudent costs associated with building Florida  
149 renewable energy resources, converting existing fossil fuel  
150 generation plants to a Florida renewable energy resource, or  
151 purchasing renewable energy under the environmental cost-  
152 recovery clause. Each provider has the sole discretion to  
153 determine the type and technology of the Florida renewable  
154 energy resources that it elects to build and determine whether  
155 to self-build or contract with a third party for the purchase of  
156 power. Such costs shall be deemed reasonable and prudent for  
157 purposes of cost recovery so long as the provider has used  
158 reasonable and customary industry practices in the design,  
159 procurement, and construction of the project in a cost-effective  
160 manner appropriate to the location of the facility. The provider  
161 shall report to the commission as part of the cost-recovery  
162 proceedings the construction costs, in-service costs, operating  
163 and maintenance costs, hourly energy production of the renewable  
164 energy project, and any other information deemed relevant by the  
165 commission. Any provider constructing a clean energy facility  
166 pursuant to this section shall file for cost recovery no later  
167 than July 1, 2009.

168 (4) Pending the adoption of a state or federal renewable  
169 portfolio standard, each provider may purchase or produce  
170 Florida renewable energy having capacity or energy costs in  
171 excess of the fully avoided cost limitations in s. 366.051,  
172 subject to the limitations and conditions specified in  
173 paragraphs (a) and (b).

174 (a) The cost of producing or purchasing Florida renewable

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energy in any calendar year in excess of the fully avoided cost limitations in s. 366.051 shall not exceed 2 percent in 2011 and 2012, 3 percent in 2013, or 4 percent in 2014 and thereafter of the investor-owned utility's total revenue from retail sales of electricity for the calendar year 2010. Pursuant to this section, costs shall be computed using a methodology that averages the revenue requirements of the renewable energy resource or the purchases over their economic lives. Costs incurred by a provider in 2011 for Florida renewable energy resources for which construction is commenced or for renewable energy purchased on or after the effective date of this act shall be counted toward and included in the calculation of the cost cap. Costs for renewable energy resources approved by the commission for cost recovery through the environmental cost-recovery clause before the effective date of this act are not subject to or included in the calculation of the cost cap.

(b) If a provider pays costs for purchased power above the limitations set out in s. 366.051, the seller shall surrender to the provider all renewable attributes of the energy being purchased by the provider.

(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) All prudently incurred costs of renewable energy are recoverable under s. 366.8255.

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(a) The costs incurred by a provider in connection with the construction or conversion, operation, and maintenance of a Florida renewable energy resource shall be deemed to be prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate for the type of Florida renewable energy resource and 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.

(b) The commission shall allow full cost recovery over the entire useful life of the Florida renewable energy resource of the revenue requirements using traditional declining balance amortization through the environmental cost-recovery clause of all reasonable and prudent costs incurred by the provider related to or resulting from activities under this section, including, but not limited to, the following:

1. The siting, licensing, engineering, design, permitting, construction, operation, and maintenance of Florida renewable energy resources and associated transmission facilities by the provider. Cost includes, but is not limited to, all capital investments, including rate of return and any applicable taxes and all expenses, including operation and maintenance expenses, for the purposes stated in this subsection;

2. The reasonable and prudent costs associated with the purchase of capacity and energy from new renewable energy

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resources; or

3. The reasonable and prudent costs for conversion of existing fossil fuel generating plants to a Florida renewable energy resource, including the costs of retirement of the fossil fuel generation plant.

(c) Notwithstanding any other provision to the contrary, the commission shall allow a provider to recover all reasonable and prudent costs incurred to comply with a federal renewable portfolio standard, including costs to purchase renewable energy credits or alternative compliance payments.

(d) In addition to the full cost recovery for such renewable energy projects, a return on equity of not less than 50 basis points above the top of the range of the provider's last authorized rate of return on equity, approved by the commission for energy projects, shall be approved and provided for such renewable energy projects if a majority of the energy-producing components incorporated into such projects are manufactured or assembled within this state.

(7)(6) Nothing in this section or actions taken pursuant to this section shall be construed to impede or impair terms and conditions of existing contracts or be a basis for renegotiating or repricing existing contracts.

(8) Nothing in this section impedes or impairs a provider's full cost recovery of all reasonable and prudent costs incurred for renewable energy projects approved by the commission as eligible for cost recovery through the environmental cost-recovery clause before the effective date of this act. Nothing in this section requires a provider to build Florida renewable energy resources, convert existing fossil fuel generation plants

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to a Florida renewable resource, or purchase renewable energy.  
Furthermore a provider is not required to contract for  
generation at a price above its avoided cost if doing so would  
be inconsistent with or violate the Public Utility Regulatory  
Policies Act of 1978, as amended.

~~(9)(7)~~ The Commission may adopt rules to administer and  
implement the provisions of this section.

Section 2. Subsection (1) of section 366.8255, Florida  
Statutes, is amended to read:

366.8255 Environmental cost recovery.—

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

(a) "Electric utility" or "utility" means any investor-  
owned electric utility that owns, maintains, or operates an  
electric generation, transmission, or distribution system within  
the State of Florida and that is regulated under this chapter.

(b) "Commission" means the Florida Public Service  
Commission.

(c) "Environmental laws or regulations" includes all  
federal, state, or local statutes, administrative regulations,  
orders, ordinances, resolutions, or other requirements that  
apply to electric utilities and are designed to protect the  
environment, including any federal or state law that requires an  
electric utility to provide electricity from renewable energy.

(d) "Environmental compliance costs" includes all costs or  
expenses incurred by an electric utility in complying with  
environmental laws or regulations, including, but not limited  
to:

1. Inservice capital investments, including the electric  
utility's last authorized rate of return on equity thereon.

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291 2. Operation and maintenance expenses.

292 3. Fuel procurement costs.

293 4. Purchased power costs.

294 5. Emission allowance costs.

295 6. Direct taxes on environmental equipment.

296 7. Costs or expenses prudently incurred by an electric  
297 utility pursuant to an agreement entered into on or after the  
298 effective date of this act and prior to October 1, 2002, between  
299 the electric utility and the Florida Department of Environmental  
300 Protection or the United States Environmental Protection Agency  
301 for the exclusive purpose of ensuring compliance with ozone  
302 ambient air quality standards by an electrical generating  
303 facility owned by the electric utility.

304 8. Costs or expenses prudently incurred for the  
305 quantification, reporting, and third-party verification as  
306 required for participation in greenhouse gas emission registries  
307 for greenhouse gases as defined in s. 403.44.

308 9. Costs or expenses prudently incurred for scientific  
309 research and geological assessments of carbon capture and  
310 storage conducted in this state for the purpose of reducing an  
311 electric utility's greenhouse gas emissions when such costs or  
312 expenses are incurred in joint research projects with Florida  
313 state government agencies and Florida state universities.

314 10. Costs or expenses prudently incurred to comply with any  
315 environmental laws or regulations requiring that any portion of  
316 the electric utility's energy sales, demand, or other measures  
317 of the provision of electricity to its customers be derived from  
318 renewable energy, however defined, either produced by the  
319 electric utility itself or purchased from another source, or

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320 through credits purchased to comply in whole or in part with  
321 such provisions, including costs or expenses associated with  
322 setting up and participating in markets or other mechanisms for  
323 trading such renewable energy credits.

324 Section 3. This act shall take effect upon becoming a law.