

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 539 Renewable Energy  
**SPONSOR(S):** Byrd  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 896

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	17 Y, 0 N	Willson	Keating
2) Environment, Agriculture & Flooding Subcommittee		Gawin	Moore
3) Commerce Committee			

### SUMMARY ANALYSIS

Section 366.91, F.S., defines "renewable energy" as 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.

Certain renewable energy projects are eligible for a variety of financing and permitting benefits. Additionally, public utilities and municipal utilities are required to continuously make available standard offer contracts for the purchase of renewable energy, subject to certain price limitations, with the costs of any purchases recoverable from the utility's ratepayers.

The bill expands the definition of "renewable energy" to include "renewable natural gas" and to specify that renewable energy means electrical energy produced or energy created to displace traditional fuel sources from a method that uses certain specified fuels.

The bill defines "renewable natural gas" as anaerobically-generated biogas, landfill gas, or waste-water treatment gas refined to a methane content of 90 percent or greater which is capable of being used as transportation fuel, for electric power generation, or is of a quality capable of being injected into a natural gas pipeline.

The bill authorizes renewable natural gas and biogas projects to be eligible for consumptive use permits with a minimum 25-year term under certain conditions. Additionally, renewable natural gas and biogas projects would be eligible for the expedited review process for permits and comprehensive plan amendments applicable to certain economic development projects.

The bill authorizes the Florida Development Finance Corporation to issue revenue bonds to finance the undertaking of any project within the state that promotes renewable natural gas and biogas.

The bill requires renewable natural gas and biogas to be eligible for purchase under standard offer contracts, for a term of at least 10 years and containing payment provisions for energy and capacity based upon the utility's full avoided costs, that utilities must make available.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

#### Renewable Energy

##### *Florida Renewable Energy Policy*

Section 366.92, F.S. declares that 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
- minimize the costs of power supply to electric utilities and their customers.

Section 366.91, F.S., defines "renewable energy" as 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;<sup>1</sup>
- solar energy;
- geothermal energy;
- wind energy;
- ocean energy; and
- hydroelectric power.

Renewable energy also includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

##### *Contracts for the Purchase of Renewable Energy*

Since 2005, public utilities<sup>2</sup> have been required to continuously make available standard offer contracts for the purchase of renewable energy, with the costs of any purchases recoverable from the utility's ratepayers.<sup>3</sup> The law limits the price paid by a utility for renewable energy to the utility's full avoided costs, which are defined in s. 366.051, F.S., as the costs the utility would have incurred to produce the energy or capacity itself or purchase it from another source if not for the purchase of the renewable energy.<sup>4</sup> 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

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<sup>1</sup> Section 366.91(2)(a), F.S., defines "biomass" as "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."

<sup>2</sup> Section 366.02(1), F.S., defines a "public utility" as "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state." The term "public utility" does not include rural electric cooperatives, municipal electric utilities, special natural gas districts, natural gas transmission pipeline companies, natural gas marketers, or propane suppliers.

<sup>3</sup> Section 366.91(3), F.S. Each contract must provide a contract term of at least ten years.

<sup>4</sup> This pricing scheme reflects limits established by federal law, which have been in place since adoption of the Public Utilities Regulatory Policy Act in 1978.

avoided unit, the renewable energy producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term.<sup>5</sup> Prudent and reasonable costs associated with the contract must be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery mechanism administered by the Florida Public Service Commission (PSC).<sup>6</sup>

Similarly, each municipal electric utility<sup>7</sup> and rural electric cooperative<sup>8</sup> whose annual sales, as of July 1, 1993, to retail customers were greater than 2,000 gigawatt hours must continuously offer a purchase contract with a minimum term of 10 years to producers of renewable energy. These contracts must include 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.<sup>9</sup>

A contracting producer of renewable energy must pay the actual costs of its interconnection with the transmission grid or distribution system.<sup>10</sup>

## Florida Development Finance Corporation Revenue Bonds

Section 288.9606(7), F.S., authorizes the Florida Development Finance Corporation (FDFC) to issue revenue bonds to finance the undertaking of any project within the state that promotes renewable energy.

## Expedited Permitting

Section 403.973, F.S., provides for expedited permitting and a process for amendments to comprehensive plans for certain projects that are identified to encourage and facilitate the location and expansion of those types of economic development projects that offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., the Department of Environmental Protection must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by certain entities. Projects resulting in the production of biofuels cultivated on lands that are 1,000 acres or more or in the construction of a biofuel or biodiesel processing facility or a facility generating renewable energy<sup>11</sup> are eligible for such expedited review.

Section 403.973(19), F.S., provides that the following projects are ineligible for expedited review:

- A project funded and operated by a local government<sup>12</sup> and located within that government's jurisdiction.
- A project, the primary purpose of which is to:
  - Effect the final disposal of solid waste, biomedical waste, or hazardous waste in the state.

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<sup>5</sup> Section 366.91(3), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> There are 33 municipal electric (public power) utilities in the state, which serve approximately 3 million people or 14 percent of Florida's population. Municipal utilities are not-for-profit and governed by an elected city commission, or an appointed or elected utility board. They raise capital through operating revenues or the sale of tax-exempt bonds. See Florida Municipal Electric Association, *Florida Municipal Utility Map*, <https://www.publicpower.com/florida-municipal-utility-map> (last visited Mar. 5, 2021).

<sup>8</sup> Rural electric cooperatives are cooperative, nonprofit membership corporations organized under ch. 425, F.S., for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas. Florida has 16 distribution cooperatives and 2 generation and transmission cooperatives that supply electricity to more than 2.7 million Floridians in 57 of Florida's 67 counties. Cooperatives are owned by the members they serve and provide at-cost electric service to their consumer-members. See Florida Electric Cooperatives Association, *About*, <https://feca.com/about/> (last visited Mar. 5, 2021).

<sup>9</sup> Section 366.91(4), F.S.

<sup>10</sup> Section 366.91(8), F.S.

<sup>11</sup> Section 366.91(2)(d), F.S.

<sup>12</sup> Section 377.709(2)(e), F.S.

- Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy.
- Extract natural resources.
- Produce oil.
- Construct, maintain, or operate an oil, petroleum, or sewage pipeline.

## **Permits for the Consumptive Use of Water**

A consumptive use of water permit allows the holder to withdraw a specified amount of water from groundwater or surface waters for reasonable-beneficial uses.<sup>13</sup> Section 373.236(7), F.S., specifies that a consumptive use permit for a renewable energy generating facility, or for lands where 1,000 or more acres are used to cultivate agricultural products used in the production of renewable energy, must be granted for a term of at least 25 years, at the applicant's request, based on the anticipated life of the facility if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, a permit may be issued for a shorter duration that reflects the longest period for which such reasonable assurances are provided.

### **Effect of the Bill**

The bill defines "biogas" as a mixture of carbon dioxide and hydrocarbons, primarily methane gas, which is released from the biological decomposition of organic materials.

The bill expands the definition of "renewable energy" to include "renewable natural gas" and to specify that renewable energy means electrical energy produced or energy created to displace traditional fuel sources from a method that uses certain specified fuels. The bill further specifies that hydrogen resulting from certain sources is considered renewable energy.

The bill defines "renewable natural gas" as anaerobically-generated biogas, landfill gas, or waste-water treatment gas refined to a methane content of 90 percent or greater which is capable of being used as transportation fuel, for electric power generation, or is of a quality capable of being injected into a natural gas pipeline.

The bill authorizes renewable natural gas and biogas projects to be eligible for consumptive use permits with a minimum 25-year term if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. Additionally, renewable natural gas and biogas projects would be eligible for the expedited review process for permits and comprehensive plan amendments applicable to certain economic development projects.

By reenacting s. 288.9606, F.S., the bill authorizes the FDFC to issue revenue bonds to finance the undertaking of any project within the state that promotes renewable natural gas and biogas.

The bill requires renewable natural gas and biogas to be eligible for purchase under standard offer contracts, for a term of at least 10 years and containing payment provisions for energy and capacity based upon the utility's full avoided costs, that utilities must make available.<sup>14</sup>

## **B. SECTION DIRECTORY:**

**Section 1** Amends s. 366.91, F.S.; defining the terms "biogas" and "renewable natural gas"; revising the definition of the term "renewable energy" to include certain energy created to displace traditional fuel sources.

**Section 2** Amends s. 366.92, F.S.; conforming a cross-reference.

<sup>13</sup> South Florida Water Management District, *Consumptive Water Use Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits> (last visited Mar. 10, 2021).

<sup>14</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2021 House Bill 539, p. 5 (Feb. 26, 2021).

**Section 3** Amends s. 373.236, F.S.; conforming a cross-reference.

**Section 4** Amends s. 403.973, F.S.; conforming a cross-references.

**Section 5** Reenacts s. 288.9606(7), F.S.; relating to the issuance of revenue bonds, to incorporate the amendments made by the bill.

**Section 6** Provides an effective date of July 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the producers of renewable natural gas associated with the requirement that utilities make renewable natural gas eligible for purchase under standard offer contracts.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill adds the phrase “or energy created to displace traditional fuel sources” to the definition of renewable energy. However, the bill does not define what is meant by “traditional fuel sources.” The interpretation of this phrase could change over time.

By adding the phrase “or energy created to displace traditional fuel sources,” the scope of renewable energy would be expanded beyond electricity to include an energy source created to displace a traditional fuel, such as natural gas or any other fuel commodity. Consequently, the bill introduces a non-electrical source of energy into the definition of renewable energy that, pursuant to sections (3) and (4), an electric utility may be required to purchase under the requirements of the statute.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.