

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 539 Renewable Energy

**SPONSOR(S):** Commerce Committee, Environment, Agriculture & Flooding Subcommittee, Byrd, Roth and others

**TIED BILLS:**           **IDEN./SIM. BILLS:**

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**FINAL HOUSE FLOOR ACTION:** 86 Y's           29 N's           **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 539 passed the House on April 28, 2021, as CS/CS/SB 896. The bill includes portions of HB 761, SB 1008, and SB 1960.

The bill authorizes the Florida Public Service Commission (PSC) to approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas but are otherwise deemed reasonable and prudent by the PSC.

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 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 also defines "solar facility" and specifies that such facilities must be a permitted use in all agricultural land use categories in a local government comprehensive plan and all agricultural zoning districts within an unincorporated area. Solar facilities must comply with setback and landscape buffer area criteria to the same extent as other similar permitted uses in an agricultural district.

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

The bill was approved by the Governor on June 29, 2021, ch. 2021-178, L.O.F., and became effective on July 1, 2021.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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

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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> S. 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.

energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's 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>

## **Local Land Development Regulations and Comprehensive Plans**

The Community Planning Act (act) directs the manner in which local governments create and adopt their local comprehensive plans.<sup>11</sup> The act prescribes certain principles, guidelines, standards, and strategies to allow for an orderly and balanced future land development.<sup>12</sup> Section 163.3177, F.S., outlines the required and optional elements of a comprehensive plan and includes provisions which govern agricultural lands and practices.<sup>13</sup> The act does not specifically address how agricultural lands with solar electric generation facilities should be considered for purposes of local government comprehensive plans.

### **Effect of the Bill**

The bill authorizes the PSC to approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but are otherwise deemed reasonable and prudent by the PSC.

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.

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<sup>5</sup> S. 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> S. 366.91(4), F.S.

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

<sup>11</sup> S. 163.3167(2), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> S. 163.3162, F.S.

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 also defines "solar facility" and specifies that such facilities must be a permitted use in all agricultural land use categories in a local government comprehensive plan and all agricultural zoning districts within an unincorporated area. Solar facilities must comply with setback and landscape buffer area criteria to the same extent as other similar permitted uses in an agricultural district.

## **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 if the PSC approves cost recovery for a gas public utility's contract for renewable natural gas.

### **D. FISCAL COMMENTS:**

None.