CHAPTER 2005-259

House Bill No. 77

An act relating to renewable energy; creating s. 366.91, F.S.; providing legislative findings; providing definitions; requiring public utilities, municipal utilities, and rural electric cooperatives to offer a purchase contract to producers of renewable energy; requiring the Florida Public Service Commission to establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers; authorizing the commission to adopt rules; providing requirements for contracts; requiring that a producer pay the costs for interconnection; amending s. 366.11, F.S.; specifying that requirements for the purchase of renewable energy apply to municipal utilities; amending s. 403.7061, F.S.; revising a permit requirement for a waste-to-energy facility; encouraging specified applicants for a landfill permit to consider construction of a waste-to-energy facility; providing an effective date.

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

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

366.91 Renewable energy.—

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

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

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

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

(3) On or before January 1, 2006, each public utility must continuously offer a purchase contract to producers of renewable energy. The commission shall establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers and may adopt rules to administer this section. The contract shall contain payment provisions for

energy and capacity which are based upon the utility's full avoided costs, as defined in s. 366.051; however, capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Each contract must provide a contract term of at least 10 years. Prudent and reasonable costs associated with a renewable energy contract shall be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery clause mechanism administered by the commission.

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

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

Section 2. Subsection (1) of section 366.11, Florida Statutes, is amended to read:

366.11 Certain exemptions.—

(1) No provision of this chapter shall apply in any manner, other than as specified in ss. 366.04, 366.05(7) and (8), 366.051, 366.055, 366.093, 366.095, 366.14, ~~and~~ 366.80-366.85, and 366.91, to utilities owned and operated by municipalities, whether within or without any municipality, or by cooperatives organized and existing under the Rural Electric Cooperative Law of the state, or to the sale of electricity, manufactured gas, or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under and pursuant to any contracts now in effect or which may be entered into in the future, when such municipality or cooperative is engaged in the sale and distribution of electricity or manufactured or natural gas, or to the rates provided for in such contracts.

Section 3. Section 403.7061, Florida Statutes, is amended to read:

403.7061 Requirements for review of new waste-to-energy facility capacity by the Department of Environmental Protection.—

(1) The Legislature recognizes the need to use an integrated approach to municipal solid waste management. Accordingly, the solid waste management legislation adopted in 1988 was guided by policies intended to foster

integrated solid waste management by using waste reduction, recycling, waste-to-energy facilities, and landfills. Progress is being made in the state using this integrated approach to municipal solid waste management, and this approach should be continued. Waste-to-energy facilities will continue to be an integral part of the state's solid waste management practices. However, the state is committed to achieving its recycling and waste reduction goals and must ensure that waste-to-energy facilities are fully integrated with the state's waste management goals. Therefore, the Legislature finds that the department should evaluate applications for waste-to-energy facilities in accordance with the new criteria in subsection (3) to confirm that the facilities are part of an integrated waste management plan.

(2) Notwithstanding any other provisions of state law, the department shall not issue a construction permit or certification to build a waste-to-energy facility or expand an existing waste-to-energy facility unless the facility meets the requirements set forth in subsection (3). Any construction permit issued by the department between January 1, 1993, and May 12, 1993, which does not address these new requirements shall be invalid. These new requirements do not apply to the issuance of permits or permit modifications to retrofit existing facilities with new or improved pollution control equipment to comply with state or federal law. The department shall initiate rulemaking to incorporate the criteria in subsection (3) into its permit review process.

(3) An applicant must provide reasonable assurance that the construction of a new waste-to-energy facility or the expansion of an existing waste-to-energy facility will comply with the following criteria ~~subsections~~:

(a) The facility is a necessary part of the local government's integrated solid waste management program in the jurisdiction where the facility is located and cannot be avoided through feasible and practical efforts to use recycling or waste reduction.

(b) The use of capacity at existing waste-to-energy facilities within reasonable transportation distance of the proposed facility must have been evaluated and found not to be economically feasible when compared to the use of the proposed facility for the expected life of the proposed facility. This paragraph does not apply to:

1. Applications to build or expand waste-to-energy facilities received by the department before March 1, 1993, or amendments to such applications that do not increase combustion capacity beyond that requested as of March 1, 1993; or

2. Any modification to waste-to-energy facility construction or operating permits or certifications or conditions thereto, including certifications under ss. 403.501-403.518, that do not increase combustion capacity above that amount applied for before March 1, 1993.

(c) The county in which the facility is located has implemented and maintains a solid waste management and recycling program that is designed to ~~will~~ achieve the ~~30-percent~~ waste reduction goal set forth in s. 403.706(4) ~~by the time the facility begins operation~~. For the purposes of this section, the

provisions of s. 403.706(4)(c) for counties having ~~with~~ populations of 100,000 ~~75,000~~ or fewer ~~less~~ do not apply.

(d) The local government in which the facility is located has implemented a mulching, composting, or other waste reduction program for yard trash.

(e) The local governments served by the facility will have implemented or participated in a separation program designed to remove small-quantity generator and household hazardous waste, mercury containing devices, and mercuric-oxide batteries from the waste stream prior to incineration, by the time the facility begins operation.

(f) The local government in which the facility is located has implemented a program to procure products or materials with recycled content, pursuant to s. 403.7065.

(g) A program will exist in the local government in which the facility is located for collecting and recycling recovered material from the institutional, commercial, and industrial sectors by the time the facility begins operation.

(h) The facility will be in compliance with applicable local ordinances and with the approved state and local comprehensive plans required by chapter 163.

(i) The facility is in substantial compliance with its permit, conditions of certification, and any agreements or orders resulting from environmental enforcement actions by state agencies.

(4) For the purposes of this section, the term "waste-to-energy facility" means a facility that uses an enclosed device using controlled combustion to thermally break down solid, liquid, or gaseous combustible solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term also does not include facilities that burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

Section 4. Requirements relating to solid waste disposal facility permitting.—Local government applicants for a permit to construct or expand a Class I landfill are encouraged to consider construction of a waste-to-energy facility as an alternative to additional landfill space.

Section 5. This act shall take effect October 1, 2005.

Approved by the Governor June 17, 2005.

Filed in Office Secretary of State June 17, 2005.