

LAND USE CONSTRAINTS

LAND USE COMPATIBILITY

Land use conflicts often occur where proposed land uses create physical impacts such as noise, dust, light and glare etc., which offend nearby sensitive land uses (e.g., residential, schools, recreation areas, hospitals, senior centers, etc.).

Typically, avoidance of land use compatibility issues involves procuring sites that are large enough to provide an adequate buffer area, or locating within an existing industrial area, or that intervening uses in the area would minimize land use conflicts.

Proposed new power plant projects may also be seen as counter to the economic development activities and goals of the local land use agency (cities or counties). For example, several cities and counties throughout California are actively pursuing large high technology employer-type uses (such as Hewlett Packard, NEC, Intel, etc) to locate facilities in their industrial designated areas. They may perceive a proposed new power plant project as incompatible with these economic development goals. Other examples of this include perceived conflicts with the "quality of life" provided in a community.

INFRASTRUCTURE REQUIREMENTS

Power plants require substantial physical infrastructure that has become difficult to provide at suitable new locations. Construction of extended new transmission facilities and other linear facilities usually raises environmental concerns that are time consuming, expensive and politically costly to deal with. A supply of natural gas for fuel, water for cooling and steam generation, electrical transmission lines, wastewater conveyance system, drainage facilities, roadways and disposal areas, are necessary. These must be extended from the nearest facility with available capacity and the shortest possible route is usually desirable. Generally the longer the route to extend required infrastructure facilities, the more environmental impacts and land use conflicts encountered that need to be addressed. Land use conflicts often arise when power plant infrastructure requirements involve modification and/or expansion of existing facilities. For example, extension of underground infrastructure facilities (e.g., natural gas pipelines) can cause conflicts with local land use agencies street improvement programs, as well as result in significant (though temporary) land use conflicts with land uses along the route of the extension.

As opposed to the challenges posed in identifying sites for new plants, existing power plants often have available infrastructure for natural gas and electrical transmission facilities, and are usually appropriately designated in community land use plans. Refurbishing and expanding existing power plants, therefore, may represent the path of least resistance when it comes to selecting a site to increase power generation, although this may not be true in all communities. The desirability of renovation may be enhanced through improvements to older technology, and possibly resulting in improvements in air quality and safety.

URBAN VERSUS RURAL AREAS

While a majority of the state's power demand is associated with urban areas, power plants are not usually proposed to be located in those areas. Exceptions to this may occur when existing industrial land have been subject to urban encroachment. Generally, siting power plants in urban areas may be considered preferable because of the availability of required infrastructure facilities and public services, close proximity to power users (minimizing power loss from transmission), and general compatibility with urban land uses. However, land use conflicts are generally more of a problem in urban areas where intense land development with a variety of uses occurs in close proximity. In urban areas large vacant parcels, especially parcels that are appropriately designated as heavy industrial and are in reasonable proximity to required infrastructure, may be rare and land prices are relatively high. Urban sites are likely to be smaller, providing less space for needed equipment and infrastructure and less opportunity for physical separation from population area. Perhaps the best opportunities for power plant siting on large urban sites may occur where military base closure is occurring or on the fringe of urban areas where development has not yet occurred. The Crockett Cogeneration Project was constructed on a small site containing an existing heavy industrial facility, but still experienced significant challenges in designing and locating equipment to avoid or mitigate impacts on adjacent urban areas. The Crockett project demonstrated that smaller sites with suitable existing uses that act as buffers provide an opportunity for power plant siting in a more developed urban situation.

Siting power plants in rural areas can provide several advantages over urban areas including proximity to the electrical transmission fuel supply and water supply lines, and the availability of large, and relatively inexpensive parcels of land that provide the greatest opportunity to avoid or reduce land use conflict through physical separation. However, siting power plants in rural areas can result in conflicts with agricultural operations, other rural land uses, and local agency policies that prohibit development in rural areas in order to preserve open space, agricultural lands and habitat areas.

CONSTRAINTS ASSOCIATED WITH LAND USE DEVELOPMENT POLICIES AND STANDARDS (LORS)

LOCAL AGENCY PARTICIPATION

As provided in the Warren-Alquist Act, the Commission is identified as the sole permitting authority for power plant projects producing in excess of 50 megawatts of electrical energy. Given the provisions in the Warren-Alquist Act, local land use agencies sometimes have the impression that the review process is out of their jurisdiction and that they cannot obtain development review fees to fund their staff's involvement in the projects. However, the Energy Commission regulations do provide for reimbursement of local agencies. The regulations do not provide for reimbursement of state or federal agencies, or public participation. In some cases the local land use agency is in opposition to a power plant project, which can

complicate receiving input from the local land use agency because of their status as an intervener. While early consultation to solicit local land use agency participation is preferable, power plant applicants may be reluctant for fear of rallying early opposition to their projects.

RELATIONSHIP BETWEEN STATE AND LOCAL LAND USE CONTROL

The primary responsibility for land use regulation development and control lies with local agencies. While there are several state laws associated with land use control (e.g., Planning and Zoning Law [Government Code Sections 65000 et al.], Subdivision Map Act [Government Code 66410 et al.], etc.), the state does not directly regulate land use. There is currently no state requirement that local agencies provide any land use designation that would clearly allow a power plant. As result, land use issues associated with power plant siting can vary significantly between local jurisdictions. For example, Sacramento County has an energy element as part of its general plan that generally acknowledges that the County will have an increased demand for power and provides guidance regarding consideration of future power facilities and conservation planning, while other communities provide little or no direction in their general plans and ordinances regarding the need for energy infrastructure.

LOCAL AGENCY LAND USE ISSUES

While some communities such as Sacramento County have been proactive in considering regional power needs and land uses, some local jurisdictions have chosen to preclude power plants in their planning efforts and land use plans due to public opposition. In these situations, local agency staff is sometimes hesitant to provide assessments of a power plant's consistency with land use plans due to the political nature of the ultimate interpretation of local development standards by elected officials.

In addition, the application of local agency zoning ordinance provisions and development standards to power plants is often unclear. Specific issues often include setback standards, lot coverage, outside storage, noise and height restrictions, and lot sizes. In order to resolve consistency issues, Conditions of Certification sometimes include requiring general plan amendments, rezones, variances or participation in the development review process of the local agency. Depending on the land use and the political setting of the local agency, this could result in further local opposition and denial of local standard amendments, which then result in power plant construction delays or cancellation of the project.

REGIONAL AGENCY LAND USE PROVISION ISSUES

As the environmental sensitivity of a site and associated linear corridors increases, the level of concern expressed by various agencies at the regional, state and federal level also increases. These agencies may include the U.S. Bureau of Land Management (BLM), Coastal Commission, Bay Conservation and Development Commission (BCDC), Federal Aviation Administration (FAA), and Local Agency Formation Commissions (LAFCOs). Resolving concerns regarding stream crossing/disturbance, wetlands, air quality, sensitive species, local coastal program

and historical resource issues can be complicated and time consuming. This may involve multiple jurisdictions increase the need for early coordination to resolve issues. They also add complexity and can result in delays as each jurisdiction follows its own procedures.

POWER PLANT APPLICATION ISSUES

There are occasions where the power plant application (AFC) may be considered data adequate, but fails to provide the necessary information in order to evaluate land use issues. This issue often arises in association with the proposed power plant site plan, which sometimes is missing information such as property line location, roadway right-of-way, a scale, relationship to other land uses and other associated material. This information sometimes remains ill-defined even after data requests and associated workshops, resulting in Conditions of Certification that require site plan review be performed by the local land use agency.

There are delays that can occur when the power plant application does not have data readily available, where the applicant decides to alter aspects of the project to address concerns that arise in the process, or if the applicant does not clearly own or have authorization to use the site. The applicant may not be informed or may be incorrectly advised about local land use plans. The San Francisco Energy project is an example of a project where a privately owned site was proposed that was incompatible with existing land uses and general plan/zoning designations. The applicant ultimately withdrew the site after an extended public controversy, and requested certification for a different site, which was owned by the City/County of San Francisco. The Energy Commission certified the project at the second site, but the City/County would not provide a lease for the site. This site control issue resulted in the applicant eventually dropping the project, despite Energy Commission approval.

CONCLUSIONS

As described above, issues associated with land use constraints can vary substantially by jurisdiction. They generally involve determination of consistency with LORS and local land use agency participation in the process. Possible options for the Committee to consider to improve the consideration of land use issues include the following:

- Establishing an early agency consultation process with local, regional, state and federal agencies potentially affected by a proposed power plant project in order to identify land use and LORS issues prior to completion of the data adequacy process for AFCs. This process could also be used to identify alternative power plant sites considered acceptable by the affected agencies.
- Providing workshops or information sessions for affected land use agencies regarding how the Energy Commission power plant permitting process works and how the agency can provide input.

- Offer assistance to local and regional agencies in the development of a programs that identify power needs on a regional basis (e.g., Sacramento Metropolitan area) as well as land areas appropriate for siting power plants and related linear facilities.
- Encourage local land use agencies to consider the power needs of the community in their land use and planning activities (e.g., general plan and specific plan development processes and associated zoning ordinances).
- Evaluate local agency and public participation reimbursement regulations and/or guidelines to facilitate participation in the siting process.

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1 A bill to be entitled

2 An act relating to energy; providing legislative findings
3 and intent; creating s. 377.801, F.S.; creating the
4 "Florida Renewable Energy Technologies and Energy
5 Efficiency Act"; creating s. 377.802, F.S.; stating the
6 purpose of the act; creating s. 377.803, F.S.; providing
7 definitions; creating s. 377.804, F.S.; creating the
8 Renewable Energy Technologies Grants Program; providing
9 program requirements and procedures, including matching
10 funds; creating s. 377.805, F.S.; creating the Energy
11 Efficient Appliance Rebate Program; providing program
12 requirements, procedures, and limitations; creating s.
13 377.806, F.S.; creating the Solar Energy System Rebate
14 Program; providing program requirements, procedures, and
15 limitations; creating s. 377.901, F.S.; creating the
16 Florida Energy Council within the Department of
17 Environmental Protection; providing purpose and
18 composition; providing for appointment of members and
19 their terms; providing for reimbursement for travel and
20 per diem; requiring the department to provide certain
21 services to the council; providing rulemaking authority;
22 amending s. 212.08, F.S.; providing definitions for the
23 terms "biodiesel" and "ethanol"; providing tax exemptions
24 for the sale or use of certain energy efficient products;
25 providing eligibility requirements and tax credit limits;
26 directing the department to adopt rules; directing the
27 department to determine and publish certain information
28 relating to such exemptions; amending s. 213.053, F.S.;

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29 | authorizing the Department of Revenue to share certain
30 | information with the Department of Environmental
31 | Protection for specified purposes; amending s. 220.02,
32 | F.S.; providing the order of application of the renewable
33 | energy technologies investment tax credit; creating s.
34 | 220.192, F.S.; establishing a corporate tax credit for
35 | certain costs related to renewable energy technologies;
36 | providing eligibility requirements and credit limits;
37 | providing certain authority to the Department of
38 | Environmental Protection and the Department of Revenue;
39 | directing the Department of Environmental Protection to
40 | determine and publish certain information; providing for
41 | repeal of the tax credit; amending s. 220.13, F.S.;
42 | providing an addition to the definition of "adjusted
43 | federal income"; amending s. 186.801, F.S.; revising the
44 | provisions of electric utility 10-year site plans to
45 | include the effect on fuel diversity; amending s. 366.04,
46 | F.S.; revising the safety standards for public utilities;
47 | amending s. 366.05, F.S.; authorizing the Public Service
48 | Commission to adopt certain construction standards and
49 | make certain determinations; directing the commission to
50 | conduct a study and provide a report by a certain date;
51 | amending s. 403.503, F.S.; revising and providing
52 | definitions applicable to the Florida Electrical Power
53 | Plant Siting Act; amending s. 403.504, F.S.; providing the
54 | Department of Environmental Protection with additional
55 | powers and duties relating to the Florida Electrical Power
56 | Plant Siting Act; amending s. 403.5055, F.S.; revising

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57 provisions for certain permits associated with
58 applications for electrical power plant certification;
59 amending s. 403.506, F.S.; revising provisions relating to
60 applicability and certification of certain power plants;
61 amending s. 403.5064, F.S.; revising provisions for
62 distribution of applications and schedules relating to
63 certification; amending s. 403.5065, F.S.; revising
64 provisions relating to the appointment of administrative
65 law judges; amending s. 403.5066, F.S.; revising
66 provisions relating to the determination of completeness
67 for certain applications; creating s. 403.50663, F.S.;
68 authorizing certain local governments and regional
69 planning councils to hold an informational public meeting;
70 providing requirements and procedures therefor; creating
71 s. 403.50665, F.S.; requiring local governments to file
72 certain land use determinations; providing requirements
73 and procedures therefor; repealing s. 403.5067, F.S.;
74 relating to the determination of sufficiency for certain
75 applications; amending s. 403.507, F.S.; revising required
76 statement provisions for affected agencies; amending s.
77 403.508, F.S.; revising provisions related to land use and
78 certification proceedings; requiring certain notice;
79 amending s. 403.509, F.S.; revising provisions related to
80 the final disposition of certain applications; providing
81 requirements and provisions with respect thereto; amending
82 s. 403.511, F.S.; revising provisions related to the
83 effect of certification for the construction and operation
84 of proposed power plants; providing that issuance of

85 certification meets certain consistency requirements;
86 creating s. 403.5112, F.S.; requiring filing of notice for
87 certified corridor routes; providing requirements and
88 procedures with respect thereto; creating s. 403.5113,
89 F.S.; authorizing postcertification amendments for power
90 plant site certification applications; providing
91 requirements and procedures with respect thereto; amending
92 s. 403.5115, F.S.; requiring certain public notice for
93 activities related to power plant site application,
94 certification, and land use determination; providing
95 requirements and procedures with respect thereto;
96 directing the Department of Environmental Protection to
97 maintain certain lists and provide copies to of certain
98 publications; amending s. 403.513, F.S.; revising
99 provisions for judicial review of appeals related to power
100 plant site certification; amending s. 403.516, F.S.;
101 revising provisions relating to modification of
102 certification for power plant sites; amending s. 403.517,
103 F.S.; revising the provisions relating to supplemental
104 applications for certain power plant sites; amending s.
105 403.5175, F.S.; revising provisions relating to existing
106 power plant site certification; revising the procedure for
107 reviewing and processing applications; requiring
108 additional information to be included in certain
109 applications; amending s. 403.518, F.S.; revising the
110 allocation of proceeds from certain fees collected;
111 providing for reimbursement of certain expenses; directing
112 the Department of Environmental Protection to establish

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113 rules for determination of certain fees; eliminating
114 certain operational license fees; amending s. 403.519,
115 F.S.; directing the Public Service Commission to consider
116 fuel diversity and reliability in certain determinations;
117 providing an effective date.

118
119 Be It Enacted by the Legislature of the State of Florida:

120
121 Section 1. Legislative findings and intent.--The
122 Legislature finds that advancing the development of renewable
123 energy technologies and energy efficiency is important for the
124 state's future, its energy stability, and the protection of its
125 citizens' public health and its environment. The Legislature
126 finds that the development of renewable energy technologies and
127 energy efficiency in the state will help to reduce demand for
128 foreign fuels, promote energy diversity, enhance system
129 reliability, reduce pollution, educate the public on the promise
130 of renewable energy technologies, and promote economic growth.
131 The Legislature finds that there is a need to assist in the
132 development of market demand that will advance the
133 commercialization and widespread application of renewable energy
134 technologies. The Legislature further finds that the state is
135 ideally positioned to stimulate economic development through
136 such renewable energy technologies due to its ongoing and
137 successful research and development track record in these areas,
138 an abundance of natural and renewable energy sources, an ability
139 to attract significant federal research and development funds,

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140 and the need to find and secure renewable energy technologies
141 for the benefit of its citizens, visitors, and environment.

142 Section 2. Section 377.801, Florida Statutes, is created
143 to read:

144 377.801 Short title.--Sections 377.801-377.806 may be
145 cited as the "Florida Renewable Energy Technologies and Energy
146 Efficiency Act."

147 Section 3. Section 377.802, Florida Statutes, is created
148 to read:

149 377.802 Purpose.--This act is intended to provide matching
150 grants to stimulate capital investment in the state and to
151 enhance the market for and promote the statewide utilization of
152 renewable energy technologies. The targeted grants program is
153 designed to advance the already growing establishment of
154 renewable energy technologies in the state and encourage the use
155 of other incentives such as tax exemptions and regulatory
156 certainty to attract additional renewable energy technology
157 producers, developers, and users to the state. This act is also
158 intended to provide rebates for energy efficient appliances and
159 for solar energy equipment installations for residential and
160 commercial buildings.

161 Section 4. Section 377.803, Florida Statutes, is created
162 to read:

163 377.803 Definitions.--As used in this act, the term:

164 (1) "Act" means the Florida Renewable Energy Technologies
165 and Energy Efficiency Act.

166 (2) "Department" means the Department of Environmental
167 Protection.

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168 (3) "Energy Star qualified appliance" means a
169 refrigerator, residential model clothes washer including a
170 residential style coin operated clothes washer, or dishwasher
171 that has been designated by the United States Environmental
172 Protection Agency and the United States Department of Energy as
173 meeting or exceeding the energy saving efficiency requirements
174 under each agency's Energy Star program.

175 (4) "Person" means an individual, partnership, joint
176 venture, private or public corporation, association, firm,
177 public service company, or any other public or private entity.

178 (5) "Renewable energy" means renewable energy as defined
179 in s. 366.91.

180 (6) "Renewable energy technology" means any technology
181 that generates or utilizes a renewable energy resource.

182 (7) "Solar energy system" means equipment that provides
183 for the collection and use of incident solar energy for water
184 heating, space heating or cooling, or other applications that
185 require a conventional source of energy such as petroleum
186 products, natural gas, or electricity and equipment that
187 performs primarily with solar energy. In other systems in which
188 solar energy is used in a supplemental way, only those
189 components which collect and transfer solar energy shall be
190 included in this definition. The term "solar energy system" does
191 not include a swimming pool heater.

192 (8) "Solar photovoltaic system" means a device that
193 converts incident sunlight into electrical current.

194 (9) "Solar thermal system" means a device that traps heat
195 from incident sunlight in order to heat water.

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196 Section 5. Section 377.804, Florida Statutes, is created
197 to read:

198 377.804 Renewable Energy Technologies Grants Program.--

199 (1) The Renewable Energy Technologies Grants Program is
200 established within the department to provide renewable-energy
201 matching grants for demonstration, commercialization, research,
202 and development projects relating to renewable energy
203 technologies.

204 (2) Matching grants for renewable energy technology
205 demonstration, commercialization, research, and development
206 projects may be made to any of the following:

207 (a) Municipalities and county governments.

208 (b) Established for-profit companies licensed to do
209 business in the state.

210 (c) Universities and colleges.

211 (d) Utilities located and operating within the state.

212 (e) Not-for-profit organizations.

213 (f) Other qualified persons, as determined by the
214 department.

215 (3) The department may adopt rules pursuant to ss.
216 120.536(1) and 120.54 to administer the awarding of grants under
217 this program.

218 (4) Factors the department shall consider in awarding
219 grants include, but are not limited to:

220 (a) The degree to which the project stimulates in-state
221 capital investment and economic development in metropolitan and
222 rural areas, including the creation of jobs and the future

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223 development of a commercial market for renewable energy
224 technologies.

225 (b) The extent to which the proposed project has been
226 demonstrated to be technically feasible based on pilot project
227 demonstrations, laboratory testing, scientific modeling, or
228 engineering or chemical theory which supports the proposal.

229 (c) The degree to which the project incorporates an
230 innovative new technology or an innovative application of an
231 existing technology.

232 (d) The degree to which a project generates thermal,
233 mechanical, or electrical energy by means of a renewable energy
234 resource that has substantial long-term production potential.

235 (e) The degree to which a project demonstrates efficient
236 use of energy and material resources.

237 (f) The degree to which the project fosters overall
238 understanding and appreciation of renewable energy technologies.

239 (g) The availability of matching funds from an applicant.

240 (h) Other in-kind contributions applied to the total
241 project.

242 (i) The ability to administer a complete project.

243 (j) Project duration and timeline for expenditures.

244 (k) The geographic area in which the project is to be
245 conducted in relation to other projects.

246 (l) The degree of public visibility and interaction.

247 Section 6. Section 377.805, Florida Statutes, is created
248 to read:

249 377.805 Energy Efficient Appliance Rebate Program.--

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250 (1) The Energy Efficient Appliances Rebate Program is
251 established within the department to provide for financial
252 incentives for the purchase of Energy Star qualified appliances
253 as specified in this section.

254 (2) Any resident of the state who purchases a new Energy
255 Star qualified appliance from July 1, 2006, through June 30,
256 2010, from a retail store in the state is eligible for a rebate.

257 (3) The department shall adopt rules pursuant to ss.
258 120.536(1) and 120.54 to designate rebate amounts and administer
259 the issuance of rebates. The department's rules may include
260 separate incentives for low-income families to purchase Energy
261 Star qualified appliances.

262 (4) Application for a rebate must be made within 90 days
263 after the purchase of the Energy Star qualified appliance.

264 (5) Rebates are limited to one per type of appliance per
265 year.

266 (6) The total dollar amount of all rebates issued by the
267 department is subject to the total amount of appropriations in
268 any fiscal year for this program. If funds are insufficient
269 during the current fiscal year, any requests for rebates
270 received during that fiscal year may be processed during the
271 following fiscal year.

272 (7) The department shall determine and publish on a
273 regular basis the amount of rebate funds remaining in each
274 fiscal year.

275 Section 7. Section 377.806, Florida Statutes, is-created
276 to read:

277 377.806 Solar Energy System Rebate Program.--

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278 (1) The Solar Energy System Rebate Program is established
279 within the department to provide for financial incentives for
280 the purchase of solar energy systems.

281 (2) Any person who purchases a new solar energy system
282 from July 1, 2006, through June 30, 2010, of 2 kilowatts or
283 larger for a solar photovoltaic system, or a solar energy system
284 that provides at least 50 percent of a building's hot water
285 consumption for a solar thermal system and has the system
286 installed by a certified solar contractor, is eligible for a
287 rebate.

288 (3) The department shall adopt rules pursuant to ss.
289 120.536(1) and 120.54 to designate rebate amounts and administer
290 the issuance of rebates.

291 (4) Application for a rebate must be made within 90 days
292 after the purchase of the solar energy equipment.

293 (5) Rebates are limited to two per person.

294 (6) The total dollar amount of all rebates issued by the
295 department is subject to the total amount of appropriations in
296 any fiscal year for this program. If funds are insufficient
297 during the current fiscal year, any requests for rebates
298 received during that fiscal year may be processed during the
299 following fiscal year.

300 (7) The department shall determine and publish on a
301 regular basis the amount of rebate funds remaining in each
302 fiscal year.

303 Section 8. Section 377.901, Florida Statutes, is created
304 to read:

305 377.901 Florida Energy Council.--

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306 (1) The Florida Energy Council is created within the
307 Department of Environmental Protection to provide advice and
308 counsel to the Governor, the President of the Senate, and the
309 Speaker of the House of Representatives on the energy policy of
310 the state. The council should advise the state on current and
311 projected energy issues including, but not limited to,
312 generation, transmission, and fuel supply issues.

313 (2) (a) The council shall be comprised of utility
314 providers, researchers, fuel suppliers, technology
315 manufacturers, environmental interests, and others.

316 (b) The council shall consist of eight voting members as
317 follows:

318 1. The Secretary of the Department of Environmental
319 Protection shall serve as chair of the council.

320 2. The Chair of the Public Service Commission shall serve
321 as vice chair of the council.

322 3. Two members shall be appointed by the Governor.

323 4. Two members shall be appointed by the President of the
324 Senate.

325 5. Two members shall be appointed by the Speaker of the
326 House of Representatives.

327 (c) All initial members shall be appointed prior to
328 September 1, 2006. Appointments made by the Governor, the
329 President of the Senate, and the Speaker of the House of
330 Representatives shall be for terms of 2 years each. Members
331 shall serve until their successors are appointed. Vacancies
332 shall be filled in the manner of the original appointment for
333 the remainder of the term that is vacated.

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334 (d) Members shall serve without compensation, but shall be
335 entitled to travel reimbursement and per diem expenses related
336 to council duties and responsibilities pursuant to s. 112.061.

337 (3) The Department of Environmental Protection shall
338 provide primary staff support to the council and shall ensure
339 that council meetings are electronically recorded. Such
340 recording shall be preserved pursuant to chapters 119 and 257.

341 (4) The Department of Environmental Protection may adopt
342 rules pursuant to ss. 120.536 and 120.54 to implement the
343 provisions of this section.

344 Section 9. Paragraph (ccc) is added to subsection (7) of
345 section 212.08, Florida Statutes, to read:

346 212.08 Sales, rental, use, consumption, distribution, and
347 storage tax; specified exemptions.--The sale at retail, the
348 rental, the use, the consumption, the distribution, and the
349 storage to be used or consumed in this state of the following
350 are hereby specifically exempt from the tax imposed by this
351 chapter.

352 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
353 entity by this chapter do not inure to any transaction that is
354 otherwise taxable under this chapter when payment is made by a
355 representative or employee of the entity by any means,
356 including, but not limited to, cash, check, or credit card, even
357 when that representative or employee is subsequently reimbursed
358 by the entity. In addition, exemptions provided to any entity by
359 this subsection do not inure to any transaction that is
360 otherwise taxable under this chapter unless the entity has
361 obtained a sales tax exemption certificate from the department

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or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ccc) Equipment, machinery, and other materials for renewable energy technologies.--

1. Definitions.--As used in this paragraph, the term:

a. "Biodiesel" means a fuel comprised of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats meeting the requirements of American Society for Testing and Materials (ASTM) standard D6751. Biodiesel may refer to a blend of biodiesel fuel meeting the ASTM standard D6751 with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means a high octane, liquid fuel produced by the fermentation of plant sugars meeting the requirements of ASTM standard D5798-99. Ethanol refers to a blend of ethanol fuel meeting ASTM standard D5798-99 with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

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389 2. The sale or use of the following is exempt from the tax
390 imposed by this chapter:

391 a. Hydrogen-powered vehicles, materials incorporated into
392 hydrogen-powered vehicles, and hydrogen-fueling stations, up to
393 \$2 million each fiscal year.

394 b. Commercial stationary hydrogen fuel cells, up to \$1
395 million each fiscal year.

396 c. Materials used in the distribution of biodiesel (B10-
397 B100) and ethanol (E10-E85), including fueling infrastructure,
398 transportation, and storage, up to \$1 million each fiscal year.

399 3. The Department of Environmental Protection shall
400 provide to the department a list of items eligible for the
401 exemption.

402 4.a. The exemption shall be available to a purchaser
403 through a refund of previously paid taxes.

404 b. To be eligible to receive the exemption, a purchaser
405 shall file an application with the Department of Environmental
406 Protection. The application shall be developed by the Department
407 of Environmental Protection, in consultation with the
408 department, and shall require:

409 (I) The name and address of the person claiming the
410 refund.

411 (II) A specific description of the purchase for which a
412 refund is sought, including, when applicable, a serial number or
413 other permanent identification number.

414 (III) The sales invoice or other proof of purchase showing
415 the amount of sales tax paid, the date of purchase, and the name

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416 and address of the sales tax dealer from whom the property was
417 purchased.

418 (IV) A sworn statement that the information provided is
419 accurate.

420 c. Within 30 days after receipt of an application, the
421 Department of Environmental Protection shall review the
422 application and shall notify the applicant of any deficiencies.
423 Upon receipt of a completed application, the Department of
424 Environmental Protection shall evaluate the application for
425 exemption and issue a written certification that the applicant
426 is eligible for a refund or issue a written denial of such
427 certification within 60 days. The Department of Environmental
428 Protection shall provide the department with a copy of each
429 certification issued upon approval of an application.

430 d. Each certified applicant shall be responsible for
431 forwarding a certified copy of the application and copies of all
432 required documentation to the department within 6 months after
433 certification by the Department of Environmental Protection.

434 e. The provisions of s. 212.095 do not apply to any refund
435 application made pursuant to this paragraph. A refund approved
436 pursuant to this paragraph shall be made within 30 days after
437 formal approval by the department.

438 f. The department shall adopt rules governing the manner
439 and form of refund applications and may establish guidelines as
440 to the requisites for an affirmative showing of qualification
441 for exemption under this paragraph.

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442 g. The Department of Environmental Protection shall be
443 responsible for ensuring that the exemptions do not exceed the
444 limits provided in subparagraph 2.

445 5. The Department of Environmental Protection shall
446 determine and publish on a regular basis the amount of sales tax
447 funds remaining in each fiscal year.

448 6. This exemption is repealed July 1, 2010.

449 Section 10. Paragraph (y) is added to subsection (7) of
450 section 213.053, Florida Statutes, to read:

451 213.053 Confidentiality and information sharing.--

452 (7) Notwithstanding any other provision of this section,
453 the department may provide:

454 (y) Information relative to ss. 212.08(7)(ccc) and 220.192
455 to the Department of Environmental Protection for use in the
456 conduct of its official business.

457
458 Disclosure of information under this subsection shall be
459 pursuant to a written agreement between the executive director
460 and the agency. Such agencies, governmental or nongovernmental,
461 shall be bound by the same requirements of confidentiality as
462 the Department of Revenue. Breach of confidentiality is a
463 misdemeanor of the first degree, punishable as provided by s.
464 775.082 or s. 775.083.

465 Section 11. Subsection (8) of section 220.02, Florida
466 Statutes, is amended to read:

467 220.02 Legislative intent.--

468 (8) It is the intent of the Legislature that credits
469 against either the corporate income tax or the franchise tax be

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applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, ~~and~~ those enumerated in s. 220.187, and those enumerated in s. 220.192.

Section 12. Section 220.192, Florida Statutes, is created to read:

220.192 Renewable energy technologies investment tax credit.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in s. 212.08(7)(ccc).

(b) "Eligible costs" means:

1. Seventy-five percent of all capital costs, operational and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to \$3 million per fiscal year, in connection with an investment in hydrogen powered vehicles and hydrogen vehicle fueling stations including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operational and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of \$1.5 million in connection with an investment in commercial stationary hydrogen fuel cells including, but not limited to,

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498 the costs of constructing, installing, and equipping such
499 technologies in the state.

500 3. Seventy-five percent of all capital costs, operational
501 and maintenance costs, and research and development costs
502 incurred between July 1, 2006, and June 30, 2010, up to a limit
503 of \$6.5 million per fiscal year, in connection with an
504 investment in the production and distribution of biodiesel (B10-
505 B100) and ethanol (E10-E85) including, the costs of
506 constructing, installing, and equipping such technologies in the
507 state.

508 (c) "Ethanol" means ethanol as defined in s.
509 212.08(7)(ccc).

510 (d) "Hydrogen fuel cell" means hydrogen fuel cell as
511 defined in s. 212.08(7)(ccc).

512 (2) TAX CREDIT.--For tax years beginning on or after
513 January 1, 2007, a credit against the tax imposed by this
514 chapter shall be granted in an amount equal to the eligible
515 costs. Credits may be used beginning January 1, 2007, through
516 December 31, 2013, after which the credit shall expire. If the
517 credit is not fully used in any one tax year because of
518 insufficient tax liability on the part of the corporation, the
519 unused amount may be carried forward through December 31, 2012,
520 after which the credit carryover expires and may not be used. A
521 taxpayer that files a consolidated return in this state as a
522 member of an affiliated group under s. 220.131(1) may be allowed
523 the credit on a consolidated return basis up to the amount of
524 tax imposed upon the consolidated group. Any eligible cost for
525 which a credit is claimed and which is deducted or otherwise

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reduces federal taxable income shall be added back in computing
adjusted federal income under s. 220.13.

(3) APPLICATION PROCESS.--Any corporation wishing to
obtain tax credits available under this section must submit to
the Department of Environmental Protection an application for
tax credit that includes a complete description of all eligible
costs for which the corporation is seeking a credit and a
description of the total amount of credits sought. The
Department of Environmental Protection shall make a
determination on the eligibility of the applicant for the
credits sought and certify the determination to the applicant
and the Department of Revenue. The corporation must attach the
Department of Environmental Protection's certification to the
tax return on which the credit is claimed. The Department of
Environmental Protection is authorized to adopt the necessary
rules, guidelines, and application materials for the application
process.

(4) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF
CREDITS.--

(a) In addition to its existing audit and investigation
authority, the Department of Revenue may perform any additional
financial and technical audits and investigations, including
examining the accounts, books, and records of the tax credit
applicant, that are necessary to verify the eligible costs
included in the tax credit return and to ensure compliance with
this section. The Department of Environmental Protection shall
provide technical assistance when requested by the Department of

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553 Revenue on any technical audits or examinations performed
554 pursuant to this section.

555 (b) It is grounds for forfeiture of previously claimed and
556 received tax credits if the Department of Revenue determines, as
557 a result of either an audit or examination or from information
558 received from the Department of Environmental Protection, that a
559 taxpayer received tax credits pursuant to this section to which
560 the taxpayer was not entitled. The taxpayer is responsible for
561 returning forfeited tax credits to the Department of Revenue,
562 and such funds shall be paid into the General Revenue Fund of
563 the state.

564 (c) The Department of Environmental Protection may revoke
565 or modify any written decision granting eligibility for tax
566 credits under this section if it is discovered that the tax
567 credit applicant submitted any false statement, representation,
568 or certification in any application, record, report, plan, or
569 other document filed in an attempt to receive tax credits under
570 this section. The Department of Environmental Protection shall
571 immediately notify the Department of Revenue of any revoked or
572 modified orders affecting previously granted tax credits.
573 Additionally, the taxpayer must notify the Department of Revenue
574 of any change in its tax credit claimed.

575 (d) The taxpayer shall file with the Department of Revenue
576 an amended return or such other report as the Department of
577 Revenue prescribes by rule and shall pay any required tax and
578 interest within 60 days after the taxpayer receives notification
579 from the Department of Environmental Protection that previously
580 approved tax credits have been revoked or modified. If the

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581 revocation or modification order is contested, the taxpayer
582 shall file as provided in this paragraph within 60 days after a
583 final order is issued following proceedings.

584 (e) A notice of deficiency may be issued by the Department
585 of Revenue at any time within 3 years after the taxpayer
586 receives formal notification from the Department of
587 Environmental Protection that previously approved tax credits
588 have been revoked or modified. If a taxpayer fails to notify the
589 Department of Revenue of any changes to its tax credit claimed,
590 a notice of deficiency may be issued at any time.

591 (5) RULES.--The Department of Revenue shall have the
592 authority to adopt rules relating to the forms required to claim
593 a tax credit under this section, the requirements and basis for
594 establishing an entitlement to a credit, and the examination and
595 audit procedures required to administer this section.

596 (6) PUBLICATION.--The Department of Environmental
597 Protection shall determine and publish on a regular basis the
598 amount of available tax credits remaining in each fiscal year.

599 (7) REPEAL.--The provisions of this section, except the
600 credit carryover provisions provided in subsection (2), are
601 repealed on July 1, 2010.

602 Section 13. Paragraph (a) of subsection (1) of section
603 220.13, Florida Statutes, is amended to read:

604 220.13 "Adjusted federal income" defined.--

605 (1) The term "adjusted federal income" means an amount
606 equal to the taxpayer's taxable income as defined in subsection
607 (2), or such taxable income of more than one taxpayer as

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608 provided in s. 220.131, for the taxable year, adjusted as
609 follows:

610 (a) Additions.--There shall be added to such taxable
611 income:

612 1. The amount of any tax upon or measured by income,
613 excluding taxes based on gross receipts or revenues, paid or
614 accrued as a liability to the District of Columbia or any state
615 of the United States which is deductible from gross income in
616 the computation of taxable income for the taxable year.

617 2. The amount of interest which is excluded from taxable
618 income under s. 103(a) of the Internal Revenue Code or any other
619 federal law, less the associated expenses disallowed in the
620 computation of taxable income under s. 265 of the Internal
621 Revenue Code or any other law, excluding 60 percent of any
622 amounts included in alternative minimum taxable income, as
623 defined in s. 55(b)(2) of the Internal Revenue Code, if the
624 taxpayer pays tax under s. 220.11(3).

625 3. In the case of a regulated investment company or real
626 estate investment trust, an amount equal to the excess of the
627 net long-term capital gain for the taxable year over the amount
628 of the capital gain dividends attributable to the taxable year.

629 4. That portion of the wages or salaries paid or incurred
630 for the taxable year which is equal to the amount of the credit
631 allowable for the taxable year under s. 220.181. The provisions
632 of this subparagraph shall expire and be void on June 30, 2005.

633 5. That portion of the ad valorem school taxes paid or
634 incurred for the taxable year which is equal to the amount of
635 the credit allowable for the taxable year under s. 220.182. The

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636 provisions of this subparagraph shall expire and be void on June
637 30, 2005.

638 6. The amount of emergency excise tax paid or accrued as a
639 liability to this state under chapter 221 which tax is
640 deductible from gross income in the computation of taxable
641 income for the taxable year.

642 7. That portion of assessments to fund a guaranty
643 association incurred for the taxable year which is equal to the
644 amount of the credit allowable for the taxable year.

645 8. In the case of a nonprofit corporation which holds a
646 pari-mutuel permit and which is exempt from federal income tax
647 as a farmers' cooperative, an amount equal to the excess of the
648 gross income attributable to the pari-mutuel operations over the
649 attributable expenses for the taxable year.

650 9. The amount taken as a credit for the taxable year under
651 s. 220.1895.

652 10. Up to nine percent of the eligible basis of any
653 designated project which is equal to the credit allowable for
654 the taxable year under s. 220.185.

655 11. The amount taken as a credit for the taxable year
656 under s. 220.187.

657 12. The amount taken as a credit for the taxable year
658 under s. 220.192.

659 Section 14. Subsection (2) of section 186.801, Florida
660 Statutes, is amended to read:

661 186.801 Ten-year site plans.--

662 (2) Within 9 months after the receipt of the proposed
663 plan, the commission shall make a preliminary study of such plan

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664 and classify it as "suitable" or "unsuitable." The commission
665 may suggest alternatives to the plan. All findings of the
666 commission shall be made available to the Department of
667 Environmental Protection for its consideration at any subsequent
668 electrical power plant site certification proceedings. It is
669 recognized that 10-year site plans submitted by an electric
670 utility are tentative information for planning purposes only and
671 may be amended at any time at the discretion of the utility upon
672 written notification to the commission. A complete application
673 for certification of an electrical power plant site under
674 chapter 403, when such site is not designated in the current 10-
675 year site plan of the applicant, shall constitute an amendment
676 to the 10-year site plan. In its preliminary study of each 10-
677 year site plan, the commission shall consider such plan as a
678 planning document and shall review:

679 (a) The need, including the need as determined by the
680 commission, for electrical power in the area to be served.

681 (b) The effect on fuel diversity within the state.

682 (c) ~~(b)~~ The anticipated environmental impact of each
683 proposed electrical power plant site.

684 (d) ~~(e)~~ Possible alternatives to the proposed plan.

685 (e) ~~(d)~~ The views of appropriate local, state, and federal
686 agencies, including the views of the appropriate water
687 management district as to the availability of water and its
688 recommendation as to the use by the proposed plant of salt water
689 or fresh water for cooling purposes.

690 (f) ~~(e)~~ The extent to which the plan is consistent with the
691 state comprehensive plan.

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692 (g) ~~(f)~~ The plan with respect to the information of the
693 state on energy availability and consumption.

694 Section 15. Subsection (6) of section 366.04, Florida
695 Statutes, is amended to read:

696 366.04 Jurisdiction of commission.--

697 (6) The commission shall further have exclusive
698 jurisdiction to prescribe and enforce safety standards for
699 transmission and distribution facilities of all public electric
700 utilities, cooperatives organized under the Rural Electric
701 Cooperative Law, and electric utilities owned and operated by
702 municipalities. In adopting safety standards, the commission
703 shall, at a minimum:

704 (a) Adopt the 1984 edition of the National Electrical
705 Safety Code (ANSI C2) as initial standards; and

706 (b) Adopt, after review, any new edition of the National
707 Electrical Safety Code (ANSI C2).

708

709 The standards prescribed by the current 1984 edition of the
710 National Electrical Safety Code (ANSI C2) shall constitute
711 acceptable and adequate requirements for the protection of the
712 safety of the public, and compliance with the minimum
713 requirements of that code shall constitute good engineering
714 practice by the utilities. The administrative authority referred
715 to in the 1984 edition of the National Electrical Safety Code is
716 the commission. However, nothing herein shall be construed as
717 superseding, repealing, or amending the provisions of s.
718 403.523(1) and (10).

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719 Section 16. Subsections (1) and (8) of section 366.05,
720 Florida Statutes, are amended to read:

721 366.05 Powers.--

722 (1) In the exercise of such jurisdiction, the commission
723 shall have power to prescribe fair and reasonable rates and
724 charges, classifications, standards of quality and measurements,
725 including the ability to adopt construction standards that
726 exceed the National Electrical Safety Code, for purposes of
727 ensuring the reliable provision of service and service rules and
728 regulations to be observed by each public utility; to require
729 repairs, improvements, additions, replacements, and extensions
730 to the plant and equipment of any public utility when reasonably
731 necessary to promote the convenience and welfare of the public
732 and secure adequate service or facilities for those reasonably
733 entitled thereto; to employ and fix the compensation for such
734 examiners and technical, legal, and clerical employees as it
735 deems necessary to carry out the provisions of this chapter; and
736 to adopt rules pursuant to ss. 120.536(1) and 120.54 to
737 implement and enforce the provisions of this chapter.

738 (8) If the commission determines that there is probable
739 cause to believe that inadequacies exist with respect to the
740 energy grids developed by the electric utility industry,
741 including inadequacies in fuel diversity or fuel supply
742 reliability, it shall have the power, after proceedings as
743 provided by law, and after a finding that mutual benefits will
744 accrue to the electric utilities involved, to require
745 installation or repair of necessary facilities, including
746 generating plants and transmission facilities, with the costs to

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747 be distributed in proportion to the benefits received, and to
748 take all necessary steps to ensure compliance. The electric
749 utilities involved in any action taken or orders issued pursuant
750 to this subsection shall have full power and authority,
751 notwithstanding any general or special laws to the contrary, to
752 jointly plan, finance, build, operate, or lease generating, and
753 transmission, and distribution facilities and shall be further
754 authorized to exercise the powers granted to corporations in
755 chapter 361. This subsection shall not supersede or control any
756 provision of the Florida Electrical Power Plant Siting Act, ss.
757 403.501-403.518.

758 Section 17. The Florida Public Service Commission shall
759 conduct a study of the electric transmission grid in the state.
760 The study shall look at electric system reliability to examine
761 the efficiency and reliability of power transfer and emergency
762 contingency conditions. In addition, the study shall examine
763 subterranean placement of distribution lines and the hardening
764 of infrastructure to address issues arising from the 2004 and
765 2005 hurricane seasons. A report of the results of the study
766 shall be provided to the Governor, the President of the Senate,
767 and the Speaker of the House of Representatives by January 30,
768 2007.

769 Section 18. Subsections (5), (8), (9), (12), and (27) of
770 section 403.503, Florida Statutes, are amended, subsections (16)
771 through (28) are renumbered as (17) through (29), respectively,
772 and new subsection (16) is added to that section, to read:

773 403.503 Definitions relating to Florida Electrical Power
774 Plant Siting Act.--As used in this act:

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775 (5) "Application" means the documents required by the
776 department to be filed to initiate a certification review and
777 evaluation, including the initial document filing, amendments,
778 and responses to requests from the department for additional
779 data and information ~~proceeding and shall include the documents~~
780 ~~necessary for the department to render a decision on any permit~~
781 ~~required pursuant to any federally delegated or approved permit~~
782 ~~program.~~

783 (8) "Completeness" means that the application has
784 addressed all applicable sections of the prescribed application
785 format, and ~~but does not mean~~ that those sections are sufficient
786 in comprehensiveness of data or in quality of information
787 provided to allow the department to determine whether the
788 application provides the reviewing agencies adequate information
789 to prepare the reports required by s. 403.507.

790 (9) "Corridor" means the proposed area within which an
791 associated linear facility right-of-way is to be located. The
792 width of the corridor proposed for certification as an
793 associated facility, at the option of the licensee ~~applicant,~~
794 may be the width of the right-of-way or a wider boundary, not to
795 exceed a width of 1 mile. The area within the corridor in which
796 a right-of-way may be located may be further restricted by a
797 condition of certification. After all property interests
798 required for the right-of-way have been acquired by the licensee
799 ~~applicant,~~ the boundaries of the area certified shall narrow to
800 only that land within the boundaries of the right-of-way.

801 (12) "Electrical power plant" means, for the purpose of
802 certification, any steam or solar electrical generating facility

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803 using any process or fuel, including nuclear materials, except
804 that this term does not include any steam or solar electric
805 generating facility of less than 75 megawatts in capacity unless
806 the applicant for such a facility elects to apply for
807 certification under this act. This term ~~and~~ includes associated
808 facilities which directly support the construction and operation
809 of the electrical power plant such as fuel unloading facilities,
810 pipelines necessary for transporting fuel for the operation of
811 the facility or other fuel transportation facilities, water or
812 wastewater transport pipelines, construction, maintenance and
813 access roads, railway lines necessary for transport of
814 construction equipment or fuel for the operation of the
815 facility, and those associated transmission lines which connect
816 the electrical power plant to an existing transmission network
817 or rights-of-way to which the licensee ~~applicant~~ intends to
818 connect, ~~except that this term does not include any steam or~~
819 ~~solar electrical generating facility of less than 75 megawatts~~
820 ~~in capacity unless the applicant for such a facility elects to~~
821 ~~apply for certification under this act.~~ An associated
822 transmission line may include, at the licensee's ~~applicant's~~
823 option, any proposed terminal or intermediate substations or
824 substation expansions connected to the associated transmission
825 line.

826 (16) "Licensee" means an applicant that has obtained a
827 certification order for the subject project.

828 (28) ~~(27)~~ "Ultimate site capacity" means the maximum
829 generating capacity for a site as certified by the board.

830 ~~"Sufficiency" means that the application is not only complete~~

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831 ~~but that all sections are sufficient in the comprehensiveness of~~
832 ~~data or in the quality of information provided to allow the~~
833 ~~department to determine whether the application provides the~~
834 ~~reviewing agencies adequate information to prepare the reports~~
835 ~~required by s. 403.507.~~

836 Section 19. Subsections (1), (7), (9), and (10) of section
837 403.504, Florida Statutes, are amended, and new subsections (9),
838 (10), (11), and (12) are added to that section, to read:

839 403.504 Department of Environmental Protection; powers and
840 duties enumerated.--The department shall have the following
841 powers and duties in relation to this act:

842 (1) To adopt rules pursuant to ss. 120.536(1) and 120.54
843 to implement the provisions of this act, including rules setting
844 forth environmental precautions to be followed in relation to
845 the location, construction, and operation of electrical power
846 plants.

847 (7) To conduct studies and prepare a project written
848 analysis under s. 403.507.

849 (9) To issue final orders after receipt of the
850 administrative law judge's order relinquishing jurisdiction
851 pursuant to s. 403.508(6).

852 (10) To act as clerk for the siting board.

853 (11) To administer and manage the terms and conditions of
854 the certification order and supporting documents and records for
855 the life of the facility.

856 (12) To issue emergency orders on behalf of the board for
857 facilities licensed under this act.

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858 ~~(9) To notify all affected agencies of the filing of a~~
859 ~~notice of intent within 15 days after receipt of the notice.~~

860 ~~(10) To issue, with the electrical power plant~~
861 ~~certification, any license required pursuant to any federally~~
862 ~~delegated or approved permit program.~~

863 Section 20. Section 403.5055, Florida Statutes, is amended
864 to read:

865 403.5055 Application for permits pursuant to s.
866 403.0885.--In processing applications for permits pursuant to s.
867 403.0885 that are associated with applications for electrical
868 power plant certification:

869 (1) The procedural requirements set forth in 40 C.F.R. s.
870 123.25, including public notice, public comments, and public
871 hearings, shall be closely coordinated with the certification
872 process established under this part. In the event of a conflict
873 between the certification process and federally required
874 procedures for NPDES permit issuance, the applicable federal
875 requirements shall control.

876 ~~(2) The department's proposed action pursuant to 40 C.F.R.~~
877 ~~s. 124.6, including any draft NPDES permit (containing the~~
878 ~~information required under 40 C.F.R. s. 124.6(d)), shall within~~
879 ~~130 days after the submittal of a complete application be~~
880 ~~publicly noticed and transmitted to the United States~~
881 ~~Environmental Protection Agency for its review pursuant to 33~~
882 ~~U.S.C. s. 1342(d).~~

883 ~~(3) The department shall include in its written analysis~~
884 ~~pursuant to s. 403.507(3) copies of the department's proposed~~
885 ~~action pursuant to 40 C.F.R. s. 124.6 on any application for a~~

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886 ~~NPDES permit; any corresponding comments received from the~~
887 ~~United States Environmental Protection Agency, the applicant, or~~
888 ~~the general public; and the department's response to those~~
889 ~~comments.~~

890 (2)(4) The department shall not issue or deny the permit
891 pursuant to s. 403.0885 in advance of the issuance of the
892 electric power plant certification under this part unless
893 required to do so by the provisions of federal law. When
894 possible, any hearing on a permit issued pursuant to s.
895 403.0885, shall be conducted in conjunction with the
896 certification hearing held pursuant to this act. The
897 department's actions on an NPDES permit shall be based on the
898 record and recommended order of the certification hearing, if
899 the hearing on the NPDES was conducted in conjunction with the
900 certification hearing, and of any other proceeding held in
901 connection with the application for an NPDES permit, timely
902 public comments received with respect to the application, and
903 the provisions of federal law. The department's action on an
904 NPDES permit, if issued, shall differ from the actions taken by
905 the siting board regarding the certification order if federal
906 laws and regulations require different action to be taken to
907 ensure compliance with the Clean Water Act, as amended, and
908 implementing regulations. Nothing in this part shall be
909 construed to displace the department's authority as the final
910 permitting entity under the federally approved state NPDES
911 program. Nothing in this part shall be construed to authorize
912 the issuance of a state NPDES permit which does not conform to

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913 the requirements of the federally approved state NPDES program.

914 ~~The permit, if issued, shall be valid for no more than 5 years.~~

915 ~~(5) The department's action on an NPDES permit renewal, if~~
916 ~~issued, shall differ from the actions taken by the siting board~~
917 ~~regarding the certification order if federal laws and~~
918 ~~regulations require different action to be taken to ensure~~
919 ~~compliance with the Clean Water Act, as amended, and~~
920 ~~implementing regulations.~~

921 Section 21. Section 403.506, Florida Statutes, is amended
922 to read:

923 403.506 Applicability and certification.--

924 (1) The provisions of this act shall apply to any
925 electrical power plant as defined herein, except that the
926 provisions of this act shall not apply to any electrical power
927 plant or steam generating plant of less than 75 megawatts in
928 capacity or to any substation to be constructed as part of an
929 associated transmission line unless the applicant has elected to
930 apply for certification of such plant or substation under this
931 act. No construction of any new electrical power plant or
932 expansion in steam generating capacity as measured by an
933 increase in the maximum normal generator nameplate rating of any
934 existing electrical power plant may be undertaken after October
935 1, 1973, without first obtaining certification in the manner as
936 herein provided, except that this act shall not apply to any
937 such electrical power plant which is presently operating or
938 under construction or which has, upon the effective date of
939 chapter 73-33, Laws of Florida, applied for a permit or

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940 certification under requirements in force prior to the effective
941 date of such act.

942 (2) Except as provided in the certification, modification
943 of nonnuclear fuels, internal related hardware, including
944 increases in steam turbine efficiency, or operating conditions
945 not in conflict with certification which increase the electrical
946 output of a unit to no greater capacity than the maximum
947 operating capacity of the existing generator shall not
948 constitute an alteration or addition to generating capacity
949 which requires certification pursuant to this act.

950 ~~(3) The application for any related department license~~
951 ~~which is required pursuant to any federally delegated or~~
952 ~~approved permit program shall be processed within the time~~
953 ~~periods allowed by this act, in lieu of those specified in s.~~
954 ~~120.60. However, permits issued pursuant to s. 403.0885 shall be~~
955 ~~processed in accordance with 40 C.F.R. part 123.~~

956 Section 22. Section 403.5064, Florida Statutes, is amended
957 to read:

958 403.5064 Distribution of application; schedules.--

959 (1) The formal date of certification application filing
960 and commencement of the certification review process shall be
961 when the applicant submits:

962 (a) Copies of the certification application as prescribed
963 by rule to the department and other agencies identified in s.
964 403.507(2)(a).

965 (b) The application fee specified under s. 403.518 to the
966 department.

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967 (2)~~(1)~~ Within 7 days after the filing of an application,
968 the department shall provide to the applicant and the Division
969 of Administrative Hearings the names and addresses of any
970 additional ~~those affected or other~~ agencies or persons entitled
971 to notice and copies of the application and any amendments.

972 (3) Any amendment to the application made prior to
973 certification shall be disposed of as part of the original
974 certification proceeding. Amendment of the application may be
975 considered good cause for alteration of time limits pursuant to
976 s. 403.5095.

977 (4)~~(2)~~ Within 15 7 days after the application filing
978 ~~completeness has been determined~~, the department shall prepare a
979 proposed schedule of dates for determination of completeness,
980 submission of statements of issues, determination of
981 sufficiency, and submittal of final reports, from affected and
982 other agencies and other significant dates to be followed during
983 the certification process, including dates for filing notices of
984 appearance to be a party pursuant to s. 403.508 (3)~~(4)~~. This
985 schedule shall be timely provided by the department to the
986 applicant, the administrative law judge, all agencies identified
987 pursuant to subsection (2) ~~(1)~~, and all parties. Within 7 days
988 after the filing of this proposed schedule, the administrative
989 law judge shall issue an order establishing a schedule for the
990 matters addressed in the department's proposed schedule and
991 other appropriate matters, if any.

992 (5)~~(3)~~ ~~Within 7 days after completeness has been~~
993 ~~determined, the applicant shall distribute copies of the~~
994 ~~application to all agencies identified by the department~~

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995 ~~pursuant to subsection (1).~~ Copies of changes and amendments to
996 the application shall be timely distributed by the applicant to
997 all affected agencies and parties who have received a copy of
998 the application.

999 (6) Notice of the filing of the application shall be
1000 published in accordance with the requirements of s. 403.5115.

1001 Section 23. Section 403.5065, Florida Statutes, is amended
1002 to read:

1003 403.5065 Appointment of administrative law judge, powers
1004 and duties.--

1005 (1) Within 7 days after receipt of an application, ~~whether~~
1006 ~~complete or not,~~ the department shall request the Division of
1007 Administrative Hearings to designate an administrative law judge
1008 to conduct the hearings required by this act. The division
1009 director shall designate an administrative law judge within 7
1010 days after receipt of the request from the department. In
1011 designating an administrative law judge for this purpose, the
1012 division director shall, whenever practicable, assign an
1013 administrative law judge who has had prior experience or
1014 training in electrical power plant site certification
1015 proceedings. Upon being advised that an administrative law judge
1016 has been appointed, the department shall immediately file a copy
1017 of the application and all supporting documents with the
1018 designated administrative law judge, who shall docket the
1019 application.

1020 (2) The administrative law judge shall have all powers and
1021 duties granted to administrative law judges by chapter 120 and
1022 by the laws and rules of the department.

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1023 Section 24. Section 403.5066, Florida Statutes, is amended
1024 to read:

1025 403.5066 Determination of completeness.--

1026 (1)(a) Within 30 days after filing of an application, the
1027 affected agencies shall file a statement with the department
1028 containing each agency's recommendations on the completeness of
1029 the application.

1030 (b) Within 40 15 days after the filing receipt of an
1031 application, the department shall file a statement with the
1032 Division of Administrative Hearings, and with the applicant, and
1033 with all parties declaring its position with regard to the
1034 completeness, not the sufficiency, of the application. The
1035 department's statement shall be based upon consultation with the
1036 affected agencies.

1037 (2)(1) If the department declares the application to be
1038 incomplete, the applicant, within 15 days after the filing of
1039 the statement by the department, shall file with the Division of
1040 Administrative Hearings, and with the department, and all
1041 parties a statement:

1042 (a) A withdrawal of Agreeing with the statement of the
1043 department and withdrawing the application;

1044 (b) Additional information necessary to make the
1045 application complete. If the department first determined that
1046 the application is incomplete, the time schedules under this act
1047 shall not be tolled if the applicant makes the application
1048 complete within the 15-day time period. A subsequent finding by
1049 the department that the application remains incomplete tolls the
1050 time schedules under this act until the application is

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determined complete; ~~Agreeing with the statement of the~~
~~department and agreeing to amend the application without~~
~~withdrawing it. The time schedules referencing a complete~~
~~application under this act shall not commence until the~~
~~application is determined complete; or~~

(c) A statement contesting the department's determination
of incompleteness; or ~~contesting the statement of the~~
~~department.~~

(d) A statement agreeing with the department and
requesting additional time to provide the information necessary
to make the application complete. If the applicant exercises
this option, the time schedules under this act are tolled until
the application is determined complete.

(3) (a) ~~(2)~~ If the applicant contests the determination by
the department that an application is incomplete, the
administrative law judge shall schedule a hearing on the
statement of completeness. The hearing shall be held as
expeditiously as possible, but not later than 21 ~~30~~ days after
the filing of the statement by the department. The
administrative law judge shall render a decision within 7 ~~10~~
days after the hearing.

(b) Parties to a hearing on the issue of completeness
shall include the applicant, the department, and any agency that
has jurisdiction over the matter in dispute. Any substantially
affected person who wishes to become a party to the completeness
hearing must file a motion to intervene no later than 10 days
prior to the date of the hearing.

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1078 (c)~~(a)~~ If the administrative law judge determines that the
1079 application was not complete ~~as filed~~, the applicant shall
1080 withdraw the application or make such additional submittals as
1081 necessary to complete it. The time schedules referencing a
1082 complete application under this act shall not commence ~~until~~ the
1083 application is determined complete.

1084 (d)~~(b)~~ If the administrative law judge determines that the
1085 application was complete at the time it was declared incomplete
1086 ~~filed~~, the time schedules referencing a complete application
1087 under this act shall commence upon such determination.

1088 (4) If the applicant provides additional information to
1089 address the issues identified in the determination of
1090 incompleteness, each affected agency may submit to the
1091 department, no later than 15 days after the applicant files the
1092 additional information, a recommendation on whether the agency
1093 believes the application is complete. Within 22 days after
1094 receipt of the additional information from the applicant
1095 submitted under paragraph (2)(b), paragraph (2)(d), or paragraph
1096 (3)(c), the department shall determine whether the additional
1097 information supplied by an applicant makes the application
1098 complete. If the department finds that the application is still
1099 incomplete, the applicant may exercise any of the options
1100 specified in subsection (2) as often as is necessary to resolve
1101 the dispute.

1102 Section 25. Section 403.50663, Florida Statutes, is
1103 created to read:

1104 403.50663 Informational public meetings.--

1105 (1) Each local government or regional planning council, in

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1106 the jurisdiction of which the power plant is proposed to be
1107 sited, may hold one informational public meeting in addition to
1108 the hearings specifically authorized by this act on any matter
1109 associated with the electric power plant proceeding. Such
1110 informational public meetings shall be held no later than 70
1111 days after the application is filed. The purpose of an
1112 informational public meeting is for the local government or
1113 regional planning council to further inform the public about the
1114 proposed electric power plant or associated facilities, obtain
1115 comments from the public, and formulate its recommendation with
1116 respect to the proposed electric power plant.

1117 (2) Informational public meetings shall be held solely at
1118 the option of each local government or regional planning
1119 council. It is the legislative intent that local governments or
1120 regional planning councils attempt to hold such public meetings.
1121 Parties to the proceedings under this act shall be encouraged to
1122 attend; however, no party other than the applicant and the
1123 department shall be required to attend such informational public
1124 meetings.

1125 (3) A local government or regional planning council that
1126 intends to conduct an informational public meeting must provide
1127 notice of the meeting to all parties not less than 5 days prior
1128 to the meeting.

1129 (4) The failure to hold an informational public meeting or
1130 the procedure used for the informational public meeting are not
1131 for the alteration of any time limitation in this act under s.
1132 403.5095 or grounds to deny or condition certification.

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1133 Section 26. Section 403.50665, Florida Statutes, is
1134 created to read:

1135 403.50665 Land use consistency determination.--

1136 (1) Within 80 days after the application is filed, each
1137 local government shall file a determination with the department
1138 and the applicant on the consistency of the site or any directly
1139 associated facilities within their jurisdiction with existing
1140 land use plans and zoning ordinances which were in effect on the
1141 date the application was filed. The applicant shall publish
1142 notice of the determination in accordance with the requirements
1143 of s. 403.5115. These dates may be altered upon agreement
1144 between the applicant, the local government, and the department
1145 pursuant to s. 403.5095.

1146 (2) If any substantially affected person wishes to dispute
1147 the local government's determination, he or she shall file a
1148 petition with the department within 15 days of the publication
1149 of notice of the local government's determination. If a hearing
1150 is requested, the provisions of s. 403.508(1) shall apply.

1151 (3) If it is determined by the local government that the
1152 proposed site or directly associated facility does conform with
1153 existing land use plans and zoning ordinances in effect as of
1154 the date of the application and no petition has been filed, the
1155 responsible zoning or planning authority shall not thereafter
1156 change such land use plans or zoning ordinances so as to
1157 foreclose construction and operation of the proposed site or
1158 directly associated facilities unless certification is
1159 subsequently denied or withdrawn.

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1160 Section 27. Section 403.5067, Florida Statutes, is
1161 repealed.

1162 Section 28. Section 403.507, Florida Statutes, is amended
1163 to read:

1164 403.507 Preliminary statements of issues, reports, project
1165 analyses, and studies.--

1166 (1) Each affected agency identified in paragraph (2)(a)
1167 shall submit a preliminary statement of issues to the
1168 department, and the applicant, and all parties no later than 40
1169 60 days after the certification application has been determined
1170 distribution of the complete application. The failure to raise
1171 an issue in this statement shall not preclude the issue from
1172 being raised in the agency's report.

1173 (2)(a) No later than 100 days after the certification
1174 application has been determined complete, the following reports
1175 shall be submitted to the department and the applicant ~~The~~
1176 ~~following agencies shall prepare reports as provided below and~~
1177 ~~shall submit them to the department and the applicant within 150~~
1178 ~~days after distribution of the complete application:~~

1179 1. The Department of Community Affairs shall prepare a
1180 report containing recommendations which address the impact upon
1181 the public of the proposed electrical power plant, based on the
1182 degree to which the electrical power plant is consistent with
1183 the applicable portions of the state comprehensive plan,
1184 emergency management, and other such matters within its
1185 jurisdiction. The Department of Community Affairs may also
1186 comment on the consistency of the proposed electrical power

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1187 plant with applicable strategic regional policy plans or local
1188 comprehensive plans and land development regulations.

1189 ~~2. The Public Service Commission shall prepare a report as~~
1190 ~~to the present and future need for the electrical generating~~
1191 ~~capacity to be supplied by the proposed electrical power plant.~~
1192 ~~The report shall include the commission's determination pursuant~~
1193 ~~to s. 403.519 and may include the commission's comments with~~
1194 ~~respect to any other matters within its jurisdiction.~~

1195 2.3. The water management district shall prepare a report
1196 as to matters within its jurisdiction, including but not limited
1197 to, impact on water resources, impact on regional water supply
1198 planning, and impact on district-owned lands and works.

1199 3.4. Each local government in whose jurisdiction the
1200 proposed electrical power plant is to be located shall prepare a
1201 report as to the consistency of the proposed electrical power
1202 plant with all applicable local ordinances, regulations,
1203 standards, or criteria that apply to the proposed electrical
1204 power plant, ~~including adopted local comprehensive plans, land~~
1205 ~~development regulations, and any applicable local environmental~~
1206 ~~regulations adopted pursuant to s. 403.182 or by other means.~~

1207 4.5. The Fish and Wildlife Conservation Commission shall
1208 prepare a report as to matters within its jurisdiction.

1209 5.6. Each The regional planning council shall prepare a
1210 report containing recommendations that address the impact upon
1211 the public of the proposed electrical power plant, based on the
1212 degree to which the electrical power plant is consistent with
1213 the applicable provisions of the strategic regional policy plan.

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1214 adopted pursuant to chapter 186 and other matters within its
1215 jurisdiction.

1216 6. The Department of Transportation shall address the
1217 impact of the proposed transmission line or corridor on roads,
1218 railroads, airports, aeronautics, seaports, and other matters
1219 within its jurisdiction.

1220 (b)7. Any other agency, if requested by the department,
1221 shall also perform studies or prepare reports as to matters
1222 within that agency's jurisdiction which may potentially be
1223 affected by the proposed electrical power plant.

1224 ~~(b) As needed to verify or supplement the studies made by~~
1225 ~~the applicant in support of the application, it shall be the~~
1226 ~~duty of the department to conduct, or contract for, studies of~~
1227 ~~the proposed electrical power plant and site, including, but not~~
1228 ~~limited to, the following, which shall be completed no later~~
1229 ~~than 210 days after the complete application is filed with the~~
1230 ~~department.~~

- 1231 ~~1. Cooling system requirements.~~
1232 ~~2. Construction and operational safeguards.~~
1233 ~~3. Proximity to transportation systems.~~
1234 ~~4. Soil and foundation conditions.~~
1235 ~~5. Impact on suitable present and projected water supplies~~
1236 ~~for this and other competing uses.~~
1237 ~~6. Impact on surrounding land uses.~~
1238 ~~7. Accessibility to transmission corridors.~~
1239 ~~8. Environmental impacts.~~
1240 ~~9. Requirements applicable under any federally delegated~~
1241 ~~or approved permit program.~~

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1242 (3)(e) Each report described in subsection (2) paragraphs
1243 ~~(a) and (b)~~ shall contain:

1244 (a) A notice of any nonprocedural requirements not
1245 specifically listed in the application from which a variance,
1246 exemption, exception, all information on variances, exemptions,
1247 exemptions, or other relief is necessary in order for the
1248 proposed electric power plant to be certified. Failure of such
1249 notification by an agency shall be treated as a waiver from
1250 nonprocedural requirements of that agency. However, no variance
1251 shall be granted from standards or regulations of the department
1252 applicable under any federally delegated or approved permit
1253 program, except as expressly allowed in such program. which may
1254 be required by s. 403.511(2) and

1255 (b) A recommendation for approval or denial of the
1256 application.

1257 (c) Any proposed conditions of certification on matters
1258 within the jurisdiction of such agency. For each condition
1259 proposed by an agency in its report, the agency shall list the
1260 specific statute, rule, or ordinance which authorizes the
1261 proposed condition.

1262 (d) The agencies shall initiate the activities required by
1263 this section no later than 30 days after the complete
1264 application is distributed. The agencies shall keep the
1265 applicant and the department informed as to the progress of the
1266 studies and any issues raised thereby.

1267 ~~(3) No later than 60 days after the application for a~~
1268 ~~federally required new source review or prevention of~~
1269 ~~significant deterioration permit for the electrical power plant~~

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1270 ~~is complete and sufficient, the department shall issue its~~
1271 ~~preliminary determination on such permit. Notice of such~~
1272 ~~determination shall be published as required by the department's~~
1273 ~~rules for notices of such permits. The department shall receive~~
1274 ~~public comments and comments from the United States~~
1275 ~~Environmental Protection Agency and other affected agencies on~~
1276 ~~the preliminary determination as provided for in the federally~~
1277 ~~approved state implementation plan. The department shall~~
1278 ~~maintain a record of all comments received and considered in~~
1279 ~~taking action on such permits. If a petition for an~~
1280 ~~administrative hearing on the department's preliminary~~
1281 ~~determination is filed by a substantially affected person, that~~
1282 ~~hearing shall be consolidated with the certification hearing.~~

1283 (4) (a) No later than 150 days after the application is
1284 filed, the Public Service Commission shall prepare a report as
1285 to the present and future need for electric generating capacity
1286 to be supplied by the proposed electrical power plant. The
1287 report shall include the commission's determination pursuant to
1288 s. 403.519 and may include the commission's comments with
1289 respect to any other matters within its jurisdiction.

1290 (b) Receipt of an affirmative determination of need by the
1291 submittal deadline under paragraph (a) and shall be required for
1292 further processing of the application.

1293 (5) (4) The department shall prepare a project written
1294 analysis, which shall be filed with the designated
1295 administrative law judge and served on all parties no later than
1296 130 240 days after the complete application is determined

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1297 ~~complete filed with the department, but no later than 60 days~~
1298 ~~prior to the hearing, and which shall include:~~

1299 (a) A statement indicating whether the proposed electrical
1300 power plant and proposed ultimate site capacity will be in
1301 compliance and consistent with matters within the department's
1302 standard jurisdiction, including with the rules of the
1303 department, as well as whether the proposed electrical power
1304 plant and proposed ultimate site capacity will be in compliance
1305 with the rules of the affected agencies.

1306 (b) Copies of the studies and reports required by this
1307 section and ~~s. 403.519.~~

1308 (c) The comments received by the department from any other
1309 agency or person.

1310 (d) The recommendation of the department as to the
1311 disposition of the application, of variances, exemptions,
1312 exceptions, or other relief identified by any party, and of any
1313 proposed conditions of certification which the department
1314 believes should be imposed.

1315 (e) If available, the recommendation of the department
1316 regarding the issuance of any license required pursuant to a
1317 federally delegated or approved permit program.

1318 ~~(f) Copies of the department's draft of the operation~~
1319 ~~permit for a major source of air pollution, which must also be~~
1320 ~~provided to the United States Environmental Protection Agency~~
1321 ~~for review within 5 days after issuance of the written analysis.~~

1322 (6)-(5) Except when good cause is shown, the failure of any
1323 agency to submit a preliminary statement of issues or a report,
1324 or to submit its preliminary statement of issues or report

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1325 within the allowed time, shall not be grounds for the alteration
1326 of any time limitation in this act. Neither the failure to
1327 submit a preliminary statement of issues or a report nor the
1328 inadequacy of the preliminary statement of issues or report are
1329 ~~shall be~~ grounds to deny or condition certification.

1330 Section 29. Section 403.508, Florida Statutes, is amended
1331 to read:

1332 403.508 Land use and certification hearings ~~proceedings~~,
1333 parties, participants.--

1334 (1)(a) If a petition for a hearing on land use has been
1335 filed pursuant to s. 403.50665, the designated administrative
1336 law judge shall conduct a land use hearing in the county of the
1337 proposed site or directly associated facility, as applicable,
1338 within 30 ~~90~~ days after the department's receipt of the petition
1339 ~~a complete application for electrical power plant site~~
1340 ~~certification by the department~~. The place of such hearing shall
1341 be as close as possible to the proposed site or directly
1342 associated facility.

1343 (b) Notice of the land use hearing shall be published in
1344 accordance with the requirements of s. 403.5115.

1345 (c) ~~(2)~~ The sole issue for determination at the land use
1346 hearing shall be whether or not the proposed site is consistent
1347 and in compliance with existing land use plans and zoning
1348 ordinances.

1349 (d) The designated administrative law judge's recommended
1350 order shall be issued within 30 days after completion of the
1351 hearing and shall be reviewed by the board within 60 ~~45~~ days
1352 after receipt of the recommended order by the board.

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1353 (e) If it is determined by the board that the proposed
1354 site does conform with existing land use plans and zoning
1355 ordinances in effect as of the date of the application, the
1356 responsible zoning or planning authority shall not thereafter
1357 change such land use plans or zoning ordinances so as to
1358 foreclose construction and operation of affect the proposed site
1359 or directly associated facilities unless certification is
1360 subsequently denied or withdrawn.

1361 (f) If it is determined by the board that the proposed
1362 site does not conform, ~~it shall be the responsibility of the~~
1363 ~~applicant to make the necessary application for rezoning. Should~~
1364 ~~the application for rezoning be denied, the applicant may appeal~~
1365 ~~this decision to the board, which may, if it determines after~~
1366 ~~notice and hearing that it is in the public interest to~~
1367 ~~authorize the use of the land as a site for an electrical power~~
1368 ~~plant, authorize a variance to the adopted land use plan and~~
1369 ~~zoning ordinances. In the event a variance is denied, it shall~~
1370 be the responsibility of the applicant to make the necessary
1371 application for rezoning. No further action may be taken on the
1372 complete application ~~by the department~~ until the proposed site
1373 conforms to the adopted land use plan or zoning ordinances or
1374 the board grants a variance.

1375 (2) (a) (3) A certification hearing shall be held by the
1376 designated administrative law judge no later than 250 ~~300~~ days
1377 after the ~~complete~~ application is filed with the department,
1378 ~~however, an affirmative determination of need by the Public~~
1379 ~~Service Commission pursuant to s. 403.519 shall be a condition~~
1380 ~~precedent to the conduct of the certification hearing. The~~

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1381 certification hearing shall be held at a location in proximity
1382 to the proposed site. ~~The certification hearing shall also~~
1383 ~~constitute the sole hearing allowed by chapter 120 to determine~~
1384 ~~the substantial interest of a party regarding any required~~
1385 ~~agency license or any related permit required pursuant to any~~
1386 ~~federally delegated or approved permit program. At the~~
1387 ~~conclusion of the certification hearing, the designated~~
1388 ~~administrative law judge shall, after consideration of all~~
1389 ~~evidence of record, submit to the board a recommended order no~~
1390 ~~later than 60 days after the filing of the hearing transcript.~~
1391 ~~In the event the administrative law judge fails to issue a~~
1392 ~~recommended order within 60 days after the filing of the hearing~~
1393 ~~transcript, the administrative law judge shall submit a report~~
1394 ~~to the board with a copy to all parties within 60 days after the~~
1395 ~~filing of the hearing transcript to advise the board of the~~
1396 ~~reason for the delay in the issuance of the recommended order~~
1397 ~~and of the date by which the recommended order will be issued.~~

1398 (b) (4) (a) Parties to the proceeding shall include:

- 1399 1. The applicant.
1400 2. The Public Service Commission.
1401 3. The Department of Community Affairs.
1402 4. The Fish and Wildlife Conservation Commission.
1403 5. The water management district.
1404 6. The department.
1405 7. The regional planning council.
1406 8. The local government.
1407 9. The Department of Transportation.

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1408 ~~(c)-(b)~~ Any party listed in paragraph ~~(b)-(a)~~ other than the
1409 department or the applicant may waive its right to participate
1410 in these proceedings. If such listed party fails to file a
1411 notice of its intent to be a party on or before the 90th day
1412 prior to the certification hearing, such party shall be deemed
1413 to have waived its right to be a party.

1414 ~~(d)-(e)~~ Notwithstanding the provisions of chapter 120 to
1415 the contrary, upon the filing with the administrative law judge
1416 of a notice of intent to be a party no later than 30 ~~at least 15~~
1417 days prior to the date of the certification ~~land-use~~ hearing,
1418 the following shall also be parties to the proceeding:

1419 1. Any agency not listed in paragraph ~~(b)-(a)~~ as to matters
1420 within its jurisdiction.

1421 2. Any domestic nonprofit corporation or association
1422 formed, in whole or in part, to promote conservation or natural
1423 beauty; to protect the environment, personal health, or other
1424 biological values; to preserve historical sites; to promote
1425 consumer interests; to represent labor, commercial, or
1426 industrial groups; or to promote comprehensive planning or
1427 orderly development of the area in which the proposed electrical
1428 power plant is to be located.

1429 ~~(e)-(d)~~ Notwithstanding paragraph ~~(f)-(e)~~, failure of an
1430 agency described in subparagraph ~~(d)1.-(e)1-~~ to file a notice of
1431 intent to be a party within the time provided herein shall
1432 constitute a waiver of the right of that agency to participate
1433 as a party in the proceeding.

1434 ~~(f)-(e)~~ Other parties may include any person, including
1435 those persons enumerated in paragraph ~~(d)-(e)~~ who have failed to

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1436 timely file a notice of intent to be a party, whose substantial
1437 interests are affected and being determined by the proceeding
1438 and who timely file a motion to intervene pursuant to chapter
1439 120 and applicable rules. Intervention pursuant to this
1440 paragraph may be granted at the discretion of the designated
1441 administrative law judge and upon such conditions as he or she
1442 may prescribe any time prior to 30 days before the commencement
1443 of the certification hearing.

1444 (g) ~~(f)~~ Any agency, including those whose properties or
1445 works are being affected pursuant to s. 403.509(4), shall be
1446 made a party upon the request of the department or the
1447 applicant.

1448 (3) (a) The order of presentation at the certification
1449 hearing, unless otherwise changed by the administrative law
1450 judge to ensure the orderly presentation of witnesses and
1451 evidence, shall be:

- 1452 1. The applicant.
- 1453 2. The department.
- 1454 3. State agencies.
- 1455 4. Regional agencies, including regional planning councils
1456 and water management districts.
- 1457 5. Local governments.
- 1458 6. Other parties.

1459 (b) ~~(5)~~ When appropriate, any person may be given an
1460 opportunity to present oral or written communications to the
1461 designated administrative law judge. If the designated
1462 administrative law judge proposes to consider such
1463 communications, then all parties shall be given an opportunity

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1464 to cross-examine or challenge or rebut such communications.

1465 (4) At the conclusion of the certification hearing, the
1466 designated administrative law judge shall, after consideration
1467 of all evidence of record, submit to the board a recommended
1468 order no later than 45 days after the filing of the hearing
1469 transcript.

1470 (5) (a) No later than 25 days prior to the conduct of the
1471 certification hearing, the department or the applicant may
1472 request that the administrative law judge cancel the
1473 certification hearing and relinquish jurisdiction to the
1474 department if all parties to the proceeding stipulate that there
1475 are no disputed issues of fact to be raised at the certification
1476 hearing.

1477 (b) The administrative law judge shall issue an order
1478 granting or denying the request within 5 days.

1479 (c) If the administrative law judge grants the request,
1480 the department and the applicant shall publish notices of the
1481 cancellation of the certification hearing, in accordance with s.
1482 403.5115.

1483 (d) 1. If the administrative law judge grants the request,
1484 the department shall prepare and issue a final order in
1485 accordance with s. 403.509(1)(a).

1486 2. Parties may submit proposed recommended orders to the
1487 department no later than 10 days after the administrative law
1488 judge issues an order relinquishing jurisdiction.

1489 (6) The applicant shall pay those expenses and costs
1490 associated with the conduct of the hearings and the recording
1491 and transcription of the proceedings. The ~~designated~~

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1492 ~~administrative law judge shall have all powers and duties~~
1493 ~~granted to administrative law judges by chapter 120 and this~~
1494 ~~chapter and by the rules of the department and the~~
1495 ~~Administration Commission, including the authority to resolve~~
1496 ~~disputes over the completeness and sufficiency of an application~~
1497 ~~for certification.~~

1498 ~~(7) The order of presentation at the certification~~
1499 ~~hearing, unless otherwise changed by the administrative law~~
1500 ~~judge to ensure the orderly presentation of witnesses and~~
1501 ~~evidence, shall be:~~

1502 ~~(a) The applicant.~~

1503 ~~(b) The department.~~

1504 ~~(c) State agencies.~~

1505 ~~(d) Regional agencies, including regional planning~~
1506 ~~councils and water management districts.~~

1507 ~~(e) Local governments.~~

1508 ~~(f) Other parties.~~

1509 (7)(8) In issuing permits under the federally approved new
1510 source review or prevention of significant deterioration permit
1511 program, the department shall observe the procedures specified
1512 under the federally approved state implementation plan,
1513 including public notice, public comment, public hearing, and
1514 notice of applications and amendments to federal, state, and
1515 local agencies, to assure that all such permits issued in
1516 coordination with the certification of a power plant under this
1517 act are federally enforceable and are issued after opportunity
1518 for informed public participation regarding the terms and
1519 conditions thereof. When possible, any hearing on a federally

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1520 approved or delegated program permit such as new source review,
1521 prevention of significant deterioration permit, or NPDES permit
1522 shall be conducted in conjunction with the certification hearing
1523 held under this act. The department shall accept written comment
1524 with respect to an application for, or the department's
1525 preliminary determination on, a new source review or prevention
1526 of significant deterioration permit for a period of no less than
1527 30 days from the date notice of such action is published. Upon
1528 request submitted within 30 days after published notice, the
1529 department shall hold a public meeting, in the area affected,
1530 for the purpose of receiving public comment on issues related to
1531 the new source review or prevention of significant deterioration
1532 permit. If requested following notice of the department's
1533 preliminary determination, the public meeting to receive public
1534 comment shall be held prior to the scheduled certification
1535 hearing. The department shall also solicit comments from the
1536 United States Environmental Protection Agency and other affected
1537 federal agencies regarding the department's preliminary
1538 determination for any federally required new source review or
1539 prevention of significant deterioration permit. It is the intent
1540 of the Legislature that the issuance of such permits be closely
1541 coordinated with the certification process established under
1542 this part. In the event of a conflict between the certification
1543 process and federally required procedures contained in the state
1544 implementation plan, the applicable federal requirements of the
1545 implementation plan shall control.

1546 Section 30. Section 403.509, Florida Statutes, is amended
1547 to read:

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CODING: Words stricken are deletions; words underlined are additions.

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1548 403.509 Final disposition of application.--

1549 (1) (a) If the administrative law judge has granted a
1550 request to cancel the certification hearing and has relinquished
1551 jurisdiction to the department under the provisions of s.
1552 403.508(6), within 40 days thereafter, the secretary of the
1553 department shall act upon the application by written order in
1554 accordance with the terms of this act, and state the reasons for
1555 issuance or denial.

1556 (b) If the administrative law judge has not granted a
1557 request to cancel the certification hearing under the provisions
1558 of s. 403.508(6), within 60 days after receipt of the designated
1559 administrative law judge's recommended order, the board shall
1560 act upon the application by written order, approving
1561 certification or denying certification the issuance of a
1562 certificate, in accordance with the terms of this act, and
1563 stating the reasons for issuance or denial. If certification the
1564 certificate is denied, the board shall set forth in writing the
1565 action the applicant would have to take to secure the board's
1566 approval of the application.

1567 (2) The issues that may be raised in any hearing before
1568 the board shall be limited to those matters raised in the
1569 certification proceeding before the administrative law judge or
1570 raised in the recommended order. All parties, or their
1571 representatives, or persons who appear before the board shall be
1572 subject to the provisions of s. 120.66.

1573 (3) In determining whether an application should be
1574 approved in whole, approved with modifications or conditions, or
1575 denied, the board, or secretary when applicable, shall consider

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1576 whether, and the extent to which, the location of electric power
1577 plant and directly associated facilities and their construction
1578 and operation will:

1579 (a) Provide reasonable assurance that operational
1580 safeguards are technically sufficient for the public welfare and
1581 protection.

1582 (b) Comply with applicable nonprocedural requirements of
1583 agencies.

1584 (c) Be consistent with applicable local government
1585 comprehensive plans and land development regulations.

1586 (d) Meet the electrical energy needs of the state in an
1587 orderly and timely fashion.

1588 (e) Provide a reasonable balance between the need for the
1589 facility as established pursuant to s. 403.519, and the impacts
1590 upon air and water quality, fish and wildlife, water resources,
1591 and other natural resources as a result of the construction and
1592 operation of the facility.

1593 ~~(3) Within 30 days after issuance of the certification,~~
1594 ~~the department shall issue and forward to the United States~~
1595 ~~Environmental Protection Agency a proposed operation permit for~~
1596 ~~a major source of air pollution and must issue or deny any other~~
1597 ~~license required pursuant to any federally delegated or approved~~
1598 ~~permit program. The department's action on the license and its~~
1599 ~~action on the proposed operation permit for a major source of~~
1600 ~~air pollution shall be based upon the record and recommended~~
1601 ~~order of the certification hearing. The department's actions on~~
1602 ~~a federally required new source review or prevention of~~
1603 ~~significant deterioration permit shall be based on the record~~

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1604 ~~and recommended order of the certification hearing and of any~~
1605 ~~other proceeding held in connection with the application for a~~
1606 ~~new source review or prevention of significant deterioration~~
1607 ~~permit, on timely public comments received with respect to the~~
1608 ~~application or preliminary determination for such permit, and on~~
1609 ~~the provisions of the state implementation plan. The~~
1610 ~~department's action on a federally required new source review or~~
1611 ~~prevention of significant deterioration permit shall differ from~~
1612 ~~the actions taken by the siting board regarding the~~
1613 ~~certification if the federally approved state implementation~~
1614 ~~plan requires such a different action to be taken by the~~
1615 ~~department. Nothing in this part shall be construed to displace~~
1616 ~~the department's authority as the final permitting entity under~~
1617 ~~the federally approved permit program. Nothing in this part~~
1618 ~~shall be construed to authorize the issuance of a new source~~
1619 ~~review or prevention of significant deterioration permit which~~
1620 ~~does not conform to the requirements of the federally approved~~
1621 ~~state implementation plan. Any final operation permit for a~~
1622 ~~major source of air pollution must be issued in accordance with~~
1623 ~~the provisions of s. 403.0872. Unless the federally delegated or~~
1624 ~~approved permit program provides otherwise, licenses issued by~~
1625 ~~the department under this subsection shall be effective for the~~
1626 ~~term of the certification issued by the board. If renewal of any~~
1627 ~~license issued by the department pursuant to a federally~~
1628 ~~delegated or approved permit program is required, such renewal~~
1629 ~~shall not affect the certification issued by the board, except~~
1630 ~~as necessary to resolve inconsistencies pursuant to s.~~
1631 ~~403.516(1)(a).~~

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1632 (4) In regard to the properties and works of any agency
1633 which is a party to the certification hearing, the board shall
1634 have the authority to decide issues relating to the use, the
1635 connection thereto, or the crossing thereof, for the electrical
1636 power plant and its directly associated facilities ~~site~~ and to
1637 direct any such agency to execute, within 30 days after the
1638 entry of certification, the necessary license or easement for
1639 such use, connection, or crossing, subject only to the
1640 conditions set forth in such certification.

1641 ~~(5) Except for the issuance of any operation permit for a~~
1642 ~~major source of air pollution pursuant to s. 403.0872, the~~
1643 ~~issuance or denial of the certification by the board and the~~
1644 ~~issuance or denial of any related department license required~~
1645 ~~pursuant to any federally delegated or approved permit program~~
1646 ~~shall be the final administrative action required as to that~~
1647 ~~application.~~

1648 ~~(6) All certified electrical power plants must apply for~~
1649 ~~and obtain a major source air operation permit pursuant to s.~~
1650 ~~403.0872. Major source air operation permit applications for~~
1651 ~~certified electrical power plants must be submitted pursuant to~~
1652 ~~a schedule developed by the department. To the extent that any~~
1653 ~~conflicting provision, limitation, or restriction under any~~
1654 ~~rule, regulation, or ordinance imposed by any political~~
1655 ~~subdivision of the state, or by any local pollution control~~
1656 ~~program, was superseded during the certification process~~
1657 ~~pursuant to s. 403.510(1), such rule, regulation, or ordinance~~
1658 ~~shall continue to be superseded for purposes of the major source~~
1659 ~~air operation permit program under s. 403.0872.~~

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Section 31. Section 403.511, Florida Statutes, is amended to read:

403.511 Effect of certification.--

(1) Subject to the conditions set forth therein, any certification ~~signed by the Governor~~ shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the licensee ~~applicant~~ named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b) 1. Except as provided in subsection (4), the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding unless waived by the agency as provided below and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida

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1688 Waters or for the disposal of hazardous waste, except to the
1689 extent authorized by the applicable statute or rule or except
1690 upon a finding in the certification order ~~by the siting board~~
1691 that the public interests set forth in s. 403.509(3) ~~403.502~~ in
1692 certifying the electrical power plant at the site proposed by
1693 the applicant overrides the public interest protected by the
1694 statute or rule from which relief is sought. ~~Each party shall~~
1695 ~~notify the applicant and other parties at least 60 days prior to~~
1696 ~~the certification hearing of any nonprocedural requirements not~~
1697 ~~specifically listed in the application from which a variance,~~
1698 ~~exemption, exception, or other relief is necessary in order for~~
1699 ~~the board to certify any electrical power plant proposed for~~
1700 ~~certification. Failure of such notification by an agency shall~~
1701 ~~be treated as a waiver from nonprocedural requirements of the~~
1702 ~~department or any other agency. However, no variance shall be~~
1703 ~~granted from standards or regulations of the department~~
1704 ~~applicable under any federally delegated or approved permit~~
1705 ~~program, except as expressly allowed in such program.~~

1706 (3) The certification shall be in lieu of any license,
1707 permit, certificate, or similar document required by any state,
1708 regional, or local agency pursuant to, but not limited to,
1709 chapter 125, chapter 161, chapter 163, chapter 166, chapter 186,
1710 chapter 253, chapter 298, chapter 370, chapter 373, chapter 376,
1711 chapter 380, chapter 381, chapter 387, chapter 403, except for
1712 permits issued pursuant to any federally delegated or approved
1713 permit program ~~s. 403.0885~~ and except as provided in ~~s.~~
1714 ~~403.509(3) and (6),~~ chapter 404, or the Florida Transportation
1715 Code, ~~or 33 U.S.C. s. 1341.~~

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1716 (4) This act shall not affect in any way the ratemaking
1717 powers of the Public Service Commission under chapter 366; nor
1718 shall this act in any way affect the right of any local
1719 government to charge appropriate fees or require that
1720 construction be in compliance with applicable building-
1721 construction codes.

1722 (5) (a) An electrical power plant certified pursuant to
1723 this act shall comply with rules adopted by the department
1724 subsequent to the issuance of the certification which prescribe
1725 new or stricter criteria, to the extent that the rules are
1726 applicable to electrical power plants. Except when express
1727 variances, exceptions, exemptions, or other relief have been
1728 granted, subsequently adopted rules which prescribe new or
1729 stricter criteria shall operate as automatic modifications to
1730 certifications.

1731 (b) Upon written notification to the department, any
1732 holder of a certification issued pursuant to this act may choose
1733 to operate the certified electrical power plant in compliance
1734 with any rule subsequently adopted by the department which
1735 prescribes criteria more lenient than the criteria required by
1736 the terms and conditions in the certification which are not
1737 site-specific.

1738 (c) No term or condition of certification shall be
1739 interpreted to preclude the postcertification exercise by any
1740 party of whatever procedural rights it may have under chapter
1741 120, including those related to rulemaking proceedings: This
1742 subsection shall apply to previously issued certifications.

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1743 (6) No term or condition of a site certification shall be
1744 interpreted to supersede or control the provisions of a final
1745 operation permit for a major source of air pollution issued by
1746 the department pursuant to s. 403.0872 to such facility
1747 certified under this part.

1748 (7) No term or condition of a site certification shall be
1749 interpreted to supersede or control the provisions of a final
1750 operation permit for a major source of air pollution issued by
1751 the department pursuant to s. 403.0872, to a facility certified
1752 under this part.

1753 (8) Pursuant to s. 380.23, electrical power plants are
1754 subject to the federal coastal consistency review program.
1755 Issuance of certification shall constitute the state's
1756 certification of coastal zone consistency.

1757 Section 32. Section 403.5112, Florida Statutes, is created
1758 to read:

1759 403.5112 Filing of notice of certified corridor route.--

1760 (1) Within 60 days after certification of a directly
1761 associated linear facility pursuant to this act, the applicant
1762 shall file, in accordance with s. 28.222, with the department
1763 and the clerk of the circuit court for each county through which
1764 the corridor will pass, a notice of the certified route.

1765 (2) The notice shall consist of maps or aerial photographs
1766 in the scale of 1:24,000 which clearly show the location of the
1767 certified route and shall state that the certification of the
1768 corridor will result in the acquisition of rights-of-way within
1769 the corridor. Each clerk shall record the filing in the official
1770 record of the county for the duration of the certification or

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1771 until such time as the applicant certifies to the department and
1772 the clerk that all lands required for the transmission line
1773 rights-of-way within the corridor have been acquired within such
1774 county, whichever is sooner.

1775 Section 33. Section 403.5113, Florida Statutes, is created
1776 to read:

1777 403.5113 Postcertification amendments.--

1778 (1) If a licensee proposes any material change to the
1779 application after certification, the licensee shall submit a
1780 written request for amendment and a description of the proposed
1781 change to the application to the department. Within 30 days
1782 after the receipt of the request for the amendment, the
1783 department shall determine whether the proposed change to the
1784 application requires a modification of the conditions of
1785 certification.

1786 (2) If the department concludes that the change would not
1787 require a modification of the conditions of certification, the
1788 department shall provide written notification of the approval of
1789 the proposed amendment to the licensee, all agencies, and all
1790 other interested parties.

1791 (3) If the department concludes that the change would
1792 require a modification of the conditions of certification, the
1793 department shall provide written notification to the licensee
1794 that the proposed change to the application requires a request
1795 for modification pursuant to s. 403.516.

1796 Section 34. Section 403.5115, Florida Statutes, is amended
1797 to read:

1798 403.5115 Public notice; costs of proceeding.--

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1799 (1) The following notices are to be published by the
1800 applicant:

1801 (a) Notice ~~A notice~~ of the filing of a notice of intent
1802 under s. 403.5063, which shall be published within 21 days after
1803 the filing of the notice. The notice shall be published as
1804 specified by subsection (2), except that the newspaper notice
1805 shall be one-fourth page in size in a standard size newspaper or
1806 one-half page in size in a tabloid size newspaper.

1807 (b) Notice ~~A notice~~ of filing of the application, which
1808 shall include a description of the proceedings required by this
1809 act, within 21 days after the date of the application filing be
1810 ~~published as specified in subsection (2), within 15 days after~~
1811 ~~the application has been determined complete.~~ Such notice shall
1812 give notice of the provisions of s. 403.511(1) and (2) ~~and that~~
1813 ~~the application constitutes a request for a federally required~~
1814 ~~new source review or prevention of significant deterioration~~
1815 ~~permit.~~

1816 (c) Notice of the land use determination made pursuant to
1817 s. 403.50665(1) within 15 days after the determination is filed.

1818 (d) Notice of the land use hearing, which shall be
1819 published as specified in subsection (2), no later than 15 45
1820 days before the hearing.

1821 (e) ~~(d)~~ Notice of the certification hearing and notice of
1822 the deadline for filing notice of intent to be a party, which
1823 shall be published as specified in subsection (2), at least 65
1824 days before the date set for the certification ~~no later than 45~~
1825 ~~days before the hearing.~~

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1826 (f) Notice of the cancellation of the certification
1827 hearing, if applicable, no later than 7 days before the date of
1828 the originally scheduled certification hearing.

1829 (g)(e) Notice of modification when required by the
1830 department, based on whether the requested modification of
1831 certification will significantly increase impacts to the
1832 environment or the public. Such notice shall be published as
1833 specified under subsection (2):

1834 1. Within 21 days after receipt of a request for
1835 modification, ~~except that~~ The newspaper notice shall be of a
1836 size as directed by the department commensurate with the scope
1837 of the modification.

1838 2. If a hearing is to be conducted in response to the
1839 request for modification, then notice shall be published no
1840 later than 30 days before the hearing ~~provided as specified in~~
1841 ~~paragraph (d).~~

1842 (h)(f) Notice of a supplemental application, which shall
1843 be published as specified in paragraph (1)(b) and subsection
1844 (2) follows:

1845 ~~1. Notice of receipt of the supplemental application shall~~
1846 ~~be published as specified in paragraph (b).~~

1847 ~~2. Notice of the certification hearing shall be published~~
1848 ~~as specified in paragraph (d).~~

1849 (i) Notice of existing site certification pursuant to s.
1850 403.5175. Notices shall be published as specified in paragraph
1851 (1)(b) and subsection (2).

1852 (2) Notices provided by the applicant shall be published
1853 in newspapers of general circulation within the county or

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counties in which the proposed electrical power plant will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper ~~and published in a section of the newspaper other than the legal notices section.~~ These notices shall include a map generally depicting the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120 and provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose:

(a) Notice ~~Publish in the Florida Administrative Weekly~~ notices of the filing of the notice of intent within 15 days after receipt of the notice.+

(b) Notice of the filing of the application, no later than 21 days after the application filing.+

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1880 (c) Notice of the land use hearing before the
1881 administrative law judge, if applicable, no later than 15 days
1882 before the hearing.†

1883 (d) Notice of the land use hearing before the board, if
1884 applicable.

1885 (e) Notice of the certification hearing at least 65 days
1886 before the date set for the certification hearing.†

1887 (f) Notice of the hearing before the board, if
1888 applicable.†

1889 (h) Notice and of stipulations, proposed agency action, or
1890 petitions for modification.† and

1891 ~~(b) Provide copies of these notices to any persons who~~
1892 ~~have requested to be placed on the departmental mailing list for~~
1893 ~~this purpose.~~

1894 ~~(5) The applicant shall pay those expenses and costs~~
1895 ~~associated with the conduct of the hearings and the recording~~
1896 ~~and transcription of the proceedings.~~

1897 Section 35. Section 403.513, Florida Statutes, is amended
1898 to read:

1899 403.513 Review.--Proceedings under this act shall be
1900 subject to judicial review as provided in chapter 120. When
1901 possible, separate appeals of the certification order issued by
1902 the board and of any department permit issued pursuant to a
1903 federally delegated or approved permit program may ~~shall~~ be
1904 consolidated for purposes of judicial review.

1905 Section 36. Section 403.516, Florida Statutes, is amended
1906 to read:

1907 403.516 Modification of certification.--

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1908 (1) A certification may be modified after issuance in any
1909 one of the following ways:

1910 (a) The board may delegate to the department the authority
1911 to modify specific conditions in the certification.

1912 (b) 1. The department may modify specific conditions of a
1913 site certification which are inconsistent with the terms of any
1914 federally delegated or approved final air pollution operation
1915 permit for the certified electrical power plant issued by the
1916 United States Environmental Protection Agency under the terms of
1917 42 U.S.C. s. 7661d.

1918 2. Such modification may be made without further notice if
1919 the matter has been previously noticed under the requirements
1920 for any federally delegated or approved permit program.

1921 (c) The licensee may file a petition for modification with
1922 the department or the department may initiate the modification
1923 upon its own initiative.

1924 1. A petition for modification must set forth:

1925 a. The proposed modification.

1926 b. The factual reasons asserted for the modification.

1927 c. The anticipated environmental effects of the proposed
1928 modification.

1929 (d) (b) The department may modify the terms and conditions
1930 of the certification if no party to the certification hearing
1931 objects in writing to such modification within 45 days after
1932 notice by mail to such party's last address of record, and if no
1933 other person whose substantial interests will be affected by the
1934 modification objects in writing within 30 days after issuance of
1935 public notice.

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1936 (e) If objections are raised or the department denies the
1937 request, the applicant or department may file a request petition
1938 for a hearing on the modification with the department. Such
1939 request shall be handled pursuant to chapter 120 paragraph (e).

1940 ~~(e) A petition for modification may be filed by the~~
1941 ~~applicant or the department setting forth:~~

- 1942 1. ~~The proposed modification,~~
1943 2. ~~The factual reasons asserted for the modification, and~~
1944 3. ~~The anticipated effects of the proposed modification on~~
1945 ~~the applicant, the public, and the environment.~~

1946
1947 ~~The petition for modification shall be filed with the department~~
1948 ~~and the Division of Administrative Hearings.~~

1949 (f) Requests referred to the Division of Administrative
1950 Hearings shall be disposed of in the same manner as an
1951 application, but with time periods established by the
1952 administrative law judge commensurate with the significance of
1953 the modification requested.

1954 (g) (d) As required by s. 403.511(5).

1955 ~~(2) Petitions filed pursuant to paragraph (1) (e) shall be~~
1956 ~~disposed of in the same manner as an application, but with time~~
1957 ~~periods established by the administrative law judge commensurate~~
1958 ~~with the significance of the modification requested.~~

1959 (2) (3) Any agreement or modification under this section
1960 must be in accordance with the terms of this act. No
1961 modification to a certification shall be granted that
1962 constitutes a variance from standards or regulations of the

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1963 department applicable under any federally delegated or approved
1964 permit program, except as expressly allowed in such program.

1965 Section 37. Section 403.517, Florida Statutes, is amended
1966 to read:

1967 403.517 Supplemental applications for sites certified for
1968 ultimate site capacity.--

1969 (1) (a) Supplemental ~~The department shall adopt rules~~
1970 ~~governing the processing of supplemental applications may be~~
1971 submitted for certification of the construction and operation of
1972 electrical power plants to be located at sites which have been
1973 previously certified for an ultimate site capacity pursuant to
1974 this act. Supplemental applications shall be limited to
1975 electrical power plants using the fuel type previously certified
1976 for that site. Such applications shall include all new directly
1977 associated facilities that support the construction and
1978 operation of the electric power plant. ~~The rules adopted~~
1979 ~~pursuant to this section shall include provisions for:~~

1980 1. ~~Prompt appointment of a designated administrative law~~
1981 ~~judge.~~

1982 2. ~~The contents of the supplemental application.~~

1983 3. ~~Resolution of disputes as to the completeness and~~
1984 ~~sufficiency of supplemental applications by the designated~~
1985 ~~administrative law judge.~~

1986 4. ~~Public notice of the filing of the supplemental~~
1987 ~~applications.~~

1988 5. ~~Time limits for prompt processing of supplemental~~
1989 ~~applications.~~

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1990 ~~6. Final disposition by the board within 215 days of the~~
1991 ~~filing of a complete supplemental application.~~

1992 (b) The time limits for processing of a complete
1993 supplemental application shall be designated by the department
1994 commensurate with the scope of the supplemental application, but
1995 shall not exceed any time limitation governing the review of
1996 initial applications for site certification pursuant to this
1997 act, it being the legislative intent to provide shorter time
1998 limitations for the processing of supplemental applications for
1999 electrical power plants to be constructed and operated at sites
2000 which have been previously certified for an ultimate site
2001 capacity.

2002 (c) Any time limitation in this section or in rules
2003 adopted pursuant to this section may be altered pursuant to s.
2004 403.5095 by the designated administrative law judge upon
2005 ~~stipulation between the department and the applicant, unless~~
2006 ~~objected to by any party within 5 days after notice, or for good~~
2007 ~~cause shown by any party. The parties to the proceeding shall~~
2008 ~~adhere to the provisions of chapter 120 and this act in~~
2009 ~~considering and processing such supplemental applications.~~

2010 (2) ~~Supplemental applications shall be reviewed as~~
2011 ~~provided in ss. 403.507-403.511, except that the time limits~~
2012 ~~provided in this section shall apply to such supplemental~~
2013 ~~applications.~~

2014 ~~(3)~~ The land use and zoning consistency determination of
2015 s. 403.50665 hearing requirements of s. 403.508(1) and (2) shall
2016 not be applicable to the processing of supplemental applications
2017 pursuant to this section so long as:

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2018 (a) The previously certified ultimate site capacity is not
2019 exceeded; and

2020 (b) The lands required for the construction or operation
2021 of the electrical power plant which is the subject of the
2022 supplemental application are within the boundaries of the
2023 previously certified site.

2024 ~~(4) For the purposes of this act, the term "ultimate site~~
2025 ~~capacity" means the maximum generating capacity for a site as~~
2026 ~~certified by the board.~~

2027 Section 38. Section 403.5175, Florida Statutes, is amended
2028 to read:

2029 403.5175 Existing electrical power plant site
2030 certification.--

2031 (1) An electric utility that owns or operates an existing
2032 electrical power plant as defined in s. 403.503(12) may apply
2033 for certification of an existing power plant and its site in
2034 order to obtain all agency licenses necessary to assure
2035 compliance with federal or state environmental laws and
2036 regulation using the centrally coordinated, one-stop licensing
2037 process established by this part. An application for site
2038 certification under this section must be in the form prescribed
2039 by department rule. Applications must be reviewed and processed
2040 using the same procedural steps and notices as for an
2041 application for a new facility in accordance with ss. 403.5064-
2042 ~~403.5115~~, except that a determination of need by the Public
2043 Service Commission is not required.

2044 (2) An application for certification under this section
2045 must include:

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2046 (a) A description of the site and existing power plant
2047 installations;

2048 (b) A description of all proposed changes or alterations
2049 to the site or electrical power plant, including all new
2050 associated facilities that are the subject of the application;

2051 (c) A description of the environmental and other impacts
2052 caused by the existing utilization of the site and directly
2053 associated facilities, and the operation of the electrical power
2054 plant that is the subject of the application, and of the
2055 environmental and other benefits, if any, to be realized as a
2056 result of the proposed changes or alterations if certification
2057 is approved and such other information as is necessary for the
2058 reviewing agencies to evaluate the proposed changes and the
2059 expected impacts;

2060 (d) The justification for the proposed changes or
2061 alterations;

2062 (e) Copies of all existing permits, licenses, and
2063 compliance plans authorizing utilization of the site and
2064 directly associated facilities or operation of the electrical
2065 power plant that is the subject of the application.

2066 (3) The land use and zoning determination hearing
2067 requirements of s. 403.50665 ~~s. 403.508(1) and (2)~~ do not apply
2068 to an application under this section if the applicant does not
2069 propose to expand the boundaries of the existing site. If the
2070 applicant proposes to expand the boundaries of the existing site
2071 to accommodate portions of the plant or associated facilities, a
2072 land use and zoning determination shall be made ~~hearing must be~~
2073 ~~held~~ as specified in s. 403.50665 ~~s. 403.508(1) and (2)~~;

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2074 provided, however, that the sole issue for determination through
2075 ~~the land use hearing~~ is whether the proposed site expansion is
2076 consistent and in compliance with the existing land use plans
2077 and zoning ordinances.

2078 (4) In considering whether an application submitted under
2079 this section should be approved in whole, approved with
2080 appropriate conditions, or denied, the board shall consider
2081 whether, and to the extent to which the proposed changes to the
2082 electrical power plant and its continued operation under
2083 certification will:

2084 (a) Comply with the provisions of s. 403.509(3).
2085 ~~applicable nonprocedural requirements of agencies;~~

2086 (b) Result in environmental or other benefits compared to
2087 current utilization of the site and operations of the electrical
2088 power plant if the proposed changes or alterations are
2089 undertaken.

2090 ~~(c) Minimize, through the use of reasonable and available~~
2091 ~~methods, the adverse effects on human health, the environment,~~
2092 ~~and the ecology of the land and its wildlife and the ecology of~~
2093 ~~state waters and their aquatic life; and~~

2094 ~~(d) Serve and protect the broad interests of the public.~~

2095 (5) An applicant's failure to receive approval for
2096 certification of an existing site or an electrical power plant
2097 under this section is without prejudice to continued operation
2098 of the electrical power plant or site under existing agency
2099 licenses.

2100 Section 39. Section 403.518, Florida Statutes, is amended
2101 to read:

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2102 403.518 Fees; disposition.--

2103 (1) The department shall charge the applicant the
2104 following fees, as appropriate, which, unless otherwise
2105 specified, shall be paid into the Florida Permit Fee Trust Fund:

2106 (a) A fee for a notice of intent pursuant to s. 403.5063,
2107 in the amount of \$2,500, to be submitted to the department at
2108 the time of filing of a notice of intent. The notice-of-intent
2109 fee shall be used and disbursed in the same manner as the
2110 application fee.

2111 (b) An application fee, which shall not exceed \$200,000.
2112 The fee shall be fixed by rule on a sliding scale related to the
2113 size, type, ultimate site capacity, or increase in electric
2114 generating capacity proposed by the application, ~~or the number~~
2115 ~~and size of local governments in whose jurisdiction the~~
2116 ~~electrical power plant is located.~~

2117 1. Sixty percent of the fee shall go to the department to
2118 cover any costs associated with coordinating the review
2119 reviewing and acting upon the application, to cover any field
2120 services associated with monitoring construction and operation
2121 of the facility, and to cover the costs of the public notices
2122 published by the department.

2123 2. The following percentages ~~Twenty percent of the fee or~~
2124 ~~\$25,000, whichever is greater,~~ shall be transferred to the
2125 Administrative Trust Fund of the Division of Administrative
2126 Hearings of the Department of Management Services:--

2127 a. Five percent to compensate expenses from the initial
2128 exercise of duties associated with the filing of an application.

2129 b. An additional 5 percent if a land use hearing is held

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2130 pursuant to s. 403.508.
2131 c. An additional 10 percent if a certification hearing is
2132 held pursuant to s. 403.508.
2133 3.a. Upon written request with proper itemized accounting
2134 within 90 days after final agency action by the board or
2135 withdrawal of the application, the agencies that prepared
2136 reports pursuant to s. 403.507 or participated in a hearing
2137 pursuant to s. 403.508, may submit a written request to the
2138 department for reimbursement of expenses incurred during the
2139 certification proceedings. The request shall contain an
2140 accounting of expenses incurred which may include time spent
2141 reviewing the application, the department shall reimburse the
2142 Department of Community Affairs, the Fish and Wildlife
2143 Conservation Commission, and any water management district
2144 created pursuant to chapter 373, regional planning council, and
2145 local government in the jurisdiction of which the proposed
2146 electrical power plant is to be located, and any other agency
2147 from which the department requests special studies pursuant to
2148 s. 403.507(2)(a)7. Such reimbursement shall be authorized for
2149 the preparation of any studies required of the agencies by this
2150 act, and for agency travel and per diem to attend any hearing
2151 held pursuant to this act, and for local government's or
2152 regional planning council's provision of additional notice of
2153 the informational public meetings governments to participate in
2154 the proceedings. The department shall review the request and
2155 verify that the expenses are valid. Valid expenses shall be
2156 reimbursed; however, in the event the amount of funds available
2157 for reimbursement allocation is insufficient to provide for full

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2158 compensation complete reimbursement to the agencies requesting
2159 reimbursement, reimbursement shall be on a prorated basis.

2160 b. If the application review is held in abeyance for more
2161 than 1 year, the agencies may submit a request for
2162 reimbursement.

2163 4. If any sums are remaining, the department shall retain
2164 them for its use in the same manner as is otherwise authorized
2165 by this act; provided, however, that if the certification
2166 application is withdrawn, the remaining sums shall be refunded
2167 to the applicant within 90 days after withdrawal.

2168 (c) 1. A certification modification fee, which shall not
2169 exceed \$30,000. The department shall establish rules for
2170 determining such a fee based on the equipment redesign, change
2171 in site size, type, increase in generating capacity proposed, or
2172 change in an associated linear facility location.

2173 2. The fee shall be submitted to the department with a
2174 formal petition for modification to the department pursuant to
2175 s. 403.516. This fee shall be established, disbursed, and
2176 processed in the same manner as the application fee in paragraph
2177 (b), except that the Division of Administrative Hearings shall
2178 not receive a portion of the fee unless the petition for
2179 certification modification is referred to the Division of
2180 Administrative Hearings for hearing. If the petition is so
2181 referred, only \$10,000 of the fee shall be transferred to the
2182 Administrative Trust Fund of the Division of Administrative
2183 Hearings of the Department of Management Services. The fee for a
2184 modification by agreement filed pursuant to s. 403.516(1)(b)
2185 shall be \$10,000 to be paid upon the filing of the request for

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2186 ~~modification. Any sums remaining after payment of authorized~~
2187 ~~costs shall be refunded to the applicant within 90 days of~~
2188 ~~issuance or denial of the modification or withdrawal of the~~
2189 ~~request for modification.~~

2190 (d) A supplemental application fee, not to exceed \$75,000,
2191 to cover all reasonable expenses and costs of the review,
2192 processing, and proceedings of a supplemental application. This
2193 fee shall be established, disbursed, and processed in the same
2194 manner as the certification application fee in paragraph (b),
2195 ~~except that only \$20,000 of the fee shall be transferred to the~~
2196 ~~Administrative Trust Fund of the Division of Administrative~~
2197 ~~Hearings of the Department of Management Services.~~

2198 (e) An existing site certification application fee, not to
2199 exceed \$200,000, to cover all reasonable costs and expenses of
2200 the review processing and proceedings for certification of an
2201 existing power plant site under s. 403.5175. This fee must be
2202 established, disbursed, and processed in the same manner as the
2203 certification application fee in paragraph (b).

2204 ~~(2) Effective upon the date commercial operation begins,~~
2205 ~~the operator of an electrical power plant certified under this~~
2206 ~~part is required to pay to the department an annual operation~~
2207 ~~license fee as specified in s. 403.0872(11) to be deposited in~~
2208 ~~the Air Pollution Control Trust Fund.~~

2209 Section 40. Section 403.519, Florida Statutes, is amended
2210 to read:

2211 403.519 Exclusive forum for determination of need.--

2212 (1) On request by an applicant or on its own motion, the
2213 commission shall begin a proceeding to determine the need for an

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2214 electrical power plant subject to the Florida Electrical Power
2215 Plant Siting Act.

2216 (2) The applicant ~~commission~~ shall publish a notice of the
2217 proceeding in a newspaper of general circulation in each county
2218 in which the proposed electrical power plant will be located.
2219 The notice shall be at least one-quarter of a page and published
2220 at least 21 ~~45~~ days prior to the scheduled date for the
2221 proceeding. The commission shall publish notice of the
2222 proceeding in the manner specified by chapter 120 at least 21
2223 days prior to the scheduled date for the proceeding.

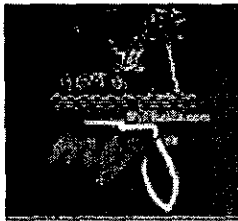
2224 (3) The commission shall be the sole forum for the
2225 determination of this matter, which accordingly shall not be
2226 raised in any other forum or in the review of proceedings in
2227 such other forum. In making its determination, the commission
2228 shall take into account the need for electric system reliability
2229 and integrity, the need for adequate electricity at a reasonable
2230 cost, the need for fuel diversity and supply reliability, and
2231 whether the proposed plant is the most cost-effective
2232 alternative available. The commission shall also expressly
2233 consider the conservation measures taken by or reasonably
2234 available to the applicant or its members which might mitigate
2235 the need for the proposed plant and other matters within its
2236 jurisdiction which it deems relevant. The commission's
2237 determination of need for an electrical power plant shall create
2238 a presumption of public need and necessity and shall serve as
2239 the commission's report required by s. 403.407(2)(b)
2240 ~~403.507(2)(a)2.~~ An order entered pursuant to this section
2241 constitutes final agency action.

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2242

Section 41. This act shall take effect July 1, 2006.



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Power Plant Siting Overview

The Power Plant Siting Act (PPSA), ss. 403.501-.518, F.S., provides for certification (licensure) of **steam** electric or solar power plants which are 75 megawatts (MW) or larger in size. The plants can be gas-fired combined-cycle units, nuclear units or those fueled by more conventional means. Combustion turbines can be permitted in conjunction with a certified facility, or as an addition via the modification process, but in and of themselves do not trigger the certification process.

Certification may include a power plant's directly associated facilities. Such facilities are those which are necessary for the construction and operation of the power plant, such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing in coal to the site, roadways, and the electrical transmission lines carrying the power to the electrical grid. For linear features, the applicant can propose certification of a corridor, within which a right-of-way will be located. These corridors can be up to a mile in width, whereas the rights-of-way are typically more on the order of 100-200 feet in width, depending on the facility type.

The Act was created by the Legislature in 1973, leaving many older power plants in use in the state which are licensed under regular permitting rather than the PPS-certification. Some sites have generation units which were permitted prior to the passage of the Act, and some after, so different procedures and coordination contacts may apply for the same site's differing units. See the "[Power Plant/Transmission Line Siting Status Chart](#)" for a listing of those units or sites which fall under the PPSA.

Certification is issued by the Siting Board (Governor & Cabinet). For the PPSA, DEP is the lead agency for coordination of the siting process, and has jurisdiction for many of the activities which the certification is in lieu of. Thus, it wears "two hats", one for the coordination role and supporting the "Siting Board" --- the SCO's and OGC's task. The other "hat" is for its standard jurisdiction, including federally approved or delegated permit programs, wetlands permits, state lands oversight, coastal protection, and so forth, as administered by the other Divisions and District Offices of the Department.

Ch. 62-17, Part I, (62-17.011 - 62-17.293), Florida

Highlights

- [Applications in Process](#)
- [Conditions of Certification](#)
- [Official Siting Notices](#)
- [Special Projects](#)
- [Frequently Asked Questions \(FAQ's\)](#)

Administrative Code, is the procedural Rule implementing the act. Note that only Part I pertains to Power Plant Siting. The Application Guide is also available electronically. This "guide" is a narrative resembling the requirements for an Environmental Impact Statement, and indicating the nature of the information which must be provided, but is not a "fill-in-the-blank" type form.

The PPSA allows the filing of applications for:

- a site and several units to be constructed immediately
- a site at which one or more units will be constructed immediately, and the others will be constructed some time in the future ("ultimate site capacity")
- supplemental units to be added to a site which has been certified for "ultimate site capacity"
- certification of an existing power plant site at which there will be an increase in generating capacity, or at which the applicant wishes to roll all existing individual permits into a unified certification

Power plants may have operational lives of 40 or more years. Since certification is a life-of-the facility permit, the considerations involved in the application review are extensive, and the applications themselves may be many volumes in size. The application process for a new facility is discussed below, and should provide guidance on how the statute and rule interweave, and who in the Department is responsible for what tasks.

The process for supplemental units at the same site, or certification of an existing site is quite similar, albeit with a few omitted steps or with shorter timeframes. A modification process is provided for in the PPSA (see further below) to accommodate the numerous changes that may occur during the operational period.

I. Pre-application filing activities

A. Long range planning -- Ten-Year Site Plan (TYSP) Reviews

The Public Service Commission (PSC) oversees the submission of plans by the utilities which describe current generation capacity and anticipated need for more capacity. The TYSPs also provide generic information on future sites for power plants to accommodate the anticipated need. This information includes land use data, environmental factors, and similar topics which allows other state and local agencies to comment on the Plans to the PSC. These comments may range from suggestions on how to improve utilization of the site, and on site problems, to recommendations that the site not be considered at all for various reasons. Based on this information and its own conclusions, the PSC will determine the suitability

of the plan.

B. Notice of Intent

A potential applicant may elect to file a Notice of Intent (NOI) that it plans to submit an application, and then work with the reviewing agencies on what information should be included in the application. There is no set time for doing this, but generally, it should be at least 6 months prior to application filing. Although the NOI process is a formal activity, pre-application discussions of the same nature can occur informally.

C. Need Determinations

The Need Determination process can occur prior to the filing of a certification application, or afterwards; however, it is usually recommended that it be commenced beforehand. Need Determination is a formal process required under s. 403.519, F.S., and is conducted by the Public Service Commission (PSC). The PSC reviews the need for the generation capacity which would be produced by the proposed facility in relation to the needs of the region, and to the state as a whole. The PSC also looks at whether the facility would be the most cost-effective means of obtaining the capacity. If the PSC makes a negative determination, or recommends that an alternative approach is more suitable, then either the pending application need not be submitted, or should be revised. If the application has already been submitted, then the certification application process comes to a halt.

II. Certification Process (See also flowchart)

The application must be submitted along with the appropriate fee in order to initiate the review process. The Office of General Counsel's Siting support attorney will request the assignment of an Administrative Law Judge by the Division of Administrative Hearings; this immediately shifts the review into a formal legal proceeding, requiring assistance from legal staff at the outset.

The Power Plant Siting Act, and other Siting Acts, are the only permitting functions wherein the fee is refunded if the application is withdrawn. Therefore, the staff of all the affected/reimbursable agencies need to track their time accordingly, and provide the appropriate information to the SCO if this situation arises.

As a part of the certification application, permit applications for federally delegated or approved permit programs are submitted. Currently, these are the:

- Preconstruction/Prevention of Significant Deterioration/New Source Review program, (often referred to as PSD/NSR)

- Title V air operation permit program
- National Pollutant Discharge Elimination System/wastewater program (often referred to as NPDES)
- Underground Injection Control program (UIC)
- Resource Recovery and Conservation Act program (RCRA).

The review of these permits is interwoven with the certification process, but may, due to federal requirements, not operate under the same time schedules as certification. Also, the final approval body for the permits is not the Siting Board, but the Department of Environmental Protection. Where possible, these two processes overlap, and steps are combined. In the remainder of this discussion, unless otherwise specified, use of the term "application" and the procedures outlined, refer to the certification side of the process.

Once the certification application is filed, the SCO then determines whether or not the application is "complete" --- that all the appropriate portions are there, but not that the information is adequate for reviewers to analyze the impacts of the proposed project. *The use of this term in this context is not the same as in many other permitting modes, and reviewers should be sensitive to this fact.* The determination must occur within 15 days of application filing. If the application is not complete, the applicant may withdraw it or submit additional material, but the review clock does not commence until the application is determined complete. The majority of applications submitted over the years have been complete as filed. Distribution of the application by the applicant to the other agencies must occur no later than 7 days after the determination of completeness. Also, copies of the application will have been distributed by the applicant to the main library in the vicinity of the site.

Within 15 days of the determination that the application is complete, notice must be published about the application. A newspaper advertisement is required, which must be at least 1/2 page in size; often, these are as large as 1-2 pages in size.

Once the application has been determined complete, the affected agencies and the in-house Power Plant Siting Review Committee assess whether the application is "sufficient" --- that the information is adequate for reviewers to analyze the impacts of the proposed project. This assessment is forwarded to the SCO by no later than 30 days after the application has been determined to be complete, for compilation into an overall determination, which must be submitted to the applicant by no later than 45 days after the application

has been determined to be complete (Day 67). The majority of applications submitted over the years have not been sufficient as filed. The applicant is afforded an opportunity to (a) rectify insufficiencies, but if the application is not sufficient within 40 days of the sufficiency determination, then the clock is reverts back to Day 67; or, (b) challenge the determination and have the issue resolved by the Administrative Law Judge.

One difficulty with the sufficiency clock under provision (a) above is that, if the applicant submits its information on the 39th day after the sufficiency determination, this is process Day 106. The clock does not stop while the next iteration of sufficiency review is ongoing. If, at the end of the 30 days allowed for this, the application is determined sufficient, the processing clock is at Day 136. This may encroach on the time available for the agencies for report preparation.

Regardless of the status of sufficiency, the agencies (including DEP) are required to file a "Preliminary Statement of Issues" by no later than 60 days after distribution of a complete application, or about Day 82 in the process. This Statement is on the order of a "fatal flaw" analysis, or to highlight various problems with the project as proposed which have been noted early in the review. A more detailed assessment will occur in the required agency reports (see further below).

The PPSA requires that a Land Use and Zoning hearing by an Administrative Law Judge (ALJ) be conducted to verify that the site is consistent with and in compliance with local government plans and zoning ordinances. This hearing must occur no later than 90 days after receipt of a complete application. The ALJ's findings will then be sent to the Siting Board for final ratification no later than 75 days after the administrative hearing (Process Day 165). If the site is not in compliance, the applicant is allowed the opportunity to correct the problem, but if corrections cannot be arranged through a variety of legal recourses, further actions by the agencies are halted.

Within 150 days after the distribution of a complete application (Day 172), the designated agencies are required to file Agency Reports on matters within their jurisdiction which will be affected by the project.

On the environmental side of DEP's jurisdiction, the reports need to address not only the impacts of the project, but any licensing provisions which are recommended if the agency/Division/District recommends certification, and variances which might need to be approved and the terms thereof. Each of these provisions, like other agency permit provisos or restrictions, must identify the statute, rule or ordinance upon which it is based. Such provisions and terms will

form the basis for the Conditions of Certification (if the project is approved). If denial of certification is recommended, then the reports must state why, and what might be done to correct the matter, e.g., redesign or relocation for all or any of the project features.

On the proprietary state lands side, the DEP report needs to address any problems associated with use, connection to, or crossing of the land in question. The same holds true for other agency-landowners. The Siting Board has the authority to direct any agency, within 30 days after certification, to execute any necessary license or easement to allow such usage.

Among the other agencies, the Public Service Commission must submit a report on the project, which must contain their Determination of Need. Since the PPSA states that "an affirmative finding of need is condition precedent to the conduct of the certification", if the report/Determination is negative, the remainder of the process essentially becomes moot.

The Department has additional report requirements under the PPSA, which must be available within 210 days after the filing of a complete application. Such items include topics not normally within the department's jurisdiction, and so the SCO may arrange for contracts for special studies, or may rely on the expertise of the other affected agencies. Day 210 is also the time when the information must be available on whether the proposed project will meet federally delegated or approved permit program requirements. However, because of federal process needs and clocks, this is not always possible, so draft positions are used when necessary.

The SCO, on behalf of the department, will then take the various reports and recommendations, and prepare a Written Analysis. This must be done no later 240 days after the complete application is filed. This analysis must attempt to interweave all the varying viewpoints and come up with an overall picture of the issues. A recommendation, based to the degree possible on all the recommendations, will be included, along with (a) if approval is recommended, appropriate Conditions of Certification that combine duplicative conditions, and the terms for any variances, if recommended; (b) if denial is recommended, the reasons therefore and the corrective measures suggested.

A "Certification Hearing", which is conducted by an Administrative Law Judge, must be held on every application, regardless of whether any matters remain in dispute. The hearing must be conducted no later than 300 days after a complete application is filed. A notice of this hearing will be published no later than 45 days before the hearing, including a large newspaper

advertisement. . Federal permit program disputes may be combined, where possible, with this hearing, and so in actuality, their time schedules may control. Testimony and evidence will be presented, and agency staff may be called upon to be witnesses. Prior to the hearing, interrogatories may need to be answered, and depositions may be taken. The agency attorney(s) should provide staff with guidance on these matters. The hearing will be held in the vicinity of the site. The hearings may last from a few hours to several weeks. The public may testify at this hearing, although oftentimes a special time is set aside for this purpose, typically in the evening.

Within 60 days after receipt of the transcript of the Certification hearing, the Administrative Law Judge must issue a Recommended Order, which contains finding of facts and conclusions of law about the matters raised at the hearing and in the application. The agencies may file Exceptions to this Recommended Order if they feel something has been overlooked or incorrectly interpreted. Upon occasion, agency staff are asked to assist in reviewing the Order and preparing the Exceptions.

The Recommended Order, Exceptions, and other pertinent data are then formulated into an Agenda package to be sent to the Governor and Cabinet (Siting Board). Much of this work is done by the DEP Office of General Counsel, the SCO, as well as the DEP Cabinet Affairs Office.

The Siting Board must hold a hearing and act upon the application within 60 days of receipt of the ALJ's Recommended Order. The hearing normally is a subset of a standard Governor & Cabinet meeting and is held in the Capitol. Prior to the full Cabinet hearing (usually the week preceding it), the Aides of the Governor and the Cabinet members conduct a meeting to discuss items on the upcoming agenda.

A Final Order is issued by the Board, in which the application may be approved, or denied. If denied, an explanation must be given as to what could be done to make the project approvable. If approved, the Order will be accompanied by Conditions of Certification. The text of Conditions is available at this website. See [Conditions and Final Orders](#) page.

Once the Final Order is signed, it must be sent to the Clerk of the Siting Board for official entry. The Clerk of the Department has been designated the Clerk for PPSA proceedings. The certification will not become effective until "clerked-in". Typically, this occurs on the same day or the next.

III. Postcertification activities

A. Federally delegated or approved permits

Within 30 days after the issuance of certification by the Siting Board, the Department of Environmental Protection must issue a proposed Title V air operation permit, and must issue or deny any other federal permit for the other programs.

B. Postcertification Review (PCR)

Depending on the facilities to be constructed in conjunction with the power plant, PCR may be established in the Conditions of Certification. This is to accommodate the review of lesser technical or design plans which are not critical to the overall decision to permit the facility, but which nonetheless require an analysis to determine compliance with regulatory standards.

An example would be the review of the efficiency of the NOx controls of a plant which hinges on the final choice of a turbine vendor, in the circumstance where the turbine choice depends on financing and the granting of certification. Thus the efficiency may not be able to be guaranteed by the applicant prior to certification.

PCR is also frequently used when dealing with certified corridors, and the review of the right-of-way and equipment to be placed within one. For example, the location of a pipeline or transmission line in relation to wetlands could be subject to review. The placement of, and size of, individual culverts along a linear facility such as a transmission line maintenance road is another often encountered item necessitating further review.

The Conditions may allow additional restrictions to be imposed as a result of PCR, and will provide the timeframe for the review process.

C. General monitoring, Compliance/Enforcement

The Conditions normally require that the facility be in compliance with the standard requirements of the various regulatory programs of the agencies (unless a variance is granted) and thus incorporates those programs' requirements for monitoring, be it for quarterly monitoring of water quality, daily monitoring of air quality, etc. The Conditions also frequently specify that additional, or alternative monitoring be conducted due to the site-specific nature of the site or the facility design. Monitoring reports, unless otherwise specified in the Conditions, should be sent to the appropriate agency (and sub-office, if defined). For DEP, these normally go to the District Office, or, for major air permits, to the Division of Air Resources. A copy of the transmittal letter for the reports should also be sent to the SCO, but the entity to determine whether or not compliance enforcement is warranted as based on these

reports (or other observations) is the appropriate Agency/District/Division. The SCO and OGC should be notified by the Agency/District/Division of any problems, and the SCO and OGC will assist in any necessary legal activities if requested, or will handle the matter if the General Counsel or the Secretary directs the SCO and OGC-Siting attorney to do so.

D. Agency Reimbursements

The Bureau of Finance & Accounting, in conjunction with the SCO, is responsible for administering the fees, and issuing any agency reimbursements. The application fee is supposed to cover those activities which would normally be remunerated through the agencies' own permit fees, plus the cost of the Administrative Law Judge. The other agencies may submit invoices for their costs, and will be reimbursed on a pro-rata basis from an amount designated for this purpose.

IV. Modifications

Modifications of Certification are frequently necessary, in part because of the life-of-the-facility license granted. However, not all changes at a certified facility necessitate a formal modification, rather, an approved amendment may suffice. A "modification" is defined to be: "any change in the certification Order after issuance, including a change in the conditions of certification". Thus, a condition might specify that the chemical treatment system for the facility only be allowed a 30 foot mixing zone, and if the applicant wishes to have a 40 foot mixing zone, a modification would be necessary, whereas if a construction shed was to be moved and this was not mentioned in the Conditions nor are there any foreseeable impacts, an amendment would be approved.

Modifications can be approved by the Siting Board, or the Board may delegate in the Conditions that authority to the Secretary of DEP --- which is frequently the case. If a dispute arises, the decision-making authority reverts to the Siting Board.

The process for Modifications normally starts with informal discussions about what the licensee is contemplating. Often a decision can be reached whether a formal modification is needed, or whether an amendment will do. If a formal modification is needed, the licensee must file a request with the Department along with a fee. This commences a legal proceeding, requiring oversight and assistance from OGC. As with the certification process, unexpended portions of the fee must be refunded if the modification is withdrawn, so all agency staff need to track their time accordingly.

The request will be circulated to the appropriate Agency/District/Division staff for a completeness/sufficiency review. Copies will also be sent to the parties to the certification proceeding. Newspaper notice of the proposed modification may be published if the Department believes the change will significantly increase impacts to the environment or the public. If objections are received from staff or the parties, then, as applicable, the licensee will be asked for more information, or to discuss possible revisions. If no objections are received regarding sufficiency, or, subsequently, on the proposal, then the SCO and OGC will prepare a proposed Final Order and circulate it to staff and the parties. Notice of the proposed modification will be published in the Florida Administrative Weekly.

Staff and parties will have 45 days after issuance of the notice to the proposed Final Order to object to it; other substantially affected persons will have 30 days. If no objections have been submitted, and if DEP has been delegated the authority to approve the modification, then the Final Order will be signed, sent to the parties, and to the Clerk of the Department/Board. After that, the Conditions of Certification will be updated to reflect the changes.

If objections have been submitted, the licensee can attempt to resolve the problem, or it can file a petition for an administrative hearing. The Department also has the authority to request a hearing. Such petitions are to be "disposed of in the same manner as an application" that is, undergo the various steps outlined in Part II above for a Certification review, albeit to be done in a time period commensurate with the significance/scope of the modification requested. Since a completeness and sufficiency review would have already been conducted, it is likely that this step would be forgone. Unless the site boundary is expanded, a Land use Hearing would probably be unnecessary. However, staff would need to submit information to the SCO for a Preliminary Statement of Issues (unless some other step could be determined to suffice for this), and information for the Agency Report. Further justification might be needed in the Report on the proposed findings and the recommended new or revised Conditions of Certification. A Written Analysis would be issued, an administrative hearing conducted, and eventually the matter would be heard by the Siting Board.

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Press Releases . . .

DEPARTMENT OF COMMUNITY AFFAIRS AWARDS \$1.35 MILLION TO THE CITIES OF LIVE OAK AND INTERLACHEN ~ Community Development Block Grants will expand wastewater infrastructure ~

TALLAHASSEE - The Florida Department of Community Affairs (DCA) recently announced \$1.35 million in Small Cities Community Development Block Grants (CDBG) to the Cities of Live Oak and Interlachen. The dollars will be used for the revitalization of the cities' water treatment facilities. The Department of Community Affairs awarded the City of Live Oak \$700,000 and Interlachen \$650,000. **More**

STATE, COUNTY AND COMMUNITY LEADERS GATHER TO CREATE A VISION FOR CENTRAL FLORIDA

ORLANDO- Community partners, including the State of Florida (Department of Community Affairs and Department of Transportation) along with representatives from Brevard, Lake, Orange, Osceola, Polk, Seminole and Volusia Counties and other community organizations including

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Prop Share Workshops



myregion.org, joined together to create a regional vision for Central Florida. The kickoff event, "How Shall We Grow," is the first meeting of a 15-month project tasked with creating a vision for what Central Florida will look like in twenty years. **More.**



Florida Response and Recovery Efforts

FLORIDA COMMUNITIES TRUST SAVES 150-ACRE HISTORIC CAMP FROM POTENTIAL DEVELOPMENT

TALLAHASSEE – Secretary Thaddeus Cohen of the Florida Department of Community Affairs (DCA) today presented a check for \$2.4 million to the Clay County Commission for the acquisition of the 150-acre property known as Camp Chowenwaw - "Camp of the Little Sisters." **More.**

FLORIDA COMMUNITIES TRUST AWARDS GRANTS FOR THREE ADDITIONAL PROJECTS

TALLAHASSEE – The Florida Communities Trust, housed within the Department of Community Affairs (DCA), is pleased to announce funding for three additional land acquisition projects throughout the state of Florida; Hidden Harbour (Manatee County), St. Marks Headwaters (Leon County) and Pioneer Park (Deerfield Beach). These projects are in addition to 29 other land acquisitions that have already been committed to by Florida Communities Trust. **More.**

FLORIDA COMMUNITIES TRUST HELPS PROTECT BEACH ACCESS

TALLAHASSEE - The Department of Community Affairs (DCA) today announced the acquisition of an oceanfront parcel of land for the Deerfield Beachfront Park. The project connects two publicly-owned beachfront parks which will expand the City's beachfront walking trail and increase public oceanfront access. The city is also planning on constructing a picnic shelter and sea turtle observation platform to further enhance the space. **More.**

CENTURY COMMISSION MEETS TO CONFRONT

THE CHALLENGES FACING FLORIDA'S FUTURE

TALLAHASSEE - The Century Commission for a Sustainable Florida met to discuss how they can add value to the resolution of difficult issues that face Florida as the population continues to grow. Topics will include education, transportation, environmental protection and energy alternatives. **More.**

DEPARTMENT OF COMMUNITY AFFAIRS AWARDS \$750,000 TO ALACHUA COUNTY

TALLAHASSEE - The Florida Department of Community Affairs (DCA) is proud to award Alachua County a Small Cities Community Development Block Grant (CDBG) for the amount of \$750,000. The funds will be used to revitalize housing in Alachua County. Sixteen low income households will benefit from the CDBG grant dollars. The Alachua County SHIP program added an additional \$350,000 making the total funds for the home revitalization effort one million dollars. **More.**

DEPARTMENT OF COMMUNITY AFFAIRS AWARDS \$600,000 TO THE TOWN OF GREENVILLE

TALLAHASSEE - The Florida Department of Community Affairs (DCA) is proud to award the Town of Greenville a Small Cities Community Development Block Grant (CDBG) in the amount of \$600,000 to assist in local development efforts. The funding will be used for sewage infrastructure improvements and the construction of a gazebo memorializing Ray Charles in the town park. **More.**

SANFORD FRONT PORCH COMMUNITY UNVEILING NEW AFFORDABLE HOUSING

TALLAHASSEE - The Florida Department of Community Affairs and the Goldsboro Front Porch Council will be hosting a ribbon cutting ceremony Saturday at 10 AM at the entrance of the Pine Level Subdivision. The community will be celebrating the construction of seven new homes in the Pine Level Subdivision that will provide affordable housing to local residents. **More.**
