

## **FECA Florida Legislative Report**

**March 12, 2012**

The regular 2012 session is over but a special session will be called to redo the Senate maps, which the Supreme Court threw out. We had a very good session. In addition to preventing some bad things, we passed a copper theft bill that would create a new crime for stealing metal from a substation and increases penalties for violations by metal recyclers. We also were instrumental in passing a broader bill to increase regulations on metal recyclers. In addition, we were able to keep offensive provisions out of the energy bill that passed.

In addition to the copper bills passing, some of the late night activities on Friday included a relocation provision that utilities have been working on for a few years – see HB 599. Another issue that many of you have asked about is repealing the septic tank inspection requirement, which repeal is in HB 1263. We are still reading through bills that passed, and if there are other issues worthy of reporting we will let you know.

The bills that are of concern to co-ops are listed below. More information on each bill can be found by visiting either [www.myfloridahouse.gov](http://www.myfloridahouse.gov) or [www.flsenate.gov](http://www.flsenate.gov).

### **Bills that passed**

Copper Theft Penalties - HB 1323 by Rep. Drake (SB 1324 by Sen. Norman) would increase the penalty on secondary metal recyclers who violate the law from a first degree misdemeanor to a third degree felony. Additionally, penalties would increase for secondary recyclers that violate the law three or more times from a third degree felony to a second-degree felony. The bill would create an additional first-degree felony for anyone who steals copper/metal from an electrical substation. The effective date is October 1, 2012.

Copper Theft/Secondary Metals Recyclers - HB 885 by Rep. Ford (SB 540 by Sen. Smith) would strengthen the metals theft and recycler regulations that were enacted in 2008. Metal recyclers would be limited to purchasing regulated metals from fixed locations, which should shut down the mobile recyclers. It also would be unlawful for a metal recycler to purchase any restricted regulated metals

unless they obtain reasonable proof that the seller owns the property. Restricted regulated metals is defined to include utility structures, fixtures, wires and hardware connected to the utility structure, and transmission, distribution and service wire from a utility (including copper or aluminum bus bars, connectors, grounding plates or grounding wire). If this proof is received, it would be inferred that the secondary metals recycler did not know or have reason to believe the property was stolen. In addition to the records that are currently required to be kept by the secondary recyclers, they would be required to maintain a legible electronic record of all purchase transactions, and that electronic record must be transmitted to the appropriate law enforcement official no later than 10 am the next day. The definition of secondary metal recycler is revised to clarify that a recycler is engaged in the business of purchasing metals. A secondary metal recycler must pay by check for regulated metals that exceed \$1,000 and cannot pay cash for restricted regulated metals. The purchase of restricted regulated metals must be done after 7am and before 7pm. The bill also would create immunity from civil liability for all owners of copper and metals when a person is injured while stealing regulated metals. In addition, a person that has been convicted of stealing copper or other nonferrous metals from a utility is liable to the utility for damages in an amount equal to three times the actual damages sustained by the utility due to any personal injury, wrongful death, or property damage caused by the theft, or an amount equal to three times any claim made against the utility for any personal injury, wrongful death, or property damage caused by the malfunction of the facilities, whichever is greater. The regulation of metals recycling would be the exclusive jurisdiction of the State, but any local government ordinances enacted before March 1, 2012, are grandfathered. The bill also includes the penalties that are in HB 1323. The effective date of the bill is July 1, 2012.

Energy Bill - HB 7117 (SB 2094) would enact several of Commissioner Putnam's energy proposals. The need determination provision that would make it difficult to build another gas plant in Florida was removed. The bill includes the following:

- Renewable energy resource information would be added to the factors considered by the PSC for Ten Year Site Plans filed annually by utilities.
- Sales tax exemptions and tax credits created for equipment, machinery and other materials used for renewable transportation fuel (i.e. ethanol, biodiesel).

- The \$.01 per kwh energy production tax credit for new renewable facilities and facilities that increase the investment by 50% is revived for electricity produced in 2013 through June 2016. The credit is capped at \$5,000,000 in 2012 and 2013 and \$10,000,000 in the remaining years.
- Electric vehicle charging services would be excluded from the definition of the “retail sale of electricity” and the charging stations would not be subject to regulation by the PSC, but they would be regulated by the Florida Building Commission and the Dept. of Agriculture. The PSC would be required to conduct a study of the effects of charging stations on the energy grid and investigate the feasibility of using off-grid solar PV to power the stations.
- The Dept. of Agriculture’s Office of Energy would be required to develop a clearinghouse of information regarding cost savings associated with energy efficiency and conservation measures.
- The PSC would be required to hire an independent consultant to evaluate the Florida Energy Efficiency and Conservation Act (FEECA) and determine if FEECA remains in the public interest.
- Deletes the RPS rule language in section 366.92.
- Expands the local government infrastructure surtax to authorize expenditures for loans, grants and rebates for property owners to make energy efficiency improvements, including air sealing; insulating; energy-efficient HVAC; solar; building modifications to increase the use of daylight or shade; replacement windows; energy controls or energy recovery systems; electric vehicle charging equipment; and efficient lighting equipment.
- The Dept. of Agriculture would be required to inventory Florida’s forests and to evaluate the biomass resources.
- Clarifies that gasoline without ethanol can be sold in Florida.

Repeal of Cap-and-Trade Authority - HB 4001 by Rep. Plakon (SB 648 by Sen. Hays) would repeal the Florida Climate Protection Act (FCPA) that was enacted in 2008 (HB 7135). The FCPA authorized DEP to draft a cap-and-trade rule that was subject to ratification by the Legislature. Even though DEP has discontinued its efforts to draft a cap-and-trade rule, it would be very beneficial to have this law removed from the statutes.

Environmental Permitting - HB 503 by Rep. Patronis (SB 716 by Sen. Bennett) would allow local governments to expedite the permitting process for biofuel and renewable facilities. In addition, the bill revises a number of provisions relating to construction and building permits; permit application requirements; local government comprehensive plans; and other activities. The overarching intent is to facilitate coordination among local, state and federal agencies and to implement a more efficient permitting process.

Numeric Nutrient Criteria - HB 7051 (SB 2060) has been signed by the Governor. It exempts DEP's proposed numeric nutrient criteria (NNC) rule from the statutory requirement of legislative ratification in order to facilitate EPA's review of the rule. However, after adoption of the proposed rule any amendments will require Legislative ratification. EPA has suspended its NNC rule until July 6.

Tangible Personal Property Tax - HB 1003 by Rep. Eisnaugle (SJR 1064 by Sen. Detert) would give Floridians an opportunity to vote to amend Florida's Constitution to allow the legislature to change the tangible personal property (TPP) tax law. Currently, the Florida Constitution allows for a \$25,000 exemption from ad valorem taxes on the assessed value of tangible personal property (TPP). If approved by 60%, TPP with an assessed value between \$25,000 and \$50,000 would be exempt from taxation. In addition, a local government could provide an additional exemption from ad valorem taxes by local ordinance if allowed by general law.

Sunshine State One Call Public Records Exemptions - HB 7037 by Rep. Roberson (SB 844 by Sen. Gardiner) would exempt proprietary confidential business information held by Sunshine State One-Call of Florida, Inc., from public records requirements, and would eliminate the automatic repeal under the Open Government Sunset Review Act.

Building Construction and Inspection - SB 704 by Sen. Bennett (HB 651 by Rep. Davis) no longer contains the language that addressed landlords providing solar power to multiple tenants. The bill would make it easier to implement the President's "Sunshot Program" by allowing an owner or tenant of a residential building to install or replace solar panels without using a licensed electrician.

Unemployment Compensation Tax Relief - HB 7027 reduces a scheduled increase to the unemployment tax from \$100 to \$50 per employee by lowering the wage base from \$8,500 to \$8,000 and extending the period of time over which the state will collect funds to replenish the unemployment compensation trust fund to a surplus level.

Development of Regional Impact Review - HB 979 by Rep. Diaz (SB 1180 by Sen. Bennett) would create an alternative review process for certain large development projects designated as “developments of regional impact” (DRI). The DRI process was eliminated for a large number of cities and some counties in 2009 to reduce state oversight in local growth management decisions. The bill would allow local governments still subject to the DRI process to direct larger developments into an alternative “coordinated review” process and the review would be limited to land use, environmental protection, and public facility issues. This could provide faster approval for competing projects in local jurisdictions.

Economic Development - HB 7087 contains several provisions designed to encourage economic development in Florida and creates a new sales tax exemption for electricity used directly or indirectly in a packinghouse where fruits and vegetables are packed for wholesale distribution, which is similar to the provision that was in SB 592 by Sen. Siplin and HB 821 by Rep. Albritton, which did not pass.

Transportation - HB 599 clarifies timing and cost issues when utilities relocate or remove lines on or along public roads. Upon 30 days’ written notice to the authority (either DOT or local governments), a utility must **initiate** the work necessary to relocate facilities. Before this clarification, certain authorities believed that the utilities had 30 days to actually remove or relocate the facilities. In addition, an authority may be responsible for the costs of removal/relocation if the utility has a compensable property interest by establishing that: 1) it was physically located on the property before the authority acquired rights in the property; 2) it has a compensable property right in all adjacent properties along the road and; 3) the information available to the authority does not establish either party’s priority in the property interest.

Septic Tank Inspection Repeal - HB 1263 by Rep. Hudson repeals the government mandated septic tank inspection program instituted in 2010. The repeal of this

program has been a top priority for legislators around the state, but especially for legislators representing rural communities.

### **Bills that did not pass**

Unclaimed Deposits - SB 100 by Sen. Siplin and HB 229 by Rep. Watson would require unclaimed utility deposits to be put into a newly created Energy Affordability Trust Fund (EATF). The trust fund would supplement the Low Income Home Energy Assistance Program. Currently, unclaimed deposits are sent to the Dept. of Financial Services and held in escrow until claimed by the owner or eligible heir. SB 100 passed out of 2 committees but HB 229 was not heard.

Workers' Compensation - HB 511 by Rep. Hudson and SB 668 by Sen. Hays would address a loophole in the workers' compensation system that allows physicians to dispense repackaged drugs and charge employers drug prices that greatly exceed the statutory reimbursement for the same medications dispensed by pharmacies (up to 679% more than what a pharmacy would charge). The bill would have reduced workers' compensation rates.

Sustainable Community Project (Babcock/FPL Solar Project) - HB 1391 by Rep. Kreegel and SB 1878 by Sen. Latvala would require the Department of Economic Opportunity to certify a project as a Sustainable Community Demonstration Project if the project complies with the requirements set forth in the Bill. If the project is designed to demonstrate the economic feasibility and viability of clean renewable energy systems and smart grid infrastructure, the PSC will approve recovery of all reasonable and prudent costs incurred by an IOU for these projects. HB 1391 was amended to add a caveat that FPL's residential customers would pay no more than a nickel a month for the proposed 75 MW solar plant at Babcock Ranch. The Florida Industrial Power Users Group testified that without a similar cap for C&I customers they will be forced to pick up the majority of the cost. HB 1391 passed out of 2 committees but SB 1878 was not heard.

Retail Wheeling for Solar Energy Systems – SB 1106 by Sen. Altman and HB 779 by Rep. Burgin would exempt solar energy systems of up to 5 MW from the definition of public utility. These generators would not be regulated by the PSC and could sell electricity to existing utility customers (it is silent as to whether they must be customers of the same utility) that are on property adjacent to, or

contiguous with, the generator. The bill also expands net metering to include all of the customer's accounts located on contiguous property owned by the same customer. The bill is silent as to whether we can put these customers on a special rate to insure that the remaining customers do not subsidize the renewable generator's consumers.

Retail Wheeling for Renewables - SB 696 by Sen. Bennett and HB 661 by Rep. Williams would allow a landlord who self-generates renewable energy to sell electricity at retail to their tenants. The word "tenant" is not defined in the bill, so it should be assumed tenant would be broadly construed. The bills would require all electric utilities, including co-ops, to allow this practice. In addition, the bills would require the Public Service Commission (PSC) to promulgate rules to administer the law. They do not address issues such as a utility's obligation to serve partial requirements customers, how to deal with potential rate subsidies by nonparticipants, the role of the PSC, or the effect on local and state taxes.

Local Government Renewable Energy Zones - SB 640 by Sen. Bennett and HB 1463 by Rep. Perman would allow local governments to create energy zones through local ordinances. The energy zones would authorize renewable energy producers to sell electricity to new retail customers (not defined but could include teardowns as well as undeveloped properties) within this zone or sell the electricity to the territory's electric utility at established renewable energy rates. This would enable renewable energy producers to create electric utilities that are only subject to local jurisdictions and are not subject to the PSC's jurisdiction. The bill would require the renewable producer to pay the electric utility serving the area a fee of 1.5¢ per kwh of renewable energy produced and sold unless the customer is on an interruptible rate. The PSC would be required to promulgate rules to ensure that the general body of ratepayers of the electric utility serving the area does not subsidize customers of the renewable facilities. Electric utilities would be required to submit reports on the implementation of this program. The bill would exempt renewable producers from the definition of "utility" in Chapter 366, which also would exempt them from the gross receipts and public service taxes. SB 640 passed out of 1 committee.

Energy/PSC/Renewable Trust Fund - HB 1427 and HB 1429 by Rep. Rehwinkel-Vasilinda would require the PSC to ensure that rate structures for IOUs are designed to promote energy efficiency and demand-side renewable energy by

prohibiting declining block rates, providing for a performance-indexed financial reward for utilities that meet or exceed their conservation goals and providing for penalties for failure to meet conservation goals. The PSC would require an impact study for any proposed power plant which would include projections for the long-term impact of the plan and public health and safety concerns and other impacts. The bill would require the PSC to begin rulemaking on these matters by January 1, 2013. Beginning January 1, 2013, each electric utility, including co-ops, would be required to collect a monthly charge of 25 cents per meter to be deposited into the Sustainable and Renewable Energy Policy Trust Fund, which would be created by HB 1429. The Florida Energy Office would create an organization to provide assistance, funding and support to the Office to carry out its mission. The bill would also reinstate the solar PV system rebates, but the rebate amounts would be reduced from \$4/watt to \$2.50 (for 2012-13), \$2 (for 2012-15) and \$1.50 for subsequent years.

Local Government Underground Referendum - SB 466 by Sen. Bennett and HB 721 by Rep. Boyd would allow local governments in coastal areas to hold a referendum allowing the public to decide whether utility infrastructure should be placed underground. If the referendum is approved it would create a coastal barrier financing district. The property within the district would fund the project through ad valorem taxes. Additionally, the bill would add legislative findings and intent stating undergrounding services is "...safer and more reliable than overhead facilities during and after severe storm and weather events to which coastal barriers are often exposed", which is not a valid statement regarding underground facilities in an area that is subject to storm surge or flooding. We are working on an amendment to modify these findings. SB 466 passed out of 1 committee.

Termination of Service Prohibition - SB 104 by Sen. Siplin would prevent an electric or gas utility from disconnecting service, because of nonpayment, to seniors or low-income families during extreme weather days (32°F or below or 95°F and above). The bill would not allow disconnections on the day or the following two days (also any day before a holiday or weekend) when the temperature standards are met. The bill does not define "senior citizen" or "low income".



Assault or Battery on Utility Workers - SB 194 by Sen. Wise and HB 127 by Rep. Weinstein would increase the criminal penalties for committing assault or battery on a utility worker. SB 194 passed out of 1 committee.

Cost Recovery - SB 740 by Sen. Fasano and HB 4031 by Rep. Rehwinkle Vasilinda would repeal the pre-completion cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC facilities.

Limiting Federal Loans - HM 1431 by Rep. Rehwinkel-Vasilinda is a resolution urging Congress to stop the increase to the federal loan guarantee program for new nuclear reactors; eliminate the funding for mixed oxide plutonium fuel plants; support energy efficiency and renewable sources of energy; fund nuclear waste immobilization; and increase funding for environmental cleanup programs.

Air Pollution Fees – SB 1574 by Sen. Smith and HB 1449 by Rep. Gibbons would authorize a major source of air pollution to remit air pollution fees directly to an approved local air pollution control program, instead of directly to DEP, under Title V of the federal Clean Air Act.

Eminent Domain- SB 1504 by Senator Evers and HB 193 by Ford would allow all entities who have the power of eminent domain, including electric utilities, to file a petition to acquire private property for public use by condemnation within 5 years after the date of an administrative determination to acquire the property. If a petition is not filed within the 5-year period, the entity cannot pursue condemnation for 10 years (5 years after the expiration of the 5-year period).

Mortgage Foreclosures - SB 1890 by Sen. Latvala and HB 1149 by Rep. Steube would establish expedited foreclosure proceedings for abandoned residential real property. If the mortgagor files a petition to determine the status of the residential property, they may ask the court to issue subpoenas to the utility companies serving the property asking for the resident's current status (i.e. are services disconnected, are payments delinquent). The court would review the responses from the utilities along with other matters of record to determine if the property is abandoned and subject to expedited foreclosure.

PSC Ex Parte Communications - SB 172 by Sen. Fasano would prohibit PSC commissioners and staff from engaging in ex parte communications with

regulated entities. Any oral or written communications between a regulated entity and PSC commissioners and staff would have to be made available to the public. Additionally, the bill would place a four-year ban on commissioners and staff from lobbying the executive and legislative branches, appearing before the PSC, or working for a regulated entity if their employment was terminated after July 1, 2012. The bill would direct PSC commissioners to follow the Code of Judicial Conduct except when it conflicts with Florida's sunshine laws. Any person that engages in ex parte communications can be fined \$5,000 and cannot appear before the PSC for 2 years, and the regulated entity can be fined up to .1% of their annual operating revenue.

Solar Energy System Rebates - SB 1864 by Sen. Bennett and HB 1283 by Rep. Brodeur would appropriate \$26 million to the Dept. of Agriculture and Consumer Services. The Department would use this money to pay the difference between the rebate amount authorized by the Solar Energy System Incentives Program and rebates previously approved for applicants by the former Florida Energy and Climate Commission.

Repeal of Renewable Gasoline Standard - SB 238 by Sen. Evers and HB 4013 by Rep. Gaetz would repeal the Florida Renewable Fuel Standard Act that was enacted in 2008 (HB 7135). The Act requires that all gas sold after Dec. 2010, with exceptions, must contain 9-10% fuel ethanol. The bills did not pass but similar language was added to the energy bill – HB 7117.

Off-shore Drilling Ban - SJR 90 by Sen. Joyner and HJR 23 by Rep. Kriseman is a proposed amendment to Florida's Constitution to ban the exploration, drilling, extraction and production of oil off Florida's coast.

Solar Energy Systems - SB 690 by Sen. Bennett would replace the Florida Solar Energy Center with the Underwriters Laboratories, Inc. as the entity that sets the safety and performance standards of solar systems sold in Florida.

Local Business Tax Repeal – SB 760 by Sen. Hays and HB 4025 by Rep. O'Toole would repeal the Local Business Tax, which is a tax imposed by a local governing authority for the privilege of conducting business within its jurisdiction.

Sales and Use Tax - SB 430 by Sen. Lynn, HB 1181 by Reps. Costello and Corcoran, and HB 321 by Rep. Rehwinkel Vasilinda would streamline the sales and use tax provisions and would provide amnesty for uncollected or unpaid sales and use taxes for sellers who register under the Streamlined Sales and Use Tax Agreement. DOR would maintain a database to be used by vendors, which provides information on sales and use tax rates and boundary changes for taxing jurisdictions. The bill also would clarify when a utility bill should reflect any increase, decrease, or termination of a discretionary sales surtax. Under the bill, if a purchaser chooses to seek a refund or credit from a dealer, they must submit a written request for a refund or credit to the dealer (the dealer has 60 days to respond to the request) containing all information necessary for the dealer to determine the validity of the purchaser's request. In addition, the bill would create a joint House and Senate committee to study Florida's tax system, including sales tax exemptions.

Review of Exemptions from Sales & Use Tax - HB 907 by Rep. Pafford and SB 1832 by Sen. Gibson would create a Joint Legislative Review Committee to oversee the review of, and possible elimination of exemptions from, the sales & use tax provisions. By July 1, 2015, with some exceptions, all sales, rental, use, consumption, distribution, and storage tax exemptions would be eliminated. The exemption for sales of electricity to households is preserved. Sales tax exemptions which would affect utilities if eliminated include: fuels used by utilities in generation of power, the transmission or wheeling of electricity, the purchase of machinery and equipment used in the production of electrical energy, electricity used for certain agricultural purposes, the purchase of boiler fuels, electricity used to operate pollution control equipment, solar energy systems, sales to non-profit water systems, and electrical energy used by a qualified business in a municipal enterprise zone.

Discretionary Sales Surtax – SB 1074 by Sen. Altman and HB 743 by Rep. Rehwinkel-Vasilinda would authorize local governments to impose a discretionary sales surtax that would be used to provide financial assistance to owners of residential property who make energy efficiency improvements. The program would give preference to low-income elders, Florida veterans, and disabled adults. The program would have to be created by local ordinance and approved by referendum. Additionally, the bill defines what actions constitute energy efficiency improvements. HB 743 passed out of 1 committee.

Thermal Roof Standards – SB 1032 by Sen. Benaquisto and HB 987 by Representatives Abruzzo and Rooney would create standards for a thermal-efficient roof. The House bill previously was HB 747, but that bill has been withdrawn from further consideration.