**FECA Florida Legislative Report**

**December 2, 2011**

The Legislature will hold one more week of committee meetings in December (5-9) before the Session begins on January 10th, 2012. Bills are slowly moving through the process and new bills continue to pour out of bill drafting. There are 2 proposals for retail wheeling/competition that are our highest priority (SB 696/HB 661, and HB 779), but amending the existing laws on copper theft/metal recyclers also will be a high priority.

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).

**Priority Bills**

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 energy usage 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. Trudi Williams would allow a customer who self-generates renewable energy to sell electricity at retail to the generator’s 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 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.

**Other Electric Utility Bills**

Local Government Underground Referendum - SB 466 by Sen. Bennett and HB 721 by Rep. Boyd would allow a local government that has authority over a coastal barrier 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.

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 its first committee of reference.

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.

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.

**Copper Theft**

Secondary Metals Recyclers - SB 540 by Sen. Smith defines “regulated metals property” to include utility structure, 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.) It would be unlawful for a secondary metals recycler to purchase any restricted regulated metals property unless they obtain reasonable proof that the seller owns such property. If this proof is received, then it would be inferred that the secondary metals recycler did not know or have reason to believe that the property was stolen. This bill would amend the metals theft and recyclers regulations that were enacted in 2008.

**PSC**

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.

**Other Energy Bills**

Repeal of Cap-and-Trade Authority - SB 648 by Sen. Hays and HB 4001 by Rep. Plakon 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. HB 4001 passed out of its first committee of reference and has one committee left.

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. SB 238 passed out of its first committee of reference.

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.

**Bills of Interest**

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.

Environmental Permitting - SB 716 by Sen. Bennett and HB 503 by Rep. Patronis 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.

Local Business Tax Repeal - 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 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.

Sales Tax Exemption - SB 592 by Sen. Siplin and HB 821 by Rep. Albritton would exempt from sales taxes electricity used in fresh fruit and vegetable packinghouses if the packinghouses are separately metered from other operations. SB 592 passed out of its first committee of reference.

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.

Sunshine State One Call Public Records Exemptions - 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.

Thermal Roof Standards – SB 1032 by Sen. Benaquisto and HB 747 by Rep. Rooney would create standards for a thermal-efficient roof.

Tangible Personal Property Tax - SJR 1064 by Sen. Detert would give Floridians an opportunity to vote to amend Florida's Constitution to allow the legislature to change tangible personal property (TPP) tax law. SJR 1064 would have to pass out of the legislature and win more than 60% support of the voters. If that occurs the Legislature would exempt at least $25,000 of the assessed value from ad valorem taxation. Additionally, the Constitution would then allow for an assessment of TPP at a specified percentage of its value, would specify an item of TPP exempt from ad valorem taxation, or would exempt a person from paying TPP tax if the amount due does not substantially exceed the cost to administer the tax.