

## **FECA Florida Legislative Report**

**January 17<sup>th</sup>, 2012**

The Legislature began the 60-day regular session last week. The week began with one of the Senate's copper theft bills (SB 540) being amended and passing out of its first committee of reference. Several concepts important to co-ops were added to SB 540 and we will continue to work with the bill sponsor, law enforcement, and stakeholders to keep improving the bill. Note that Rep. Drake filed HB 1323, which is the companion to Sen. Norman's bill that increases the criminal penalties for copper theft and creates a separate crime for stealing wire from a substation. The week ended with Commissioner Putnam's presentation to the House Energy and Utilities Subcommittee, which is discussed below. In between we had one of the most successful legislative cookouts in recent history. Everyone did a great job of adapting to the new location, but I want to give a special recognition to Sherman Phillips and Henry Barrow for all of the great work they did in coordinating the event.

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).

### **Commissioner Putnam's Energy Proposal**

The talking points of Commissioner Putnam's energy plan are attached. During his presentation he highlighted the need to diversify Florida's energy mix with renewables, but he also recommends deleting the RPS provisions in Florida Statutes (Section 366.92(3), F.S., has never been implemented because the Legislature did not ratify the PSC's proposed rule for the IOUs). Some of his proposals already are required, such as requiring companies to report renewable resources as part of their 10-year site plans and placing a value on diversity and conservation in need determination proceedings, so we are not sure what changes he is seeking. Probably the most controversial concepts are in Proposals 5 and 6, which would allow utilities to enter into public and private partnerships to expand renewable energy, and would allow utilities to recover the cost of developing 75 megawatts or 1 percent of their generating capacity from renewable energy. Note that the Babcock/FPL solar bills (HB 1391 and SB 1878) were released from bill drafting last week.

The Commissioner is expected to make a similar presentation to the Senate Communications, Energy and Public Utilities Committee and we may get some clarification at that time. At this time we do not know if these concepts will be turned into a bill. However, it is noteworthy that last year the Governor threatened to veto a similar concept and this year the Governor has reiterated that he is opposed to any bills that will increase electric rates. Fortunately we have very good working relationships with the Commissioner and his staff and we will work closely with them if the Legislature decides to act on his recommendations.

### **New Bills**

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.

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.

Air Pollution Fees – SB 1574 by Sen. Smith 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 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 (5years after the expiration of the 5 year period).

Mortgage Foreclosures - 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.

### **Priority Bills**

Copper Theft/Secondary Metals Recyclers - SB 540 by Sen. Smith and HB 885 by Rep. Ford 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.) Secondary recyclers would be limited to purchasing regulated metals only from fixed locations - prohibiting purchases from mobile units. It also would be unlawful for a secondary metals recycler to purchase any restricted regulated metals unless they obtain reasonable proof that the seller owns the 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. The regulation of metals recycling would be preempted to the State, making any ordinance or regulation adopted by a local government void. However, ordinances/regulations enacted before March 1, 2012, would be grandfathered. SB 540 passed out of its first committee of reference this week with an amendment sponsored by Sen. Bill Montford. The

bill now clarifies that any person that assists in the taking of copper or other metals commits a felony of the first degree. In addition, the bill creates immunity from civil liability for all owners of copper and metals when a person is injured while committing a theft of metals, and it clarifies that anyone that assists with the theft also is committing a felony. This bill would amend the metals theft and recyclers regulations that were enacted in 2008.

Copper Theft Penalties - SB 1324 by Sen. Norman would prohibit recyclers from purchasing metals from anyone who presents false identification, is under the age of 18, or is under the influence of alcohol or drugs. Additionally, the bill would allow law enforcement to charge anyone who removes or assists with removing ferrous or nonferrous metals from substations with a first degree felony even if the theft does not cause an immediate interruption of service. The bill also would require secondary metal recyclers to carry a \$1.5 million bond to cover damages if the recycler purchased regulated metals stolen from a substation. HB 1323 by Rep. Drake would increase the penalty on secondary metal recyclers who violate the law three or more times from a third degree felony to a first-degree felony. The bill would create an additional first-degree felony for anyone who knowingly removes, or assists with removing, copper/metal from an electrical substation. Sen. Norman intends to amend SB 1324 to match Rep. Drake's bill HB 1323 in its first committee stop.

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 its first committee of reference, which was chaired by the Bill's sponsor.

### **Other Electric Utility Bills**

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 its first committee of reference.

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.

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.

## **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 last committee of reference and is headed to the floor.

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. HB 4013 passed out of its first committee and SB 238 was temporarily postponed in its last committee.

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.

### **Other Bills of Interest**

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). If the bill passes, it

should reduce workers' compensation rates. HB 511 passed out of its first committee of reference.

Development of Regional Impact Review - SB 1180 by Sen. Bennett and HB 979 by Rep. Diaz 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.

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. HB 503 passed out of its second committee of reference.

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, 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.

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. Both bills have passed out of their 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 and HB 7037 by Rep. Roberson 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. SB 844 passed out of its first committee of reference.

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.

Tangible Personal Property Tax - SJR 1064 by Sen. Detert and HB 1003 by Rep. Eisnaugle 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.