**FECA Florida Legislative Report April 22, 2011**

Two more weeks to go in the session and things are still up in the air. Our biggest concern right now is language in the Senate’s energy bill that would create new PSC reporting requirements and may require PSC approval for all renewable purchases. The Senate energy bill is on Monday’s and Tuesday’s agenda, but the House bill is not scheduled to be heard at this time. There is however another vehicle to amend (SB 2106) if the energy bills stall, so we will continue to work on the problems in SB 2078 and any new amendments that may be problematic.

We have deleted the phrase “such as unreasonably high pole-attachment rates” from both the Senate bill (SB 1524) and the House bill (HB 1231), which the telephone and cable industries wanted. In addition, the bill to address EPA’s numeric nutrient rule (HB 239) passed out of the House and should be considered by the Senate. There also are several bills that address economic development by removing regulatory burdens in the areas of growth management and environmental permitting. One of these was filed yesterday, HB 7247, a 914 page bill that will dissolve the Department of Community Affairs and create a Department of Economic Opportunity.

Note that there also are two bills (SB 1142 and HB 927) that address adverse possession. They amend section 95.18 to state that the person claiming adverse possession must pay ad valorem taxes on the property to establish possession, and the property owner of record can negate the adverse possession claim by showing that he has paid the property tax during the period that the person is claiming adverse possession. These bills are designed to prevent squatters from acquiring property during this housing crisis, but we want to make sure they do not affect our ability to establish a prescriptive easement. To this is end we have asked Rep. Drake to clarify on the House floor that the bill does not affect prescriptive easements and the bill’s sponsor, Rep. Roberson, has agreed to do that for us. SB 1142 has passed out of the Senate and HB 927 is on second reading on the House floor.

To make this easier to follow, we have grouped the bills by subject matter. 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 are Moving**

**Energy Bills**

We have two energy bills, SB 2078 and HB 7217. SB 2078 has one more committee stop and is on the agenda for both Monday and Tuesday in that committee, but the House bill has not been heard since passing out of its first committee. We have been told that there will be amendments to SB 2078 to allow retail wheeling for renewables and some net metering language on Monday/Tuesday, but they have not yet been filed. In its current form, SB 2078 would expand the 10-year site plans to include future transmission and distribution corridors and projected fuels and technologies for the next 10 years. The utilities have united to oppose this expansion, but so far we have made only limited progress. The bill also appears to require co-ops and municipals to get preapproval from the PSC for renewable generation, but we have been assured this was not their intent and we should be able to correct this. The IOUs would be required to conduct a free energy audit of commercial customers prior to December of 2016. It would abolish the Florida Energy and Climate Commission (FECC) and transfer its powers and duties to the Department of Environment Protection, but would keep the Florida Energy Office as a separate entity within DEP. In addition, the bill would allow IOUs to spend the equivalent of 2% of their 2010 retail sales on renewable energy for 5 years. SB 2106 (formerly SB 7100) is a related bill that would abolish the FECC and move its duties to DEP. This is in contrast to the House energy bill (HB 7217) that would transfer the energy office to Department of Agriculture and Consumer Services. HB 7217 (formerly PCB ENUS-11-01) passed out of its first committee but is not scheduled to be heard again. HB 7217 would streamline the State’s energy policy and prioritize the goals - with affordability being the first priority goal. In addition, the bill would allow IOUs to spend the equivalent of 2% of their 2010 retail sales on renewable energy for 5 years. In the event these energy bills die in committee, they could be added to SB 2106. SB 2106 passed out of the Senate, and in a very unusual move, was amended with a strike everything clause, passed out of the House and has been sent to conference.

Repeal of Cap-and-Trade Authority - HB 4117 by Rep. Plakon and SB 762 by Sen. Hayes 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. SB 762 passed out of the second committee and has one stop left before it goes to the floor.

PACE Bond Bills - HB 7153 is a resolution urging Congress reinstitute and affirm local government’s authority to finance improvements to their constituents’ homes and businesses if the improvements are for energy conservation and efficiency, wind resistance or renewable energy. Last year, Florida enacted the PACE bond bill but the law has been frozen by the Federal Housing Finance Agency. HB 7153 is on the House floor but there is no Senate companion.

**PSC Bills**

PSC Ex Parte Communications - HB 7211 (Formerly PCB ENUS 11-02) would define ex parte communications and prohibit commissioners and their direct staff from such communications and create monetary penalties for those that make a prohibited ex parte communication. Commissioners would be subject to certain provisions from the Judicial Code of Conduct and would be required to have training and education on ethics and other matters. Commissioners would be prohibited from demanding or requiring PSC staff to pursue a particular position on pending substantive matters. The bill also would prevent the PSC from expanding the authority given to it by the Legislature. In addition, the Office of the Public Counsel would be transferred to the Attorney General’ Office. SB 212 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, 2011. The bill would direct PSC commissioners to follow the Code of Judicial Conduct except when it conflicts with Florida’s sunshine laws, and authorizes the PSC to impose penalties on regulated entities that engage in ex parte communications up to .1% of their annual operating revenue. HB 7211 is on the House floor and SB 212 passed out of its first committee.

The bills that would require an elected PSC (SB 804 and HB 719) have not been heard.

**EPA Bills**

Numeric Nutrient Criteria (NNC) - HB 239 by Rep. T. Williams and SB 1090 by Sen. Dean and SB 1490 by Sen. Evers would prohibit DEP, water management districts, and local governmental entities from implementing EPA’s numeric nutrient water quality criteria (NNC) rules. HB 239 has been amended to direct DEP to adopt its own water quality standards through the Total Maximum Daily Loads (TMDLs) program. The bill directs DEP to base these criteria on objective and credible data, and scientific studies and analysis. Previously HB 239 authorized DEP to adopt Florida-specific NNC criteria only if DEP determines that such criteria are necessary. This change should eliminate the risk of creating a situation where a permit cannot be obtained. HB 239 passed out of the House, but the Senate bills have not been heard. In addition, HB 1401 by Rep. Stuebe is a resolution urging Congress to keep EPA from overextending its mandate and to direct EPA not to interfere with Florida’s previously approved clean water program. HB 1401 is on the House floor.

GHG Resolution - HM 1375 by Rep. Fresen is a resolution urging Congress to clarify and specify EPA’s legal and regulatory obligations regarding greenhouse gases. HM 1375 is on the House floor. Sen. Bennett’s resolution (SR 1260) to Congress opposing EPA’s regulation of greenhouse gasses (GHG) under the Clean Air Act has not been heard.

**Copper theft**

HB 343 by Rep. Metz and SB 622 by Sen. Hays would help law enforcement track stolen copper and other metals by requiring notification to all local law enforcement agencies of regulated metal sales despite jurisdictions. SB 622 passed out of its first committee but HB 343 has not been heard. SB 1528 by Sen. Altman and HB 753 by Rep. Ford would amend the recycling and metal theft statutes to make it easier for recyclers to purchase goods from legitimate sellers. SB 1528 has one more committee stop but HB 753 has not been heard. We are watching these to make sure they do not weaken the existing statute.

**Electric Utility**

Termination of Service - SB 1572 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” but it did pass out of its first committee. There is no House companion.

Assault or Battery on Utility workers – HB 15 by rep. Soto and SB 734 by Sen. Wise would increase the criminal penalties for committing assault or battery on a utility worker. SB 734 passed out of its second committee and has one more committee stop but HB 15 has not been heard.

Unclaimed Deposits - SB 770 by Sen. Siplin and HB 807 by Taylor would require unclaimed utility deposits to be put into a newly created Energy Affordability Trust Fund (EATF). The trust fund would be created by SB 772 (Sen. Siplin) and HB 809 (Rep. Taylor) to 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. SBs 770/772 have one more committee but HBs 807/809 have not been heard in the House.

Agriculture bill from 2010 that Gov. Crist vetoed - Both chambers voted to override Gov. Crist’s veto of last year’s agriculture bill HB 7103 and the bill is now law. The bill includes a definition of "sustainable agricultural land" with an ambiguous use of the word “energy”. The override should have eliminated the need to track HB 707 by Rep. Crisafulli and SB 858 by Sen. Hays, which are similar bills, but SB 858 is scheduled to be heard in committee on Monday and Tuesday, and they obviously are keeping these bills open for other agriculture amendments.

Campaign contribution limits – SB 1690 by Sen. Diaz de la Portilla would increase the campaign contribution limits from $500 to $10,000 for the Governor’s race, $5,000 for the other Cabinet races, and $2,500 for legislators. SB 1690 is in its second committee but there is no House companion.

**Growth Management**

SB 1122 by Sen. Bennett and HB 7129 would eliminate the requirement for local comprehensive plans to account for existing and future electric power generation and transmission systems and greenhouse gas reduction strategies. It also deletes the provisions for using energy efficiency and renewable energy resources in the design and construction of new housing from the housing element of the comprehensive plan, and it eliminates state review of most developments and gives more control to local governments. Note that SB 410, which already passed out of both chambers, lowers the standard for challenging impact fees in court. HB 7129 passed out of the House and SB 1122 is in its last committee.

HB 7001 by Rep. Workman (also SB 174 by Sen. Bennett) would reenact specific provisions of SB 360, the 2009 growth management amendments that have been challenged in the courts. The bill would address comprehensive plans, concurrency requirements for transportation facilities, notices for new or increased impact fees, and the process for adopting a comprehensive plan. It also would create a definition for “dense urban service area” and provide a method of designating these jurisdictions; create a transportation concurrency exception areas in municipalities that qualify as dense urban land areas; and extend previously obtained permits and approvals by 2 years. HB 7001 passed and is headed to the Governor.

**Other Bills of interest that are moving or at least have been heard**

Energy Economic Zones - SB 1460 by Sen. Bennett and HB 1175 by Rep. Pilon and HB 879 by Rep. Eisnaugle would provide incentives to form energy economic zones. These incentives include sales tax exemptions, property tax credits, and tax refunds. An IOU would be allowed to offer discounts of up to 50% on rates to small businesses located in an energy economic zone for up to 5 years. At this time the only two economic zones are in Sarasota and Miami Beach, but we will attempt to amend this language and Section 290.007(8) to make it applicable to co-ops in the event one of these zones is ever created I a co-op’s service territory. In addition, projects located in energy economic zones would have priority ranking to receive any energy grants. SB 1460 passed out of its first two committees and has two more committee stops. HB 879, which originally was a tax refund bill, was substantially amended to conform to SB 1460 last week and is now on the House floor.

Discretionary Sales Surtax - SB 1864 by Sen. Altman and HB 1281 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 install renewable energy devices or make energy efficiency upgrades. The bill defines renewable energy devices accepted in the program including solar, wind, geothermal and certain accessories associated with these devices. Additionally, the bill defines what actions constitute energy efficiency improvements. SB 1864 was amended to allow local governments to pay “public utilities” the difference between their avoided costs and the cost of renewables, and if these bills move we will amend that provision to insure that cooperatives also can be paid. Both bills passed out of their first committee.

Economic Recovery/Deepwater Horizon Disaster - SB 248 by Sen. Gaetz and HB 1309 by Rep. Coley would extend the expiration dates of certain building permits following the declaration of a state of emergency by the Governor. The bill would give a tax refund to qualified target industries that relocate from another state to northwest Florida, and would appropriate $10 million in recurring funds for the purpose of economic development in northwest Florida. SB 248 passed out of the Senate and HB 1309 is headed to the House floor.

Environmental Permitting – SB 1404 by Sen. Evers and HB 991 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 991 passed out of three committees but has 2 more to go, and SB 1404 has not been heard.

Biodiesel Manufacturers - SB 1284 by Sen. Bennett would exempt certain biodiesel manufacturers from bonding requirements and certain diesel fuel taxes.  The bill would also set a new fuel standard, which would require that all diesel sold in Florida contain a certain percentage of biodiesel. SB 1284 has one more committee stop before the floor, but there is no House companion.

Unemployment Compensation - HB 7005 by Rep. Holder and SB 728 by Sen. Detert would prevent an unemployment tax increase by making it more difficult to qualify for unemployment benefits and reducing benefits. Because of the high number of people drawing benefits, the unemployment trust fund has been depleted. The depletion has triggered a statutory mechanism that will raise the unemployment tax unless there is new legislation. SB 728 has one stop left before the floor and HB 7005 passed out of the House.

Ad Valorem Exemptions- HB 531 by Rep. Frishe and SB 434 by Sen. Latvala would implement a Constitutional amendment that passed in 2008, which prohibits the taxation of improvements to residential property if the improvements are a renewable energy device or they strengthen the property’s resistance to wind damage.  The exemptions would apply to new and existing residential construction. In addition, SB 412 by Sen. Bennett would have expanded the Constitutional amendment to include commercial property, but it has been withdrawn. SB 434 is moving and only has one committee stop before the Senate floor, and HB 531 is on the House floor.

**Other Bills of Interest that have not moved but could become amendments**

Retail Wheeling for Renewable Projects – SB 1048 by Sen. Lynn exempts renewable generators of up to 5 MW from the definition of public utility. These renewable generators will not be regulated by the PSC and may sell electricity to other customers (it is silent as to whether they must be customers of the same utility) regardless of entities that are in the proximity of the generator, including co-op members. The bill also 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.

Renewable/Clean Energy Standard - SB 1102 by Sen. Detert would create a 20% clean energy standard for IOUs and a penalty for failing to meet the standard. Clean energy includes renewables and one fourth of the goal can be met with new nuclear and carbon capture and sequestration. Presently the bill does not include co-ops and municipals. The bill also would promote natural gas as the preferred fuel for end use consumption.

Expansion of PSC Jurisdiction - HB 899 by Rep. Mayfield would place the City of Vero Beach Electric Utility (VBEU) under the jurisdiction of the PSC as a public utility and subject to full rate regulation.  The bill allows VBEU to maintain the ability to levy a public service tax to customers inside the city limits and a similar surcharge to those outside city limits.  The bill is ambiguous on whether or not the PSC would have to approve the public service tax or surcharge, but the bill states that VBEU would have to provide justification for customers outside city limits.  VBEU would not be considered a public utility and fully regulated by the PSC if VBEU stopped serving customers outside the city limits.

Renewable Energy Tax/Solar Incentives - SB 282 by Sen. Bennett and HB 219 by Rep. Rehwinkle-Vasilinda would require each electric utility, including co-ops, to collect a monthly 25¢ tax on each customer. The proceeds from this tax would be deposited in a trust fund (created by SB 284 and HB 221). The Florida Energy Office, through a committee of political appointees, would utilize the funds to subsidize conservation, efficiency, and renewable energy projects, but municipal solid waste projects would not be eligible for subsidies from the trust fund. It renews the solar rebate program through 2016, but would reduce the rebate to $2.50 per watt for the first year, $2 per watt for the next 2 years, and $1.50 per watt after that. The bills appear to allow public utilities to recover costs that are above avoided costs if they purchase power from these projects.

Green Jobs Tax Credit – SB 1958 by Sen. Smith and HB 447 by Rep. Alan Williams would create a tax credit for the creation of Green Jobs. The bill would define Green Jobs as employment in an industry related to alternative and renewable energy, including manufacturing jobs. Beginning in Jan. 2012 the bill would allow an employer a $500 tax credit per full-time employee earning more than $50,000 a year. If the employers’ tax credits exceed the liability, then the credit could be carried forward each year until the program expires in Jan. 2017. Additionally, the bill would create the Green Jobs Council to work with stakeholders to develop strategic initiatives.

Energy Efficiency Products - HB 1365 by Rep. Williams would exempt certain energy efficient products from sales tax. The bill would allow the exemption to recur annually in October and last four days.

Off Shore Drilling Resolution - HM 1357 by Rep Baxley is a resolution urging Congress to support offshore drilling and to allow Florida to receive revenues resulting from oil and gas exploration.

Right-of-Way Relocation - SB 1934 by Sen. Evers and HB 1389 by Rep. Kreegel would clarify that a utility must initiate the process of pole removal or relocation (instead of actually completing the removal or relocation) within 30 days of notice by the DOT or other authority. In addition, if DOT purchases the property on which a utility is already located, DOT would have to pay the costs of removing or relocating facilities. DOT also would have to pay for relocations if the utility has previously transferred its property interest to DOT without compensation, if the utility is located on the Turnpike Homestead extension and a permit was issued by the DOT to the utility in 1972.

Office of Energy and Water - SB 1810 by Sen. Benacquisto would expand the current Office of Water Coordination within the Dept. of Agriculture to include energy and would rename it the Office of Energy and Water. The Office would be responsible for water and energy related policies affecting agriculture within the Department’s jurisdiction. Further, the bill would repeal the Farm-to-Fuel statute. In addition, the bill defines renewable diesel fuel and renewable fuel oil as being derived from biomass and exempts these fuels from sales tax.

Renewable Energy- SB 1724 by Sen. Altman and HB 1349 by Rep. Burgin would provide sales tax exemptions and tax credits for solar energy systems that have a certain percentage of components manufactured in Florida or the U.S. The bill would exclude developers of renewable generation (under 5MWs) from the definition of “public utility.” The PSC must allow full cost recovery for renewable energy produced or purchased by an IOU. The bill sets forth provisions which must be included in a standard offer contract for the purchase of renewable energy by an IOU, including a bidding requirement. The IOUs would be required to spend 2% of retail revenues for renewable energy (including a 25% carve out for solar), which is the essence of the RPS rule proposed by the PSC a few years ago. In addition, certain renewable energy generators and expansions of renewable facilities would be exempt from the Power Plant Siting Act. The bill would also allow a renewable energy developer (under 5 MWs) to provide electricity and conjunctive billing to consumers located on the same or contiguous property as the renewable generator. The Energy Economic Zone Pilot Program would be expanded to implement a model to assist communities in attracting renewable and energy efficient technologies.

Special Assessments for Renewable Energy - SB 1640 by Sen. Bennett would allow municipalities to collect special assessments to pay an IOU for any costs above avoided costs for renewable energy purchased by the utility.

Renewable Facilities Financed by Local Governments - SB 1642 by Sen. Bennett and HB 1267 by Rep. Berman would allow local governments to finance certain capital projects, including renewable generating facilities, by expanding their bonding authority.  The bill would further allow any size renewable generator to provide service to one or more retail customers.  The PSC would be required to promulgate rules to administer this program and set rates to ensure that the general body of ratepayers of the electric utility serving the area is not subsidizing customers of the renewable facilities.

Local Government Renewable Energy Zones - SB 1452 by Sen. Bennett and HB 1119 by Rep. Trudi Williams would allow local governments to create energy zones through local ordinances. The energy zones would allow renewable energy producers to sell electricity to new retail customers (not defined but could include tear downs 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 utility offers a “disconnectable rate” to the producer and its customers within the zone.  A “disconnectable rate” apparently is synonymous with a utility’s 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 is not subsidizing 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 a utility in Chapter 366, which also exempts them from the gross receipts and public service taxes.

Contamination Notification – SB 132 by Sen. Joyner and HB 147 by Rep. Ahern would revise contamination notification provisions to require notice of site rehabilitation to specified persons/entities in the affected area. Within 30 days of notice, local governments would be required to mail a copy of the notice to each homeowner’s association. In addition, DEP would provide a copy of the notice to property owners at the rehabilitation site and to schools and childcare facilities. Further, the bills would allow the notifying agencies to recover costs from the responsible party under certain circumstances. SB 132 passed the first committee of reference and has three stops left in the Senate. HB 147 has not been heard.

**Bills that only apply to IOUs that we are monitoring**

Cost Recovery for IOUs - SB 1336 by Sen. Bennett would repeal statutes requiring the PSC to promulgate rules for an RPS that would have to be ratified by the legislature.  Further, the bill would allow IOUs to either purchase renewable energy or self-build renewable generation and use the environmental cost recovery clause to recoup costs in excess of full avoided costs.  The bill would provide investment caps above avoided cost of 2% in 2011 and 2012, 3% in 2013 or 4% in 2014 and thereafter based on the IOU’s retail sales for 2010.  In addition, the bill would allow an IOU to apply for an extra 50 basis points on the ROE for renewable projects if the majority of the components and manufactured parts come from Florida. The bill has not been heard.

Cost Recovery - SB 200 by Sen. Fasano and HB 4161 by Rep. Rehwinkle Vasilinda would repeal the pre-construction cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC facilities. They have not been heard.

Full Cost Recovery for Renewables - SB 156 by Sen. Detert appears to require IOUs to provide 10-year contracts for renewable projects at a cost equal to the renewable power provider’s cost plus a profit. The bill has not been heard.

Rate Increases - HB 159 by Rep. Campbell and SB 806 by Sen. Diaz de la Portilla would require the legislature to ratify any PSC approved rate increases for public utilities. Both bills have been withdrawn from further consideration.