

## **FECA Florida Legislative Report**

**February 10, 2012**

There was activity on the energy bills this week and the numeric nutrient criteria bill has passed and will be sent to the Governor. The House version of the energy bill is now HB 7117. Both bills passed out of their first committee and the Senate's bill is scheduled to be heard again on Monday morning. We had to deal with a few more minor issues this week, but with 4 weeks to go our bills are in a good posture except for some language regarding the power plant need determination criteria that is in the House energy bill.

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 have passed both chambers**

Numeric Nutrient Criteria – HB 7051 (SB 2060) 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. After adoption of the proposed rule any amendments will require legislative ratification. In addition, DEP would be required to submit its proposed NNC rule to the EPA for review under the Clean Water Act within 30 days after the effective date of the bill. There are legal challenges to DEP's rule at the state level and to EPA's rule at the federal level. The DEP hearing is scheduled to begin on February 26. On a sour note, EPA is expected to begin working on an estuaries rule next month.

### **New Bills**

Building Construction and Inspection- SB 704 and SB 600 by Sen. Bennett would amend provisions relating to building construction and inspection. Both bills were amended to include an exemption from the requirement to use a licensed electrician for solar panels "when installing, uninstalling, or replacing solar panels on one-family, two-family, or three-family residences for the occupancy or use of such owner or tenant of the owner." This language should be removed from SB 600 next week and we are working on an amendment to SB 704 to change the language as follows:

When installing, uninstalling, or replacing solar panels on one-family, two-family, or three-family residences, and the local permitting

agency's county or municipal government is participating in a "United States Department of Energy SunShot Initiative: Rooftop Solar Challenge" grant. However, an owner must utilize a licensed electrical contractor to effectuate the wiring of the solar panels, including any interconnection to the customer's residential electrical wiring. The limitations of this exemption shall be expressly stated in the building permit approved and issued by the permitting agency for such project.

Energy Bills - SB 2094 by the Committee on Communications, Energy, and Public Utilities and HB 7117 (formerly ENUS2) 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 has been removed from SB 2094, but HB 7117 still has problematic language that we are trying to remove or amend. In addition, SB 2094 was amended to allow a municipality to levy and collect a special assessment against benefited property owners to pay a public utility for any costs paid to a contracted renewable facility that is over the utility's avoided costs. There is a question whether this will provision will survive, but if it does we plan to amend it to clarify that a municipality can make similar payments to a cooperative or municipal electric utility. At this time the Senate's 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 tax credit for renewable facilities that increase their output by 5% is extended and the credit is capped at \$500,000 for an individual and the State's cost capped at \$5 million per year.
- Electric vehicle charging services would be excluded from the definition of the "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 evaluate the Florida Energy Efficiency and Conservation Act (FEECA) and determine if FEECA remains in the public interest.

The House bill is similar but the need determination provision requires the PSC to "improve the balance of power plant fuel diversity and supply reliability within the state and within the generation portfolio of the applicant". The House bill also deletes the RPS language in section 366.92 and creates a procedure for the PSC to evaluate renewable projects selected by IOUs through competitive bidding.

### **Priority Bills that are moving**

Copper Theft/Secondary Metals Recyclers - SB 540 by Sen. Smith and HB 885 by Rep. Ford were not heard this week, and we learned that the "or assists with the taking of copper" provision that we added last week is a problem, and since it already is addressed in the aiding and abetting statutes we have agreed to remove it. However, we will keep the provision that allows utilities to go after copper thieves in a civil action for up to triple the amount of the damages they cause. The bills define "regulated metals property" 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.) 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. 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. SB 540 has one committee stop left. HB 885 was heard in its first committee of reference and was amended to make it virtually identical to the Senate bill.

Copper Theft Penalties - SB 1324 by Sen. Norman and HB 1323 by Rep. Drake 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 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 amended SB 1324 to match Rep. Drake's HB 1323. Both bills have passed out of their first committee of reference.

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 its second committee and has one more committee of reference. SB 1878 has not been heard.

### **Other 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 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.

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.

### **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. SB 466 was temporarily postponed in committee and the bill sponsor stated he would not pursue the bill any further this session. We will continue to monitor both bills just in case.

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. SB 100 passed out of its second committee and has one more committee of reference. HB 229 has not been heard.

Cost Recovery - SB 740 by Sen. Fasano and HB 4031 by Rep. Rehwinkel 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 (5years after the expiration of the 5-year period). Neither bill has been heard, but the sponsors have committed to remove any language that would affect electric utilities if the bills come up.

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**

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 is on the House floor. SB 648 passed out of its first committee of reference.

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 another committee and both bills have one more 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. Both bills passed out of their first committee of reference.

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. SB 690 has been withdrawn from further consideration.

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 is on the House floor and SB 716 passed out of its second committee and has one more committee of reference.

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. SB 760 was temporarily postponed in its first committee of reference.

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. Additionally, this provision has been amended into the committee bill HB 7087 by Finance and Tax committee and Rep. Precourt.

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 its first committee of reference.

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. Both bills are on their respective floors.

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. SB 1032 was temporarily postponed in its first committee of reference.

Tangible Personal Property Tax - SJR 1064 by Sen. Detert and HB 1003 by Rep. Eisnagle 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. Both bills have passed out of their first committee of reference.