

FINANCIAL IMPACT ESTIMATING CONFERENCE

COMPLETE INITIATIVE FINANCIAL INFORMATION STATEMENT: RIGHTS OF ELECTRICITY CONSUMERS REGARDING SOLAR ENERGY CHOICE (15-17)

SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT

The Financial Impact Estimating Conference reviewed current law, administrative practice, and market data and trends regarding the utilization and taxation of solar energy alternatives in Florida. The Conference also received testimony concerning the impacts of the proposal from proponents and other interested parties. This review identified no inconsistencies between the proposed amendment and current statutes, regulations, administrative practices, and relevant revenue forecasts.

In particular, the Conference noted the proposed amendment provides that state and local governments will retain enumerated abilities to regulate and to prevent consumers who do not choose to install solar from subsidizing the costs of backup power and electric grid access to those who do. The Conference interprets this provision to mean that the affected governments are not required to take any specific action as a result of the proposed amendment.

Based on all this information, the Conference determined that the proposed amendment will not require any change in current or anticipated state and local regulation or taxation of solar energy in Florida. Consequently, the Conference concluded that the amendment is not expected to result in an increase or decrease in any revenues or costs to state and local government.

FINANCIAL IMPACT STATEMENT

The amendment is not expected to result in an increase or decrease in any revenues or costs to state and local government.

SUBSTANTIVE ANALYSIS

A. Proposed Amendment

Ballot Title:

Rights of Electricity Consumers Regarding Solar Energy Choice

Ballot Summary:

This amendment establishes a right under Florida's constitution for consumers to own or lease solar equipment installed on their property to generate electricity for their own use. State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.

Proposed Amendment to the Florida Constitution:

The amendment proposes to add Section 29 to Article X as follows:

Section 29 – Rights of electricity consumers regarding solar energy choice. –

(a) ESTABLISHMENT OF CONSTITUTIONAL RIGHT. Electricity consumers have the right to own or lease solar equipment installed on their property to generate electricity for their own use.

(b) RETENTION OF STATE AND LOCAL GOVERNMENTAL ABILITIES. State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.

(c) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:

(1) "consumer" means any end user of electricity regardless of the source of that electricity.

(2) "solar equipment," "solar electrical generating equipment" and "solar" are used interchangeably and mean photovoltaic panels and any other device or system that converts sunlight into electricity.

(3) "backup power" means electricity from an electric utility, made available to solar electricity consumers for their use when their solar electricity generation is insufficient or unavailable, such as at night, during periods of low solar electricity generation or when their solar equipment otherwise is not functioning.

(4) "lease," when used in the context of a consumer paying the owner of solar electrical generating equipment for the right to use such equipment, means an agreement under which the consumer pays the equipment owner/lessor a stream of periodic payments for the use of such equipment, which payments do not vary in amount based on the amount of electricity produced by the equipment and used by the consumer/lessee.

(5) "electric grid" means the interconnected electrical network, consisting of power plants and other generating facilities, transformers, transmission lines, distribution lines and related facilities, that makes electricity available to consumers throughout Florida.

(6) "electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

(d) EFFECTIVE DATE. This section shall be effective immediately upon voter approval of this amendment.

B. Substantive Effect of Proposed Amendment

The amendment establishes a constitutional right to own or lease solar equipment to generate electricity that is consistent with current law and administration.

C. Background

Sponsor of the Proposed Amendment

Consumers for Smart Solar is the official sponsor of the proposed amendment. The sponsor's website describes the organization as a "diverse coalition of business, civic, and faith-based organizations working to promote solar energy without sacrificing commonsense consumer protections."¹

¹ Consumers for Smart Solar website: <https://smartsolarfl.org/>

Public Service Commission (PSC)

The Florida Public Service Commission (PSC) is an arm of the legislative branch that regulates the electric, natural gas, water and wastewater, and telecommunications industries in the state. The PSC consists of five commissioners who are appointed by the Governor to four-year terms.²

The PSC has regulatory authority over each public utility. “Public utility” is defined to mean every person or legal entity supplying electricity to or for the public within this state, but expressly excludes a rural electric cooperative and a municipality or any agency thereof.³

The PSC regulates investor-owned electric companies’ rates and charges, meter and billing accuracy, electric lines up to the meter, reliability of the electric service, new construction safety code compliance for transmission and distribution, and the need for additional power plants and transmission lines. The PSC does not regulate rates and adequacy of services provided by municipally-owned and rural cooperative electric utilities, except for safety oversight; electrical wiring inside the customer’s building; taxes on the electric bill; physical placement of transmission and distribution lines; damage claims; right of way; and the physical placement or relocation of utility poles.⁴

Electric Utilities

Pursuant to Chapter 366, F.S., the PSC has some regulatory authority over 58 electric utilities, including 5 investor-owned utilities, 35 municipal utilities, and 18 rural electric cooperatives.⁵ According to the PSC’s 2012 publication entitled “Statistics of the Florida Electric Utility Industry,” for each year between 1998 and 2012, of total net capacity statewide, investor-owned utilities had approximately 75 percent of total megawatts, and municipal and rural electric cooperatives combined made up the other 25 percent.

Investor-Owned Electric Utilities

Currently, five investor-owned utilities (Florida Power and Light Company, Duke Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation) operate in Florida. The PSC has regulatory authority over all aspects of operations, including rates and safety.⁶

Municipal Electric Utilities

There are 35 generating and non-generating municipal electric utilities in Florida.⁷ According to the Florida Municipal Electric Association, municipal utilities are not-for-profit and are governed by an elected city commission or an appointed or elected utility board. Capital is raised through operating revenues or the sale of tax-exempt bonds.⁸ Together, these utilities serve 15 percent of the state’s population.⁹ Payments from their customers are considered to be local government revenues.

² Chapter 350, Florida Statutes.

³ Section 366.02(1), F.S.

⁴ Florida Public Service Commission, “When to Call the Florida Public Service Commission” available at http://www.psc.state.fl.us/publications/consumer/brochure/When_to_Call_the_PSC.pdf

⁵ Florida Public Service Commission, “Facts and Figures of the Florida Utility Industry” March 2015 available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2015.pdf>

⁶ *Ibid*, p.10.

⁷ *Ibid*, p.11.

⁸ Florida Municipal Electric Association, “Florida Public Power” webpage, available at <http://publicpower.com/floridas-electric-utilities-2/>

⁹ Florida Municipal Electric Association, “Who is FMEA?” webpage, available at <http://publicpower.com/who-is-fmea/>

Rural Electric Cooperatives

Rural electric cooperatives were created as the result of the Rural Electrification Act of 1936. At the time, electric utilities did not provide service in large portions of Florida since the cost of providing such service in the non-urban areas was prohibitive. The cooperatives were formed to make electricity available in rural areas. Today these electric cooperatives are still not-for-profit electric utilities that are owned by the members they serve and provide at-cost electric service to their members. Each cooperative is governed by a board of cooperative members that is elected by the membership. Today Florida has 16 distribution cooperatives and 2 generation and transmission cooperatives that serve 10 percent of the state's population.¹⁰

Solar Energy in Florida

According to the PSC, as of December 2014, there were 8,546 customer-owned solar systems in Florida with generating capacity of 74,052 kilowatts of power. This number has increased over the previous six years, as can be seen in the following table. The increase was primarily due to the decreasing price of solar energy systems and the availability of state and federal incentives which alleviate substantial up-front costs to customers.

Customer-Owned Solar Generation*				
	Solar Systems	Growth	kW Power Rating	Growth
2008	577		2,765	
2009	1,625	181.6%	12,986	369.7%
2010	2,809	72.9%	19,208	47.9%
2011	3,966	41.2%	27,705	44.2%
2012	5,274	33.0%	41,521	49.9%
2013	6,678	26.6%	60,528	45.8%
2014	8,546	28.0%	74,052	22.3%

Source: Public Service Commission (PSC)

*The term "customer-owned" includes customers of the investor-owned utilities who own or lease solar systems.

Net Metering

In Florida, "net metering" is defined as "a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on site." Section 366.91(2)(c), F.S. If a customer delivered to the utility more electricity than it received from the utility by the end of a calendar year, the utility pays the customer for the excess. See Rule 25-6.065(8), F.A.C. Net metering is currently allowed and commonly used in Florida.

Third-Party Financing Models

Third-party financing models alleviate the large upfront costs of purchasing and installing solar energy systems, making it more affordable for customers to adopt the use of solar power without the initial capital investment requirements.

Solar Leases -- A solar lease is a financial agreement in which a property owner enters into a lease for the installation of a solar energy system. The property owner pays the company for the use and maintenance of the solar equipment. Typically, the electricity produced by the solar energy system is consumed on the

¹⁰ Florida Electric Cooperatives Association, "About Us" webpage, available at <http://www.feca.com/about.html>

property with any excess being transferred to the electric utility serving the property. Solar leases are permitted under current law in Florida.

Solar Power Purchase Agreements (PPAs) -- A solar power purchase agreement (PPA) is a financial agreement in which a developer installs and finances a solar energy system on a customer's property. The customer then purchases the power generated from the system from the developer at a fixed rate, which is typically lower than the local utility's retail rate. The developer maintains responsibility for the operation and maintenance of the system for the duration of the PPA, which typically ranges from 10 to 25 years.

The U.S. Department of Energy's 2010 report entitled "Solar PV Project Financing: Regulatory and Legislative Challenges for Third-Party PPA System Owners", refers to the following court case and ruling related to PPAs in Florida:

"In 1987, the Florida Public Service Commission (FPSC) considered a proposed cogeneration project for which PW Ventures, Inc. (PW Ventures) would have sold electricity from their plant exclusively to Pratt and Whitney (the customer) to provide most of their power needs (PW Ventures v. Nichols, 533 So. 2d 281). Supplementary power needs and emergency backup power would have come from the local utility, Florida Power & Light. The definition of a "Public utility" as defined by Florida Statute 366.02 is:

Every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas...to or for the public within this state.

In their ruling on the issue, the FPSC focused on the definition of "to or for the public." PW Ventures argued that to be considered a utility they would have to sell their power to the general public to be considered a utility. However, the Commission determined that the definition of "to or for the public" could mean one customer, meaning that by selling only to Pratt and Whitney, PW Ventures was selling to the public and would be deemed a public utility. Without a change in statute, this ruling appears to eliminate the possibility of using the third-party PPA model in Florida without PSC regulation (FPSC 1987)."

This ruling still reflects current law and administration in Florida.

State and Local Revenues

Sales Tax -- Section 212.08(7)(hh), F.S., provides a sales tax exemption for solar energy systems and any component thereof. Section 212.02(26), F.S., defines "solar energy system" as "the equipment and requisite hardware that provide and are used for collecting, transferring, converting, storing, or using incident solar energy for water heating, space heating, cooling, or other applications that would otherwise require the use of a conventional source of energy such as petroleum products, natural gas, manufactured gas, or electricity." The Florida Solar Energy Center publishes a comprehensive list of solar energy system components.

Section 212.08(7)(j), F.S., provides an exemption for household fuels including sales of utilities to residential households by utility companies that pay gross receipts tax. The sale of electricity produced from solar energy is included in this exemption.

Section 212.05, F.S., levies a 4.35 percent tax on the sale of electricity to nonresidential consumers. Section 212.06(1)(b), F.S., provides the corresponding use tax. Section 212.07(1)(b), F.S., provides an exemption for sales for resale.

Gross Receipts Tax -- Pursuant to ch. 203, F.S., Gross Receipts Taxes are imposed on sellers of electricity and natural or manufactured gas at a rate of 2.5 percent and on the sale of communications services at a rate of 2.52 percent. In addition, a rate of 2.6 percent is levied on sales of electricity to non-residential customers not otherwise exempt.

The gross receipts “use tax” in ss. 203.01(1)(h)&(i), F.S., applies to electricity produced and used by a person, cogenerator, or small power producer, is subject to the Gross Receipts Tax.

All Gross Receipts Tax revenues are deposited in the Public Education Capital Outlay (PECO) Trust Fund, which is administered by the Department of Education (DOE). These revenues are primarily used to pay debt service on outstanding PECO bonds, but may be used for additional education-related purposes if any revenues are available after debt service is paid.

Ad Valorem Tax -- The ad valorem tax is an annual tax levied by local governments based on the value of real and tangible personal property as of January 1 of each year. Florida’s constitution prohibits the state government from levying an ad valorem tax except on intangible personal property. The taxable value of real and tangible personal property is the just value (i.e., the fair market value) of the property adjusted for any exclusion, differential, or exemption allowed by the Florida Constitution or the statutes. The Florida Constitution strictly limits the Legislature’s authority to provide exemptions or adjustments to fair market value. Also, with certain exceptions for millage levies approved by the voters, the Florida Constitution limits county, municipal and school district levies to ten mills each.

Section 193.624 (2), F.S., provides that when determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.

*Franchise Fees*¹¹ -- Article VIII, Section 2(b), Florida Constitution, provides:

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

Section 166.021, F.S., grants extensive home rule power to municipalities. A municipality has the complete power to legislate by ordinance for any municipal purpose, except in those situations that a general or special law is inconsistent with the subject matter of the proposed ordinance.

Not all local government revenue sources are taxes requiring general law authorization under Article VII, Section 1(a), Florida Constitution. When a county or municipal revenue source is imposed by ordinance, the judicial test is whether the charge meets the legal sufficiency test, pursuant to Florida case law, for a valid fee or assessment. If not a valid fee or assessment, the charge is a tax and requires general law authorization. If not a tax, the fee or assessment’s imposition is within the constitutional and statutory home rule power of municipalities and counties.

When analyzing the validity of a home rule fee, judicial reliance is often placed on the type of governmental power being exercised. Generally, fees fall into two categories. Regulatory fees, such as building permit fees, inspection fees, and impact fees, are imposed pursuant to the exercise of police powers as regulation of an

¹¹ The following discussion of franchise fees is based on materials contained in Nabors, Giblin & Nickerson, P.A., Primer on Home Rule & Local Government Revenue Sources (June 2014).

activity or property. Such regulatory fees cannot exceed the cost of the regulated activity and are generally applied solely to pay the cost of the regulated activity.

In contrast, proprietary fees, such as user fees, rental fees, and franchise fees, are imposed pursuant to the exercise of the proprietary right of government. Such proprietary fees are governed by the principle that the fee payer receives a special benefit or the imposed fee is reasonable in relation to the privilege or service provided. For each fee category, rules have been developed by Florida case law to distinguish a valid fee from a tax.

Local governments may exercise their home rule authority to impose a franchise fee upon a utility for the grant of a franchise and the privilege of using a local government's rights-of-way to conduct the utility business. The franchise fee is considered fair rent for the use of such rights-of-way and consideration for the local government's agreement not to provide competing utility services during the term of the franchise agreement. The imposition of the fee requires the adoption of a franchise agreement, which grants a special privilege that is not available to the general public. Typically, the franchise fee is calculated as a percentage of the utility's gross revenues within a defined geographic area. A fee imposed by a municipality is based upon the gross revenues received from the incorporated area while a fee imposed by a county is generally based upon the gross revenues received from the unincorporated area.

In Fiscal Year 2012-13, 343 municipal governments in Florida collected \$656.5 million in franchise fee revenues, of which \$546.5 million (83.3 percent) was from electricity franchise fees. Electricity franchise fee revenues accounted for 1.7 percent of total municipal government revenues for that fiscal year. In Fiscal Year 2012-13, 13 county governments in Florida collected \$160.3 million in franchise fee revenues, of which \$139.0 million (86.7 percent) was from electricity franchise fees. Electricity franchise fee revenues accounted for 0.4 percent of total county government revenues. Summaries of prior years' franchise fee revenues as reported by local governments are available on the Office of Economic and Demographic Research's (EDR) website.¹²

Public Service Tax -- Municipalities and charter counties may levy by ordinance a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service.¹³ The tax is levied only upon purchases within the municipality or within the charter county's unincorporated area and cannot exceed 10 percent of the payments received by the seller of the taxable item. Services competitive with those listed above, as defined by ordinance, can be taxed on a comparable base at the same rates; however, the tax rate on fuel oil cannot exceed 4 cents per gallon.¹⁴ The tax proceeds are considered general revenue for the municipality or charter county.

All municipalities are eligible to levy the tax within the area of its tax jurisdiction. In addition, municipalities imposing the tax on cable television service, as of May 4, 1977, may continue the tax levy in order to satisfy debt obligations incurred prior to that date. By virtue of a number of legal rulings in Florida case law, a charter county may levy the tax within the unincorporated area. For example, the Florida Supreme Court ruled in 1972 that charter counties, unless specifically precluded by general or special law, could impose by ordinance any tax in the area of its tax jurisdiction that a municipality could impose.¹⁵ In 1994, the Court held that Orange County could levy a public service tax without specific statutory authority to do so.¹⁶

¹² <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/index.cfm>

¹³ Section 166.231(1), F.S.

¹⁴ Section 166.231(2), F.S.

¹⁵ *Volusia County vs. Dickinson*, 269 So.2d 9 (Fla. 1972).

¹⁶ *McLeod vs. Orange County*, 645 So.2d 411 (Fla. 1994).

The tax is collected by the seller of the taxable item from the purchaser at the time of payment.¹⁷ At the discretion of the local taxing authority, the tax may be levied on a physical unit basis.¹⁸ A number of tax exemptions are specified in law.¹⁹

The seller of the service remits the taxes collected to the governing body in the manner prescribed by ordinance.²⁰ The tax proceeds are considered general revenue for the municipality or charter county. Taxing authorities are required to furnish information to the Department of Revenue and it maintains an online database that can be searched or downloaded.²¹

In Fiscal Year 2012-13, 327 municipal governments collected \$864.1 million in Public Service Tax revenues of which \$686.3 million (79.4 percent) was from public service taxes on electricity. Electricity public service tax revenues made up 2.1 percent of total municipal revenues in that fiscal year. Also in Fiscal Year 2012-13, 12 charter county governments collected \$255.8 million in Public Service Tax revenues, of which \$224.1 million (87.6 percent) was from public service taxes on electricity. Electricity public service taxes made up 0.8 percent of the counties total revenues in that fiscal year. Summaries of prior years' revenues reported by county and municipal governments are available on EDR's website.²²

Regulatory Assessment Fees -- Section 366.14, F.S., provides that each regulated company under the jurisdiction of the PSC must pay a fee based on its gross operating revenues derived from intrastate business, excluding sales for resale between public utilities, municipal electric utilities, and rural electric cooperatives, or any combination. Statutorily, the rate for investor-owned utilities that supply electricity can be no greater than 0.125 percent, and the rate for municipal electric utilities and rural electric cooperatives can be no greater than 0.015625 percent. PSC Rule 25-6.0131, F.A.C., establishes the fee on investor-owned electric utilities at 0.072 percent and municipal and rural electric cooperative utilities at the statutory maximum 0.015625 percent.

D. Fiscal Impact of Proposed Amendment

Section 100.371(5)(a), F.S., requires that the Financial Impact Estimating Conference "...complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative."

As part of determining the fiscal impact of this amendment, the Conference held three public meetings:

- Public Workshop on November 9, 2015
- Principals' Workshop on November 23, 2015
- Formal Conference on November 30, 2015

¹⁷ Section 166.231(7), F.S.

¹⁸ Section 166.232, F.S.

¹⁹ Section 166.231(3)-(6) and (8), F.S.

²⁰ Section 166.231(7), F.S.

²¹ <http://dor.myflorida.com/dor/governments/mpst/>

²² <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/index.cfm>

Requested Information from State Entities and other Organizations

Presenter	Date	Summary of Information
Public Service Commission (PSC)	November 9 th	The proposed amendment appears to be consistent with existing law and regulations that address customer-owned solar facilities that are primarily intended to offset a customer’s electricity consumption on site. Specifically, section 29(a) of the proposed amendment is consistent with Section 366.91(2)(b), Florida Statutes. There is no reference to the electrical generating capacity of a solar facility in the amendment while current regulatory rules have a maximum electrical generating capacity limitation. ²³ The proposed amendment appears to preserve existing authority of state and local governments over customer-owned solar facilities. This would also include the authority of a state or local government to establish a regulation or program that may or may not have the effect of requiring non-solar customers to subsidize customers with solar facilities. The term “lease” as defined in the amendment, appears to be consistent with a Public Service Commission declaratory statement concerning the lease financing of a cogeneration facility. ²⁴ The Commission determined in the circumstances presented to it that a fixed lease payment for equipment not based upon a volumetric rate, does not constitute the retail sale of electricity. Thus, the owner of the electrical generating equipment was determined not to be a public utility subject to the Commission’s regulatory authority.
Florida Association of Counties	November 9 th	The proposed amendment establishes a right for consumers to own or lease solar equipment installed on their property to generate electricity for their own use. The amendment provides that state and local governments will retain their abilities to protect consumer rights, public health, safety and welfare and ensure consumers who choose not to install solar on their property are not required to subsidize the costs of access to backup power and electric grid to those who do. Staff indicated that the amendment would not have a significant impact on county revenues.
Consumers for Smart Solar	November 9 th	The amendment establishes affirmative rights for the consumer who owns or leases solar equipment and preserves the abilities of state and local governments to regulate solar to protect consumers who choose not to use solar from subsidizing the costs of access to backup power and the electric grid.

²³ Rule 25-6.065(3), Florida Administrative Code.

²⁴ FPSC Order No. 17009, Docket No. 860725-EU, Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility, issued December 22, 1986; and FPSC Order No. 17009-A, Docket No. 860725-EU, Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility, issued March 9, 1987.

The Financial Impact Estimating Conference reviewed current law, administrative practice, and market data and trends regarding the utilization and taxation of solar energy alternatives in Florida. The Conference also received testimony concerning the impacts of the proposal from proponents and other interested parties. This review identified no inconsistencies between the proposed amendment and current statutes, regulations, administrative practices, and relevant revenue forecasts.

The Conference's analysis of the fiscal impact of the amendment relies on the following interpretations of four issues that came up during the Conference's deliberations.

- State and local governments will retain their abilities to protect consumer rights and public health, safety and welfare. The Conference interprets this provision to mean that the affected governments are not required to take any specific action as a result of the proposed amendment.
- State and local governments will retain their abilities to prevent consumers who do not choose to install solar from subsidizing the costs of backup power and electric grid access to those who do. The Conference interprets this provision to mean that the affected governments are not required to take any specific action as a result of the proposed amendment and may allow subsidies.
- The costs of future actions by state and local governments cannot be attributed to the proposed amendment, since no particular course of action is required or barred relative to current law and administration.
- The definitions provided in the petition initiative are limited to the purposes of the proposed amendment and do not affect the use of alternative definitions for different purposes.

Based on all of the above information, the Conference determined that the proposed amendment will not require any change in current or anticipated state and local regulation or taxation of solar energy in Florida. Consequently, the Conference concluded that the amendment is not expected to result in an increase or decrease in any revenues or costs to state and local government.