

## **INITIATIVE FINANCIAL INFORMATION STATEMENT LIMITS OR PREVENTS BARRIERS TO LOCAL SOLAR ELECTRICITY SUPPLY**

### **SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT**

The amendment prohibits state and local government regulation of local solar electricity suppliers with respect to rates, service, or territory, and prohibits electric utilities from discriminating against customers of local solar electricity suppliers with respect to rates, charges, and terms of service. The amendment limits or prevents barriers to the sale of electricity by local solar electricity suppliers directly to customers. The Financial Impact Estimating Conference believes that the amendment will induce more solar electricity generation than would have occurred in its absence.

Based on information provided at public workshops and information collected through staff research, the conference expects the amendment will have several financial effects.

- Revenues from the following sources will be lower than they otherwise would have been as sales by local solar electricity suppliers displace sales by traditional utilities:
  - State regulatory assessment fees;
  - Local government franchise fees;
  - Local Public Service Tax;
  - State Gross Receipts Tax;
  - State and local Sales and Use Tax; and
  - Municipal utility electricity sales.
- At current millage rates, Ad Valorem Tax revenues will increase as a result of the installation of more solar energy systems than would have occurred in the amendment's absence. The increase in Ad Valorem Tax revenues is not expected to offset the reductions in other revenue sources. Over time, the Ad Valorem Taxes paid by electric utilities may be lower than otherwise as their need for additional generating capacity is reduced by expanded solar electricity production.
- Implementation and compliance costs will likely be minimal and include the following:
  - The Public Service Commission will incur one-time administrative costs related to the implementation of the amendment, particularly in regard to rule-making activities.
  - The Department of Revenue will incur administrative costs related to the implementation of the amendment, particularly in regard to rule-making, enforcement and compliance activities.
  - To the extent that current administrative practices are changed, local governments will incur costs related to the implementation of and compliance with the amendment. Some of these costs will likely be offset by fees.

There are numerous favorable and unfavorable factors affecting the adoption of solar technology to produce electricity in Florida. The magnitude of the revenue reductions cannot be determined because the following factors are uncertain: the extent and timing of the shift in electricity production from electric utilities to solar producers; continuation of federal solar

investment tax credits; the methodology for determining the basis for the use tax on solar electricity; the pace of decline in solar energy production costs; the removal of technological barriers to greater deployment; and future legislative or administrative actions by state and local governments to mitigate the revenue reduction.

### **FINANCIAL IMPACT STATEMENT**

Based on current laws and administration, the amendment will result in decreased state and local government revenues overall. The timing and magnitude of these decreases cannot be determined because they are dependent on various technological and economic factors that cannot be predicted with certainty. State and local governments will incur additional costs, which will likely be minimal and partially offset by fees.

## I. SUBSTANTIVE ANALYSIS

### A. Proposed Amendment

Ballot Title:

*Limits or Prevents Barriers to Local Solar Electricity Supply*

Ballot Summary:

*Limits or prevents government and electric utility imposed barriers to supplying local solar electricity. Local solar electricity supply is the non-utility supply of solar generated electricity from a facility rated up to 2 megawatts to customers at the same or contiguous property as the facility. Barriers include government regulation of local solar electricity suppliers' rates, service and territory, and unfavorable electric utility rates, charges, or terms of service imposed on local solar electricity customers.*

Text of Proposed Amendment:

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

*Purchase and sale of solar electricity. –*

*(a) PURPOSE AND INTENT. It shall be the policy of the state to encourage and promote local small-scale solar-generated electricity production and to enhance the availability of solar power to customers. This section is intended to accomplish this purpose by limiting and preventing regulatory and economic barriers that discourage the supply of electricity generated from solar energy sources to customers who consume the electricity at the same or a contiguous property as the site of the solar electricity production. Regulatory and economic barriers include rate, service and territory regulations imposed by state or local government on those supplying such local solar electricity, and imposition by electric utilities of special rates, fees, charges, tariffs, or terms and conditions of service on their customers consuming local solar electricity supplied by a third party that are not imposed on their other customers of the same type or class who do not consume local solar electricity.*

*(b) PURCHASE AND SALE OF LOCAL SMALL-SCALE SOLAR ELECTRICITY.*

*(1) A local solar electricity supplier, as defined in this section, shall not be subject to state or local government regulation with respect to rates, service, or territory, or be subject to any assignment, reservation, or division of service territory between or among electric utilities.*

*(2) No electric utility shall impair any customer's purchase or consumption of solar electricity from a local solar electricity supplier through any special rate, charge, tariff, classification, term or condition of service, or utility rule or regulation, that is not also imposed on other customers of the same type or class that do not consume electricity from a local solar electricity supplier.*

*(3) An electric utility shall not be relieved of its obligation under law to furnish service to any customer within its service territory on the basis that such customer also purchases electricity from a local solar electricity supplier.*

*(4) Notwithstanding paragraph (1), nothing in this section shall prohibit reasonable health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations, which do not prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier as defined in this section.*

*(c) DEFINITIONS. For the purposes of this section:*

*(1) "local solar electricity supplier" means any person who supplies electricity generated from a solar electricity generating facility with a maximum rated capacity of no more than 2 megawatts, that converts energy from the sun into thermal or electrical energy, to any other person located on the same property, or on separately owned but contiguous property, where the solar energy generating facility is located.*

*(2) "person" means any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, government entity, and any other group or combination.*

*(3) "electric utility" means every person, corporation, partnership, association, governmental entity, and their lessees, trustees, or receivers, other than a local solar electricity supplier, supplying electricity to ultimate consumers of electricity within this state.*

*(4) "local government" means any county, municipality, special district, district, authority, or any other subdivision of the state.*

*(d) ENFORCEMENT AND EFFECTIVE DATE. This amendment shall be effective on January 3, 2017.*

Effective Date:

*January 3, 2017*

## **B. Effect of Proposed Amendment**

The amendment prohibits state and local government regulation of local solar electricity suppliers with respect to rates, service, or territory, and prohibits electric utilities from discriminating against customers of local solar electricity suppliers with respect to rates, charges, and terms of service. The amendment limits or prevents barriers to the sale of electricity by local solar electricity suppliers directly to customers.

## C. Background

### Sponsor of the Proposed Amendment

Floridians for Solar Choice, Inc. is the official sponsor of the proposed amendment. The sponsor's website describes the organization as a "grassroots citizens' effort to allow more homes and businesses to generate electricity by harnessing the power of the sun."<sup>1</sup>

### 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.<sup>2</sup>

For electric utilities, the commission 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 to expressly exclude both a rural electric cooperative and a municipality or any agency thereof.<sup>3</sup>

With respect to electric utilities, 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, territorial agreements and disputes, 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.<sup>4</sup>

### Electric Utilities

Pursuant to Chapter 366, F.S., the PSC has regulatory authority over 58 electric utilities, including 5 investor-owned utilities, 35 municipal utilities, and 18 rural electric cooperatives.<sup>5</sup> 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.

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<sup>1</sup> Floridians for Solar Choice website: <http://www.flsolarchoice.org/>

<sup>2</sup> Chapter 350, Florida Statutes.

<sup>3</sup> Section 366.02(1), F.S.

<sup>4</sup> 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](http://www.psc.state.fl.us/publications/consumer/brochure/When_to_Call_the_PSC.pdf)

<sup>5</sup> 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>

### *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.<sup>6</sup>

### *Municipal Electric Utilities*

There are 35 generating and non-generating municipal electric utilities in Florida.<sup>7</sup> 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.<sup>8</sup> Together, these utilities serve 15 percent of the state's population.<sup>9</sup> Payments from their customers are considered to be local government revenues.

### *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.<sup>10</sup>

### Solar Energy in Florida

According to the PSC, as of 2013, there were 6,678 customer-owned solar systems in Florida.<sup>11</sup> This number dramatically increased over the previous six years, as can be seen in the following table prepared by the PSC. The increase was primarily due to the rapidly decreasing price of solar energy systems and the availability of state and federal incentives which alleviate substantial up-front costs to customers.

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<sup>6</sup> Ibid, p.10.

<sup>7</sup> Ibid, p.11.

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

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

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

<sup>11</sup> PSC Memorandum provided for presentation at April 10, 2015 FIEC Public Workshop

| Customer-Owned Solar Generation   |                                   |       |       |       |       |       |                       |        |        |        |        |        |
|-----------------------------------|-----------------------------------|-------|-------|-------|-------|-------|-----------------------|--------|--------|--------|--------|--------|
|                                   | # of Customer-Owned Solar Systems |       |       |       |       |       | kW Gross Power Rating |        |        |        |        |        |
|                                   | 2008                              | 2009  | 2010  | 2011  | 2012  | 2013  | 2008                  | 2009   | 2010   | 2011   | 2012   | 2013   |
| <b>IOU</b>                        | 383                               | 1,045 | 1,855 | 2,803 | 3,799 | 4,818 | 1,696                 | 7,653  | 12,442 | 19,441 | 30,401 | 43,876 |
| <b>Municipal</b>                  | 137                               | 313   | 493   | 614   | 791   | 1,007 | 797                   | 3,378  | 4,099  | 5,002  | 7,021  | 11,787 |
| <b>Rural Electric Cooperative</b> | 57                                | 267   | 461   | 549   | 684   | 853   | 272                   | 1,955  | 2,667  | 3,262  | 4,099  | 4,865  |
| <b>TOTAL</b>                      | 577                               | 1,625 | 2,809 | 3,966 | 5,274 | 6,678 | 2,765                 | 12,986 | 19,208 | 27,705 | 41,521 | 60,528 |

### Net Metering

Net metering allows utility customers with renewable energy systems to pay their utility for only the net energy used. Depending on its supply of or demand for electricity at various times, a home or business with a solar energy system may export excess power to the electric grid or import power from the grid. If a customer produces more electricity than consumed, the utility bill will be credited for the excess production. 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 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.

In 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)."

Further, in regards to net metering and PPAs, Floridians for Solar Choice, the proponents of the ballot amendment, provided the following:

"Currently, a property owner who owns his own solar panels can net meter. A property owner who leases panels from a third party can net meter. These activities are permitted because the property owner is not purchasing solar electricity from a third party, but is instead purchasing or leasing the panels. A property owner who buys solar generated power from a company which has placed solar panels on his or her property cannot net meter."

Current law in Florida makes PPAs infeasible because the purchase of solar-generated electricity in these types of financial agreements would subject the provider of electricity to PSC regulation as an "electric utility."

## 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 to non-residential customers not otherwise exempt.

The gross receipts “use tax” in ss. 203.01(1)(h)&(i), F.S., provides that any 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*<sup>12</sup>

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, impact fees, and stormwater fees, are imposed pursuant to the exercise of police powers as regulation of an 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.

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<sup>12</sup> 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).

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. Similar to the municipal governments, the 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.<sup>13</sup>

### *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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> In 1994, the Court held that Orange County could levy a public service tax without specific statutory authority to do so.<sup>17</sup>

The tax is collected by the seller of the taxable item from the purchaser at the time of payment.<sup>18</sup> At the discretion of the local taxing authority, the tax may be levied on a physical unit basis. Using this basis, the tax is levied as follows: electricity, number of kilowatt hours purchased; metered or bottled gas, number of cubic feet purchased; fuel oil and kerosene, number of gallons purchased; and water service, number of gallons purchased.<sup>19</sup> A number of tax exemptions are specified in law.<sup>20</sup>

A tax levy is adopted by ordinance, and the effective date of every tax levy or repeal must be the beginning of a subsequent calendar quarter: January 1st, April 1st, July 1st, or October 1st.

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<sup>13</sup> <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/index.cfm>

<sup>14</sup> Section 166.231(1), F.S.

<sup>15</sup> Section 166.231(2), F.S.

<sup>16</sup> Volusia County vs. Dickinson, 269 So.2d 9 (Fla. 1972).

<sup>17</sup> McLeod vs. Orange County, 645 So.2d 411 (Fla. 1994).

<sup>18</sup> Section 166.231(7), F.S.

<sup>19</sup> Section 166.232, F.S.

<sup>20</sup> Section 166.231(3)-(6) and (8), F.S.

The taxing authority must notify the Department of Revenue (DOR) of a tax levy adoption or repeal at least 120 days before its effective date. Such notification must be furnished on a form prescribed by the DOR and specify the services taxed, the tax rate applied to each service, and the effective date of the levy or repeal as well as other additional information.<sup>21</sup>

The seller of the service remits the taxes collected to the governing body in the manner prescribed by ordinance.<sup>22</sup> The tax proceeds are considered general revenue for the municipality or charter county. As previously mentioned, taxing authorities are required to furnish information to the DOR and the Department maintains an online database that can be searched or downloaded.<sup>23</sup>

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. Similar to the municipalities, the 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.<sup>24</sup>

### *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.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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 four public meetings:

- Public Workshop on April 10, 2015

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<sup>21</sup> Section 166.233(2), F.S.

<sup>22</sup> Section 166.231(7), F.S.

<sup>23</sup> <http://dor.myflorida.com/dor/governments/mpst/>

<sup>24</sup> <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/index.cfm>

- Principals' Workshop on April 24, 2015
- Formal Conference on May 6, 2015 and May 7, 2015

## A. FISCAL ANALYSIS BACKGROUND

### Requested Information from State Entities and other Organizations

The following table provides a summary of information gathered from several state entities and other organizations that presented information to the FIEC. Information specific to tax revenues that was provided by the Department of Revenue (DOR) is addressed separately under the "Tax Treatment of Solar Equipment and Energy in Florida" section of this report.

| <b>Presenter</b>                | <b>Date</b>                                      | <b>Summary of Information</b>  |
|---------------------------------|--|--|
| Public Service Commission (PSC) | April 10 <sup>th</sup><br>April 24 <sup>th</sup> | Commission staff indicated that implementation costs are unknown at this time. Staff provided information on Regulatory Assessment Fees, which are designed to cover the costs of utility regulation. The revenue reductions associated with the amendment will depend on the degree of displacement of traditional utility activity. At a minimum, rule-making would be necessary to change the Regulatory Assessment Fee rate.   |
| Department of Revenue (DOR)     | April 24 <sup>th</sup>                           | The key to implementation is voluntary compliance – payment of Gross Receipts Use Tax. DOR did not identify specific implementation costs but indicated the need to work with various stakeholders to facilitate voluntary compliance methods.   |
| Florida League of Cities        | April 10 <sup>th</sup><br>April 24 <sup>th</sup> | The impact will depend on the degree to which the amendment incentivizes additional solar activity. There are two scenarios that could impact the franchise fee revenues. The first is a reduction in the gross revenues of an electric utility due to increased generation of local small-scale solar-generated electricity. The second is the potential termination or renegotiation of franchise fee agreements. Costs associated with the permitting process for building/installing solar may have to be re-evaluated in the event of an expansion of solar. Net metering agreements and insurance requirements on interconnections to the grid may also have to be re-evaluated. |
| Florida Association of Counties | April 24 <sup>th</sup>                           | Public Service Tax collections will likely be reduced. Franchise fee agreements would likely be terminated, in which case the agreements would have to be re-negotiated, probably at a loss to the affected counties.  |

The PSC, Florida League of Cities, and Florida Association of Counties all believe that there will be costs to implement the amendment. However, those costs are currently unknown. The Florida League of Cities and Florida Association of Counties believe that the Public Service Tax and franchise fees will likely see reduced collections, but the amount is unknown. The Regulatory Assessment Fee imposed on the municipal electric utilities and rural electric

cooperatives is already at the statutory maximum rate. If the amendment's implementation results in a future reduction to the gross operating revenues of municipal electric utilities and rural electric cooperatives, it is possible that the Florida Legislature would consider a statutory rate increase in order to prevent a potential future revenue loss to the Public Service Commission. The Regulatory Assessment Fee currently imposed on the investor-owned utilities is not at the maximum rate, so there would be flexibility to adjust that rate to the extent needed, if the amendment results in changes to gross operating revenues of the utilities.

### Solar Business Models

The following table describes five different solar business models. The first four were identified by Floridians for Solar Choice, and the fifth was identified by the FIEC. Models A and B are permitted under current law, while models C, D, and E are not.

|          | <b>Business Model Description</b>   | <b>Allowable Under Current Law?</b> |
|----------|---|-------------------------------------|
| <b>A</b> | A property owner contracts for the purchase and installation of solar equipment that provides energy to the property.   | Yes                                 |
| <b>B</b> | A property owner enters into a lease for the installation of solar equipment on the property with the solar energy being consumed on the property. The property owner pays the company for the use and maintenance of the solar equipment.  | Yes                                 |
| <b>C</b> | A property owner allows a company to install equipment on the property and purchases some, but not necessarily all, of the solar energy from the company. The solar energy system may be financed through a PPA which requires the purchaser to pay a monthly charge to the solar supplier based on the amount of solar electricity used at the property. | No                                  |
| <b>D</b> | A property owner provides solar-generated electricity to itself and also sells it to contiguous property owners.  | No                                  |
| <b>E</b> | Multiple contiguous property owners purchase solar-generated electricity from a centrally located solar-panel hub owned by someone other than an electric utility.  | No                                  |

### Tax Treatment of Solar Equipment and Solar Energy in Florida

The following table and explanatory notes were prepared by the Department of Revenue (DOR) and present six scenarios related to potential solar energy financial arrangements. The table presents the sales tax and gross receipts tax implications of each scenario. Scenarios III. and VI. are permitted under current law, while Scenarios I., II., IV., and V. are not.

|      | Scenario  | Purchase of Solar System | Use of self-generated electricity |                | Sale of excess electricity to neighbor (or utility in III. and VI.)                           |                             |
|------|---|--------------------------|-----------------------------------|----------------|---|-----------------------------|
|      |   | Sales/Use                | Sales/Use                         | Gross Receipts | Sales/Use   | Gross Receipts              |
| I.   | <b>A residential household buys or leases a solar system then sells excess electricity directly to a neighbor without going through the local utility/grid.</b>   | exempt                   | exempt                            | use tax        | exempt if neighbor is residential; taxable if neighbor is commercial and not otherwise exempt | arguably taxable            |
| II.  | <b>A residential household buys or leases a solar system then sells excess electricity directly to a neighbor using another entity's distribution system.</b>   | exempt                   | exempt                            | use tax        | exempt if neighbor is residential; taxable if neighbor is commercial and not otherwise exempt | arguably not taxable        |
| III. | <b>A residential household buys or leases a solar system, sells the excess electricity to the local utility under a net-metering agreement. The local utility then sells the electricity to the household's neighbor.</b>       | exempt                   | exempt                            | use tax        | exempt as a sale for resale   | exempt as a sale for resale |
| IV.  | <b>A commercial business buys or leases a solar system, then sells the excess electricity directly to a neighbor without going through the local utility/grid.</b>  | exempt                   | use tax                           | use tax        | exempt if neighbor is residential; taxable if neighbor is commercial and not otherwise exempt | arguably taxable            |
| V.   | <b>A commercial business buys or leases a solar system, then sells the excess electricity directly to a neighbor using another entity's distribution system.</b>  | exempt                   | use tax                           | use tax        | exempt if neighbor is residential; taxable if neighbor is commercial and not otherwise exempt | arguable not taxable        |
| VI.  | <b>A commercial business buys or leases a solar system, then sells the excess electricity to a local utility under a net-metering agreement. The local utility sells the electricity to the commercial business's neighbor.</b> | exempt                   | use tax                           | use tax        | exempt as a sale for resale   | exempt as a sale for resale |

In the last column of the table above, some of the scenarios are categorized as “arguably” taxable or “arguably” not taxable. The uncertainty stems from the definition of “distribution company.” The Gross Receipts Tax is imposed on “distribution companies.” Section 203.012(1), F.S., defines the term “distribution companies” as meaning: “... any person owning or operating local electric or natural or manufactured gas utility distribution facilities within this state for the transmission, delivery, and sale of electricity or natural or manufactured gas. ...” [emphasis added] The term “distribution facilities” is not defined in statute. Arguments both for and against someone being considered a “distribution company” could be made. The spectrum of fact patterns that one can envision would range from a power producer like a traditional large investor-owned utility to a future wherein neighbors share electricity they produce through wiring that they install and maintain.

## B. FISCAL ANALYSIS CONCLUSIONS BY THE FIEC

There are numerous favorable and unfavorable factors affecting the adoption of solar technology to produce electricity in Florida. The amendment will likely induce more solar electricity generation than would have occurred in its absence. In this regard, the conference agrees with the following statement in the joint memorandum from Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company and Gulf Power Company (the Utilities) dated April 22, 2015: “The express purpose of the proposed Initiative is to ‘encourage and promote local small-scale solar-generated electricity’ (Section (a) of the proposed Initiative) and to facilitate its sale to electric consumers in Florida. Those sales will necessarily displace sales of electricity currently made by the Utilities, as well as by municipal utilities and electric cooperatives.” The items discussed below are influenced by this premise.

### **Regulatory Assessment Fees**

#### **State Impact: Reduction in Revenue**

1. The relevant impact is limited to state government.
2. Current revenues are likely to decline due to sales by traditional utilities displacing sales by local solar electricity suppliers.
3. The Public Service Commission has the ability to act to generate additional dollars.
  - i) For Investor-Owned Utilities, the assessment rate is not at its statutory maximum.
  - ii) For Municipal and Rural Electric Cooperative Utilities, the assessment rate has reached its statutory maximum.
  - iii) Section 350.113(3), F.S. reads in part: “The fee shall, *to the extent practicable*, be related to the cost of regulating such type of regulated company.” [emphasis added]

### **Municipal Utility Revenues**

#### **Local Impact: Probable Revenue Loss to Local Governments**

1. Payments by customers to the municipally owned utilities are local government revenues that are used to operate the utility and in some cases to finance the general operations of government.
2. To the extent that production and sale of electricity by local solar electricity suppliers displaces municipal utility sales, local government revenues will be reduced.
3. It is unknown how local governments will respond to the loss of revenue.

## **Local Government Franchise Agreements**

### **Local Impact: Probable Revenue Loss to Local Governments**

1. Since franchise fees are calculated based on the gross sales of electricity by utilities, each reduced or eliminated sale by a utility results in a reduction in the amount of fees collected.
2. The conference agrees with the following statement in the joint memorandum from Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company and Gulf Power Company dated April 22, 2015: “There is no question that those franchise fees would *not* be paid on LSES [Local Solar Electricity Suppliers] sales. This is because the agreements pursuant to which utilities pay franchise fees are bilateral contracts between the specific utilities and the counties and municipalities that the utilities serve. There is no counterpart to those franchise agreements for LSES sales.”
3. Renegotiation of local government franchise agreements resulting in lower rates than would have occurred in the absence of the amendment is also likely. However, the timing of such reduction is unclear. Whether it occurs as a result of outright cancellation or upon the expiration of current agreements is unknown. At a minimum, local governments will experience a loss in bargaining strength and will be at a disadvantage in future negotiations.
4. In public and written testimony provided on April 24, 2015 to the FIEC, representatives of the Florida League of Cities and the Florida Association of Counties expressed concerns that current electric utility franchise agreements may be impaired.
5. It is unknown how local governments will respond to the loss of revenue.

## **Ad Valorem Taxes**

### **Local Impact: Probable Initial Revenue Gain to Local Governments**

1. The installation of more solar energy systems on non-residential properties than would have occurred in the amendment’s absence will increase ad valorem revenues to local governments at current millage rates.
2. Over time, the Ad Valorem Taxes paid by electric utilities may be lower than otherwise as their need for additional generating capacity is reduced by expanded solar electricity production.
3. It is unknown how local governments will respond to the changes in revenue.

## **Public Service Tax**

### **Local Impact: Probable Revenue Loss to Local Governments**

1. The Public Service Tax does not have a “use tax” provision; consequently electricity produced but not sold by local solar electricity suppliers is not subject to the tax.
2. To the extent that the electricity produced by local solar electricity suppliers reduces sales of electricity, tax collections will be reduced.
3. It is unknown how local governments will respond to the loss of revenue.
4. It is possible—but cannot be deemed probable—that the Legislature would act to change the basis of this tax to capture additional kinds of sales or impose a use tax.

## **Gross Receipts Tax**

### **State Impact: Probable Revenue Loss to State Government**

1. In regard to (a) the use of self-generated electricity and (b) sales that are not reliant on the grid for transmission, the use tax provisions associated with the Gross Receipts Tax rely on voluntary compliance, which is overall less effective than traditional tax collection methods.
2. In regard to sales of excess electricity that use another entity's distribution system, the sales are arguably not taxable, but the consumer of that electricity is subject to use tax.
3. In regard to sales of excess electricity through net metering agreements with electric utilities, the sales are exempt as sales for resale; however, the sale by the utility to a customer is taxable.
4. It is unknown how state government would respond to the loss of revenue.
5. It is possible—but cannot be deemed probable—that the Legislature would act to increase enforcement of use tax provisions or to otherwise broaden the taxable base.
6. It is probable that the Department of Revenue would act to increase voluntary compliance in some manner, but the outcome is uncertain and likely to be less than 100 percent effective.

## **Sales Tax**

### **State and Local Impact: Probable Revenue Loss to State and Local Governments**

1. In regard to self-generated electricity for commercial purposes, the use tax provisions associated with the Sales Tax rely on voluntary compliance, which is overall less effective than traditional tax collection methods.
2. In regard to sales of excess electricity for commercial purposes that use another entity's distribution system, the sales are taxable.
3. In regard to sales of excess electricity through net metering agreements with electric utilities, the sales are exempt as sales for resale; however, the sale by the utility to a customer is taxable.
4. It is unknown how state and local governments would respond to the loss of revenue.
5. It is possible—but cannot be deemed probable—that the Legislature would act to increase enforcement in some manner.
6. It is probable that the Department of Revenue would act to increase voluntary compliance in some manner, but the outcome is uncertain and likely to be less than 100 percent effective.

## **Implementation and Compliance Costs**

### **State and Local Impact: Probable Minor Costs to State and Local Governments**

1. The Public Service Commission is likely to incur one-time administrative costs related to the implementation of the amendment, particularly in regard to rule-making activities.
2. The Department of Revenue is likely to incur administrative costs related to the implementation of the amendment, particularly in regard to rule-making and compliance activities.
3. To the extent that current administrative practices are changed, local governments are likely to incur costs related to the implementation of and compliance with the amendment. Some of these costs will likely be offset by fees.
4. All of these costs are expected to be minor.