



# Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 9, 2011

**TO:** Art Graham, Chairman  
Lisa Polak Edgar, Commissioner  
Ronald A. Brisé, Commissioner  
Eduardo E. Balbis, Commissioner  
Julie I. Brown, Commissioner

**FROM:** S. Curtis Kiser, General Counsel

**RE:** 2011 Legislative Wrap-Up – Summary of Key Bills

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## KEY BILLS THAT PASSED

### *Telecommunications*

#### **CS/CS/HB 1231 – The Regulatory Reform Act**

CS/CS/HB 1231, the “Regulatory Reform Act,” was signed by the Governor on May 5, 2011, and will become effective July 1, 2011. The bill will eliminate retail regulation of local exchange telecommunications services by the Florida Public Service Commission (FPSC or Commission), including the elimination of rate caps on all retail telecommunications services; elimination of telecommunications related consumer protection and assistance duties of the FPSC; and the elimination of FPSC oversight of telecommunications service quality. The bill also proposes reform to FPSC certification processes, authority over intercarrier matters, and other general provisions.

Other specific areas where PSC retail jurisdiction is reduced or eliminated include:

- Repeal of the requirement to provide a flat-rate pricing option for local service
- Repeal of the authority to designate wireless carriers as Eligible Telecommunications Carriers for the purpose of receiving Universal Service Fund benefits (including Lifeline)
- Elimination of the Commission authority to compel repairs rendering ineffective the Commission ordered pole inspection program
- Repeal of the requirement that the Commission disseminate information to consumers to assist in understanding the competitive market and billing related issues
- Repeal of the requirement that the Commission provide informational materials and conduct outreach to inform consumers of the benefits available through the Lifeline program (the Commission may continue to do so but is no longer required)

- Repeal of specific prohibition against discriminatory pricing of telecommunications services
- Repeal of the requirement to inform new subscribers of the least cost service option
- Repeal of specific consumer protection relating to cramming
- Restriction of slamming complaints to those filed by carriers against other carriers.

Statutes related to the Commission’s authority over intercarrier issues were also amended to consolidate authority into a single section. The Commission retains authority over intercarrier disputes, arbitrations, and interconnection agreements as well as authority over numbering issues such as area code exhaust. Modifications have also been made to the certification process for telecommunications companies.

Finally, the Commission must, by August 1, 2011, initiate rulemaking to reduce the regulatory assessment fee (RAF) factor for telecommunications companies to reflect the reduction in regulation resulting from the amendments to Chapter 364, F.S., that take affect July 1, 2011.

## **KEY BILLS THAT DID NOT PASS**

### *Energy Bills*

<b>HB 7217</b>	<b>Relating to Energy Incentives and Initiatives</b>
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House Bill (HB) 7217 was an omnibus energy bill introduced by the House Energy and Utilities Subcommittee. The most significant provision of the bill would have allowed each IOU to petition the FPSC, through July 1, 2015, to recover costs for up to 2 percent of 2010 revenues above avoided cost on renewable energy projects or purchases. The bill also deleted from statute all language relating to a proposed Renewable Portfolio Standard. Additionally, the bill would have exempted all solar power facilities from the Electrical Power Plant Siting Act, disbanded the Florida Energy and Climate Commission, and moved the Energy Office to the Department of Agriculture and Consumer Services.

The renewable energy cost recovery provision in HB 7217 would have allowed generating IOUs to petition to recover costs up to 2 percent of 2010 revenues per year in addition to avoided cost. IOUs could spend this amount on the construction of new renewable energy facilities, conversion of existing resources to renewable energy, or purchases of Florida renewable energy. Costs could continue to be recovered over the useful life of the project. The bill required the IOUs to spend at least 20 percent of the capacity for projects approved under this provision on non-solar sources. Also, 5 percent of the costs spent on solar energy were directed to go to solar programs approved through the FEECA goals process. Projects for which a majority of the energy-producing components were manufactured in-state received a rate of return 50 basis points above the last authorized return on equity. Within these requirements, IOUs would have had sole discretion to determine the renewable projects they pursued. IOUs had to demonstrate that a project was the most cost-effective option for its type of renewable energy, and that it used reasonable and customary industry practices. The need determination process would not have applied to these renewable projects.

HB 7217 was passed by the House Energy and Utilities Subcommittee by a unanimous vote. It was then referred to the State Affairs committee, but was never heard in the committee or withdrawn from it. The bill was not taken up again and ultimately died in committee. SB 2106, however, did pass, and contained a similar provision to HB 7217 dissolving the Florida Energy and Climate Commission, and moving the Energy Office to the Department of Agriculture and Consumer Services.

<b>SB 2078</b>	<b>Relating to Energy</b>
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Senate Bill (SB) 2078 was an omnibus energy bill introduced by the Senate Communications, Energy, and Public Utilities Committee. The bill would have allowed each investor owned electric utility (IOU) to petition the FPSC, through July 1, 2016, to recover costs for up to 2 percent of 2010 revenues on renewable energy projects or purchases. The bill also would have instituted a new ongoing energy planning process, the State Energy Resources Plan. Additionally, the bill made changes to the avoided cost statute that likely would have forced changes in the FPSC's net metering rule for customer-owned rooftop solar systems. Finally, the bill would have made other changes, including deleting the Renewable Portfolio Standard language from statute, and making changes relating to commercial energy audits. Beyond changes affecting the FPSC, the bill would have dissolved the Florida Energy and Climate Commission and moved the Energy Office to the Department of Environmental Protection.

The first major provision of the bill would have allowed each IOU to spend 2 percent of 2010 revenues on renewable energy, including new construction, conversion of existing resources, or renewable energy purchases. This 2 percent of 2010 revenues represented a total figure, not an amount above avoided cost. The bill also required 25 percent of the total nameplate capacity of projects funded under this section to come from non-solar resources. Due to a later amendment, the bill required 5 percent of total spending to be directed towards demand-side renewable energy systems, half of which were required to be under 10 kW in size. Another amendment to the bill capped the customer impact at 2 percent of a customer's monthly bill. An amendment passed at the bill's final committee stop also capped costs at the IOUs' retail rates. Within these requirements, the IOUs would have had sole discretion how to spend these funds. The bill did specify that these projects were subject to the same bid process as conventional generation, without clarifying to which process it was referring.

The second major provision of the bill would have required the FPSC to develop and review a State Energy Resources Plan with a 10-year timeframe. This plan would have augmented and complemented the Ten-Year Site Plan (TYSP), but not replaced it. The plan required the FPSC to forecast electrical demand and requirements, the ability of the existing electrical system to meet those needs, and what additional resources would be needed. The FPSC would also need to determine potential system constraints and alternatives to current resource types. The plan also would have required the FPSC to identify resource additions to meet energy requirements, costs and risks of energy supply source alternatives, emerging trends in energy markets, and potential future sites for renewable energy generation, as well as transmission and distribution lines. The bill did not specify whether the FPSC was expected to directly acquire this information, or whether the IOUs would provide the information as part of the TYSP review

process. Additionally, the bill provided the criteria for the FPSC to consider determining whether there was a need for new renewable energy projects. These new projects were not subject to cost constraints if the FPSC determined a need.

The third major change would have affected the FPSC's net metering rule. This change was part of the avoided cost statute and would have required IOUs to purchase all electricity offered for sale by property owners with rooftop solar equipment at rates that do not exceed the utility's full avoided cost. The FPSC's net metering rule requires any excess energy to be credited to customers on the next month's bill at the equivalent value of the retail rate, with any excess energy remaining after 12 months credited at the avoided fuel cost rate. This change would have resulted in customers with solar equipment receiving less value for any excess energy.

SB 2078 was introduced and passed as a proposed committee bill by the Senate Communications, Energy, and Public Utilities Committee. The bill was taken up by the Budget Committee late in session. There, it was amended before being temporarily postponed. A key amendment tied the cost of producing or purchasing renewable energy that would be eligible for cost recovery to the IOUs' retail rate. The bill was not taken up again or withdrawn from committee, and no bill addressing its major provisions passed either chamber. SB 2106, however did pass, and contained a provision dissolving the Florida Energy and Climate Protection and moving the Energy Office to the Department of Agriculture and Consumer Services.

#### *Commission Specific*

<b>SB 0212</b>	<b>Relating to Public Service Commission</b>
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This bill would have revised several sections of the Florida Statutes relating to ex parte communication and the standards of conduct for Commissioners of the Public Service Commission. This bill would have extended the existing ex parte restrictions to direct Commissioner staff. Also, this bill would have required notification to the Office of Public Counsel when the Public Service Commission receives certain communications, and requires published summaries of such communications in certain instances.

This bill would have prohibited former Public Service Commissioners and former members of a Commissioner's direct reporting staff from lobbying the legislative or executive branch of government for four years after termination of Commission service. This prohibition would have applied to Commissioners appointed or reappointed on or after July 1, 2011, and to commissioners' direct reporting staff hired on or after July 1, 2011.

The bill proposed extending the existing post-employment prohibitions for former Public Service Commissioners from two to four years. The bill would also have extended this post-employment prohibition to former members of a Commissioner's direct reporting staff.

Finally, the bill would have given the Office of Public Counsel access to certain utility and company records and provides that, in addition to the Public Service Commission, the Office of Public Counsel may find that certain records are confidential and exempt from the provisions of section 119.07(1), Florida Statutes.

This Joint Resolution was sponsored by Rep. Rehwinkel Vasilinda / Sen. Fasano and proposed an amendment to the State Constitution to be submitted to the electors of the State at the next general election. The amendment would have created an elected Commission. The powers and duties of the Commission will be provided by general law. Prohibitions are set out against contributions from certain entities. The Commission would have been placed in the executive branch rather than the legislative branch. The primary elections would have been held in 2012, although the effective date of the Constitutional change and the law would be January 8, 2013.

The proposed constitutional amendment would have changed the process of selecting commissioners from an appointed to an elected process. The current process of gubernatorial appointments with Senate confirmation of the appointees would be eliminated.

This bill sponsored by the House Energy & Utilities Subcommittee would have done the following;

- Adopts certain provisions from the Code of Judicial Conduct as standards of conduct applicable to commissioners.
- Defines ex parte communications and prohibits commissioners and their direct staff from engaging in ex parte communications concerning substantive matters and certain procedural matters related to proposed agency action proceedings and formal proceedings under ss. 120.565, 120.569, or 120.57, F.S., or concerning the merits of any issue that he or she reasonably foresees will be filed with the PSC.
- Expands monetary penalties to apply to any individual who makes a prohibited ex parte communication and knowingly fails to comply with the reporting requirements of the law.
- Provides that persons involved in the selection of PSC commissioners, including the Governor and specified legislative members, may not attempt to sway the independent judgment of the commission by bringing pressure to bear upon a commissioner, an applicant to fill a vacancy on the commission, or a commission employee by threat or offer of reward in relation to the commissioner selection or confirmation process, and designates the Commission on Ethics to receive and investigate sworn complaints of violations.
- Provides that an individual commissioner may not demand or require any member of the PSC staff, other than the commissioner's direct staff, to develop, present, or pursue a particular opinion, position, or course of action in relation to a pending substantive matter, and designates the PSC's inspector general to receive and investigate complaints of violations.
- Establishes training and continuing education requirements, concerning substantive and ethical matters, for commissioners and PSC staff.
- Specifies the authority of the PSC to employ an executive director, a general counsel, and an inspector general, and specifies the authority of the executive director to serve as the agency head for certain purposes, such as personnel and procurement matters.

- Requires each person offering testimony in a PSC proceeding to disclose, at the time the testimony is offered, any financial or fiduciary relationship between the person and any party to the proceeding.

*Water and Wasterwater*

**HB 0223 / SB 950 Relating to Water and Wastewater Utilities**

This bill, sponsored by Rep. Hudson and Sen. Bennett, would have created section 367.0819, Florida Statutes (F.S.), to allow water and wastewater utilities to recover, through a surcharge, prudently incurred capital costs for investment in non-revenue producing system improvements. The proposed bill provides a mechanism for water and wastewater utilities to recover appropriate costs without the time and expense of an evidentiary hearing. Instead, a utility must file a tariff for Commission approval demonstrating the calculation of the surcharge, a notification to customers of the filing, and disclosure of the surcharge as a separate line item on a customer's bill. The bill defines eligible projects and the appropriate manner in which companies may request cost recovery and how the surcharge should be implemented. The calculation of the surcharge must include recovery of depreciation and return on investment. The surcharge would be reevaluated on a quarterly basis based on supporting data submitted to the Florida Public Service Commission (FPSC, or Commission). The surcharge may not exceed eight percent of otherwise applicable rates and charges approved by the Commission. The surcharge shall be listed as a separate line charge on a customer's bill and is subject to annual true-up based on a period of 12 months. The proposed effective date of the bill is July 1, 2011.

CBM:tf

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