

Tab 1	CS/SB 446 by EP, Passidomo ; (Similar to H 00379) Underground Facilities					
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Tab 2	SB 456 by Rodriguez ; (Similar to H 01251) Public Utilities					
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Tab 3	CS/SB 776 by CJ, Baxley ; (Similar to H 00879) Unlawful Acquisition of Utility Services					
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603448	D	S	RCS	CU, Baxley	Delete everything after	03/28 04:28 PM
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Tab 4	SB 1146 by Broxson ; (Identical to H 00977) Representation by the Public Counsel					
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Tab 5	SB 1312 by Perry ; (Similar to H 01021) Construction					
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Tab 6	SB 1636 by Artiles ; (Identical to H 01377) Taxation of Internet Video Service					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES
Senator Artiles, Chair
Senator Montford, Vice Chair

MEETING DATE: Tuesday, March 28, 2017
TIME: 3:00—5:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Artiles, Chair; Senator Montford, Vice Chair; Senators Broxson, Campbell, Clemens, Perry, Stargel, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 446 Environmental Preservation and Conservation / Passidomo (Similar H 379)	Underground Facilities; Revising the information that must be submitted to the Legislature annually by the board of directors of Sunshine State One-Call of Florida, Inc.; requiring excavators to call the 911 emergency telephone number under certain circumstances; specifying how certain civil penalties issued by state law enforcement officers shall be distributed, etc. EP 03/14/2017 Fav/CS CU 03/28/2017 Favorable ACJ AP	Favorable Yeas 8 Nays 0
2	SB 456 Rodriguez (Similar H 1251)	Public Utilities; Exempting certain producers of renewable solar-based energy from being defined as a public utility, etc. CU 03/28/2017 Temporarily Postponed CA RC	Temporarily Postponed
3	CS/SB 776 Criminal Justice / Baxley (Similar H 879)	Unlawful Acquisition of Utility Services; Revising the elements that constitute theft of utilities; clarifying that the presence of certain devices and alterations on the property of, and the actual possession by, a person constitutes prima facie evidence of a violation; clarifying that specified circumstances create prima facie evidence of theft of utility services for the purpose of facilitating the manufacture of a controlled substance, etc. CJ 03/21/2017 Fav/CS CU 03/28/2017 Fav/CS ACJ AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Communications, Energy, and Public Utilities
Tuesday, March 28, 2017, 3:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1146 Broxson (Identical H 977)	Representation by the Public Counsel; Authorizing the Public Counsel to provide representation in proceedings of municipal and other government utilities; authorizing the Public Counsel to represent residential ratepayers in rate proceedings before the Public Service Commission determining rate structure, etc. CU 03/28/2017 Fav/CS AGG AP RC	Fav/CS Yeas 8 Nays 0
5	SB 1312 Perry (Similar H 1021, Compare H 567)	Construction; Providing applicability of certain standards and criteria for solar energy systems manufactured or sold in the state; providing for solar energy systems manufactured or sold in the state to be certified pursuant to National Renewable Energy Laboratory standards; prohibiting a county, municipality, special taxing district, public utility, or private utility from requiring a separate water connection or charging a specified water or sewage rate under certain conditions, etc. CU 03/28/2017 Favorable CA RC	Favorable Yeas 6 Nays 0
6	SB 1636 Artiles (Identical H 1377)	Taxation of Internet Video Service; Prohibiting, except under certain circumstances, public bodies from levying on or collecting from sellers or purchasers of Internet video services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of Internet video services, etc. CU 03/28/2017 Favorable AFT AP	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: CS/SB 446

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Passidomo

SUBJECT: Underground Facilities

DATE: March 27, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	Fav/CS
2.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 446 amends ch. 556, F.S., the “Underground Facility Damage Prevention and Safety Act” by:

- Requiring an excavator that causes contact with or damage to any pipe or other underground facility to immediately report the contact or damage by calling 911 if any natural gas or other hazardous substance or hazardous material regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation (USDOT) has escaped;
- Requiring a member operator to file a report with the Sunshine State One-Call of Florida (SSOCF) system of all events it has received notice of through the system which have resulted in damages to its underground facilities. The report must be submitted at least on an annual basis or more frequently at the option and sole discretion of the member operator and must include, if known, the cause, nature, and location of the damage;
- Providing that if a citation is issued by a state law enforcement officer, 80 percent of the civil penalty collected by the clerk of the court for the citation will be distributed to the governmental entity whose employee issued it; and
- Requiring the SSOCF board of director’s annual progress report to the Legislature and the Governor on the participation by municipalities and counties in the one-call notification system, to include a summary of the damage reporting data received by the system for the preceding year and any analysis of the data by the board.

II. Present Situation:

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The purpose of the Act is to identify and locate underground facilities¹ prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.² To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice through the system of the person’s intended activities. Prior notifications provide operators of underground facilities the opportunity to identify and locate their nearby facilities.³ All operators of underground facilities in the state are required to be members of the corporation (“member operators”) and are required to use and participate in the system.⁴

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc. (SSOCF), which exercises its powers through a board of directors.⁵ The system provides a single toll-free telephone number within Florida which excavators use to notify member operators of planned excavation or demolition activities.⁶ An excavator must notify the system not less than two full business days before beginning the operations.⁷ The excavator must also provide specified identification, location, and operational information which remain valid for 30 calendar days.⁸ Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.⁹

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹⁰ Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities

¹ Section 556.102(13), F.S., defines “underground facility” as “any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under ch. 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to ch. 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities.”

² Section 556.101(3), F.S.

³ Section 556.101(2), F.S.

⁴ Section 556.103(1), F.S.

⁵ Section 556.103, F.S.

⁶ Section 556.104, F.S.

⁷ Section 556.105(1)(a), F.S. The statute provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

⁸ Section 556.105(1)(c), F.S.

⁹ Section 556.105(3), F.S.

¹⁰ Section 556.105(5), F.S. The statute also provides that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities.

beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹¹ If this cannot be done within two business days after notification is received, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. An excavator is required to delay excavations until one of the following events occurs:

- All affected member operator's underground facilities have been marked and located;
- The excavator has been notified that no member operator has underground facilities in the area described in the notice; or
- The time allowed for markings has expired.

If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided the excavator does so with reasonable care and uses detection equipment or other acceptable means to locate underground facilities. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹²

The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The Act establishes a civil penalty of \$500, plus court costs, for such infractions.¹³ If a citation is issued by a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the governmental entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.¹⁴ If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk of the court is retained by the clerk for deposit into the fine and forfeiture fund established pursuant to s. 142.01, F.S.¹⁵ The fine and forfeiture fund is established by the clerk of the circuit court in each county of this state and functions as a separate fund for use by the clerk of the circuit court in performing court-related functions.

By March 31 of each year, each clerk of court must submit a report to SSOFC listing each violation notice written under s. 556.107(1)(a), F.S., which has been filed in that county during the preceding calendar year.¹⁶ The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.¹⁷ The Florida Court Clerks and Comptrollers reported that a total of 23 citations were issued statewide under the Act in 2015, and a total of 19 citations were issued

¹¹ Section 556.105(5), F.S.

¹² Section 556.105(6), F.S.

¹³ Section 556.107(1), F.S.

¹⁴ Section 556.107(1)(c), F.S.

¹⁵ *Id.*

¹⁶ Section 556.107(2), F.S.

¹⁷ *Id.*

in 2016. None of these citations were issued by state law enforcement officers.¹⁸ Additionally, the SSOFC board must submit an annual progress report, including a summary of the reports to the system from the clerks of court, to the Governor, no later than 60 days before the convening of each regular session of the Legislature.¹⁹ The SSOFC board must also submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor, no later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the participation by municipalities and counties in the one-call notification system, including a summary of the reports to the system from the clerks of court.²⁰

U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration - Pipeline Damage Prevention Programs

The U.S. Department of Transportation (USDOT) has back-stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.²¹

On July 13, 2015, the USDOT Pipeline and Hazardous Materials Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforce minimum Federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.²²

Under its rule,²³ PHMSA uses the following criteria in evaluating the effectiveness of a state damage prevention program:

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?
- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?

¹⁸ Email message dated March 7, 2017, from Christopher J. Campbell, Director, Legislative and Government Affairs, Florida Court Clerks and Comptrollers (on file with Senate Environmental Preservation and Conservation Committee).

¹⁹ Section 556.103(4), F.S.

²⁰ Section 556.103(5), F.S.

²¹ 49 U.S.C. s. 60114.

²² U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *About Excavation Enforcement Final Rule*, <http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement> (last visited March 20, 2017).

²³ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Pipeline Safety: Pipeline Damage Prevention Programs*, 80 Fed. Reg. 43,836 (July 23, 2015) (codified at 49 C.F.R. Pts. 196 and 198).

- At a minimum, does the state’s excavation damage prevention program include the following requirements?:
 - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
 - Excavators may not engage in excavation activity without regard to the marked location of a pipeline facility as established by a pipeline operator.
 - An excavator who causes damage to a pipeline facility:
 - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
 - If the damage results in the escape of any PHMSA regulated natural or other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
 - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
 - PHMSA will make the written justifications available to the public.²⁴

Hazardous substances regulated by PHMSA include a host of chemical and radionuclides found in appendix A of Title 49, C.F.R., s. 172.101,²⁵ but do not include petroleum or crude oil, or natural gas in various states or mixtures.²⁶ Petroleum, crude oil, and natural gas are hazardous materials, regulated by PHMSA in Title 49, C.F.R., s. 172.101.²⁷ The SSOFC has identified proposals that will enhance the effectiveness of the Act according to the criteria adopted by PHMSA. They are reflected in the provisions of this bill.

III. Effect of Proposed Changes:

Procedures for Contact or Damage

If an excavator’s contact with or damage to an underground pipe or any other underground facility results in the escape of any natural gas or other hazardous substance or hazardous material regulated by the PHMSA, the excavator must immediately report the contact or damage by calling the 911 emergency telephone number.

The bill mandates that a member operator file with the SSOFC system a report of all events it has received notice of through the system that have resulted in damages to any pipe, cable or the cable’s protective covering, or other underground facility. Member operators must submit these reports at least annually to the system, no later than March 31, for all such events that occurred in

²⁴ *Id.*

²⁵ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Subchapter C - Hazardous Materials Regulations*, 49 C.F.R. s. 172.101, available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec172-101.xml> (last visited March 20, 2017).

²⁶ See 49 C.F.R. s. 171.8 for definitions of “hazardous material” and “hazardous substance,” available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec171-8.xml>. (last visited March 20, 2017).

²⁷ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Subchapter C - Hazardous Materials Regulations*, 49 C.F.R. s. 172.101, available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec172-101.xml>.

the prior calendar year. Member operators may, at their option and sole discretion, submit the reports to the system on a more frequent basis. These member operator reports are required to include, if known, the cause, nature, and location of the damage. The bill also requires the system to establish and maintain a process to facilitate submission of reports by member operators.

These reporting requirements enhance the Underground Facility Damage Prevention and Safety Act (Act) and may provide the procedures necessary to meet the requirements of the 2015 rule that contains the criteria used by the PHMSA in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

Civil Penalty Citations

The bill removes the provision that directs civil penalties collected by clerks of court from citations issued by state law enforcement officers to be retained by the clerk for deposit into the fine and forfeiture fund. Under the bill, 80 percent of the penalty resulting from a citation issued by a state law enforcement officer will be distributed to the state, and 20 percent of the penalty will be retained by the clerk of the court to cover administrative costs, in addition to other court costs. Eighty percent of the penalty resulting from a citation issued by a local government entity will continue to go to the local government that issues the citation.

Annual Progress Report on Participation by Municipalities and Counties

The bill requires the SSOFC board of director's annual progress report to the President of the Senate, the Speaker of the House of Representatives, and the Governor on the participation by municipalities and counties in the one-call notification system to include:

- A summary of the damage reporting data received by the system for the preceding year regarding events that damage underground facilities, including information from member operator reports and from notifications member operators receive from excavators that have made contact with or damaged underground facilities, including information regarding temporary or permanent repairs to the facilities resulting from any contact or damage and 911 calls made as a result of the escape of substances from underground facilities that have been impacted; and
- Any analysis of the data by the board.

This expansion of information provided in an annual progress report may provide the data necessary to meet the requirements of PHMSA in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate as such authority existed on February 1, 1989; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill may have an insignificant, positive impact on state government revenues.

B. Private Sector Impact:

The requirement that a member operator file an annual report with the SSOCF if an excavation or demolition event damages any of its pipes, cables, or other underground facilities does not appear to be a significant economic impact on the private sector.

C. Government Sector Impact:

By entitling a state law enforcement entity that issues a citation to receive 80 percent of the resulting civil penalties collected by the clerk of court, the bill may result in a slight increase in revenues to the state. The Florida Court Clerks and Comptrollers reported that a total of 23 citations were issued statewide under the Act in 2015, and a total of 19 citations were issued in 2016. However, in recent years no citations have been issued by state law enforcement.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 556.103, 556.105, and 556.107.

²⁸ Email message dated March 7, 2017, from Christopher J. Campbell, Director, Legislative and Government Affairs, Florida Court Clerks and Comptrollers (on file with Senate Environmental Preservation and Conservation Committee).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 14, 2017:

Includes hazardous materials with any natural gas or other hazardous substances as contents requiring an excavator to call 911 should any of them escape from an underground pipe or other underground facility as a result of contact or damage to the pipe or facility by the excavator.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Environmental Preservation and Conservation;
and Senator Passidomo

592-02439-17

2017446c1

A bill to be entitled

An act relating to underground facilities; amending s. 556.103, F.S.; revising the information that must be submitted to the Legislature annually by the board of directors of Sunshine State One-Call of Florida, Inc.; amending s. 556.105, F.S.; requiring excavators to call the 911 emergency telephone number under certain circumstances; requiring member operators to file a report with the free-access notification system under certain circumstances; providing reporting frequencies and required data to be submitted; amending s. 556.107, F.S.; specifying how certain civil penalties issued by state law enforcement officers shall be distributed; deleting a requirement that certain citations be deposited into the fine and forfeiture fund; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 556.103, Florida Statutes, is amended to read:

556.103 Creation of the corporation; establishment of the board of directors; authority of the board; annual report.—

(5) The board of directors shall submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor, not later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the participation by municipalities and counties in the one-call notification system created by this chapter. The report must

Page 1 of 3

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2017446c1

include a summary of the reports to the system from the clerks of court, a summary of the damage reporting data received by the system under s. 556.105(12) for the preceding year, and any analysis of the data by the board of directors.

Section 2. Subsection (12) of section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.—

(12) (a) If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. If contact with or damage to an underground pipe or any other underground facility results in the escape of any natural gas or other hazardous substance or material regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation, the excavator must immediately report the contact or damage by calling the 911 emergency telephone number. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall cease excavation or demolition activities that may cause further damage to such underground facility.

(b) If an event damages any pipe, cable or its protective covering, or other underground facility, the member operator receiving the notice shall file a report with the system. Reports must be submitted annually to the system, no later than March 31 for the prior calendar year, or more frequently at the option and sole discretion of the member operator. Each report

Page 2 of 3

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592-02439-17

2017446c1

59 must describe, if known, the cause, nature, and location of the
60 damage. The system shall establish and maintain a process to
61 facilitate submission of reports by member operators.

62 Section 3. Paragraph (c) of subsection (1) of section
63 556.107, Florida Statutes, is amended to read:

64 556.107 Violations.—

65 (1) NONCRIMINAL INFRACTIONS.—

66 (c) Any excavator or member operator who commits a
67 noncriminal infraction under paragraph (a) may be required to
68 pay a civil penalty for each infraction, which is \$500 plus
69 court costs. If a citation is issued by a state law enforcement
70 officer, a local law enforcement officer, a local government
71 code inspector, or a code enforcement officer, 80 percent of the
72 civil penalty collected by the clerk of the court shall be
73 distributed to the local governmental entity whose employee
74 issued the citation and 20 percent of the penalty shall be
75 retained by the clerk to cover administrative costs, in addition
76 to other court costs. If a citation is issued by a state law
77 enforcement officer, the civil penalty collected by the clerk
78 shall be retained by the clerk for deposit into the fine and
79 forfeiture fund established pursuant to s. 142.01. Any person
80 who fails to properly respond to a citation issued pursuant to
81 paragraph (b) shall, in addition to the citation, be charged
82 with the offense of failing to respond to the citation and, upon
83 conviction, commits a misdemeanor of the second degree,
84 punishable as provided in s. 775.082 or s. 775.083. A written
85 warning to this effect must be provided at the time any citation
86 is issued pursuant to paragraph (b).

87 Section 4. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-28-17
Meeting Date

SB 446
Bill Number (if applicable)

Topic Underground Utilities

Amendment Barcode (if applicable)

Name Mark Sweet

Job Title Executive Director

Address 403 Pine Tree Road
Street

Phone 386-801-3279

Lake Mary FL 32746
City State Zip

Email mark.sweet@sunshine811.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Sunshine State One-Call of Florida, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17
Meeting Date

58 446
Bill Number (if applicable)

Topic Underground Facilities

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title _____

Address 231 West Bay Ave

Phone 407 830-1882

Street

Longwood
City

FL
State

32750
Zip

Email BKershner@aol.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Northwest Florida Section of AGC AL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17

Meeting Date

SB 446

Bill Number (if applicable)

Topic Underground Facilities

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3730 Coconut Creek Pky Suite 200

Phone 954 465 6811

Street

Coconut Creek FL 33066

Email cbowen@ABCeastflorida.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Associated Builders Contractors of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: SB 456

INTRODUCER: Senator Rodriguez

SUBJECT: Public Utilities

DATE: March 27, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	RC	_____

I. Summary:

SB 456 amends the definition of “public utility” to exclude an entity that produces and provides or sells energy to users located on the property of a renewable energy production facility that uses a solar-based source of renewable energy and has a capacity of 2.5 megawatts or less.

The exclusion of an entity “that produces and provides or sells energy to” users located on the property of a renewable energy production facility does not appear to require that the energy sold be produced using the renewable energy production facility. Thus, an entity with one solar panel and one gas-fueled power plant scaled to be profitable within the uncertain property size limitations could be exempt from regulation. Property identification and any related size limitation are uncertain because the language relating to the property is unclear.

The bill takes effect July 1, 2017.

II. Present Situation:

Public Utility

Statute

Chapter 366, F.S., provides for regulation of electric utilities by the Public Service Commission (PSC). Section 366.02, F.S., defines “public utility” as every person supplying electricity to or for the public within this state; but the term does not include either a cooperative or a municipality. All public utilities are subject to full PSC economic and reliability regulation.

Case Law / PW Ventures

In the 1980s, a company sought to build and operate a cogeneration facility¹ and sell the output directly to another entity.² PW Ventures³ signed a letter of intent with Pratt and Whitney (Pratt) to provide electric and thermal energy at Pratt's industrial complex in Palm Beach County. PW Ventures proposed to construct, own, and operate a cogeneration project on land leased from Pratt and to sell its output to Pratt under a long-term contract.⁴ Before proceeding with construction of the facility, PW Ventures sought a declaratory statement from the PSC that it would not be a public utility subject to PSC regulation. After a hearing, the PSC ruled that PW Ventures' proposed transaction with Pratt fell within its regulatory jurisdiction. PW Ventures appealed this ruling to the Florida Supreme Court.

On appeal, PW Ventures argued that it would be selling electricity to a single customer and that the phrase "to the public" means to the general public and was not meant to apply to a bargained-for transaction between two businesses; the PSC, in contrast, argued that the phrase means "to any member of the public." The Court addressed the issue of whether the sale of electricity to a single customer makes the provider a public utility.

The Court based its ruling, in part, on the consistency of the PSC's interpretation with "the legislative scheme of chapter 366," which "necessarily contemplates the granting of monopolies in the public interest" and directs the PSC to exercise its powers to avoid "uneconomic duplication of generation, transmission, and distribution facilities."⁵ The Court wrote:

If the proposed sale of electricity by PW Ventures is outside of PSC jurisdiction, the duplication of facilities could occur. What PW Ventures proposes is to go into an area served by a utility and take one of its major customers. Under PW Ventures' interpretation, other ventures could enter into similar contracts with other high use industrial complexes on a one-to-one basis and drastically change the regulatory scheme in this state. The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced.⁶

¹ Cogeneration is the sequential production of thermal energy and electrical or mechanical energy. Florida Public Service Commission, *Florida's Electric Utilities: A Reference Guide*, 188 (1994 edition).

² *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (1988).

³ PW Ventures was a Florida corporation originally owned by FPL Energy Services, Inc. (a wholly owned subsidiary of FPL Group, Inc.) and Impell Corporation (a wholly owned subsidiary of Combustion Engineering, Inc.). After the entry of the PSC order, FPL Energy Services, Inc. transferred its 50% interest to Combustion Engineering, Inc. *PW Ventures*, footnote 1.

⁴ The electricity was to have been used by Pratt and several affiliated corporate entities and by the Federal Aircraft Credit Union, which was also located on the property. *PW Ventures*, 282.

⁵ *PW Ventures*, 283.

⁶ *PW Ventures*, 283.

The Court affirmed the decision of the Public Service Commission.⁷ In doing so, it noted that the statutory protection of the public interest requires only limiting competition in the sale of electric service, not a prohibition against self-generation.⁸

Thus, current law allows non-utilities to produce electricity for their own use and sell any excess to a utility,⁹ but prohibits all non-utility sales of electricity to anyone other than a utility.

Regulatory Policy and Economic Regulation

Economic regulation is used when market forces of supply and demand do not function effectively and efficiently to establish prices and supply levels. This occurs when an industry is a “natural monopoly,” which frequently involves an essential product or service for which there are few or no alternative products or services, resulting in inelasticity in demand.

In a natural monopoly, due to economies of scale, one company can produce a product at a lower cost to society than multiple companies can. Additionally, there are high capital costs and a situation in which redundant or duplicative systems, such as power plants and transmission lines, are wasteful or undesirable. The economic concept of a natural monopoly has been described as follows.

The term does not refer to the actual number of sellers in a market but to the relationship between demand and the technology of supply. If the entire demand within a relevant market can be satisfied at lowest cost by one firm rather than by two or more, the market is a natural monopoly, whatever the actual number of firms in it. If such a market contains more than one firm, either the firms will quickly shake down to one through mergers or failures, or production will continue to consume more resources than necessary. In the first case, competition is short-lived and in the second it produces inefficient results. Competition is thus not a viable regulatory mechanism under conditions of natural monopoly. Hence, it is said, direct controls are necessary to ensure satisfactory performance: controls over profits, specific rates, quality of service, extensions and abandonments of service and plant, even permission whether to enter the business at all.¹⁰

The electric industry has long been deemed a natural monopoly, and its product deemed a necessity in the public interest with no substitutes, so it has long been subjected to economic regulation to ensure a reliable supply and delivery system, to keep prices competitive, and to

⁷ *PW Ventures*, 284.

⁸ *Id.*

⁹ A non-utility electricity producer can sell excess electricity to a utility in three ways: as a cogenerator or small power producer under s. 366.051, F.S.; as a renewable energy producer selling pursuant to a purchase contract under s. 366.91(3) and (4), F.S.; or as a renewable energy producer under a net-metering program under s. 366.91(5) and (6), F.S., and PSC rule 25-6.065 Interconnection of Small Photovoltaic Systems. In all cases, the prices paid is the purchasing utility’s “full avoided costs,” the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase the utility would generate itself or purchase from another source.

¹⁰ Richard A. Posner, *Natural Monopoly and its Regulation*, 1 (CATO Institute, Washington, D.C., 1999). See, Richard J. Pierce, Jr. and Ernest Gellhorn, *Regulated Industries* (West Group, St. Paul, Minnesota, 1999), 48-54, and Tomain and Cudahy, 120-122.

avoid waste.¹¹ At the heart of economic regulation is the “regulatory compact,” an implied contract balancing rights and obligations of a utility and its ratepayers. The regulatory compact has been described as follows.

The utility business represents a compact of sorts; a monopoly on service in a particular geographic area (coupled with state-conferred rights of eminent domain or condemnation) is granted the utility in exchange for a regime of intensive regulation, including price regulation, quite alien to free market. . . . Each party to the compact gets something in the bargain. As a general rule, utility investors are provided a level of stability in earnings and value less likely to be attained in the unregulated or moderately regulated sector; in turn, ratepayers are afforded universal, non-discriminatory service and protection from monopoly profits through political control over an economic enterprise.¹²

In other words, under the regulatory compact, a utility is granted:

- A protected monopoly within a defined service territory;
- Recovery of all prudent and reasonable costs; and
- The ability to earn a profit within a regulator-determined range of levels of return on investment.

In return, the utility’s ratepayers get:

- The utility’s obligation to serve, that is the obligation to provide reliable electric service to all paying customers within that service territory;
- Imposition and enforcement of quality of utility service and reliability standards; and
- Fair and reasonable rates.

Regulation in Florida

In Florida, the PSC regulates the electricity industry.¹³ Each public utility is required to furnish reasonably sufficient, adequate, and efficient service upon terms as required by the commission to each person applying therefor, and all rates and charges must be fair and reasonable.¹⁴

The utility’s obligation to serve is codified in a statute requiring each public utility to furnish to each person applying therefore reasonably sufficient, adequate, and efficient service, upon terms as required by the commission.¹⁵ This statute means each utility must have generation facilities that are sufficient in quantity and quality to produce enough electricity to meet all levels of demand at all times. This, in turn, requires a reserve margin, an excess of generation facilities to meet peak demand even when a generation plant is out of service or down for maintenance.

¹¹ Joseph P. Tomain and Richard D. Cudahy, *Energy Law*, 268 (Thomson West, 2004).

¹² Tomain and Cudahy, 121-122, quoting from *Jersey Cent. Power and Light Co. v. F.E.R.C.*, 810 F.2d 1168 (D.C. Cir. 1987).

¹³ Chapter 366, F.S.

¹⁴ Sections 366.03, 366.041, 366.06(2), and 366.81, F.S.

¹⁵ Section 366.03, F.S.

The statutes require rates that are just, reasonable, compensatory, and nondiscriminatory.¹⁶ Compensatory means the utility is entitled to recover all prudently incurred costs plus a fair rate of return for its investors.¹⁷ This also protects customers as it ensures the utility remains fiscally sound enough to continue to provide reliable generation and delivery service, and to obtain capital financing on good terms.

Third Party Sales

General Background

Under economic regulation, each utility:

- Is vertically integrated, owning and operating all the facilities for the entire process of producing, selling, and delivering the electricity to the end-use customer;
- Has a protected monopoly within a defined service territory;
- Is authorized to recover all prudent and reasonable costs and to earn a profit within a regulator-determined range of levels of return on investment; and
- Is required, in return, to provide reliable electric service at all times to all paying customers within that service territory at fair and reasonable rates.

The overarching issue with any proposal to allow third party retail sales of electricity is how to fit these sales into the existing systems of regulation and vertically-integrated utilities while maintaining cost recovery and reliability.

While other states do allow third party sales, most do so in a deregulated market, which may drastically alter many of the conditions and issues.¹⁸ For example, deregulation allows an opportunity for recovery of the costs at issue through recovery of stranded costs, which are the incumbent utility's investments in existing infrastructure, which may become redundant in a competitive environment.

Cost Recovery

To recap the current Florida law, non-utility renewable energy producers can use the electricity produced and sell any excess only to a utility, and the price in each sale is the purchasing utility's full avoided cost, which is the cost the utility would have incurred to produce that amount of electricity if not for the purchase. As such, these transactions do not adversely affect a utility's cost recovery or its ratepayers' rates.

Third party retail sales, on the other hand, necessarily involves the loss to the utility of some amount of revenue, and therefore recovery of costs, with the remaining customers left to pay the continuing costs of existing infrastructure without these lost customers.¹⁹

¹⁶ Section 366.041(1), F.S.

¹⁷ Tomain and Cudahy, 126.

¹⁸ As of 2015, least 24 states allow third party sales of renewable energy: Oregon, Texas, Illinois, Michigan, Ohio, Pennsylvania, New York, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, and Maryland all had active deregulation; California, Nevada, Arizona, New Mexico, and Virginia had deregulated but suspended deregulation; and Utah, Colorado, Hawaii, Iowa, and Vermont had allowed third party sales in a regulated market.

¹⁹ While some interest groups dispute this point, the Florida Supreme Court held that it is accurate in the *PW Ventures* decision discussed above.

The ratemaking process involves two steps: determining the revenue requirement and designing rates to recover this requirement. A utility's revenue requirement is the total amount of money it must collect from all customers to recover all capital and operating costs, plus a rate of return. It is, in effect, the company's cost of providing service.²⁰ Rate design, for these purposes, is the setting of rates for different customer classes and differently situated customers within a class to allow the utility to recover its revenue requirement, but no more than that. A rate is designed for each customer class based upon that customer class' total number of customers, projected total usage, and percentage of total revenue requirement allocated to that class. To oversimplify for purposes of illustration, the total revenue from each customer class is equal to the average amount of electricity used by those customers multiplied by the number of customers multiplied by the rate per kilowatt hour for that class, and the total revenue from all customer classes is equal to the revenue requirement. Therefore, the loss of a significant number of smaller-usage customers, or of any major commercial or industrial customer (as in *PW Ventures*), will result in revenue loss and an inability to recover all costs and profits.²¹ In such circumstances, as noted by the Florida Supreme Court, the recovery of the cost is spread over fewer remaining customers, meaning costs increase for each of them.²² Put another way, the remaining customers subsidize some portion of the costs attributable to the renewable energy customers.

Another potential cause of utility losses is uneconomic dispatch. Economic dispatch is based on the cost to produce a unit of electricity.²³ Speaking generally, the cost to produce one megawatt hour of electricity is a factor of how much the fuel costs, how much energy it contains, and how efficient the plant is. With economic dispatch, the fuel with the lowest cost gets dispatched first, then the next, and so on. When production of utility plants is decreased due to excess solar generation and net metering, the idled utility plants may have produced the electricity at a lower cost than the solar resources did, resulting in uneconomic dispatch and costs to the utility and its ratepayers.

The final potential cause of losses is under-used or idle generation facilities. If demand loss reaches significant levels, a utility will have generation plant capacity it is not using but is still recovering sunken costs for, so remaining customers would pay an increased share of these costs, while possibly receiving no benefit from the plant at that point.

²⁰ Florida Public Service Commission, *Florida's Electric Utilities: A Reference Guide*, 181 (1994 edition). The formula for determining the revenue requirement is $R = (B \times r) + E + d + T$, or Revenue requirement = (Rate Base x Rate of Return) + Expenses + Depreciation Expense + Taxes. Rate base is the accumulated capital costs of facilities purchased or installed to serve the utility's customers and on which the utility is allowed to earn a return. (168) Rate of return is the amount of money earned by a regulated utility on its capital investments, expressed as a percentage of those investments. (172) Expenses are the utility's variable costs, including such costs as fuel, purchased power, administrative expenses, and cost of compliance with environmental laws.

²¹ A significant decrease in sales while maintaining the same number of customers will have the same result. Thus, revenue and cost recovery losses can occur from loss of customers, increased efficiency and conservation, or economic downturn.

²² When a state deregulates, they refer to costs incurred but not yet fully recovered under regulation as "stranded costs." Typically the state provides some mechanism to continue to ensure recovery of these costs because they were incurred with the regulatory compact's guaranty of recovery. Here, with what is in essence a partial deregulation, the utility's remaining customers will bear a disproportionate cost burden without some mechanism to continue cost recovery from customers of third party renewable energy producers.

²³ For a good, if somewhat dated, discussion of economic dispatch, see Florida Energy 2020 Study Commission, *Florida ... EnergyWise!: A Strategy for Florida's Energy Future*, pages 28-29 (December 2001).

Obligation to Serve and System Reliability

The obligation to serve requires regulated utilities to construct and maintain sufficient generation infrastructure to meet all needs at all times. Maintaining this obligation to serve while allowing third party sales necessarily requires duplicative infrastructure, while making it difficult to recover the costs from the cost causer, the renewable energy producers and their customers.

Additionally, part of operating a reliable electric grid, the system of transmission and distribution power lines that deliver the electricity, is constantly balancing the amount of electricity put onto the grid with the amount taken off and used. Currently, the utilities work with the Florida Reliability Coordinating Council (FRCC), which continuously monitors the electric grid to ensure this balance. This raises two issues: how to coordinate third party sales with the obligation to serve, and how to incorporate unregulated, intermittent power producers into a continuously-balanced and reliable grid.

Issues in Allowing Third Party Sales²⁴

The outcome of allowing third party sales depends on what changes are made to current policy and regulation to minimize adverse impacts. These potential changes involve a variety of issues, including the following.

- Should remaining utility customers be protected from increased rates? If so, how?
- Third-party-sales customers likely will continue to purchase some amount of electricity and other services from the utility, which creates an opportunity for continued cost recovery from these customers. If cost recovery is to be authorized, should it be:
 - a fee charged to each customer that also purchases renewable energy from a third party in the amount of that customer's share of previously incurred capital costs;
 - a fee charged each customer that also purchases renewable energy from a third party equal to the actual costs of maintaining generation assets ready to serve that customer;²⁵
 - an increased customer charge or minimum monthly charge for all customers, accompanied by a corresponding reduction in the general rates;²⁶
 - a demand component charged to all customers; or
 - a price for utility electricity and services negotiated by the utility and the customer that is adequate to recover all costs for all utility services received by customers.
- Another option for addressing cost recovery is through a reduction in the credit for net-metering electricity placed on the grid. However, this could penalize those producing electricity solely for their own use while failing to recover the full amount of revenue lost.

²⁴ For a fuller discussion of these issues, see The Florida Senate Committee on Communications, Energy, and Public Utilities, *Issues Involved in Providing an Economic Incentive to Enable Expansion of Renewable Energy*, Issue Brief 2010-308 (October 2009) http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-308cu.pdf and The Florida Senate Committee on Communications, Energy, and Public Utilities, *Review of Potential Methods of Encouraging Renewable Energy that Minimize the Economic Impact on Utility Ratepayers*, Issue Brief 2011-109 (October 2010) http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-109cu.pdf.

²⁵ Florida Power and Light currently has in place a standby charge for both residential and commercial net-metering customers. Solar Outreach Partnership, *Rethinking Standby & Fixed Cost Charges: Regulatory & Rate Design Pathways to Deeper Solar PV Cost Reductions*, 44 (August 2014).

²⁶ According to PSC staff, this has been done before in circumstances where the utility was concerned that some capital costs relating to distribution lines in an area with a lot of vacation or transient electricity users may not be fully recovered by fees based upon usage amounts.

- Should a third party seller of renewable energy be permitted to participate in a net metering program and sell excess electricity to a regulated utility at the expense of further reducing that utility's cost recovery?
- Should policy and law apportion the obligations to a renewable energy customer among the utility and the third party renewable energy producer? If so, how? Should a third party seller have an obligation to serve similar to a regulated utility? If a third party seller stops producing renewable energy, should it have any responsibilities and liabilities or should the obligations remain with the utility?
- If there is a dispute between the third party seller and a customer, how should the dispute be resolved, through the PSC based on regulatory law or the courts based on contract law?
- What changes are necessary to protect grid reliability? Should third party sellers be required to meet applicable grid requirements, such as communicating and cooperating with the utilities and the FRCC to ensure grid integrity? If so, what mechanism should be created to facilitate this? What more might be necessary to fully and reliably integrate these intermittent sources into the grid?

Timing, Costs, and Benefits

In recent years, several states have addressed changes to their net metering law based on differing claims as to the effect of increase in solar energy for use onsite. The actions taken by these states varied tremendously.

- Some seemed to focus on the impact of the increased use of solar energy on cost recovery: abolishing net metering, lowering the net metering payment, reducing the utilities' purchase requirement, increasing a minimum charge or creating a new customer class, creating or expanding standby or capacity fees, or taking initial steps toward a fixed grid charge.
- Others seemed to focus on the perceived benefits of the solar energy: increasing the amount of the net metering payment or taking steps to institute a systematic reward for the value of those benefits.
- Others either did nothing or ordered a study of costs and benefits.

It appears that the action taken depended, in part, on the decision-maker's viewpoint in examining solar energy's impact, as a current snapshot or as ongoing implementation of changes over time. In states that focused on the cost impact, the viewpoint seemed to be on current effects. In states that focused on a transition and preparing for what was to come, the focus seemed to be on future benefits. In states that took no action or decided to study the issue, the focus seemed to be on the transition, with no assumptions on cost or benefit.

While these state activities did not involve third-party sales, they do seem to suggest some possible effects of a transition to greater use of renewable energy, with third-party sales speeding the appearance and magnitude of the effects.

- In the earliest period of renewable energy use, the losses and benefits to the entire system and customer base are very hard to identify or quantify.
- As use increases, revenue losses become apparent first. Third-party sales will increase both the speed with which this happens and the resulting impact because the third-party sellers most probably will focus on large purchasers first. With the loss of large customers, utilities may have underused or idle plants, the costs of which must still be recovered while the associated customer base and revenue stream are decreasing. As the Florida Supreme Court

found in *PW Ventures*, the utility's only recourse is to charge its remaining customers higher rates.

- As renewable energy becomes more commonplace, benefits may begin to appear. Claimed benefits include avoidance of line loss, peak shaving, avoidance of additional power plants, and externalities.
 - Line loss is electric energy lost because of the transmission of electricity, much of which is due to the current heating the line wires.²⁷ One factor in line loss is distance traveled, and distributed generation can help by adding electricity at various points; however, the actual effect depends on the location of the additional generation.
 - Real peak shaving does not actually occur with solar energy. The peak in solar output is mid-afternoon, while the peak in summer use is in early evening. Winter peak load is during the very early morning hours.
 - When solar energy use reaches significant levels, or if significant energy storage becomes viable, the need for a new power plant may be avoided, but this effect does not occur until later in increased solar usage.
 - Externalities include claimed benefits such as improvements in human health, decreases in health care and insurance costs, and environmental benefits. These claimed benefits have never been fully identified or quantified. They will remain obscure at this stage.
- As solar energy use increases further, the cost impacts increase and actual benefits will appear and can begin to be quantified.
- At some point, the underused or idle power plants will be retired. The generation fleet will be smaller. All issues of energy production responsibility will be resolved. The benefits will be achieved and will have produced quantifiable results, which may be addressed by further legislative changes. Costs of redundant, retired generation will have been fully recovered, and the system will achieve economic balance and functional reliability.
- However, the actual costs and benefits of getting to this final stage depend greatly on the issues and related policy decisions discussed below.

III. Effect of Proposed Changes:

The bill amends the definition of “public utility” to exclude an entity that produces and provides or sells energy to users located on the property of a renewable energy production facility that uses a solar-based source of renewable energy as defined in s. 377.803(4), F.S.,²⁸ provided that such facility has a capacity of 2.5 megawatts²⁹ or less.

²⁷ <https://definedterm.com/a/definition/6436>.

²⁸ Section 377.803(4), F.S., defines “renewable energy” to mean electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in s. 366.91, F.S., solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power. Section 366.91(2)(a), F.S., defines “biomass” to mean a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

²⁹ According to PSC staff, the best match for a single-user maximum need to the maximum production of a 2.5 megawatt solar photovoltaic system would be a large hospital with a lot of equipment. A super Walmart's maximum need could be served by the maximum output of a less than 1 megawatt photovoltaic system. The bill appears to be aimed at sales to multiple large customers. However, a 1 megawatt photovoltaic system requires approximately 7 acres of space, accordingly 2.5 would require 17.5 acres.

This language is unclear. There must be a renewable energy production facility using a solar-based source of renewable energy, and this facility must have a capacity of 2.5 megawatts or less.³⁰ The energy purchasers must be “located on the property of a renewable energy production facility.” The quoted phrase, however, is unclear, so the property identification and any related size limitation are uncertain. Also, the excluded entity is one “that produces and provides or sells energy to” these users or purchasers. The bill does not require that the energy sold be produced by the renewable energy production facility, so it could exempt an entity with one solar panel and one gas-fueled power plant scaled to be profitable within the uncertain property size limitations.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

It appears that third party sellers of renewable energy would not be subject to taxes on those sales, including:

- A sales tax of 4.35 percent;³¹
- A gross receipts tax of 2.6 percent;³² and
- A discretionary municipal tax on purchases of electricity within the municipality, not to exceed 10 percent of the payments received by the seller from the purchaser for the purchase of such service.³³

B. Private Sector Impact:

Non-utility, third party renewable energy producers and sellers will benefit, as will their customers, who presumably buy the renewable energy for a lower price and thereby reduce their purchases from the utility, additionally avoiding paying at least some portion

³⁰ This capacity limitation means that the solar energy must be electrical, not thermal.

³¹ Section 212.05(1)(e)1.c., F.S.

³² Section 203.01(1)(a)4., F.S.

³³ Section 166.231(1)(a), F.S.

of the utility's costs incurred to serve those customers. Remaining utility customers will pay more of the cost recovery, in effect subsidizing the renewable energy customers.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 366.02 of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/28/2017	.	
	.	
	.	
	.	

The Committee on Communications, Energy, and Public Utilities (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 366.02, Florida Statutes, is amended to read:

366.02 Definitions.—As used in this chapter:

(1) "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas



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11 (natural, manufactured, or similar gaseous substance) to or for
12 the public within this state; but the term "public utility" does
13 not include either a cooperative now or hereafter organized and
14 existing under the Rural Electric Cooperative Law of the state;
15 a municipality or any agency thereof; a property owner not
16 otherwise meeting the definition of a public utility under this
17 subsection owning and operating on their property a renewable
18 energy source device as defined in s. 193.624(1) having a
19 capacity 2.5 megawatts or less and who produces and provides or
20 sells renewable energy from that device to users located on the
21 property; any dependent or independent special natural gas
22 district; any natural gas transmission pipeline company making
23 only sales or transportation delivery of natural gas at
24 wholesale and to direct industrial consumers; any entity selling
25 or arranging for sales of natural gas which neither owns nor
26 operates natural gas transmission or distribution facilities
27 within the state; or a person supplying liquefied petroleum gas,
28 in either liquid or gaseous form, irrespective of the method of
29 distribution or delivery, or owning or operating facilities
30 beyond the outlet of a meter through which natural gas is
31 supplied for compression and delivery into motor vehicle fuel
32 tanks or other transportation containers, unless such person
33 also supplies electricity or manufactured or natural gas.

34 Section 2. This act shall take effect July 1, 2017.

35
36 ===== T I T L E A M E N D M E N T =====

37 And the title is amended as follows:

38 Delete everything before the enacting clause
39 and insert:



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40 A bill to be entitled
41 An act relating to public utilities; amending s.
42 366.02, F.S.; exempting certain owners of property who
43 own and operate certain renewable energy source
44 devices on their property from being defined as a
45 public utility; providing an effective date.

By Senator Rodriguez

37-00253A-17

2017456__

1 A bill to be entitled
 2 An act relating to public utilities; amending s.
 3 366.02, F.S.; exempting certain producers of renewable
 4 solar-based energy from being defined as a public
 5 utility; providing an effective date.
 6
 7 Be It Enacted by the Legislature of the State of Florida:
 8
 9 Section 1. Subsection (1) of section 366.02, Florida
 10 Statutes, is amended to read:
 11 366.02 Definitions.—As used in this chapter:
 12 (1) "Public utility" means every person, corporation,
 13 partnership, association, or other legal entity and their
 14 lessees, trustees, or receivers supplying electricity or gas
 15 (natural, manufactured, or similar gaseous substance) to or for
 16 the public within this state; but the term "public utility" does
 17 not include either a cooperative now or hereafter organized and
 18 existing under the Rural Electric Cooperative Law of the state;
 19 a municipality or any agency thereof; an entity that produces
 20 and provides or sells energy to users located on the property of
 21 a renewable energy production facility that uses a solar-based
 22 source of renewable energy as defined in s. 377.803(4), provided
 23 that such facility has a capacity of 2.5 megawatts or less; any
 24 dependent or independent special natural gas district; any
 25 natural gas transmission pipeline company making only sales or
 26 transportation delivery of natural gas at wholesale and to
 27 direct industrial consumers; any entity selling or arranging for
 28 sales of natural gas which neither owns nor operates natural gas
 29 transmission or distribution facilities within the state; or a
 30 person supplying liquefied petroleum gas, in either liquid or
 31 gaseous form, irrespective of the method of distribution or
 32 delivery, or owning or operating facilities beyond the outlet of

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

37-00253A-17

2017456__

33 a meter through which natural gas is supplied for compression
 34 and delivery into motor vehicle fuel tanks or other
 35 transportation containers, unless such person also supplies
 36 electricity or manufactured or natural gas.
 37 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

456
Bill Number (if applicable)

Topic Renewable Energy Deregulation Amendment

366666
Amendment Barcode (if applicable)

Name Gerrit Van Lent

Job Title Legislative Policy Coordinator

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Email gerrit@rethinkenergyflorida.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Rethink Energy Action Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17
Meeting Date

SB 456
Bill Number (if applicable)

Topic SB 456 re. Public Utilities ✓

Amendment Barcode (if applicable)

Name Commissioner Daniella Levine Cava

Job Title Miami-Dade County Commissioner, District 8

Address 111 NW 1st St., Ste. 220
Street

Phone 305-375-5218

Miami FL 33128
City State Zip

Email district8@miamidade.gov

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/28/17
Meeting Date

456
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kim Ross

Job Title President, ReThink Energy Florida

Address P O Box 1341

Phone 850-888-2565

Street

Tallahassee FL 32308

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ReThink Energy Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/28/17
Meeting Date

450
Bill Number (if applicable)

Topic Public Utilities ✓

Amendment Barcode (if applicable)

Name JEFF SHARKEY

Job Title Pres. Capital Alliance Group

Address 106 E Collyer Ave
Street
Tallahassee City FL State 32301 Zip

Phone 850 224 6600

Email jeff@sharkenergy.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Energy Freedom Coalition of America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

028-17
Meeting Date

456
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title _____

Address 106 E. College Av #1200

Phone _____

Tallahassee FL

Email _____

Street

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Solar Energy Industry Associations

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17

Meeting Date

456

Bill Number (if applicable)

Topic Renewable Energy Deregulation

Amendment Barcode (if applicable)

Name Gerrit Van Lent

Job Title Legislative Policy Coordinator

Address 919 Old Bainbridge

Phone 3053933465

Street

Tallahassee

FL

32301

Email gerrit@rethinkenergyflorida.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ReThink Energy Action Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/28/2017

Meeting Date

456

Bill Number (if applicable)

Topic Public Utilities ✓

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title Senior Vice President

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 28, 2017
Meeting Date

SB 456
Bill Number (if applicable)

Topic Public Utilities ✓

Amendment Barcode (if applicable)

Name Janet Bowman

Job Title Director of Legislative Policy & Strategies

Address 236 E. 5th Avenue Phone (850) 251-9406
Street

Tallahassee, FL 32301 Email
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The Nature Conservancy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

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3-28-17

Meeting Date

SB 456

Bill Number (if applicable)

Topic Renewable Exemption

Amendment Barcode (if applicable)

Name Terry Deason

Job Title Consultant

Address 301 S Bronough

Phone 850-643-7749

Street

Tallahassee FL

32301

Email tdeason@radeylaw.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing IOU utilities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17
Meeting Date

SB 454
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name MICHAEL HERZBERG

Job Title DIRECTOR OF DEVELOPMENT, SLEIMAN ENTERPRISES

Address 1 SLEIMAN PARKWAY

Phone 904-731-8806

Street

JACKSONVILLE FL 32214

Email mherzberg@slleman.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing SLEIMAN ENTERPRISES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17
Meeting Date

456
Bill Number (if applicable)

Topic PUBLIC UTILITIES

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1674 Univ. Pkwy #296
Street

Phone 941.323.2401

SARASOTA FL 34243
City State Zip

Email cullen@sear.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17

Meeting Date

456

Bill Number (if applicable)

Topic

Solar energy

X

Amendment Barcode (if applicable)

Name

Aliki Moncrief (a-LEE-key)

Job Title

Exec. Dir.

Address

1700 N. Monroe St #11-286

Phone

8506294656

Street

Tallahassee

State

FL

Zip

32303

Email

contact@fcvoters.org

City

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Florida Conservation Voters

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: CS/CS/SB 776

INTRODUCER: Communications, Energy, and Public Utilities; Criminal Justice Committee; and Senator Baxley

SUBJECT: Unlawful Acquisition of Utility Services

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 776 revises provisions relating to utility theft as follows:

- Requires a court to include certain specified amounts in its order for civil damages or restitution related to the theft and labor costs.
- Allows the state to make a prima facie showing of the estimated losses of unlawfully obtained electric services based on any methodology reasonably relied upon by utilities.
- Allows the methodology to consider the estimated start date of the theft and the estimated daily or hourly use of electricity.
- Provides specified criteria to determine the estimated start date of the theft and the estimated daily or hourly use of electricity.
- Requires that once the state has made a prima facie showing the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by the utility.
- Allows the court to order a defendant to pay restitution for damages to the property of a utility or for the theft of electricity for criminal offenses that are causally connected to the utility theft.

The bill may have an indeterminate positive fiscal impact on public and private utilities.

The bill is effective October 1, 2017.

II. Present Situation:

Theft of Utilities and Marijuana

As the cost of electricity increases, the rate of theft of electricity goes up.¹ The utility industry estimates that energy theft losses are \$6 billion a year.² In Canada, the majority of electricity theft comes from the indoor cultivation of marijuana. The United States and Florida in particular are seeing an increase in indoor marijuana grow operations.³

A man in Tampa was arrested for growing marijuana and stealing over \$4,500 in electricity over a 3-month period. Authorities discovered an illegal tap was supplying the unmetered power to the house where the man was growing marijuana.⁴ In Brooksville, Florida, the Withlacoochee River Electric Cooperative informed the Hernando County Sheriff's Office of three different locations where irregular power usage had been detected. The sheriff's office executed search warrants and found extensive marijuana grow operations at all three locations. The cooperative approximated that its total loss due to the theft and labor costs for all three locations was over \$143,000.⁵

Section 812.14, F.S., Theft of Utilities

A utility is any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

Section 812.14(2), F.S., makes it a crime to:

- Willfully alter, tamper with, injure, or knowingly cause to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service which causes loss or damage or to prevent any meter installed for registering from registering the quantity used;
- Alter the index or break the seal of any meter;
- Hinder or interfere with any meter or device; or
- Knowingly use, waste, or cause the waste of electricity or gas or water passing through any meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging

¹ dTechs Electrical Profile Management, *Power Theft*, available at <http://www.dtechsepm.com/power-theft> (last visited March 16, 2017).

² myPalmBeachPost, *Smart meters help FPL catch more electricity thieves*, Susan Salisbury, (May 8, 2016) available at <http://www.mypalmbeachpost.com/business/smart-meters-help-fpl-catch-more-electricity-thieves/QyE2N4vDV4Mm0WwjQukoXL/> (last visited March 16, 2017).

³ *Supra* note 1.

⁴ Tampa Bay Times, *Man charged with trafficking, growing marijuana using stolen electricity*, (March 20, 2016), available at <http://www.tampabay.com/news/publicsafety/crime/man-arrested-for-trafficking-growing-marijuana-using-stolen-electricity/2270101> (last visited March 16, 2017).

⁵ REALNEWSREALFAST, *Three Charged in Large Marijuana Grow Operation, Nearly \$60K in Stolen Power*, Tom Lemons, (June 23, 2016), available at <http://www.rnrfonline.com/three-charged-in-large-marijuana-grow-operation-nearly-60k-in-stolen-power/> (last visited March 16, 2017).

to any utility, after the meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.⁶

It is also a crime to:

- Make or cause a connection to be made with any wire, main, service pipe or other pipes, appliance, or appurtenance without the consent of the utility and take any service or electricity, gas, or water without the service being measured and reported for payment; or
- Use or receive the direct benefit from the use of a utility with the knowledge, or under such circumstances that would induce a reasonable person to believe, that such use resulted from tampering, altering, or injuring any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by the utility, for the purpose of avoiding payment.⁷

The penalties for the above-described crimes are based on the value of theft. A theft of utilities valued at:

- \$100,000 or more is a first degree felony;⁸
- \$20,000 or more but less than \$100,000 is a second degree felony;⁹
- \$300 or more but less than \$20,000 is a third degree felony;¹⁰
- \$100 or more but less than \$300 is a first degree misdemeanor;¹¹ and
- Under \$100 is a second degree misdemeanor.¹²

When a person who is in actual possession of property where a device or alteration affecting the registration or reporting of the use of utility services to avoid payment is present, it is prima facie evidence of a violation of s. 812.14, F.S. This presumption does not apply unless the:

- Presence of the device or alteration can be attributed to a deliberate act in furtherance of an intent to avoid payment for utility services;
- Person charged has received the direct benefit of the reduction of the cost of the utility services; and
- Customer or recipient of the utility services has received the direct benefit of the utility service for at least one full billing cycle.¹³

It is a first degree misdemeanor for a person or entity that owns, leases, or subleases property to allow a tenant or occupant to use utility services knowing, or under such circumstances that a

⁶ Section 812.14(2)(a), F.S.

⁷ Section 812.14(2)(b) and (c), F.S.

⁸ Section 812.014(2)(a)1., F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁹ Section 812.014(2)(b)1., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 812.014(2)(c), F.S. A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

¹¹ Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to 1 year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹² Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹³ Section 812.14(3), F.S.

reasonable person would believe, that the utility services have been connected in one of the above listed ways.¹⁴ It is prima facie evidence of a person's intent to violate this provision if:

- A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;
- The dwelling or structure has been visibly modified to accommodate the use of equipment to grow marijuana indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic cultivation; and
- The person or entity that owned, leased, or subleased the dwelling or structure knew of, or under such circumstances believed, that there was a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.¹⁵

Theft of Utility Services for the Purpose of Facilitating the Manufacture of a Controlled Substance

Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is punishable as a theft under s. 812.014, F.S.¹⁶ There is prima facie evidence of a person's intent to violate this provision if:

- The person committed theft of utility services that resulted in a dwelling or structure receiving unauthorized access to utility services;¹⁷
- A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and
- The person knew of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure, regardless of whether the person was involved in the manufacture of the controlled substance.¹⁸

Public Service Commission Rule 25-6.104, F.A.C.

The Public Service Commission regulates the utilities in Florida through market oversight, monitoring the safety, reliability, and services of the utilities and rate base, and economic regulation.¹⁹ The Public Service Commission rules allow a utility to bill a customer in the event of unauthorized or fraudulent use, or meter tampering. The utility may bill for a reasonable estimate of the energy that was used.²⁰

¹⁴ Section 812.14(5), F.S.

¹⁵ Section 812.14(6), F.S.

¹⁶ Section 812.14(8), F.S.

¹⁷ Section 810.011, F.S., defines "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof; and a "structure" as a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. ("Curtilage" means the area of land occupied by a dwelling and its yard and outbuildings actually enclosed or considered as enclosed.)

¹⁸ Section 812.14(9), F.S.

¹⁹ My Florida, Public Service Commission, *The PSC's Role*, available at <http://www.psc.state.fl.us/> (last visited March 16, 2017).

²⁰ Rule 25-6.104, F.A.C.

Civil Damages

In a civil action, any person who is found to have committed an offense in s. 812.14, F.S., is liable to a utility involved for an amount equal to three times the amount of the services unlawfully obtained or \$3,000, whichever is greater.²¹

Restitution in a Criminal Case

Section 775.089, F.S., requires a court to order a defendant to make restitution to the victim for:

- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.

When a court determines whether to order restitution and the amount of restitution, it must consider the amount of the loss sustained by the victim because of the offense.²²

III. Effect of Proposed Changes:

The bill provides that prima facie evidence includes:

- Person knew *or should have known* of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure.

The bill requires a court to include the following amounts in its order for civil damages under s. 812.14(10), F.S., or criminal restitution for theft of electricity:

- The costs to repair or replace damaged property owned by a utility, including reasonable labor costs.
- Reasonable costs for the use of specialized equipment to investigate or calculate the amount of unlawfully obtained electric services, including reasonable labor costs.
- The amount of unlawfully obtained electric services.

The bill allows the state or a utility to make a prima facie showing of the estimated losses of unlawfully obtained electric services based on any methodology reasonably relied upon by utilities. The methodology may consider the estimated start date of the theft and the estimated daily or hourly use of electricity.

The estimated start date of a theft may be based upon one or more of the following:

- The date of an overload notification from a transformer, or the tripping of a transformer, that the utility reasonably believes was overloaded because of the theft of electricity.
- The date the utility verified a substantive difference between the amount of electricity used at a property and the amount billed to the accountholder.
- The date the utility or a law enforcement officer located a tap or other device bypassing a meter.
- The date the utility or a law enforcement officer observed or verified meter tampering.
- The maturity of a cannabis crop found in a dwelling or structure using unlawfully obtained electric services or the number of cannabis crops the utility or a law enforcement officer reasonably believes to have been grown in the dwelling or structure.

²¹ Section 812.14(10), F.S.

²² Section 775.089(6)(a), F.S.

- The date the utility or a law enforcement agency received a report of suspicious activity potentially indicating the presence of the unlawful cultivation of cannabis in a dwelling or structure or when a law enforcement officer or an employee or contractor of a utility observes such suspicious activity.
- The date when a utility observes a significant change in metered energy usage.
- The date when an account with the utility was opened for a property that receives both metered and unlawfully obtained electric services.
- Any other facts or data reasonably relied upon by utilities to estimate the start date of a theft of electricity.

The estimated average daily or hourly use of the electricity may be based upon any, or a combination, of the following:

- The load imposed by the fixtures, appliances, or equipment powered by unlawfully obtained electric services.
- Recordings by the utility of the amount of electricity used by a property or the difference between the amount used and the amount billed.
- A comparison of the amount of electricity historically used by the property and the amount billed while the property was using unlawfully obtained electricity.
- A reasonable analysis of a meter that was altered or tampered with to prevent the creation of an accurate record of the amount of electricity obtained.
- Any other facts or data reasonably relied upon by utilities to estimate the amount of unlawfully obtained electric services.

Once the state or a utility has made a prima facie showing, the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by the utility.

The bill allows the court to order a defendant to pay restitution for damages to the property of a utility or for the theft of electricity for criminal offenses that are causally connected to the damages or losses and bear a significant relationship to those damages or losses. A conviction for theft of utilities is not required for the court to issue a restitution order.

The bill specifies the criminal offenses that bear a significant relationship and are causally connected to a violation of s. 812.14, F.S., include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis.

The monetary threshold of any criminal charge does not limit the restitution amount that a defendant may be ordered to pay.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties

or municipalities have to raise revenues in the aggregate as such authority existed on February 1, 1989; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill specifies that criminal offenses that bear a significant relationship and are causally connected to a violation of s. 812.14, F.S., include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis. Section 775.089, F.S., requires, in a restitution hearing, the state to prove the causal relationship between the defendant's offense and the damages or losses. In *J.S.H. v. State*, 472 So.2d 737, 738 (Fla. 1985), the Florida Supreme Court found that the offense charged does not have to describe the damage done for restitution to be ordered, but that the "damage bear a significant relationship to the convicted offense." If the bill allows restitution to be ordered for the theft of utility services when these requirements are not met, it may be found unconstitutional.

Section 775.089(7), F.S., requires that the state prove the amount of loss sustained by a victim by the preponderance of the evidence. The bill specifies that once the state has made a prima facie showing the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by a utility. If this provision shifts the burden to the defendant without the state having to prove the amount of loss by the preponderance of the evidence and if the bill treats these defendants differently than any other defendant in a restitution hearing, the bill could be found unconstitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows the state to seek restitution for utilities for criminal offenses that are causally connected to the damages or losses and bear a significant relationship to those damages or losses. This may result in an indeterminate positive fiscal impact on utilities.

The bill allows utilities to estimate losses of unlawfully obtained electric services based on any reasonably used utility methodology. Utilities could use a methodology that

results in the largest estimate of loss, which could have an indeterminate positive fiscal impact on those utilities.

C. Government Sector Impact:

The bill allows the state to seek restitution for utilities in criminal offenses that are causally connected to the damages or losses and bears a significant relationship to those damages or losses. This may result in a positive indeterminate fiscal impact on public utilities.

The bill allows utilities to estimate losses of unlawfully obtained electric services based on any reasonably used utility methodology. Utilities could use a methodology that results in the largest estimate of loss, which could have an indeterminate positive fiscal impact on public utilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In several instances, the bill provides certain criteria for a prima facie showing that can be used to prove start date of theft or estimated use. Those criteria are “that the utility reasonably believes²³” and “reasonably relied upon by utilities.²⁴” This standard suggests that if the utility believes the evidence is reasonable, such evidence meets the prima facie showing. This standard is different from a more general standard of whether it is reasonable for the utility to rely on such evidence or that the court finds to be reasonable. While all are subjective, however the latter standards are less so.

VIII. Statutes Affected:

This bill substantially amends section 812.14 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Communications, Energy, and Public Utilities Committee on March 28, 2017:

The committee substitute reverts the penalty from grand theft back to current law.

CS by Criminal Justice on March 21, 2017:

The committee substitute:

- Removes the references “of a diversion” because s. 812.14, F.S., does not criminalize such behavior or define it.

²³ Section 812.14(11)(b)1.a. and (11)(b)2.e., F.S., of the bill.

²⁴ Section 812.14(11)(b)1.i., F.S., of the bill.

- Replaces the term “grow house” with the terms “dwelling” and “structure” to provide consistency throughout s. 812.14, F.S.
- Deletes proposed changes that would have included a person acting on the behalf of an owner, lessor, or sublessor as a person who could violate s. 812.14(5), F.S.
- Deletes the proposed change that replaced the term “prima facie evidence” with the term “permissive inference.”
- Provides that theft of utility services for the purpose of facilitating the manufacture of a controlled substance is a grand theft punishable under s. 812.014, F.S.
- Removes the requirement that the amount of taxes be included in a court’s civil damages or restitution order.
- Deletes the proposed change that allowed the number of cannabis crops that could have reasonably been grown to be used to determine the start date of the utility theft.
- Makes technical and stylistic changes.

Changes the effective date from July 1, 2017, to October 1, 2017.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/28/2017	.	
	.	
	.	
	.	

The Committee on Communications, Energy, and Public Utilities
(Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 812.14, Florida Statutes, is amended to
read:

812.14 Trespass and larceny with relation to utility
fixtures; theft of utility services.—

(1) As used in this section, "utility" includes any person,
firm, corporation, association, or political subdivision,



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11 whether private, municipal, county, or cooperative, which is
12 engaged in the sale, generation, provision, or delivery of gas,
13 electricity, heat, water, oil, sewer service, telephone service,
14 telegraph service, radio service, or telecommunication service.

15 (2) A person may not ~~It is unlawful to~~:

16 (a) Willfully alter, tamper with, damage ~~injure~~, or
17 knowingly allow damage to a ~~suffer to be injured~~ any meter,
18 meter seal, pipe, conduit, wire, line, cable, transformer,
19 amplifier, or other apparatus or device belonging to a utility
20 line service in such a manner as to cause loss or damage or to
21 prevent any meter installed for registering electricity, gas, or
22 water from registering the quantity which otherwise would pass
23 through the same; ~~to~~

24 (b) Alter the index or break the seal of any such meter; ~~in~~
25 ~~any way to~~

26 (c) Hinder or interfere in any way with the proper action
27 or accurate ~~just~~ registration of any such meter or device; ~~or~~

28 (d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste of,
29 by any means, ~~of~~ electricity, ~~or~~ gas, or water passing through
30 any such meter, wire, pipe, or fitting, or other appliance or
31 appurtenance connected with or belonging to any such utility,
32 after the ~~such~~ meter, wire, pipe, or fitting, or other appliance
33 or appurtenance has been tampered with, injured, or altered; ~~or~~

34 (e) ~~(b)~~ Connect ~~Make~~ or cause a to be made ~~any~~ connection
35 with a ~~any~~ wire, main, service pipe or other pipes, appliance,
36 or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without
37 the consent of the utility, any service or any electricity, gas,
38 or water; ~~or to~~

39 (f) Cause a utility, without its consent, to supply any ~~to~~



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40 ~~be supplied any service or electricity, gas, or water from a~~
41 ~~utility to any person, firm, or corporation or any lamp, burner,~~
42 ~~orifice, faucet, or other outlet whatsoever, without reporting~~
43 ~~the such service being reported for payment; or~~

44 (g) Cause, without the consent of a utility, such
45 electricity, gas, or water to bypass passing through a meter
46 provided by the utility; or and used for measuring and
47 registering the quantity of electricity, gas, or water passing
48 through the same.

49 (h)(e) Use or receive the direct benefit from the use of a
50 utility knowing, or under such circumstances that as would
51 induce a reasonable person to believe, that the such direct
52 benefits have resulted from any tampering with, altering of, or
53 injury to any connection, wire, conductor, meter, pipe, conduit,
54 line, cable, transformer, amplifier, or other apparatus or
55 device owned, operated, or controlled by such utility, for the
56 purpose of avoiding payment.

57 (3) The presence on the property of and in the actual
58 possession by of a person of any device or alteration that
59 prevents affects the diversion or use of the services of a
60 utility so as to avoid the registration of the such use of
61 services by or on a meter installed by the utility or that
62 avoids so as to otherwise avoid the reporting of the use of
63 services such service for payment is prima facie evidence of the
64 violation of subsection (2) this section by such person.
65 However, this presumption does not apply unless:

66 (a) The presence of the such a device or alteration can be
67 attributed only to a deliberate act in furtherance of an intent
68 to avoid payment for utility services;



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69 (b) The person charged has received the direct benefit of
70 the reduction of the cost of the ~~such~~ utility services; and

71 (c) The customer or recipient of the utility services has
72 received the direct benefit of the ~~such~~ utility service for at
73 least one full billing cycle.

74 (4) A person who willfully violates subsection (2)
75 ~~paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c)~~ commits
76 theft, punishable as provided in s. 812.014.

77 (5) ~~It is unlawful for~~ A person or entity that owns,
78 leases, or subleases a property may not ~~to~~ permit a tenant or
79 occupant to use utility services knowing, or under such
80 circumstances as would induce a reasonable person to believe,
81 that such utility services have been connected in violation of
82 subsection (2) ~~paragraph (2) (a), paragraph (2) (b), or paragraph~~
83 ~~(2) (c).~~

84 (6) It is prima facie evidence that an owner, lessor, or
85 sublessor intended ~~It is prima facie evidence of a person's~~
86 ~~intent~~ to violate subsection (5) if:

87 (a) A controlled substance and materials for manufacturing
88 the controlled substance intended for sale or distribution to
89 another were found in a dwelling or structure;

90 (b) The dwelling or structure was ~~has been~~ visibly modified
91 to accommodate the use of equipment to grow cannabis ~~marijuana~~
92 indoors, including, but not limited to, the installation of
93 equipment to provide additional air conditioning, equipment to
94 provide high-wattage lighting, or equipment for hydroponic
95 cultivation; and

96 (c) The person or entity that owned, leased, or subleased
97 the dwelling or structure knew of, or did so under such



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98 | circumstances as would induce a reasonable person to believe in,
99 | the presence of a controlled substance and materials for
100 | manufacturing a controlled substance in the dwelling or
101 | structure, regardless of whether the person or entity was
102 | involved in the manufacture or sale of a controlled substance or
103 | was in actual possession of the dwelling or structure.

104 | (7) An owner, lessor, or sublessor ~~A person~~ who willfully
105 | violates subsection (5) commits a misdemeanor of the first
106 | degree, punishable as provided in s. 775.082 or s. 775.083.
107 | Prosecution for a violation of subsection (5) does not preclude
108 | prosecution for theft pursuant to subsection (8) or s. 812.014.

109 | (8) Theft of utility services for the purpose of
110 | facilitating the manufacture of a controlled substance is theft,
111 | punishable as provided in s. 812.014.

112 | (9) It is prima facie evidence of a person's intent to
113 | violate subsection (8) if:

114 | (a) The person committed theft of utility services
115 | resulting in a dwelling, as defined in s. 810.011, or a
116 | structure, as defined in s. 810.011, receiving unauthorized
117 | access to utility services;

118 | (b) A controlled substance and materials for manufacturing
119 | the controlled substance were found in the dwelling or
120 | structure; and

121 | (c) The person knew or should have known of the presence of
122 | the controlled substance and materials for manufacturing the
123 | controlled substance in the dwelling or structure, regardless of
124 | whether the person was involved in the manufacture of the
125 | controlled substance.

126 | (10) Whoever is found in a civil action to have violated



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127 this section is liable to the utility involved in an amount
128 equal to 3 times the amount of services unlawfully obtained or
129 \$3,000, whichever is greater.

130 (11) (a) For purposes of determining a defendant's liability
131 for civil damages under subsection (10) or criminal restitution
132 for the theft of electricity, the amount of civil damages or a
133 restitution order must include all of the following amounts:

134 1. The costs to repair or replace damaged property owned by
135 a utility, including reasonable labor costs.

136 2. Reasonable costs for the use of specialized equipment to
137 investigate or calculate the amount of unlawfully obtained
138 electricity services, including reasonable labor costs.

139 3. The amount of unlawfully obtained electricity services.

140 (b) A prima facie showing of the amount of unlawfully
141 obtained electricity services may be based on any methodology
142 reasonably relied upon by a utility to estimate such loss. The
143 methodology may consider the estimated start date of the theft
144 and the estimated daily or hourly use of electricity. Once a
145 prima facie showing has been made, the burden shifts to the
146 defendant to demonstrate that the loss is other than that
147 claimed by the utility.

148 1. The estimated start date of a theft may be based upon
149 one or more of the following:

150 a. The date of an overload notification from a transformer,
151 or the tripping of a transformer, which the utility reasonably
152 believes was overloaded as a result of the theft of electricity.

153 b. The date the utility verified a substantive difference
154 between the amount of electricity used at a property and the
155 amount billed to the account holder.



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156 c. The date the utility or a law enforcement officer
157 located a tap or other device bypassing a meter.

158 d. The date the utility or a law enforcement officer
159 observed or verified meter tampering.

160 e. The maturity of a cannabis crop found in a dwelling or
161 structure using unlawfully obtained electricity services the
162 utility or a law enforcement officer reasonably believes to have
163 been grown in the dwelling or structure.

164 f. The date the utility or a law enforcement agency
165 received a report of suspicious activity potentially indicating
166 the presence of the unlawful cultivation of cannabis in a
167 dwelling or structure or the date a law enforcement officer or
168 an employee or contractor of a utility observed such suspicious
169 activity.

170 g. The date when a utility observed a significant change in
171 metered energy usage.

172 h. The date when an account with the utility was opened for
173 a property that receives both metered and unlawfully obtained
174 electricity services.

175 i. Any other fact or data reasonably relied upon by the
176 utility to estimate the start date of a theft of electricity.

177 2. The estimated average daily or hourly use of the
178 electricity may be based upon any, or a combination, of the
179 following:

180 a. The load imposed by the fixtures, appliances, or
181 equipment powered by unlawfully obtained electricity services.

182 b. Recordings by the utility of the amount of electricity
183 used by a property or the difference between the amount used and
184 the amount billed.



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185 c. A comparison of the amount of electricity historically
186 used by the property and the amount billed while the property
187 was using unlawfully obtained electricity.

188 d. A reasonable analysis of a meter that was altered or
189 tampered with to prevent the creation of an accurate record of
190 the amount of electricity obtained.

191 e. Any other fact or data reasonably relied upon by
192 utilities to estimate the amount of unlawfully obtained
193 electricity services.

194 (12) A court order requiring a defendant to pay restitution
195 for damages to the property of a utility or for the theft of
196 electricity need only be based on a conviction for a criminal
197 offense that is causally connected to the damages or losses and
198 bears a significant relationship to those damages or losses. A
199 conviction for a violation of this section is not a prerequisite
200 for a restitution order. Criminal offenses that bear a
201 significant relationship and are causally connected to a
202 violation of this section include, but are not limited to,
203 offenses relating to the unlawful cultivation of cannabis in a
204 dwelling or structure if the theft of electricity was used to
205 facilitate the growth of the cannabis.

206 (13) The amount of restitution that a defendant may be
207 ordered to pay is not limited by the monetary threshold of any
208 criminal charge on which the restitution order is based.

209 (14) ~~(11)~~ This section does not apply to licensed and
210 certified electrical contractors while such persons are
211 performing usual and ordinary service in accordance with
212 recognized standards.

213 Section 2. This act shall take effect October 1, 2017.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the unlawful acquisition of utility
services; amending s. 812.14, F.S.; revising the
elements that constitute theft of utilities;
clarifying that the presence of certain devices and
alterations on the property of, and the actual
possession by, a person constitutes prima facie
evidence of a violation; clarifying that certain
evidence of the manufacturing of a controlled
substance in a leased dwelling constitutes prima facie
evidence of a violation by an owner, lessor,
sublessor; clarifying that specified circumstances
create prima facie evidence of theft of utility
services for the purpose of facilitating the
manufacture of a controlled substance; revising such
circumstances; specifying the types of damages that
may be recovered as civil damages or restitution in a
criminal case for damaging property of a utility or
for the theft of electricity services; specifying the
methods and bases used to determine and assess damages
in a civil action or restitution in a criminal case
for damaging property of a utility or for the theft of
electricity services; providing an effective date.

By the Committee on Criminal Justice; and Senator Baxley

591-02668-17

2017776c1

1 A bill to be entitled
 2 An act relating to the unlawful acquisition of utility
 3 services; amending s. 812.14, F.S.; revising the
 4 elements that constitute theft of utilities;
 5 clarifying that the presence of certain devices and
 6 alterations on the property of, and the actual
 7 possession by, a person constitutes prima facie
 8 evidence of a violation; clarifying that certain
 9 evidence of controlled substance manufacture in a
 10 leased dwelling constitutes prima facie evidence of a
 11 violation by an owner, lessor, sublessor, or a person
 12 acting on behalf of such persons; clarifying that
 13 specified circumstances create prima facie evidence of
 14 theft of utility services for the purpose of
 15 facilitating the manufacture of a controlled
 16 substance; revising such circumstances; specifying the
 17 types of damages that may be recovered in as civil
 18 damages or restitution in a criminal case for damaging
 19 property of a utility or for the theft of electricity
 20 services; specifying the methods and bases used to
 21 determine and assess damages in a civil action or
 22 restitution in a criminal case for damaging property
 23 of a utility or for the theft of electricity services;
 24 making technical changes; amending s. 812.014, F.S.;
 25 conforming provisions to changes made by the act;
 26 providing an effective date.
 27
 28 Be It Enacted by the Legislature of the State of Florida:
 29

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30 Section 1. Section 812.14, Florida Statutes, is amended to
 31 read:
 32 812.14 Trespass and larceny with relation to utility
 33 fixtures; theft of utility services.—
 34 (1) As used in this section, "utility" includes any person,
 35 firm, corporation, association, or political subdivision,
 36 whether private, municipal, county, or cooperative, which is
 37 engaged in the sale, generation, provision, or delivery of gas,
 38 electricity, heat, water, oil, sewer service, telephone service,
 39 telegraph service, radio service, or telecommunication service.
 40 (2) A person may not ~~It is unlawful to:~~
 41 (a) Willfully alter, tamper with, damage ~~injure~~, or
 42 knowingly allow damage to a ~~suffer to be injured~~ any meter,
 43 meter seal, pipe, conduit, wire, line, cable, transformer,
 44 amplifier, or other apparatus or device belonging to a utility
 45 line service in such a manner as to cause loss or damage or to
 46 prevent any meter installed for registering electricity, gas, or
 47 water from registering the quantity which otherwise would pass
 48 through the same; ~~to~~
 49 (b) Alter the index or break the seal of any such meter; ~~in~~
 50 ~~any way to~~
 51 (c) Hinder or interfere in any way with the proper action
 52 or accurate ~~just~~ registration of any such meter or device; ~~or~~
 53 (d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste, by
 54 any means, of electricity, or gas, or water passing through any
 55 such meter, wire, pipe, or fitting, or other appliance or
 56 appurtenance connected with or belonging to any such utility,
 57 after the ~~such~~ meter, wire, pipe, or fitting, or other appliance
 58 or appurtenance has been tampered with, injured, or altered;—

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59 (e)(b) Connect Make or cause a ~~to be made~~ any connection
60 with ~~a any~~ wire, main, service pipe or other pipes, appliance,
61 or appurtenance in ~~a such~~ manner ~~that uses as to use~~, without
62 the consent of the utility, any service or any electricity, gas,
63 or water; ~~or to~~

64 (f) Cause a utility, without its consent, to supply any to
65 ~~be supplied any~~ service or electricity, gas, or water ~~from a~~
66 ~~utility to any person, firm, or corporation or any lamp, burner,~~
67 orifice, faucet, or other outlet ~~whatsoever~~, without reporting
68 the such service being reported for payment; ~~or~~

69 (g) Cause, without the consent of a utility, such
70 electricity, gas, or water to bypass ~~passing through~~ a meter
71 provided by the utility and used for measuring and registering
72 the quantity of electricity, gas, or water passing through the
73 same; ~~or-~~

74 (h)(e) Use or receive the direct benefit from the use of a
75 utility knowing, or under ~~such~~ circumstances that as would
76 induce a reasonable person to believe, that the such direct
77 benefits have resulted from any tampering with, altering of, or
78 injury to any connection, wire, conductor, meter, pipe, conduit,
79 line, cable, transformer, amplifier, or other apparatus or
80 device owned, operated, or controlled by such utility, for the
81 purpose of avoiding payment.

82 (3) The presence on the property of and in the actual
83 possession by of a person of any device or alteration that
84 prevents ~~affects the diversion or use of the services of a~~
85 ~~utility so as to avoid~~ the registration of the such use of
86 services by ~~or on~~ a meter installed by the utility or that
87 avoids ~~so as to otherwise avoid~~ the reporting of the use of

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88 services such service for payment is prima facie evidence of the
89 violation of subsection (2) ~~this section~~ by such person; ~~r~~
90 However, this presumption does not apply unless:

91 (a) The presence of the such a device or alteration can be
92 attributed only to a deliberate act in furtherance of an intent
93 to avoid payment for utility services;

94 (b) The person charged has received the direct benefit of
95 the reduction of the cost of the such utility services; and

96 (c) The customer or recipient of the utility services has
97 received the direct benefit of the such utility service for at
98 least one full billing cycle.

99 (4) A person who willfully violates subsection (2)
100 paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c) commits
101 grand theft, punishable as provided in s. 812.014.

102 (5) ~~It is unlawful for~~ A person or entity that owns,
103 leases, or subleases a property may not to permit a tenant or
104 occupant to use utility services knowing, or under such
105 circumstances as would induce a reasonable person to believe,
106 that such utility services have been connected in violation of
107 subsection (2) paragraph (2) (a), paragraph (2) (b), or paragraph
108 (2) (c).

109 (6) It is prima facie evidence that an owner, lessor, or
110 sublessor intended ~~It is prima facie evidence of a person's~~
111 ~~intent~~ to violate subsection (5) if:

112 (a) A controlled substance and materials for manufacturing
113 the controlled substance intended for sale or distribution to
114 another were found in a dwelling or structure;

115 (b) The dwelling or structure was has been visibly modified
116 to accommodate the use of equipment to grow cannabis marijuana

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117 indoors, including, but not limited to, the installation of
118 equipment to provide additional air conditioning, equipment to
119 provide high-wattage lighting, or equipment for hydroponic
120 cultivation; and

121 (c) The person or entity that owned, leased, or subleased
122 the dwelling or structure knew of, or did so under such
123 circumstances as would induce a reasonable person to believe in,
124 the presence of a controlled substance and materials for
125 manufacturing a controlled substance in the dwelling or
126 structure, regardless of whether the person or entity was
127 involved in the manufacture or sale of a controlled substance or
128 was in actual possession of the dwelling or structure.

129 (7) An owner, lessor, or sublessor ~~A person~~ who willfully
130 violates subsection (5) commits a misdemeanor of the first
131 degree, punishable as provided in s. 775.082 or s. 775.083.
132 Prosecution for a violation of subsection (5) does not preclude
133 prosecution for theft pursuant to subsection (8) or s. 812.014.

134 (8) Theft of utility services for the purpose of
135 facilitating the manufacture of a controlled substance is grand
136 theft, punishable as provided in s. 812.014.

137 (9) It is prima facie evidence of a person's intent to
138 violate subsection (8) if:

139 (a) The person committed theft of utility services
140 resulting in a dwelling, as defined in s. 810.011, or a
141 structure, as defined in s. 810.011, receiving unauthorized
142 access to utility services;

143 (b) A controlled substance and materials for manufacturing
144 the controlled substance were found in the dwelling or
145 structure; and

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146 (c) The person knew or should have known of the presence of
147 the controlled substance and materials for manufacturing the
148 controlled substance in the dwelling or structure, regardless of
149 whether the person was involved in the manufacture of the
150 controlled substance.

151 (10) Whoever is found in a civil action to have violated
152 this section is liable to the utility involved in an amount
153 equal to 3 times the amount of services unlawfully obtained or
154 \$3,000, whichever is greater.

155 (11) (a) For purposes of determining a defendant's liability
156 for civil damages under subsection (10) or criminal restitution
157 for the theft of electricity, the amount of civil damages or a
158 restitution order must include all of the following amounts:

159 1. The costs to repair or replace damaged property owned by
160 a utility, including reasonable labor costs.

161 2. Reasonable costs for the use of specialized equipment to
162 investigate or calculate the amount of unlawfully obtained
163 electricity services, including reasonable labor costs.

164 3. The amount of unlawfully obtained electricity services.

165 (b) A prima facie showing of the amount of unlawfully
166 obtained electricity services may be based on any methodology
167 reasonably relied upon by utilities to estimate such losses. The
168 methodology may consider the estimated start date of the theft
169 and the estimated daily or hourly use of electricity. Once a
170 prima facie showing has been made, the burden shifts to the
171 defendant to demonstrate that the loss is other than that
172 claimed by the utility.

173 1. The estimated start date of a theft may be based upon
174 one or more of the following:

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- 175 a. The date of an overload notification from a transformer,
 176 or the tripping of a transformer, that the utility reasonably
 177 believes was overloaded as a result of the theft of electricity.
 178 b. The date the utility verified a substantive difference
 179 between the amount of electricity used at a property and the
 180 amount billed to the accountholder.
 181 c. The date the utility or a law enforcement officer
 182 located a tap or other device bypassing a meter.
 183 d. The date the utility or a law enforcement officer
 184 observed or verified meter tampering.
 185 e. The maturity of a cannabis crop found in a dwelling or
 186 structure using unlawfully obtained electricity services the
 187 utility or a law enforcement officer reasonably believes to have
 188 been grown in the dwelling or structure.
 189 f. The date the utility or a law enforcement agency
 190 received a report of suspicious activity potentially indicating
 191 the presence of the unlawful cultivation of cannabis in a
 192 dwelling or structure or the date a law enforcement officer or
 193 an employee or contractor of a utility observes such suspicious
 194 activity.
 195 g. The date when a utility observes a significant change in
 196 metered energy usage.
 197 h. The date when an account with the utility was opened for
 198 a property that receives both metered and unlawfully obtained
 199 electricity services.
 200 i. Any other facts or data reasonably relied upon by
 201 utilities to estimate the start date of a theft of electricity.
 202 2. The estimated average daily or hourly use of the
 203 electricity may be based upon any, or a combination, of the

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- 204 following:
 205 a. The load imposed by the fixtures, appliances, or
 206 equipment powered by unlawfully obtained electricity services.
 207 b. Recordings by the utility of the amount of electricity
 208 used by a property or the difference between the amount used and
 209 the amount billed.
 210 c. A comparison of the amount of electricity historically
 211 used by the property and the amount billed while the property
 212 was using unlawfully obtained electricity.
 213 d. A reasonable analysis of a meter that was altered or
 214 tampered with to prevent the creation of an accurate record of
 215 the amount of electricity obtained.
 216 e. Any other facts or data reasonably relied upon by
 217 utilities to estimate the amount of unlawfully obtained
 218 electricity services.
 219 (12) A court order requiring a defendant to pay restitution
 220 for damages to the property of a utility or for the theft of
 221 electricity need only be based on a conviction for a criminal
 222 offense that is causally connected to the damages or losses and
 223 bears a significant relationship to those damages or losses. A
 224 conviction for a violation of this section is not a prerequisite
 225 for a restitution order. Criminal offenses that bear a
 226 significant relationship and are causally connected to a
 227 violation of this section include, but are not limited to,
 228 offenses relating to the unlawful cultivation of cannabis in a
 229 dwelling or structure if the theft of electricity was used to
 230 facilitate the growth of the cannabis.
 231 (13) The amount of restitution that a defendant may be
 232 ordered to pay is not limited by the monetary threshold of any

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233 criminal charge on which the restitution order is based.
 234 (14)-(11) This section does not apply to licensed and
 235 certified electrical contractors while such persons are
 236 performing usual and ordinary service in accordance with
 237 recognized standards.
 238 Section 2. Paragraph (c) of subsection (2) of section
 239 812.014, Florida Statutes, is amended to read:
 240 812.014 Theft.—
 241 (2)
 242 (c) It is grand theft of the third degree and a felony of
 243 the third degree, punishable as provided in s. 775.082, s.
 244 775.083, or s. 775.084, if the property stolen is:
 245 1. Valued at \$300 or more, but less than \$5,000.
 246 2. Valued at \$5,000 or more, but less than \$10,000.
 247 3. Valued at \$10,000 or more, but less than \$20,000.
 248 4. A will, codicil, or other testamentary instrument.
 249 5. A firearm.
 250 6. A motor vehicle, except as provided in paragraph (a).
 251 7. Any commercially farmed animal, including any animal of
 252 the equine, bovine, or swine class or other grazing animal; a
 253 bee colony of a registered beekeeper; and aquaculture species
 254 raised at a certified aquaculture facility. If the property
 255 stolen is aquaculture species raised at a certified aquaculture
 256 facility, then a \$10,000 fine shall be imposed.
 257 8. Any fire extinguisher.
 258 9. Any amount of citrus fruit consisting of 2,000 or more
 259 individual pieces of fruit.
 260 10. Taken from a designated construction site identified by
 261 the posting of a sign as provided for in s. 810.09(2)(d).

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262 11. Any stop sign.
 263 12. Anhydrous ammonia.
 264 13. Any amount of a controlled substance as defined in s.
 265 893.02. Notwithstanding any other law, separate judgments and
 266 sentences for theft of a controlled substance under this
 267 subparagraph and for any applicable possession of controlled
 268 substance offense under s. 893.13 or trafficking in controlled
 269 substance offense under s. 893.135 may be imposed when all such
 270 offenses involve the same amount or amounts of a controlled
 271 substance.
 272 14. Utility services, in a manner as specified in s.
 273 812.14.
 274
 275 However, if the property is stolen within a county that is
 276 subject to a state of emergency declared by the Governor under
 277 chapter 252, the property is stolen after the declaration of
 278 emergency is made, and the perpetration of the theft is
 279 facilitated by conditions arising from the emergency, the
 280 offender commits a felony of the second degree, punishable as
 281 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 282 property is valued at \$5,000 or more, but less than \$10,000, as
 283 provided under subparagraph 2., or if the property is valued at
 284 \$10,000 or more, but less than \$20,000, as provided under
 285 subparagraph 3. As used in this paragraph, the term "conditions
 286 arising from the emergency" means civil unrest, power outages,
 287 curfews, voluntary or mandatory evacuations, or a reduction in
 288 the presence of or the response time for first responders or
 289 homeland security personnel. For purposes of sentencing under
 290 chapter 921, a felony offense that is reclassified under this

Page 10 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02668-17

2017776c1

291 paragraph is ranked one level above the ranking under s.

292 921.0022 or s. 921.0023 of the offense committed.

293 Section 3. This act shall take effect October 1, 2017.

294

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17
Meeting Date

774
Bill Number (if applicable)

Topic Utility Theft

Amendment Barcode (if applicable)

Name MIKE BJORKLUND

Job Title DIR. OF LEG. AFFAIRS

Address 2916 Apalachee Pkwy
Street

Phone 877-6166

Tam
City

FL
State

32317
Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FECA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: CS/SB 1146

INTRODUCER: Communication, Energy, and Public Utilities Committee and Senator Broxson

SUBJECT: Representation by the Public Counsel

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.			AGG	
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1146 authorizes the Public Counsel to also provide legal for ratepayers living outside the jurisdictional boundary of a local government that provides water and wastewater service to those ratepayers in proceedings of municipal and other local government utilities in which water and wastewater rates are determined.

II. Present Situation:

Section 350.0611, F.S., requires the Public Counsel to provide legal representation for the people of the state in proceedings before the commission and in certain proceedings before counties.¹ The Public Counsel has specific powers, including, but not limited to, the following:

- To recommend to the commission or the counties, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission or the counties and urge therein any position which the Public Counsel deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission or the counties, and utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission or the counties which shall be reviewable by summary procedure in the circuit courts of this state;

¹ Section 367.171(8), F.S.

- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in a proceeding before the commission or the counties;
- In any proceeding in which the Public Counsel has participated as a party, to seek review of any determination, finding, or order of the commission or the counties, or of any hearing examiner designated by the commission or the counties, in the name of the state or its citizens;
- To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make such recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions; and
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission, in the name of the state or its citizens.

Section 367.171(8), F.S., authorizes a county to regulate the rates of water and wastewater utilities in its jurisdiction which are subject to regulation. The county or its agency must follow the same procedures as the commission. These are the county proceedings in which the Public Counsel may represent the people of the state.

Municipalities may operate water and wastewater utilities to serve their residents and may also serve residents immediately outside their jurisdictional boundaries. A municipality operating a water or sewer utility outside of its jurisdictional boundaries must charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

- The municipal utility may charge the same rates, fees, and charges as consumers inside the municipal boundaries and, additionally, may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries. Fixing of such rates, fees, and charges in this manner does not require a public hearing unless a hearing is provided for service to consumers inside the municipality.
- The municipal utility may charge rates, fees, and charges that are just and equitable and which are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries. In addition, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for those services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries may not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. Such rates, fees, and charges may not be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served; and all others interested have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of the rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, a hearing or notice is not required.

The procedures apply to municipally owned water and wastewater utilities within the confines of a single county and may apply, pursuant to interlocal agreement, to municipally owned water and wastewater utilities beyond the confines of a single county.²

III. Effect of Proposed Changes:

The Public Counsel is authorized to provide legal representation for ratepayers living outside the jurisdictional boundary of a local government that provides water and wastewater utility service to those ratepayers in proceedings of municipal and other local government utilities in which water and wastewater rates are determined.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{3,4,5}

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill may require counties or municipalities to expend funds or take action requiring the expenditure of funds as a result of the participation of the Public Counsel in rate setting proceedings and potentially if a rate change is appealed. The Revenue Estimating Conference has not examined the fiscal impact of this bill, however, the bill's impact may exceed the \$2 million threshold.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

² Section 180.191, F.S.

³ FLA. CONST. art. VII, s. 18(d).

⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

⁵ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some ratepayers may have lower utility rates as a result of Public Counsel representation before local governments that operate water and wastewater utilities.

C. Government Sector Impact:

According to the Public Counsel, developing a fiscal impact required a lot of speculation. However, using the best information available estimated the need for up to nine FTEs (4 legal, 3 accounting, 2 administrative) to represent the ratepayers living outside a municipality’s jurisdictional boundaries in proceedings before local governments. It is estimated that there are approximately 200 municipally owned water and wastewater utilities that provide service to customers outside of its jurisdictional boundaries. Generally, utility rates are discussed and determined during workshops on a city’s budget during the summer months and finalized at a local government council or commission meeting in the fall before the October 31 end of fiscal year. Although not every council or commission meets every year on this issue, significant travel is anticipated.

In addition, outside legal counsel where conflicts arise within a residential rate class may require outside legal counsel. Thus, an additional appropriation would be necessary.

Based on the above discussion, Public Counsel estimated the following:

Personnel	\$818,950
Other Personnel Services – Contractual	214,800
Misc. office expenses including travel	<u>224,180</u>
TOTAL Incremental Budget Adjustment	\$1,257,930

VI. Technical Deficiencies:

None.

VII. Related Issues:

Municipal electric utilities do not have formal proceedings in which rates are set other than when a local government council or commission or the governing authority meets to approve such rates. Therefore, the Public Counsel does not have a clear point of entry at which to raise

concerns. Moreover, it is unclear in what forum the Public Counsel would challenge or appeal a rate or decision.

VIII. Statutes Affected:

This bill substantially amends section 350.0611 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on March 28, 2017:

The Committee Substitute removes the requirement that the Public Counsel represent residential ratepayers in rate structure proceedings before the Public Service Commission. The bill authorizes the Public Counsel to represent water and wastewater customers who live outside the jurisdictional boundaries in rate proceedings of a municipal water and wastewater utility. The requirement that the Public Counsel represent municipal and cooperative electric utility customers in ratemaking proceedings is removed.

- B. **Amendments:**

None.



359332

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/28/2017	.	
	.	
	.	
	.	

The Committee on Communications, Energy, and Public Utilities (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 44
and insert:
water and wastewater utilities. The Public Counsel shall have such powers as are necessary to carry out the duties of his or her office, including, but not limited to, the following specific powers:

(1) (a) To recommend to the commission or the counties, by petition, the commencement of any proceeding or action or to



359332

11 appear, in the name of the state or its citizens, in any
12 proceeding or action before the commission or the counties and
13 urge therein any position which he or she deems to be in the
14 public interest, whether consistent or inconsistent with
15 positions previously adopted by the commission or the counties,
16 and utilize therein all forms of discovery available to
17 attorneys in civil actions generally, subject to protective
18 orders of the commission or the counties which shall be
19 reviewable by summary procedure in the circuit courts of this
20 state; and

21 (b) To represent ratepayers living outside the
22 jurisdictional boundary of a local government that provides a
23 water and wastewater utility service to those ratepayers in a
24 proceeding in which rates for the local government water and
25 wastewater utility services are determined;

26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete lines 6 - 11

30 and insert:

31 water and wastewater utilities; authorizing the Public
32 Counsel to represent customers living outside the
33 jurisdictional boundaries of a local government water
34 and wastewater utility in ratesetting proceedings;

By Senator Broxson

1-00915-17

20171146__

1 A bill to be entitled
 2 An act relating to representation by the Public
 3 Counsel; amending s. 350.0611, F.S.; authorizing the
 4 Public Counsel to provide representation in
 5 proceedings of municipal and other government
 6 utilities; authorizing the Public Counsel to represent
 7 residential ratepayers in rate proceedings before the
 8 Public Service Commission determining rate structure;
 9 authorizing the Public Counsel to represent customers
 10 living outside the jurisdictional boundaries of a
 11 local government utility in ratesetting proceedings;
 12 providing an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Section 350.0611, Florida Statutes, is amended
 17 to read:
 18 350.0611 Public Counsel; duties and powers.—It shall be the
 19 duty of the Public Counsel to provide legal representation for
 20 the people of the state in proceedings before the commission,
 21 ~~and~~ in proceedings before counties pursuant to s. 367.171(8),
 22 and in proceedings of municipal and other local government
 23 utilities. The Public Counsel shall have such powers as are
 24 necessary to carry out the duties of his or her office,
 25 including, but not limited to, the following specific powers:
 26 (1) (a) To recommend to the commission or the counties, by
 27 petition, the commencement of any proceeding or action or to
 28 appear, in the name of the state or its citizens, in any
 29 proceeding or action before the commission or the counties and

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1-00915-17

20171146__

30 urge therein any position which he or she deems to be in the
 31 public interest, whether consistent or inconsistent with
 32 positions previously adopted by the commission or the counties,
 33 and utilize therein all forms of discovery available to
 34 attorneys in civil actions generally, subject to protective
 35 orders of the commission or the counties which shall be
 36 reviewable by summary procedure in the circuit courts of this
 37 state;
 38 (b) To represent residential ratepayers in a rate
 39 proceeding in which the commission determines the rate
 40 structure; and
 41 (c) To represent ratepayers living outside the
 42 jurisdictional boundary of a local government that provides a
 43 utility service to those ratepayers in a proceeding in which
 44 rates for the local government utility services are determined;
 45 (2) To have access to and use of all files, records, and
 46 data of the commission or the counties available to any other
 47 attorney representing parties in a proceeding before the
 48 commission or the counties;
 49 (3) In any proceeding in which he or she has participated
 50 as a party, to seek review of any determination, finding, or
 51 order of the commission or the counties, or of any hearing
 52 examiner designated by the commission or the counties, in the
 53 name of the state or its citizens;
 54 (4) To prepare and issue reports, recommendations, and
 55 proposed orders to the commission, the Governor, and the
 56 Legislature on any matter or subject within the jurisdiction of
 57 the commission, and to make such recommendations as he or she
 58 deems appropriate for legislation relative to commission

Page 2 of 3

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1-00915-17

20171146__

59 procedures, rules, jurisdiction, personnel, and functions; and

60 (5) To appear before other state agencies, federal
61 agencies, and state and federal courts in connection with
62 matters under the jurisdiction of the commission, in the name of
63 the state or its citizens.

64 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17
Meeting Date

SB1146
Bill Number (if applicable)

Topic Public Counsel

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Sr Legislative Aduccat

Address PO Box 1757

Phone 850 339 6211

Street

Tallah FL 32302

Email rohara@flcities

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: SB 1312

INTRODUCER: Senator Perry

SUBJECT: Construction

DATE: March 27, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.			CA	
3.			RC	

I. Summary:

SB 1312 allows manufacture and sale of solar energy systems in Florida that meet the standards established by a “recognized certifying entity,” defining that term to mean any entity that certifies equipment that collects and uses incident solar energy pursuant to standards established by the National Renewable Energy Laboratory (NREL). However, NREL does not set such standards.

Additionally, the bill does the following:

- It requires the Department of Business and Professional Regulation (DBPR) to use \$150,000.00 from the surcharge assessed on building permits to fund, for the 2017-2018 fiscal year, the University of Florida’s School of Construction Management’s continuation of the Construction Industry Workforce Taskforce (CIWT).
- It prohibits local enforcement agencies from requiring payment of any additional fees, charges, or expenses associated with applying for permits if proof of licensure and insurance is provided and recorded.
- It requires the Florida Building Commission to amend the Florida Building Code-Energy Conservation to: eliminate duplicative commissioning reporting requirements for HVAC and electrical systems; authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and prohibit the adoption of American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 90.1-2007 s. 9.4.1.1(g).
- It prohibits a county, municipality, special taxing district, public utility, or private utility from: requiring a separate water connection for a fire sprinkler system for a one-family or two-family dwelling if the dwelling’s original water connection can meet the needs of the sprinkler system; or, except under specified circumstances, charging a water or sewer rate for a larger water meter for a one-family or two-family dwelling because of the installation of a fire sprinkler system above that which is charged to a one-family and two-family dwelling with a base meter.

- It prohibits a local government from requiring an owner of a residence to obtain a permit to paint the residence, regardless of whether the residence is owned by a limited liability company.
- It requires the Department of Education, in conjunction with the Department of Economic Opportunity, to create a study to implement the recommendations of the Construction Industry Workforce Task Force dated January 20, 2017. The Department of Education must provide the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives before January 9, 2018.
- It requires CareerSource Florida, Inc., to fund construction training programs using existing federal funds awarded to the corporation for training, and to use the previous statewide Florida ReBuilds program as a implementation model for such programs.

The bill takes effect July 1, 2017.

II. Present Situation:

Solar Energy Systems

Florida Solar Energy Center

The statutes require that all solar energy systems¹ manufactured or sold in the state must meet standards established by the Florida Solar Energy Center (FSEC or center).² To accomplish this, the statutes require the FSEC to:

- Identify the most reliable designs and types of solar energy systems by consulting with people in research centers who are engaged in researching and experimenting with solar energy systems;
- Develop and promulgate standards for solar energy systems;
- Establish criteria for testing the performance of solar energy systems; and
- Maintain the necessary capability for testing or evaluating performance of solar energy systems.

FSEC may accept test results from other persons or entities if the tests are conducted according to the criteria established by the center and if the testing entity has no vested interest in the manufacture, distribution, or sale of solar energy systems.

FSEC also accepts standards and certifications for solar thermal products from the Solar Rating and Certification Program (SRCC)³ and the International Association of Plumbing and Mechanical Officials⁴ (IAPMO).⁵

¹ The term “solar energy systems” means equipment that collects and uses solar energy for water heating, space heating or cooling, or other applications which normally require a conventional source of energy such as petroleum products, natural gas, or electricity, and which performs primarily with solar energy. If solar energy is used only in a supplemental way, only those components that collect and transfer solar energy are included. Section 377.705(3)(b), F.S.

² Section 377.705(4), F.S.

³ SRCC produces solar thermal standards and certifications that are used globally. Solar Rating & Certification Corporation, *About Us – General*, <http://www.solar-rating.org/about/general.html>.

⁴ IAPMO certifies solar thermal products for use in North America. International Association of Plumbing and Mechanical Officials, *Solar Product Certification*, <http://www.iapmorg.org/Pages/SolarCertification.aspx> (last visited March 22, 2017).

⁵ Florida Solar Energy Center, *Testing and Certification*, <http://www.fsec.ucf.edu/En/certification-testing/index.htm>.

In 2009, the Office of Program Policy Analysis & Government Accountability (OPPAGA) reported that FSEC had a 2-year backlog for testing and certifying solar energy systems, adversely affecting both manufacturers and citizens.⁶ However, in 2011, OPPAGA reported that the FSEC had eliminated the backlog and testing times were down to 129 days due to streamlined testing procedures.⁷

National Renewable Energy Laboratory and Incident Solar Energy

The National Renewable Energy Laboratory (NREL) conducts research on solar photovoltaics, concentrating solar power, and solar grid and systems integration,⁸ and gives industry an opportunity to commercialize NREL-developed energy technologies and products through licensing options.⁹ However, NREL does not publish or set standards for solar energy systems.

Construction Industry Workforce Taskforce Recommendations

In 2016, the Legislature created the “Construction Industry Workforce Taskforce” (CIWT) to address the construction industry labor force shortage in the state.¹⁰ The CIWT proposed a list of recommendations to remediate the shortage of construction industry workers, including the following recommendations for the Legislature.

- Expand the definition of a Local Educational Agency (LEA), as used in apprenticeship programs in Florida, to include institutions other than public schools, such as private training organization (for profit and nonprofit), labor unions, industry trade associations, or other community based organizations.
- Create a legislative study to consider the appropriateness of moving apprenticeship programs from the Department of Education (DOE) to the Department of Economic Opportunity (DEO), and to address and clarify how current apprenticeships are funded from the state to the LEAs and what options the LEAs have in how they spend apprenticeship funding.
- Require DOE to recognize the National Center for Construction Education and Research (NCCER) curriculum, or other comparable national curriculum, as eligible for high school credits, college credits, and state supported scholarships (e.g., bright futures).
- Provide additional state Career and Technical Education (CTE) support to be directed towards K-12 programs so that “shop” or other construction related programs are added back into CTE programs.
- Extend for 4 additional years the “sunset” timeframe for CIWT and provide funding of \$100,000 per year and a mechanism to obtain matching funds to continue to coordinate

⁶ OPPAGA, Report No. 09-17, Florida Solar Energy Center Conducts Research and Development; Legislature Could Direct Fee Increases and Drop Certification Requirement, p. 1 (March 2009)
<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0917rpt.pdf>.

⁷ OPPAGA, Report No. 11-19, The Florida Solar Energy Center Eliminated the Backlog for Testing and Certification and Reduced its Reliance on State Funds, p. 1 (September 2011)
<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1119rpt.pdf>.

⁸ National Research Energy Laboratory, *Solar Research*, <https://www.nrel.gov/solar/>.

⁹ National Research Energy Laboratory, *Negotiable Technology Licensing*,
<https://www.nrel.gov/workingwithus/licensing.html>.

¹⁰ ch. 2016-129, Laws of Fla.

CIWT. Funding will be used to continue data collection and analysis, ongoing economic impact studies, and subsequent strategies, implementation planning, and follow up.

- Direct CareerSource Florida, Inc. (CSF) to set aside existing federal training dollars for construction training programs using the previous state-wide Florida reBuilds Initiative (FRI) as an implementation model.
- Provide funding from the existing Department of Business and Professional Regulation (DBPR) “Building Permit Surcharge” trust fund that is dedicated to better code compliance through the recruitment and training of a qualified workforce.
- Allow for an alternative instructor certification process through the DOE that does not require certification through an LEA.
- Create a joint legislative audit committee to review compliance regarding use of building permit fees beyond the scope of supporting the building department activities.
- Support The Building Officials Association of America, Inc. in the development of initiatives to further opportunities for potential building code enforcement professionals.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 377.705, F.S., on the Florida Solar Energy Center. The bill defines “recognized certifying entity” to mean any entity that certifies equipment that collects and uses incident solar energy pursuant to standards established by NREL. It exempts solar energy systems certified pursuant to NREL standards from the requirements, standards, and criteria for the performance of solar energy systems developed by FSEC. It allows manufacture and sale of solar energy systems in this state that meet the standards established by a recognized certifying entity. NREL does not set standards.

Section 2 amends s. 553.721, F.S., on the surcharge assessed on building permits at the rate of 1.5 percent of the permit fees. The surcharge is for DBPR’s use in administering and enforcing the Florida Building Code. The bill requires DBPR to fund \$150,000.00 in the 2017-2018 fiscal year to the University of Florida’s School of Construction Management for the continuation of the CIWT.

Section 3 amends s. 553.80, F.S., on building code enforcement to prohibit local enforcement agencies from requiring payment of any additional fees, charges, or expenses associated with applying for permits if proof of licensure and insurance is provided and recorded.

Section 4 creates s. 553.9081, F.S., to require the Florida Building Commission to amend the Florida Building Code-Energy Conservation to:

- Eliminate duplicative commissioning reporting requirements for HVAC and electrical systems;¹²

¹¹ University of Florida, FLORIDA CONSTRUCTION WORKFORCE TASKFORCE 9-10 (January 27, 2017), <http://www.cce.ufl.edu/projects/current-projects/construction-workforce-taskforce/reports/>.

¹² Section C408 of the 5th edition of the Code (Energy Conservation) requires a commercial building to receive a commissioning report prior to receiving a passing mechanical final inspection. The report covers testing of heating, ventilation, air conditioning, and lighting systems. The commissioning report includes:

- A commission plan which includes: a description of the activities to be accomplished, including the personnel intended to accomplish the activities; a listing of the equipment, appliances, or systems to be tested, and a

- Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and
- Prohibit the adoption of American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1-2007 s. 9.4.1.1(g).¹³

Section 5 amends s. 633.208, F.S., on minimum firesafety standards. The bill prohibits a county, municipality, special taxing district, public utility, or private utility from:

- Requiring a separate water connection for a fire sprinkler system for a one-family or two-family dwelling if the dwelling's original water connection can meet the needs of the sprinkler system; and
- Charging a water or sewer rate for a larger water meter for a one-family or two-family dwelling because of the installation of a fire sprinkler system above that which is charged to a one-family and two-family dwelling with a base meter. However, if the installation of fire sprinklers in a one-family or two-family dwelling requires the installation of a larger water meter, only the difference in actual cost between the base water meter and the larger water meter may be charged by the water utility provider.

Section 6 prohibits a local government from requiring an owner of a residence to obtain a permit to paint the residence, regardless of whether the residence is owned by a limited liability company.

Section 7 requires the Department of Education, in conjunction with the Department of Economic Opportunity, to create a study on how to implement the recommendations of the Construction Industry Workforce Task Force dated January 20, 2017. The Department of Education must provide the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives before January 9, 2018.

Section 8 CareerSource Florida, Inc. is required to fund construction training programs using existing federal funds awarded to the corporation for training, and to use the previous statewide Florida ReBuilds program as a implementation model for such programs.

The bill takes effect July 1, 2017.

description of the tests to be performed; the functions to be tested; conditions under which the test will be performed; and measurable criteria for performance.

- A preliminary report of tests and results, which must identify: deficiencies found during testing that have not been corrected; and tests that cannot be performed because of climate conditions and the conditions required to perform the tests.
- A final report which includes: test results; disposition of deficiencies found during testing; and a test procedure used for repeatable testing outcomes.

¹³ The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) is a society founded in 1894 that focuses on improving building systems, energy efficiency, indoor air quality, and refrigeration through research publishing, continuing education and standards. AHSRAE's energy conservation standard for buildings that are not low rise residential buildings is Standard 90.1-2016 (Standard 90). Section 9.4.1.1(g) of Standard 90 requires that the general lighting power in an enclosed area of a building must automatically reduce by 50 percent within twenty minutes of all occupants leaving the area.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may: reduce certain contractor permitting fees; reduce homeowners' water meter costs; and increase the purchases of residential fire sprinkler systems.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 377.705, 553.721, 553.80, 553.9081, and 633.208.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Perry

8-01582A-17

20171312__

1 A bill to be entitled
 2 An act relating to construction; amending s. 377.705,
 3 F.S.; revising legislative findings and intent;
 4 defining the term "recognized certifying entity";
 5 providing applicability of certain standards and
 6 criteria for solar energy systems manufactured or sold
 7 in the state; providing for solar energy systems
 8 manufactured or sold in the state to be certified
 9 pursuant to National Renewable Energy Laboratory
 10 standards; amending s. 553.721, F.S.; requiring the
 11 Department of Business and Professional Regulation to
 12 provide certain funds allocated to the University of
 13 Florida M. E. Rinker, Sr., School of Construction
 14 Management for specified purposes; amending s. 553.80,
 15 F.S.; prohibiting local enforcement agencies from
 16 charging certain fees; creating s. 553.9081, F.S.;
 17 requiring the Florida Building Commission to amend
 18 certain provisions of the Florida Building Code;
 19 amending s. 633.208, F.S.; prohibiting a county,
 20 municipality, special taxing district, public utility,
 21 or private utility from requiring a separate water
 22 connection or charging a specified water or sewage
 23 rate under certain conditions; prohibiting a local
 24 government from requiring a permit for painting a
 25 residence; requiring the Department of Education in
 26 conjunction with the Department of Economic
 27 Opportunity to create a study for specified purposes;
 28 requiring the Department of Education to submit the
 29 study to the Governor and the Legislature by a

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30 specified date; requiring CareerSource Florida, Inc.,
 31 to fund certain construction training programs;
 32 providing program requirements; providing an effective
 33 date.
 34

35 Be It Enacted by the Legislature of the State of Florida:

36
 37 Section 1. Section 377.705, Florida Statutes, is amended to
 38 read:

39 377.705 Solar Energy Center; development of solar energy
 40 standards.-

41 (1) SHORT TITLE.-This act shall be known and may be cited
 42 as the Solar Energy Standards Act of 1976.

43 (2) LEGISLATIVE FINDINGS AND INTENT.-

44 ~~(a) Because of increases in the cost of conventional fuel,~~
 45 ~~certain applications of solar energy are becoming competitive,~~
 46 ~~particularly when life-cycle costs are considered. It is the~~
 47 ~~intent of the Legislature in formulating a sound and balanced~~
 48 ~~energy policy for the state to encourage the development of an~~
 49 ~~alternative energy capability in the form of incident solar~~
 50 ~~energy.~~

51 ~~(b) Toward this purpose, The Legislature intends to provide~~
 52 ~~incentives for the production and sale of, and to set standards~~
 53 ~~for, solar energy systems. Such standards shall ensure that~~
 54 solar energy systems manufactured or sold within the state are
 55 effective and represent a high level of quality of materials,
 56 workmanship, and design.

57 (3) DEFINITIONS.-As used in this section, the term:

58 (a) "Center" means ~~is defined as~~ the Florida Solar Energy

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59 Center of the Board of Governors.

60 (b) "Recognized certifying entity" means any entity that
 61 certifies equipment that collects and uses incident solar energy
 62 pursuant to standards established by the National Renewable
 63 Energy Laboratory.

64 ~~(c)(b)~~ "Solar energy systems" ~~means is defined as~~ equipment
 65 which provides for the collection and use of incident solar
 66 energy for water heating, space heating or cooling, or other
 67 applications which normally require or would require a
 68 conventional source of energy such as petroleum products,
 69 natural gas, or electricity and which performs primarily with
 70 solar energy. In such other systems in which solar energy is
 71 used in a supplemental way, only those components which collect
 72 and transfer solar energy shall be included in this definition.

73 (4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE
 74 DISCLOSURE, SET TESTING FEES.—

75 (a) The center shall develop and adopt promulgate standards
 76 for solar energy systems manufactured or sold in this state
 77 based on the best currently available information and shall
 78 consult with scientists, engineers, or persons in research
 79 centers who are engaged in the construction of, experimentation
 80 with, and research of solar energy systems to properly identify
 81 the most reliable designs and types of solar energy systems.
 82 This paragraph does not apply to solar energy systems certified
 83 pursuant to National Renewable Energy Laboratory standards.

84 (b) The center shall establish criteria for testing
 85 performance of solar energy systems and shall maintain the
 86 necessary capability for testing or evaluating performance of
 87 solar energy systems. The center may accept results of tests on

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88 solar energy systems made by other organizations, companies, or
 89 persons ~~if when~~ such tests are conducted according to the
 90 criteria established by the center and ~~if when~~ the testing
 91 entity does not have a ~~has no~~ vested interest in the
 92 manufacture, distribution, or sale of solar energy systems. This
 93 paragraph does not apply to solar energy systems certified
 94 pursuant to National Renewable Energy Laboratory standards.

95 (c) The center shall be entitled to receive a testing fee
 96 sufficient to cover the costs of such testing. All testing fees
 97 shall be transmitted by the center to the Chief Financial
 98 Officer to be deposited in the Solar Energy Center Testing Trust
 99 Fund, which is ~~hereby~~ created in the State Treasury, and
 100 disbursed for the payment of expenses incurred in testing solar
 101 energy systems.

102 (d) All solar energy systems manufactured or sold in the
 103 state must meet the standards established by the center or by a
 104 recognized certifying entity ~~and shall display accepted results~~
 105 ~~of approved performance tests in a manner prescribed by the~~
 106 ~~center.~~

107 Section 2. Section 553.721, Florida Statutes, is amended to
 108 read:

109 553.721 Surcharge.—In order for the Department of Business
 110 and Professional Regulation to administer and carry out the
 111 purposes of this part and related activities, there is created a
 112 surcharge, to be assessed at the rate of 1.5 percent of the
 113 permit fees associated with enforcement of the Florida Building
 114 Code as defined by the uniform account criteria and specifically
 115 the uniform account code for building permits adopted for local
 116 government financial reporting pursuant to s. 218.32. The

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117 minimum amount collected on any permit issued shall be \$2. The
 118 unit of government responsible for collecting a permit fee
 119 pursuant to s. 125.56(4) or s. 166.201 shall collect the
 120 surcharge and electronically remit the funds collected to the
 121 department on a quarterly calendar basis for the preceding
 122 quarter and continuing each third month thereafter. The unit of
 123 government shall retain 10 percent of the surcharge collected to
 124 fund the participation of building departments in the national
 125 and state building code adoption processes and to provide
 126 education related to enforcement of the Florida Building Code.
 127 All funds remitted to the department pursuant to this section
 128 shall be deposited in the Professional Regulation Trust Fund.
 129 Funds collected from the surcharge shall be allocated to fund
 130 the Florida Building Commission and the Florida Building Code
 131 Compliance and Mitigation Program under s. 553.841. Funds
 132 allocated to the Florida Building Code Compliance and Mitigation
 133 Program shall be \$925,000 each fiscal year. The Florida Building
 134 Code Compliance and Mitigation Program shall fund the
 135 recommendations made by the Building Code System Uniform
 136 Implementation Evaluation Workgroup, dated April 8, 2013, from
 137 existing resources, not to exceed \$30,000 in the 2016-2017
 138 fiscal year. The department shall provide \$150,000 for the
 139 fiscal year 2017-2018 from surcharge funds available to the
 140 University of Florida M. E. Rinker, Sr., School of Construction
 141 Management for the continuation of the Construction Industry
 142 Workforce Task Force. Funds collected from the surcharge shall
 143 also be used to fund Florida Fire Prevention Code informal
 144 interpretations managed by the State Fire Marshal and shall be
 145 limited to \$15,000 each fiscal year. The State Fire Marshal

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146 shall adopt rules to address the implementation and expenditure
 147 of the funds allocated to fund the Florida Fire Prevention Code
 148 informal interpretations under this section. The funds collected
 149 from the surcharge may not be used to fund research on
 150 techniques for mitigation of radon in existing buildings. Funds
 151 used by the department as well as funds to be transferred to the
 152 Department of Health and the State Fire Marshal shall be as
 153 prescribed in the annual General Appropriations Act. The
 154 department shall adopt rules governing the collection and
 155 remittance of surcharges pursuant to chapter 120.
 156 Section 3. Paragraph (d) of subsection (7) of section
 157 553.80, Florida Statutes, is amended to read:
 158 553.80 Enforcement.—
 159 (7) The governing bodies of local governments may provide a
 160 schedule of reasonable fees, as authorized by s. 125.56(2) or s.
 161 166.222 and this section, for enforcing this part. These fees,
 162 and any fines or investment earnings related to the fees, shall
 163 be used solely for carrying out the local government's
 164 responsibilities in enforcing the Florida Building Code. When
 165 providing a schedule of reasonable fees, the total estimated
 166 annual revenue derived from fees, and the fines and investment
 167 earnings related to the fees, may not exceed the total estimated
 168 annual costs of allowable activities. Any unexpended balances
 169 shall be carried forward to future years for allowable
 170 activities or shall be refunded at the discretion of the local
 171 government. The basis for a fee structure for allowable
 172 activities shall relate to the level of service provided by the
 173 local government and shall include consideration for refunding
 174 fees due to reduced services based on services provided as

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175 prescribed by s. 553.791, but not provided by the local
 176 government. Fees charged shall be consistently applied.

177 (d) The local enforcement agency may not require the
 178 payment of any additional fees, charges, or expenses associated
 179 with:

180 1. Providing proof of licensure pursuant to chapter 489;
 181 2. Recording or filing a license issued pursuant to this
 182 chapter; ~~or~~

183 3. Providing, recording, or filing evidence of workers'
 184 compensation insurance coverage as required by chapter 440; or
 185 4. Applying for permits, if proof of licensure and
 186 insurance is provided and recorded.

187 Section 4. Section 553.9081, Florida Statutes, is created
 188 to read:

189 553.9081 Florida Building Code; required amendments.—The
 190 Florida Building Commission shall amend the Florida Building
 191 Code—Energy Conservation to:

192 (1) (a) Eliminate duplicative commissioning reporting
 193 requirements for HVAC and electrical systems; and
 194 (b) Authorize commissioning reports to be provided by a
 195 licensed design professional, electrical engineer, or mechanical
 196 engineer; and

197 (2) Prohibit the adoption of American Society of Heating,
 198 Refrigerating and Air-Conditioning Engineers Standard 90.1-2007
 199 s. 9.4.1.1(g).

200 Section 5. Subsection (8) of section 633.208, Florida
 201 Statutes, is amended to read:

202 633.208 Minimum firesafety standards.—
 203 (8) (a) The provisions of the Life Safety Code, as contained

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204 in the Florida Fire Prevention Code, do not apply to one-family
 205 and two-family dwellings. However, fire sprinkler protection may
 206 be permitted by local government in lieu of other fire
 207 protection-related development requirements for such structures.
 208 While local governments may adopt fire sprinkler requirements
 209 for one-family ~~one-~~ and two-family dwellings under this
 210 subsection, it is the intent of the Legislature that the
 211 economic consequences of the fire sprinkler mandate on home
 212 owners be studied before the enactment of such a requirement.
 213 After the effective date of this act, any local government that
 214 desires to adopt a fire sprinkler requirement on one-family ~~one-~~
 215 or two-family dwellings must prepare an economic cost and
 216 benefit report that analyzes the application of fire sprinklers
 217 to one-family ~~one-~~ or two-family dwellings or any proposed
 218 residential subdivision. The report must consider the tradeoffs
 219 and specific cost savings and benefits of fire sprinklers for
 220 future owners of property. The report must include an assessment
 221 of the cost savings from any reduced or eliminated impact fees
 222 if applicable, the reduction in special fire district tax,
 223 insurance fees, and other taxes or fees imposed, and the waiver
 224 of certain infrastructure requirements including the reduction
 225 of roadway widths, the reduction of water line sizes, increased
 226 fire hydrant spacing, increased dead-end roadway length, and a
 227 reduction in cul-de-sac sizes relative to the costs from fire
 228 sprinkling. A failure to prepare an economic report shall result
 229 in the invalidation of the fire sprinkler requirement to any
 230 one-family ~~one-~~ or two-family dwelling or any proposed
 231 subdivision. In addition, a local jurisdiction or utility may
 232 not charge any additional fee, above what is charged to a non-

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233 fire sprinklered dwelling, on the basis that a ~~one-family one-~~
234 or two-family dwelling unit is protected by a fire sprinkler
235 system.

236 (b)1. A county, municipality, special taxing district,
237 public utility, or private utility may not require a separate
238 water connection for a one-family or two-family dwelling fire
239 sprinkler system if the hydraulic design has proven the existing
240 connection is capable of supplying the needed hydraulic demand.

241 2. A county, municipality, special district, public
242 utility, or private utility may not charge a water or sewer rate
243 to a one-family or two-family dwelling that requires a larger
244 water meter solely due to the installation of fire sprinklers
245 above that which is charged to a one-family and two-family
246 dwelling with a base meter. If the installation of fire
247 sprinklers in a one-family or two-family dwelling requires the
248 installation of a larger water meter, only the difference in
249 actual cost between the base water meter and the larger water
250 meter may be charged by the water utility provider.

251 Section 6. A local government may not require an owner of a
252 residence to obtain a permit to paint such residence, regardless
253 of whether the residence is owned by a limited liability
254 company.

255 Section 7. The Department of Education, in conjunction with
256 the Department of Economic Opportunity, shall create a study to
257 implement the recommendations of the Construction Industry
258 Workforce Task Force dated January 20, 2017. The Department of
259 Education shall provide the study to the Governor, the President
260 of the Senate, and the Speaker of the House of Representatives
261 before January 9, 2018. The study shall address recommendations

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262 for:

263 (1) Expanding the definition of the term "local educational
264 agency," as used in apprenticeship programs, to include
265 nongovernmental entities, private training organizations,
266 industry trade associations, labor unions, or other community-
267 based organizations.

268 (2) Determining the appropriateness of transferring
269 apprenticeship programs from the Department of Education to the
270 Department of Economic Opportunity.

271 (3) Providing clarity regarding how current apprenticeship
272 programs are funded from the state to the local educational
273 agencies and what options such agencies have in how they spend
274 apprenticeship funding.

275 (4) Requiring the State Board of Education to accept the
276 curriculum developed by the National Center for Construction
277 Education and Research or other comparable national curriculum,
278 as satisfactory courses for high school credit, college credit,
279 or state-supported scholarships.

280 (5) Providing additional support to K-12 programs to ensure
281 construction-related education programs are offered through
282 existing career and technical education programs.

283 (6) Authorizing an alternative instructor certification
284 process through the Department of Education which does not
285 require certification through local educational agencies.

286 Section 8. CareerSource Florida, Inc., shall fund
287 construction training programs using existing federal funds
288 awarded to the corporation for training, and shall use the
289 previous statewide Florida ReBuilds program as a implementation
290 model for such programs.

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291

Section 9. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17

Meeting Date

HB 1312

Bill Number (if applicable)

Topic BUILDING Codes

Amendment Barcode (if applicable)

Name Kari Hebrank

Job Title _____

Address 113 E college Ave. suite 200

Phone 850-526-9824

Tallahassee

FL

Zip

Email khebrank@wilsonmgmt.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA HOME BUILDERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17

Meeting Date

1312

Bill Number (if applicable)

Topic Construction

Amendment Barcode (if applicable)

Name Rusty Payton

Job Title CEO

Address 2600 Centennial Place

Phone 567-1023

Street

Tallahassee

City

FL

State

32308

Zip

Email rpayton@fhba.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Home Builders Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

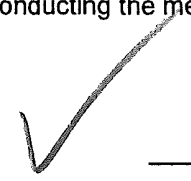
THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/58/17
Meeting Date

SB 1312
Bill Number (if applicable)



Topic Building Codes

Amendment Barcode (if applicable)

Name Richard Watson

Job Title Legislative Counsel

Address P.O. Box 10035

Phone 850 222-0008

Tallahassee FL 32302
City State Zip

Email rick@watsonandassociates.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Builders & Contractors of FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/12
Meeting Date

1312
Bill Number (if applicable)

Topic Construction

Amendment Barcode (if applicable)

Name JOFF SHARKEY

Job Title Capital Alliance Group

Address 156 E Allyn Ave

Phone 850 224 1660

RT FL 32301
City State Zip

Email jsharkey@capitalalliance.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Energy Freedom Coalition of America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: SB 1636
INTRODUCER: Senator Artiles
SUBJECT: Taxation of Internet Video Service
DATE: March 27, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.			AFT	
3.			AP	

I. Summary:

SB 1636 defines “internet video service” to mean “a subscription video programming service received by the end user customer by means of a wired or wireless Internet connection.” It exempts internet video service from the definition of “communications services,” and therefore from the communications services tax. It prohibits all public bodies from levying on or collecting from sellers or purchasers of Internet video service any tax, charge, fee, or other imposition on or with respect to the provision or purchase of Internet video service.

The bill makes conforming changes to cross-references.

The bill takes effect July 1, 2017.

II. Present Situation:

Florida Taxes on Sales of Video Services

Chapter 202, F.S., is the Communications Services Tax Simplification Law (CST). The chapter contains the following statement of legislative findings and intent.

It is declared to be a specific legislative finding that the creation of this chapter fulfills important state interests by reforming the tax laws to provide a fair, efficient, and uniform method for taxing communications services sold in this state. This chapter is essential to the continued economic vitality of this increasingly important industry because it restructures state and local taxes and fees to account for the impact of federal legislation, industry deregulation, and the multitude of providers offering functionally equivalent communications services in today’s marketplace. This chapter promotes the increased competition that accompanies deregulation by embracing a competitively neutral tax policy that will free consumers to choose a provider based on tax-neutral considerations.

This chapter further spurs new competition by simplifying an extremely complicated state and local tax and fee system. Simplification will lower the cost of collecting taxes and fees, increase service availability, and place downward pressure on price. Newfound administrative efficiency is demonstrated by a reduction in the number of returns that a provider must file each month. By restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the department, this chapter will ensure that the growth of the industry is unimpaired by excessive governmental regulation. The tax imposed pursuant to this chapter is a replacement for taxes and fees previously imposed and is not a new tax. The taxes imposed and administered pursuant to this chapter are of general application and are imposed in a uniform, consistent, and nondiscriminatory manner.¹

The chapter defines the term “communications services” to include the “transmission, conveyance, or routing of . . . video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.”² The term does not include Internet access service.³

The tax rate for communications services is 4.92 percent applied to the sales price of the communications service that originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state. The tax is calculated and collected on each retail sale of communications services. The gross receipts tax imposed by chapter 203, F.S., is calculated and collected on the same taxable transactions and remitted with the communications services tax.⁴ The gross receipts tax on these sales is 2.52 percent.⁵

Taxes on Internet Video in Other States

As technology changes and more and more cable customers “cut the cord” and go to video streaming video services like Netflix, Hulu, and Amazon Prime, revenues from taxes such as the CST and similar taxes are decreasing.⁶ In response, some states and cities are applying or considering applying these taxes to streaming video.⁷ Some customers are pushing back; in

¹ Section 202.105, F.S.

² Section 202.11(1), F.S.

³ Section 202.11(1)(h), F.S.

⁴ Section 202.12(1)(a), F.S.

⁵ Section 203.01(2)(b), F.S.

⁶ Coming Soon To A Television Near You: 'Netflix' Tax, November 16, 2016, Joe Harpaz, <https://www.forbes.com/sites/joeharpaz/2016/11/16/coming-soon-to-a-television-near-you-netflix-tax/#2d0a709769f2> (Last accessed March 23, 2017).

⁷ On June 9, 2015, Chicago extended its entertainment tax to apply to streaming video services. *See, e.g.,* This Lawsuit Could Have a Big Impact on Your Netflix Bill, <http://www.attn.com/stories/13076/chicago-is-getting-sued-over-video-streaming-tax> (Last accessed March 23, 2017). The Pennsylvania legislature expanded their 6-percent sales tax law to the purchase of digital products delivered to a customer electronically, digitally or by streaming. Pennsylvania Department of Revenue, General Tax Information, Tax Types and Information <http://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/Pages/Sales%20Use%20and%20Hotel%20Occupancy%20Tax/Digital-Products.aspx#.WNP4APnys2w> (Last accessed March 23, 2017). Pasadena, California has reinterpreted a tax ordinance to apply to video programming regardless of the technology used to deliver such

Chicago, they sued the city challenging its tax interpretation.⁸ One author has described the situation as follows.

Tax authorities around the world are very much aware of the growth of streaming video because it is both a tremendous opportunity for new revenue and – if they are too slow to enact new legislation – a huge revenue loss. Ultimately, if the world shifts away from traditional broadcast distribution of video content, which has an elaborate mix of hefty telecommunications taxes associated with it, the tax authorities that receive these taxes could see their share of the pie decrease measurably.

Seeing this tide shift coming, some regional and municipal tax authorities have worked quickly to push through so-called “Netflix taxes,” which have not been received so well. The most famous of these was in Chicago, where irate residents recently sued the city arguing that it did not have the authority to tax the cloud. Pasadena, CA city officials are also reportedly considering a streaming video tax that will use existing municipal utility tax codes that were initially designed for cable television subscriptions.⁹

Put very basically, supporters focus on the service provided (video is video) while opponents focus on the technology or business model used to provide the service or on arguments of discriminatory pricing.

Applicable Federal Law

The allegations of discriminatory taxation are based on the Federal Internet Tax Freedom Act (act).¹⁰ The act prohibits any state or political subdivision from imposing taxes on Internet¹¹ access or multiple or discriminatory taxes on electronic commerce.¹² The act defines the term

programming, applying the rate for cable services to all video programming. Video-Streaming Companies See the “Netflix Tax” Going into Effect Around the Country to the Dismay of “Cord Cutters”, BIZLITNEWS BLOG, Melonie S. Wright November 1, 2016, <http://www.butlersnow.com/2016/11/video-streaming-companies-see-netflix-tax-going-effect-around-country-dismay-cord-cutters/> (Last accessed March 23, 2017); and Time to Tax Netflix? Some Cities, and a State, Think So, January 03, 2017, Elaine S. Povich, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/01/03/time-to-tax-netflix-some-cities-and-a-state-think-so> (Last accessed March 23, 2017). The Iowa Department of Revenue ruled that Amazon Prime Membership is subject to sales and use tax as “pay television.” idor rules that internet video streaming is subject to sales/use tax. is it really?, 02/13/2017, Cody Edwards, <https://www.dickinsonlaw.com/blogs-articles/iowa-tax-cafe-blog/2017/02/13/idor-rules-that-internet-video-streaming-is-subject-to-salesuse-tax-is-it-really> (Last accessed March 23, 2017).

⁸ See, e.g., This Lawsuit Could Have a Big Impact on Your Netflix Bill, <http://www.attn.com/stories/13076/chicago-is-getting-sued-over-video-streaming-tax> (Last accessed March 23, 2017).

⁹ Coming Soon To A Television Near You: 'Netflix' Tax, November 16, 2016, Joe Harpaz, <https://www.forbes.com/sites/joeharpaz/2016/11/16/coming-soon-to-a-television-near-you-netflix-tax/#2d0a709769f2> (Last accessed March 23, 2017).

¹⁰ 47 USC sections 1100-1109 <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title47-section151&num=0&edition=prelim> (Last accessed March 23, 2017).

¹¹ The act defines “internet” to mean collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio. *Id.* section 1105(4), F.S.

¹² The act defines “electronic commerce” to mean any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access. *Id.* section 1105(3), F.S.

“discriminatory tax” to mean any tax imposed by a state or political subdivision thereof on electronic commerce that:

- Is not generally imposed and legally collectible by such state or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;
- Is not generally imposed and legally collectible at the same rate by such state or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;
- Imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or
- Establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means.¹³

III. Effect of Proposed Changes:

The bill defines “internet video service” to mean “a subscription video programming service received by the end user customer by means of a wired or wireless Internet connection.” It exempts internet video service from the definition of “communications services,” and therefore from the communications services tax. It prohibits all public bodies from levying on or collecting from sellers or purchasers of Internet video service any tax, charge, fee, or other imposition on or with respect to the provision or purchase of Internet video service.

In creating the definition of the term internet video service, the bill creates a new subsection in the lengthy definitions section, requiring renumbering of 18 existing subsections. Sections 3, 4, and 5 make conforming changes to existing cross-references to one of those subsections.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1,

¹³ *Id.* section 1105(2), F.S.

1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{14,15,16}

The bill may be subject to a challenge that it reduces the authority of local governments to raise revenues in that it effectively prohibits an interpretation of “communications services” that would include internet video services, thereby preventing any application of the communications services tax and reducing revenues at both the state and local levels. CST taxing authority did not exist on February 1, 1989, however the CST replaced a number of taxes and fees, some of which likely did exist on that date. The application of this provision is uncertain. The amount of revenue “lost” is not known, so the application of the insignificant impact provision is also uncertain. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

By exempting internet video services from the CST, the bill prevents any future interpretation of the CST statutes that would treat those services as equivalent to other video communications services, and thus prevents changing tax policy to comport with changes in technology. As people shift from obtaining video services from service providers subject to the CST to those that are not, the state and local governments will lose tax revenues. The amount of the loss is unknown.

B. Private Sector Impact:

Providers of internet video services will have a competitive edge over video services providers, whose services are subject to the CST. Internet video services customers will avoid paying a tax on these services. Companies providing non-Internet video services will lose more customers.

¹⁴ FLA. CONST. art. VII, s. 18(d).

¹⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

¹⁶ Based on the Demographic Estimating Conference’s population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

C. Government Sector Impact:

Both the state and local governments will lose CST revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 202.11, 202.24, 202.26, 212.05, and 610.118.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Artiles

40-01413-17

20171636__

A bill to be entitled

An act relating to taxation of Internet video service; amending s. 202.11, F.S.; redefining the term "communications services" to exclude Internet video service; defining the term "Internet video service"; redefining the term "video service" to exclude Internet video service; amending s. 202.24, F.S.; prohibiting, except under certain circumstances, public bodies from levying on or collecting from sellers or purchasers of Internet video services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of Internet video services; amending ss. 202.26, 212.05, and 610.118, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) is added to subsection (1) of section 202.11, Florida Statutes, present subsections (7) through (24) of that section are redesignated as subsections (8) through (25), respectively, a new subsection (7) is added to that section, and present subsection (24) of that section is amended, to read:

202.11 Definitions.—As used in this chapter, the term:

(1) "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(i) Internet video service.

(7) "Internet video service" means a subscription video programming service received by the end user customer by means of a wired or wireless Internet connection.

(25)~~(24)~~ "Video service" means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service or Internet video service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

Section 2. Paragraph (a) of subsection (2) of section 202.24, Florida Statutes, is amended to read:

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59 202.24 Limitations on local taxes and fees imposed on
60 dealers of communications services.-

61 (2) (a) Except as provided in paragraph (c), each public
62 body is prohibited from:

63 1. Levying on or collecting from dealers or purchasers of
64 communications services any tax, charge, fee, or other
65 imposition on or with respect to the provision or purchase of
66 communications services.

67 2. Requiring any dealer of communications services to enter
68 into or extend the term of a franchise or other agreement that
69 requires the payment of a tax, charge, fee, or other imposition.

70 3. Adopting or enforcing any provision of any ordinance or
71 agreement to the extent that such provision obligates a dealer
72 of communications services to charge, collect, or pay to the
73 public body a tax, charge, fee, or other imposition.

74 4. Levying on or collecting from sellers or purchasers of
75 Internet video service any tax, charge, fee, or other imposition
76 on or with respect to the provision or purchase of Internet
77 video service.

78

79 Municipalities and counties may not negotiate those terms and
80 conditions related to franchise fees or the definition of gross
81 revenues or other definitions or methodologies related to the
82 payment or assessment of franchise fees on providers of video
83 services.

84 Section 3. Paragraph (j) of subsection (3) of section
85 202.26, Florida Statutes, is amended to read:

86 202.26 Department powers.-

87 (3) To administer the tax imposed by this chapter, the

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88 department may adopt rules relating to:

89 (j) The types of books and records kept in the regular
90 course of business which must be available during an audit of a
91 dealer's books and records when the dealer has made an
92 allocation or attribution pursuant to the definition of sales
93 prices in s. 202.11(14)(b)8. ~~s. 202.11(13)(b)8.~~ and examples of
94 methods for determining the reasonableness thereof. Books and
95 records kept in the regular course of business include, but are
96 not limited to, general ledgers, price lists, cost records,
97 customer billings, billing system reports, tariffs, and other
98 regulatory filings and rules of regulatory authorities. Such
99 records may be required to be made available to the department
100 in an electronic format when so kept by the dealer. The dealer
101 may support the allocation of charges with books and records
102 kept in the regular course of business covering the dealer's
103 entire service area, including territories outside this state.
104 During an audit, the department may reasonably require
105 production of any additional books and records found necessary
106 to assist in its determination.

107 Section 4. Paragraph (e) of subsection (1) of section
108 212.05, Florida Statutes, is amended to read:

109 212.05 Sales, storage, use tax.-It is hereby declared to be
110 the legislative intent that every person is exercising a taxable
111 privilege who engages in the business of selling tangible
112 personal property at retail in this state, including the
113 business of making mail order sales, or who rents or furnishes
114 any of the things or services taxable under this chapter, or who
115 stores for use or consumption in this state any item or article
116 of tangible personal property as defined herein and who leases

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117 or rents such property within the state.

118 (1) For the exercise of such privilege, a tax is levied on
119 each taxable transaction or incident, which tax is due and
120 payable as follows:

121 (e)1. At the rate of 6 percent on charges for:

122 a. Prepaid calling arrangements. The tax on charges for
123 prepaid calling arrangements shall be collected at the time of
124 sale and remitted by the selling dealer.

125 (I) "Prepaid calling arrangement" has the same meaning as
126 provided in s. 202.11.

127 (II) If the sale or recharge of the prepaid calling
128 arrangement does not take place at the dealer's place of
129 business, it shall be deemed to have taken place at the
130 customer's shipping address or, if no item is shipped, at the
131 customer's address or the location associated with the
132 customer's mobile telephone number.

133 (III) The sale or recharge of a prepaid calling arrangement
134 shall be treated as a sale of tangible personal property for
135 purposes of this chapter, regardless of whether a tangible item
136 evidencing such arrangement is furnished to the purchaser, and
137 such sale within this state subjects the selling dealer to the
138 jurisdiction of this state for purposes of this subsection.

139 (IV) No additional tax under this chapter or chapter 202 is
140 due or payable if a purchaser of a prepaid calling arrangement
141 who has paid tax under this chapter on the sale or recharge of
142 such arrangement applies one or more units of the prepaid
143 calling arrangement to obtain communications services as
144 described in s. 202.11(10)(b)3. ~~s. 202.11(9)(b)3.~~, other
145 services that are not communications services, or products.

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146 b. The installation of telecommunication and telegraphic
147 equipment.

148 c. Electrical power or energy, except that the tax rate for
149 charges for electrical power or energy is 4.35 percent. Charges
150 for electrical power and energy do not include taxes imposed
151 under ss. 166.231 and 203.01(1)(a)3.

152 2. Section 212.17(3), regarding credit for tax paid on
153 charges subsequently found to be worthless, is equally
154 applicable to any tax paid under this section on charges for
155 prepaid calling arrangements, telecommunication or telegraph
156 services, or electric power subsequently found to be
157 uncollectible. As used in this paragraph, the term "charges"
158 does not include any excise or similar tax levied by the Federal
159 Government, a political subdivision of this state, or a
160 municipality upon the purchase, sale, or recharge of prepaid
161 calling arrangements or upon the purchase or sale of
162 telecommunication, television system program, or telegraph
163 service or electric power, which tax is collected by the seller
164 from the purchaser.

165 Section 5. Paragraph (a) of subsection (1) of section
166 610.118, Florida Statutes, is amended to read:

167 610.118 Impairment; court-ordered operations.—

168 (1) If an incumbent cable or video service provider is
169 required to operate under its existing franchise and is legally
170 prevented by a lawfully issued order of a court of competent
171 jurisdiction from exercising its right to terminate its existing
172 franchise pursuant to the terms of s. 610.105, any
173 certificateholder providing cable service or video service in
174 whole or in part within the service area that is the subject of

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 175 the incumbent cable or video service provider's franchise shall,
 176 for as long as the court order remains in effect, comply with
 177 the following franchise terms and conditions as applicable to
 178 the incumbent cable or video service provider in the service
 179 area:

180 (a) The certificateholder shall pay to the municipality or
 181 county:

182 1. Any prospective lump-sum or recurring per-subscriber
 183 funding obligations to support public, educational, and
 184 governmental access channels or other prospective franchise-
 185 required monetary grants related to public, educational, or
 186 governmental access facilities equipment and capital costs.
 187 Prospective lump-sum payments shall be made on an equivalent
 188 per-subscriber basis calculated as follows: the amount of the
 189 prospective funding obligations divided by the number of
 190 subscribers being served by the incumbent cable service provider
 191 at the time of payment, divided by the number of months
 192 remaining in the incumbent cable or video service provider's
 193 franchise equals the monthly per subscriber amount to be paid by
 194 the certificateholder until the expiration or termination of the
 195 incumbent cable or video service provider's franchise; and

196 2. If the incumbent cable or video service provider is
 197 required to make payments for the funding of an institutional
 198 network, the certificateholder shall pay an amount equal to the
 199 incumbent's funding obligations but not to exceed 1 percent of
 200 the sales price, as defined in s. 202.11 ~~s. 202.11(13)~~, for the
 201 taxable monthly retail sales of cable or video programming
 202 services the certificateholder received from subscribers in the
 203 affected municipality or county. All definitions and exemptions

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 204 under chapter 202 apply in the determination of taxable monthly
 205 retail sales of cable or video programming services.
 206 Section 6. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/26/17
Meeting Date

§ 501636
Bill Number (if applicable)

Topic Taxation of streaming internet vide

Amendment Barcode (if applicable)

Name Jeremy Kudon

Job Title Partner

Address 51 W. 52nd St.

Phone 917.327.5243

Street

NY

NY

10014

City

State

Zip

Email jkudon@erick.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Sling TV

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/17

Meeting Date

1634

Bill Number (if applicable)

Topic Examination of Internet Video

Amendment Barcode (if applicable)

Name Charles Dudley

Job Title General Counsel

Address 108 S. Monroe St.

Phone 850 681 0024

Street

Tallahassee FL 32301

Email cd@dudleyfla.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Cable Telecomm. Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-28-17
Meeting Date

1636
Bill Number (if applicable)

Topic CST

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Senior Legislative Advocate

Address PO BOX 1757

Phone 850-701-3621

Street

Tallahassee

City

FL

State

32302

Zip

Email ahughes@flcities.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

CourtSmart Tag Report

Room: SB 301
Caption: Senate Communications, Energy and Public Utilities

Case No.:

Type:
Judge:

Started: 3/28/2017 2:59:54 PM

Ends: 3/28/2017 4:02:50 PM

Length: 01:02:57

2:59:56 PM Meeting called to order
3:00:29 PM Meeting called to order
3:00:33 PM Meeting called to order
3:00:41 PM prayer
3:00:47 PM Pledge to the Flag
3:01:34 PM waiting for quorum
3:01:42 PM roll call quorum present
3:01:55 PM tab 1 sb 446
3:02:05 PM S Passidomo presents bill
3:03:02 PM S Passidomo presents bill
3:03:05 PM no questions
3:03:19 PM appearanceSweet
3:03:29 PM Bowen
3:03:33 PM Kershner
3:03:50 PM Roll call on bill 446
3:03:58 PM reports favorable
3:04:05 PM Tab 3 bill 776
3:04:43 PM A 366666
3:04:57 PM Senator Explains amendment
3:05:19 PM Senator Clemens with question
3:05:47 PM Senator Baxley responds
3:06:40 PM Waive
3:06:50 PM Waive closing
3:06:58 PM Waive closing
3:07:04 PM Amendment adopted
3:07:17 PM Mike Bjorkilund waive in support
3:07:24 PM Senator Clemens with comments
3:08:18 PM Sen Baxley closes on bill
3:08:29 PM Roll Call on SB 776
3:08:47 PM Bill reported favorably
3:09:24 PM Tab 4 SB 1146. Senator Broxson to explain amendment prior to bill
3:09:39 PM no questions on amendment
3:09:44 PM close on amendment
3:09:53 PM Amendment is adopted
3:10:09 PM Rebecca Ohara - against
3:10:47 PM Senator Broxson closes on bill
3:11:38 PM Roll call on 1146
3:11:49 PM Bill is reported favorably
3:11:58 PM Senator Stargel chair
3:12:56 PM Senator Artiles presents bill 1636
3:13:11 PM Amber Hughes of Florida League of Cities
3:14:03 PM Charles Dudley of FL Cable Telecommunication Association
3:14:55 PM Jeremy Kudon sling TV
3:19:47 PM Sen Clemens comment
3:20:10 PM Debate - Sen Clemens with clarification
3:21:24 PM Sen Artiles closes on bill 1636
3:21:46 PM Roll Call on SB 1636
3:22:03 PM SB 1636 reported favorable
3:22:15 PM Chair turned over to S Artiles
3:22:36 PM Senator Montford now chair
3:22:52 PM Senator Perry explains SB 1312 Tab 5
3:24:03 PM S Montford

3:24:13 PM Question from S Clemens
3:24:22 PM S Perry responds
3:24:50 PM S Clemens with further question
3:24:57 PM S Perry responds
3:25:19 PM Appearance
3:25:25 PM Richard Watson waive support
3:25:33 PM Rusty Payton in support
3:25:41 PM Kari Herank in support
3:25:49 PM Jeff Sharkey in support
3:25:57 PM S Perry waive close
3:26:04 PM Roll call on SB 1312
3:26:18 PM Bill 1312 reports favorable
3:26:25 PM Tab 2 SB 456
3:27:06 PM Senator Rodriquez explains the bill
3:27:39 PM No Questions
3:27:52 PM Amendment 366666
3:28:07 PM Rodriquez explains the amendment
3:28:11 PM Any questions
3:28:24 PM no Questions
3:28:32 PM Garrett
3:28:49 PM Amendment is adopted
3:29:59 PM Rodriquez with response to S Clemens question
3:30:09 PM S Clemens with follow up question
3:30:34 PM S Rodriquez with response
3:31:08 PM Senator Stargel with question
3:31:29 PM S Rodriquez with response
3:32:22 PM S Young with question
3:32:37 PM S Rodriquez response
3:32:57 PM S Young with follow up
3:33:07 PM S Rodriquez response
3:33:23 PM S Clemens follow up on S Young question
3:33:33 PM S Rodriquez response
3:34:16 PM S Clemens
3:34:38 PM S Rodriquez
3:34:42 PM S Clemson
3:35:14 PM follow up discussion with Sen Clemens and S Rodriquez
3:35:50 PM Sen Stargel
3:35:57 PM Sen Young with question
3:36:23 PM Sen Rodriquez response
3:36:35 PM S Young follow up
3:36:47 PM s Rodriquez
3:37:57 PM S Young final Follow up
3:38:23 PM S Rodriquez response
3:39:04 PM No further question
3:39:58 PM Michael Hezbere Director of Development
3:40:27 PM Jacksonville representing Sleiman Enterrpises
3:40:46 PM Waive in support
3:40:46 PM Waive in support
3:40:47 PM Waive in support
3:40:47 PM Waive in support
3:40:48 PM Waive in support
3:41:45 PM Niki Moncrief of Florida Consention Voters
3:42:16 PM Terry Deason consultant of IOU Utilities
3:46:53 PM S Clemens with question
3:47:05 PM Deason responds
3:47:46 PM Janet Bowmen
3:47:53 PM Meilssa Banks
3:48:52 PM Gerrit Van Leint
3:49:30 PM Richard Pensky Florida Solar Energy Industry Association in support
3:52:56 PM Jeff Sharkey waive in support
3:54:07 PM Kim Ross President of Rethink Energy Florida of Tallahassee Florida
3:55:33 PM Commissioner Danielle Levine Cova of Miami Dade county district 8

3:58:37 PM No further appearance
3:58:49 PM Back on the Bill for debate
3:58:59 PM Senator Clemens with debate
4:00:38 PM S Rodriguez recognized to close on the bill
4:01:31 PM request to temporarily postpone this bill SB 456
4:02:12 PM request to temporarily postpone this bill SB 456
4:02:20 PM Vote after