



# Village of Biscayne Park Commission Agenda Report

**Village Commission Meeting Date:** August 4, 2015

**Subject:** Resolution 2015-41: 2015 Florida League of Cities Proposed By-Law Amendment and Proposed Resolutions

**Prepared By:** Heidi Siegel, AICP, Village Manager

**Sponsored By:** Staff

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## **BACKGROUND**

At its July meeting, the Village Commission selected Mayor David Coviello to serve as a voting delegate at the 89<sup>th</sup> Annual Florida League of Cities Conference.

The attached packet includes a proposed amendment to the Florida League of Cities By-laws and proposed Resolutions that are to be voted on by the voting delegates at the Business Session.

These items are provided to the Village Commission for their consensus.

## **ATTACHMENT**

- Resolution 2015-41
- Florida League of Cities 2015 Proposed By-law Amendments and Proposed Resolutions

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2  
3 **RESOLUTION NO. 2015-41**  
4

5 **A RESOLUTION OF THE VILLAGE**  
6 **COMMISSION OF THE VILLAGE OF**  
7 **BISCAYNE PARK, FLORIDA,**  
8 **SUPPORTING THE PROPOSED**  
9 **RESOLUTIONS FOR CONSIDERATION BY**  
10 **THE RESOLUTIONS COMMITTEE BEING**  
11 **PRESENTED AT THE LEAGUE'S 89<sup>TH</sup>**  
12 **ANNUAL CONFERENCE ON AUGUST 13-**  
13 **15, 2015; PROVIDING FOR AN EFFECTIVE**  
14 **DATE**  
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16  
17 WHEREAS, the Resolutions Committee of the Florida League of Cities is charged with  
18 considering official resolutions relating principally to constitutional, congressional and  
19 commemorative issues; and,  
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21 WHEREAS, resolutions have been proposed that are being submitted for consideration  
22 by the Committee during the League's 89<sup>th</sup> Annual Conference being held on August 13-15,  
23 2015, which are then forwarded to the League's membership to vote on with the committee's  
24 recommendation; and,  
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26 WHEREAS, Mayor David Coviello was selected as the voting delegate to represent the  
27 Village of Biscayne Park; and,  
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29 WHEREAS, the Village Commission of the Village of Biscayne Park support the  
30 proposed resolutions for consideration by the Review Committee of the Florida League of  
31 Cities.  
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33  
34 NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF  
35 THE VILLAGE OF BISCAYNE PARK, FLORIDA:  
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37  
38 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as  
39 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.  
40

41 **Section 2.** The Village Commission of the Village of Biscayne Park support the  
42 proposed resolutions for consideration by the Review Committee of the Florida League of  
43 Cities during the League's 89<sup>th</sup> Annual Conference being held on August 13-15, 2015.  
44

45 **Section 3.** This Resolution shall become effective upon adoption.  
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47

1 PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

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3  
4 **The foregoing resolution upon being**  
5 **put to a vote, the vote was as follows:**

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7 \_\_\_\_\_  
8 David Coviello, Mayor

Mayor Coviello: \_\_\_\_  
Vice Mayor Anderson: \_\_\_\_  
Commissioner Jonas: \_\_\_\_  
Commissioner Ross: \_\_\_\_  
Commissioner Watts: \_\_\_\_

9  
10 Attest:

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12  
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14 \_\_\_\_\_  
15 Maria C. Camara, Village Clerk

16  
17 Approved as to form:

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21 \_\_\_\_\_  
22 John J. Hearn, Village Attorney  
23



# Florida League of Cities, Inc.

TO: Key Officials

FROM: Michael Sittig, Executive Director 

DATE: July 14, 2015

SUBJECT: **PROPOSED AMENDMENT TO FLORIDA LEAGUE OF CITIES' BY-LAWS**

As required by Article VII of the charter of the Florida League of Cities, this letter serves as official notification of a proposed amendment to the League's by-laws.

Article II – Board of Directors, Section 5C(2): Each district shall be apportioned into one or more Board seats representing a reasonably equal municipal population within the several districts for each individual Board seat, as determined by the official federal decennial census, but excluding the population of the ten (10) most populous cities in the state.

Districts established pursuant to Subsections (B) & (C) of this Article shall take effect no later than the second annual membership meeting following each official federal decennial census. The Board of Directors may reapportion Board seats after the initial reapportionment to address federal census population corrections that result in unintended consequences.

The Board of Directors of the Florida League of Cities convened the 2014/2015 Governance Committee to consider whether minor changes in municipal population should affect the reapportionment of board seats after they have been apportioned and whether the reapportionment process should

take place more often than once every 10 years. Following considerable discussion, the Governance Committee recommended the Board ask the membership to amend the League's by-laws as presented above.

Consideration of this by-laws change will take place during the regular annual business session of the Florida League of Cities on Saturday, August 15, 2015 at 9:00 a.m. at the World Center Marriott in Orlando, Florida. This business session will be held in conjunction with the Annual Conference of the Florida League of Cities scheduled at the same location August 13 - 15, 2015.

Please advise the members of your governing body of this proposal (especially your Florida League of Cities' voting delegate). We have attached a voting delegate form if you need one.

If you have any questions please feel free to call me at 1-800-342-8112. Thank you for your assistance in this matter. We look forward to seeing you and other representatives from your city at our annual conference next month.

Attachment

cc: FLC Board of Directors



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## Memorandum

To: Key Officials

From: Michael Sittig, Executive Director

Re: Transmittal of the 2015 Proposed Resolutions

Date: July 15, 2015

Attached are the proposed resolutions that are being submitted for consideration by the FLC Resolutions Committee, which will convene on Friday, August 14, from 8:30 a.m. until 9:30 a.m., in conjunction with the League's Annual Conference at the World Center Marriott, Orlando, Florida.

The Resolutions Committee is charged with considering official resolutions relating principally to constitutional, congressional and commemorative issues. The committee will review and vote on each resolution and then forward the committee's recommendations to the League's membership at the Business Session, which will take place on Saturday, August 15, at 9:00 a.m.

It is at the Business Session where the League's voting delegates vote on the Report of the Resolutions Committee. **Please forward this packet to your city's voting delegate in preparation for the Business Session.** Please note proposed resolutions are subject to change by the Resolutions Committee.

Proposed resolutions may also be submitted directly to the Resolutions Committee or the Business Session. These resolutions will be considered late-filed and will require a favorable two-thirds vote of the committee or the voting delegates, respectively, in order for them to be considered. Therefore, additional resolutions may be proposed at the conference.

Should you have any questions, please contact Allison Payne at the League office at (850) 701-3602 or e-mail: [apayne@flcities.com](mailto:apayne@flcities.com).

Attachments



**89th Annual Conference**  
**August 13-15, 2015**

**Proposed  
Resolutions**

**World Center Marriott  
8701 World Center Drive  
Orlando, FL 32821**

**Phone: (407) 239-4200**

# 2015 RESOLUTIONS COMMITTEE

**Chair:** Mayor Susan Haynie, City of Boca Raton  
First Vice President, Florida League of Cities

**Vice Chair:** Commissioner Phillip Walker, City of Lakeland

## LOCAL AND REGIONAL LEAGUE REPRESENTATIVES

Louie Davis, Mayor, City of Waldo  
Past President, Alachua County League of Cities

Billy Rader, Commissioner, City of Panama City  
President, Bay County League of Cities

Greg Ross, Mayor, City of Cooper City  
First Vice President, Broward County League of Cities

Michael Holland, Vice Mayor, City of Eustis  
President, Lake County League of Cities

Jack Duncan, Mayor, Town of Longboat Key  
Immediate Past President, Manasota League of Cities

Jon Burgess, Councilman, City of Homestead  
President, Miami-Dade County League of Cities

Jim Renninger, Councilman, Town of Orange Park  
President, Northeast Florida League of Cities

Ruth Sykes, Councilmember, City of Mary Esther  
President, Northwest Florida League of Cities

Shannon Hayes, Council Member, City of Crestview  
Past President, Okaloosa County League of Cities

Dawn Pardo, Council Chair, City of Riviera Beach  
President, Palm Beach County League of Cities

Collins Smith, Vice Mayor, City of Mulberry  
President, Ridge League of Cities

Mick Denham, Vice Mayor, City of Sanibel  
President, Southwest Florida League of Cities

William Capote, Mayor, City of Palm Bay  
Second Vice President, Space Coast League of Cities

Jack Nazario, Vice Mayor, City of Belleair Bluffs  
President, Suncoast League of Cities

Jim Catron, Mayor Pro Tem, City of Madison  
President, Suwannee River League of Cities

Richard Gillmor, Mayor, City of Sebastian  
President, Treasure Coast League of Cities

Ray Bagshaw, Mayor, City of Edgewood  
President, Tri-County League of Cities

Bill Partington, Deputy Mayor, City of Ormond Beach  
President, Volusia League of Cities

## **FLC POLICY COMMITTEE REPRESENTATIVES**

Stephany Eley, Councilmember, City of West Melbourne  
Chair, Energy, Environment and Natural Resources Committee

Jim Norton, Commissioner, City of Weston  
Chair, Finance, Taxation & Personnel Committee

Prebble Ramswell, Councilwoman, City of Destin  
Chair, Growth Management and Economic Affairs Committee

Jose Alvarez, Commissioner, City of Kissimmee  
Chair, Transportation and Intergovernmental Relations Committee

Dan Daley, Commissioner, City of Coral Springs  
Chair, Urban Administration Committee

Teresa Heitmann, Council Member, City of Naples  
Chair, Federal Action Strike Team

## **MUNICIPAL ASSOCIATION REPRESENTATIVES**

Greg Yantorno, CBO, Building Official, Sarasota County  
President, Building Officials Association of Florida

Tracy Ackroyd, MMC, City Clerk, City of Clermont  
President, Florida Association of City Clerks

Michael Pleus, City Manager, City of DeLand  
President, Florida City & County Management Association

Gary Ballard, Fire Chief, Lakeland Fire Department  
President, Florida Fire Chiefs' Association

Anthony A. Garganese, Municipal Attorney, Cape Canaveral, Cocoa, Orchid and Winter Springs  
President, Florida Municipal Attorneys Association

Brett Railey, Chief of Police, City of Winter Park  
President, Florida Police Chiefs' Association

Gus Gianikas, Assistant Director/Planning & Development, City of Mount Dora  
President, Florida Redevelopment Association

Barry Skinner, Deputy Director/Finance & Accounting, Orange County  
President, Florida Government Finance Officers Association

Denise Perez, Human Resources Director, City of Naples  
President, FL Public Employer Labor Relations Association

Ned Huhta, IT Director, City of Ormond Beach  
President, Florida Local Government Information Systems Association

## **FLC-SPONSORED PROGRAM REPRESENTATIVES**

Kevin Ruane, Mayor, City of Sanibel  
Chairman, Florida Municipal Insurance Trust  
Isaac Salver, Councilmember, Town of Bay Harbor Islands  
Chairman, Florida Municipal Loan Council  
Bill Arrowsmith, Vice Mayor, City of Apopka  
Chair, Florida Municipal Investment Trust  
Dominick Montanaro, Vice Mayor, City of Satellite Beach  
Chair, Florida Municipal Pension Trust  
Frank Ortis, Mayor, City of Pembroke Pines  
Chair, Florida Municipal Construction Insurance Trust

## **AT LARGE MEMBERS**

Michael Beedie, City Manager, City of Fort Walton Beach  
Scott Black, Commissioner, City of Dade City  
Ben Boukari, Vice Mayor, City of Alachua  
Marlon Brown, Deputy City Manager, City of Sarasota  
Ken Buchman, City Attorney, City of Plant City  
Justin Campbell, Commissioner, City of Palatka  
Manny Cid, Vice Mayor, Town of Miami Lakes  
Tom Cloud, City Attorney, City of Fort Meade  
Bill Colbert, City Attorney, City of Sanford  
Lenny Curry, Mayor, City of Jacksonville  
Sam Ferreri, Mayor, City of Greenacres  
Frank Gumme, City Attorney, City of New Smyrna Beach  
Linda Hudson, Mayor, City of Fort Pierce  
Craig Leen, City Attorney, City of Coral Gables  
Cindy Lerner, Mayor, Village of Pinecrest  
Jan McLean, Asst. City Attorney, City of Tampa  
Wayne Messam, Mayor, City of Miramar  
Helen Miller, Councilmember, Town of White Springs  
Margaret Roberts, City Attorney, City of Port Orange  
Mark Ryan, City Manager, City of Indian Harbour Beach  
Jack Seiler, Mayor, City of Fort Lauderdale  
Mike Staffopoulos, Assistant City Manager, City of Largo  
Jamie Titcomb, Town Manager, Town of Melbourne Beach  
P.C. Wu, Council Member, City of Pensacola

**Procedures for Submitting Resolutions**  
**Florida League of Cities' 89<sup>th</sup> Annual Conference**  
**World Center Marriott, Orlando, Florida**  
**August 13 – 15, 2015**

In order to fairly systematize the method for presenting resolutions to the League membership, the following procedures have been instituted:

- (1) Proposed resolutions must be submitted in writing, to be received in the League office by July 8, 2015, to guarantee that they will be included in the packet of proposed resolutions that will be submitted to the Resolutions Committee.
- (2) Proposed resolutions will be rewritten for proper form, duplicated by the League office and distributed to members of the Resolutions Committee. (Whenever possible, multiple resolutions on a similar issue will be rewritten to encompass the essential subject matter in a single resolution with a listing of original proposers.)
- (3) Proposed resolutions may be submitted directly to the Resolutions Committee at the conference; however, a favorable two-thirds vote of the committee will be necessary to consider such resolutions.
- (4) Proposed resolutions may be submitted directly to the business session of the conference without prior committee approval by a vote of two-thirds of the members present. In addition, a favorable weighted vote of a majority of members present will be required for adoption.
- (5) Proposed resolutions relating to state legislation will be referred to the appropriate standing policy committee. Such proposals will not be considered by the Resolutions Committee at the conference; however, all state legislative issues will be considered by the standing policy committees and the Legislative Committee, prior to the membership. At that time, a state Legislative Action Agenda will be adopted.
- (6) Proposed resolutions must address either federal issues, state constitutional issues, matters directly relating to the conference, matters recognizing statewide or national events or service by League officers. All other proposed resolutions will be referred for adoption to either the Florida League of Cities Board of Directors or FLC President.

Municipalities unable to formally adopt a resolution before the deadline may submit a letter to the League office indicating their city is considering the adoption of a resolution, outlining the subject thereof in as much detail as possible, and this letter will be forwarded to the Resolutions Committee for consideration in anticipation of receipt of the formal resolution.

## **Proposed Florida League of Cities 2015 Resolutions**

1. City of Miramar
2. Florida City Government Week
3. Voting Rights Act
4. U.S. Department of Housing and Urban Development
5. Village of Estero
6. City of St. Augustine
7. Remote Transactions Parity Act
8. Municipal Financing
9. Tax on Internet Access
10. Transportation Funding
11. Community Development Block Grant Program
12. FEMA De-obligations
13. Solar Power Proposed Constitutional Amendment

# 1. City of Miramar

2015-01

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC.,  
EXPRESSING APPRECIATION TO MIRAMAR, FLORIDA, FOR ITS  
SUPPORT OF LORI MOSELEY AS PRESIDENT OF THE FLORIDA  
LEAGUE OF CITIES.

WHEREAS, Lori Moseley, former mayor of Miramar, Florida, served as the president of the Florida League of Cities from 2014 through 2015; and

WHEREAS, the citizens, commissioners and staff of Miramar were most understanding of the demands placed upon Mayor Moseley in her role as president of the League; and

WHEREAS, during her presidency, Mayor Moseley focused on helping municipal officials become more engaged with the millennial generation to encourage these young adults to learn more about the vital role cities play in their everyday lives; and

WHEREAS, the membership and staff of the League recognize the commitment of the City of Miramar to President Moseley's presidency assured her active participation in League activities and unselfish service to the League, and permitted her to successfully promote the programs, projects and philosophy of the League while she was mayor; and

WHEREAS, the membership and staff of the League also wish to recognize and personally thank Shari Covington, administrative assistant to the mayor, and the dedicated Miramar city staff for their efforts in providing outstanding assistance to President Moseley and the FLC staff in coordinating President Moseley's duties with the city and with the Florida League of Cities. Ms. Covington and the staff went above and beyond the call of duty, and their outstanding contributions to this effort are applauded and greatly appreciated.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities' membership and staff do officially and personally appreciate the commitment Miramar's citizens, commissioners and staff made to Mayor Moseley's presidency.

Section 2. That a copy of this resolution be presented to the City of Miramar.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

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Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff

## 2. Florida City Government Week

2015-02

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC., RECOGNIZING THE WEEK OF OCTOBER 18-24 AS "FLORIDA CITY GOVERNMENT WEEK," AND ENCOURAGING ALL FLORIDA CITY OFFICIALS TO SUPPORT THIS CELEBRATION BY PARTICIPATING IN THE "MY CITY: I'M PART OF IT, I'M PROUD OF IT!" ACTIVITIES.

WHEREAS, city government is the government closest to most citizens, and the one with the most direct daily impact upon its residents; and

WHEREAS, city government is administered for and by its citizens, and is dependent upon public commitment to and understanding of its many responsibilities; and

WHEREAS, city government officials and employees share the responsibility to pass along their understanding of public services and their benefits; and

WHEREAS, Florida City Government Week is a very important time to recognize the significant role played by city government in our lives; and

WHEREAS, Florida City Government Week offers a great opportunity to spread the word to all Floridians that they can shape and influence this branch of government, which is closest to the people; and

WHEREAS, the Florida League of Cities and its member cities have joined together to teach students and other citizens about municipal government through a variety of different projects and information.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., encourages all city officials, city employees, school officials and citizens to participate in events that recognize Florida City Government Week and to celebrate it throughout Florida.

Section 2. That the Florida League of Cities, Inc., supports and encourages all city governments to promote, sponsor and participate in "My City: I'm Part of It, I'm Proud of It!"

Section 3. That a copy of this resolution be provided to Florida Governor Rick Scott, the Florida Cabinet, Florida School Boards Association and the membership of the Florida League of Cities, Inc.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

2015-03

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC.,  
RECOGNIZING THE 50th ANNIVERSARY OF THE VOTING RIGHTS ACT  
AND ENCOURAGING CITY OFFICIALS TO CONTINUE TO ADVANCE THE  
CAUSE OF VOTER EQUALITY AND EQUAL ACCESS TO THE POLITICAL  
PROCESS.

WHEREAS, on August 6, 1965, President Lyndon B. Johnson signed into law the Voting Rights Act of 1965, a landmark piece of federal legislation Congress later amended five times to expand its protections; and

WHEREAS, in 1868, Congress ratified the right to equal protection under the law with the 14<sup>th</sup> Amendment, and in 1870, it ratified the 15th Amendment, which declared the right to vote shall not be denied or abridged on the basis of race, color or previous condition of servitude; and

WHEREAS, between 1870 and 1965, African Americans faced discriminatory barriers such as poll taxes, literacy tests, vouchers of “good character,” disqualification for “crimes of moral turpitude,” and other unscrupulous tactics intended to keep them from the polls on Election Day; and

WHEREAS, by 1910, violence and discrimination resulted in most African American citizens being disenfranchised and removed from the voter rolls in the former Confederate States, negatively impacting the promise of equal protection under the law; and

WHEREAS, other people of color (Native American, Latino and Asian American/Pacific Islander) also have experienced similar attempts to disenfranchise citizens in their communities throughout the United States; and

WHEREAS, by 1965, efforts to break the grip of state disenfranchisement had achieved only modest success overall and in some areas were almost entirely ineffectual, and numerous acts of violence and terrorism, as well as the murder of voting-rights activists in Philadelphia and Mississippi gained national attention; and

WHEREAS, the unprovoked attack on March 7, 1965, known as *Bloody Sunday*, by state troopers on peaceful marchers in Selma, Alabama, who were en route to the state capitol in Montgomery, persuaded President Lyndon B. Johnson and the U.S. Congress to overcome Southern legislators' resistance to effective voting rights legislation and was the impetus for hearings on the bill that would become the Voting Rights Act; and

WHEREAS, often regarded as one of the most effective civil rights laws, the Voting Rights Act was passed with the intent to ban discriminatory voting policies at all levels of government; and

WHEREAS, the Voting Rights Act is credited for the enfranchisement of millions of minority voters, as well as the diversification of the electorate and legislative bodies throughout all levels of government.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., encourages all city officials and residents to recognize the importance of the Voting Rights Act and continue to help advance the cause of voter equality and equal access to the political process for all people in order to protect the rights of every American.

Section 2. That the Florida League of Cities, Inc., further encourages city officials and residents to continue to educate the next generation about the importance of civic engagement in our communities.

Section 3. That a copy of this resolution be provided to the membership of the Florida League of Cities, Inc.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89th Annual Conference, at the World Center Marriott, Orlando, Florida, this 15th Day of August 2015.

\_\_\_\_\_  
Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff

4. U.S. Department of Housing  
and Urban Development

2015-04

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC.,  
RECOGNIZING THE U.S. DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT FOR ITS 50<sup>TH</sup> ANNIVERSARY ON SEPTEMBER 9, 2015.

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) was created on September 9, 1965 as part of an initiative that was started under President John F. Kennedy and later completed by President Lyndon B. Johnson; and

WHEREAS, HUD will celebrate its 50<sup>th</sup> Anniversary on September 9, 2015; and

WHEREAS, HUD began as the consolidation of five existing independent federal housing and community development agencies: the Federal Housing Administration; the Public Housing Administration; the Federal National Mortgage Association (Fannie Mae); the Urban Renewal Administration; and the Community Facilities Administration; and

WHEREAS, over the last 50 years, HUD has had many outstanding achievements, which include:

Homeownership - Since 1934, the Federal Housing Administration and HUD have insured more than 44 million home mortgages and approximately 50,000 multifamily project mortgages;

Public and Assisted Housing - In the last 20 years alone, HUD has provided housing assistance to more than 35 million individuals through the Public Housing, Housing Choice Voucher (Section 8), Project Base Rental Assistance, Section 202 (Supportive Housing for the Elderly), and Section 811 (Supportive Housing for Persons with Disabilities) programs;

Affordable Housing Creation - HUD's HOME Investment Partnerships Program, which produces affordable housing for low-income families, has assisted more than 600 communities with almost 500,000 units for first time homebuyers. In addition, HOME has assisted nearly 300,000 tenants in obtaining direct rental assistance;

Native American Housing - HUD has funded nearly 87,000 housing units on Indian reservations and tribal areas. Housing produced through HUD programs now provides shelter for a quarter of Native Americans living on reservations and tribal areas;

Community Development - Since its inception in 1974, HUD's Community Development Block Grant (CDBG) Program has awarded more than \$144 billion to state and local governments to target their own community development priorities. This funding has gone toward the rehabilitation of affordable housing, the construction of public facilities, and the creation of job growth and business opportunities; and

Homelessness Initiatives - Since the passage of the Stewart B. McKinney Homeless Assistance Act in 1987, HUD has awarded more than \$14 billion to thousands of local housing and service programs around the U.S. to combat homelessness.

WHEREAS, HUD has been an important federal agency for cities and has provided resources and technical support, often on a city-by-city basis.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., commends HUD for its impressive achievements and its dependable support of cities across the nation.

Section 2. That a copy of this resolution be provided to HUD Secretary Julian Castro, the Florida Congressional Delegation and the membership of the Florida League of Cities, Inc.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

\_\_\_\_\_  
Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff

## 5. Village of Estero

2015-05

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC.,  
RECOGNIZING THE NEW VILLAGE OF ESTERO AND  
CONGRATULATING THE NEWEST MUNICIPALITY IN FLORIDA  
UPON ITS SUCCESSFUL INCORPORATION IN 2014.

WHEREAS, the citizens of the Village of Estero by referendum voted to incorporate in 2014 under the provisions of Florida law; and

WHEREAS, by incorporating, the Village of Estero will henceforth have all municipal powers allowed by the Florida Constitution and Laws of Florida to promptly respond to the needs and conveniences of its citizens, and will be the government closest to its citizenry; and

WHEREAS, Section 2 of Article VIII, Florida Constitution (1968), establishes Home Rule for municipalities by granting them “governmental, corporate and proprietary powers...to conduct municipal government, perform municipal functions and render municipal services...”; and

WHEREAS, the newly elected council for Estero is also congratulated upon their respective elections, and its newest staff appointments are also herein honored for being the inaugural elected and appointed officials to represent the new village; and

WHEREAS, this most recent incorporation furthers the positive elements of self-governance and Home Rule philosophies, and the Florida League of Cities desires to applaud these actions.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the League proudly acknowledges the municipal incorporation of the Village of Estero and welcomes its addition to the League’s municipal family.

Section 2. That the citizens of the Village of Estero are commended for their desire to incorporate as a municipality and to thereby assume the responsibility of self-governance.

Section 3. That a copy of this resolution will be presented to the Village of Estero.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League’s 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

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Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff

## 6. City of St. Augustine

2015-06

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC.,  
RECOGNIZING THE 450<sup>TH</sup> ANNIVERSARY OF ST. AUGUSTINE'S  
FOUNDING AND HONORING THE CITY OF ST. AUGUSTINE FOR ITS  
HISTORIC FOUNDER'S DAY ANNIVERSARY.

WHEREAS, on September 8, 1565, Spanish admiral and Florida's first governor, Don Pedro Menéndez de Avilés claimed "San Augustin" for the King of Spain, making the City of St. Augustine the oldest continuously occupied European settlement in the United States of America; and

WHEREAS, Don Pedro Menéndez de Avilés named the settlement San Agustín, as his ships, bearing settlers, troops, and supplies from Spain, first sighted land in Florida on August 28, 1565, the feast day of Saint Augustine; and

WHEREAS, the City of St. Augustine served as the capital of Spanish Florida for more than 200 years, and remained the capital of East Florida when the territory briefly changed hands between Spain and Britain; and

WHEREAS, St. Augustine was the capital of the Florida Territory when Florida was purchased by the United States in 1819 until 1824, when Tallahassee was designated as the capital; and

WHEREAS, St. Augustine was first incorporated in 1824 and recognized by Territorial Governor Andrew Jackson as a functioning municipality from the territory's beginnings; and

WHEREAS, the year 2015 is the 450th anniversary of the founding of St. Augustine, which is a milestone achievement.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., congratulates the City of St. Augustine on its 450<sup>th</sup> Founder's Day.

Section 2. That a copy of this resolution be provided to the City of St. Augustine.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

---

Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: City of St. Augustine



# City of St. Augustine



La Lealísima y Valerosa Ciudad de San Agustín de la Florida

1565 - 2015

## RESOLUTION

*WHEREAS, on the 8<sup>th</sup> day of September, in the year of our Lord fifteen hundred and sixty five, Pedro Menendez de Aviles, by the act of claiming this land for the King of Spain, founded San Augustin, in La Florida, the oldest continuously occupied European settlement in the land to become the United States of America; and*

*WHEREAS, it is fitting that the events of that historic occasion be observed and re-created in the manner recorded four hundred and forty nine years ago; and*

*WHEREAS, on the 8th of September, 1565, a solemn Mass was offered on these grounds by Father Francisco Lopez de Mendoza Grajales, thus founding the parish of Saint Augustine and establishing Christianity in these lands; and*

*WHEREAS, September 8, 2015 marks the Four Hundred and Fiftieth Anniversary of the founding of St. Augustine.*

*NOW, THEREFORE, the City Commission of the City of St. Augustine does hereby proclaim September 8, 2015 as **FOUNDER'S DAY**, in commemoration of the 450th Anniversary of the Founding of St. Augustine, Our Nation's Oldest City. And further, in celebration of this 450th Anniversary, we urge all our citizens to participate in the festivities and commemoration of this singular event.*

*IN WITNESS WHEREOF I hereunto set my hand and do cause the Seal and Title of the "Most Loyal and Valorous City" bestowed by His Majesty King Philip V in 1715 – to be affixed hereon, this 8th day of September in the year of our Lord two thousand and fifteen.*

2015-15

Nancy E. Shaver, MAYOR

*"Most Loyal and Valorous"*

*Title conferred upon the Presidio of St. Augustine by King Philip V of Spain, November 26, 1715*

## 7. Remote Transactions Parity Act

2015-07

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC.,  
URGING CONGRESS TO PASS LEGISLATION THAT WOULD  
GRANT STATES THE AUTHORITY TO COMPEL ONLINE AND  
CATALOG RETAILERS TO COLLECT SALES TAX.

WHEREAS, the use of the Internet as a way to purchase goods and services has been steadily increasing over the past decade; and

WHEREAS, as the result of court decisions and congressional inaction, many online and catalog retailers are not obligated to collect sales taxes from consumers; and

WHEREAS, this tax loophole is unfairly advantageous toward online and catalog retailers and results in both the loss of tax revenue for state and local governments and market conditions that are unfavorable for Main Street and "brick and mortar" small businesses; and

WHEREAS, the Streamlined Sales Tax Project was created in 1999 to assist states in administering a simpler and more uniform sales and use tax system; and

WHEREAS, to date, 44 states, including Florida, have approved the Streamlined Sales and Use Tax Agreement (SSUTA), which sets the minimum sales and use tax statutory simplifications required of any state desiring to participate in the simplified system and minimizes cost and administrative burdens on retailers; and

WHEREAS, 24 of those states, not including Florida, have modernized their sales and use tax statutes to conform to the requirements of the SSUTA; and

WHEREAS, Congressman Jason Chaffetz (R-3-Utah) recently introduced H.R. 2775, titled the Remote Transactions Parity Act (RTPA); and

WHEREAS, H.R. 2775 would create a framework for states to impose sales and use taxes on remote sellers.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., urges Congress to support the RTPA, which would provide states the authority to enforce state and local sales and use tax laws in a fair and equitable manner to both in-state and out-of-state retailers.

Section 2. That the Florida League of Cities, Inc., expresses sincere appreciation to the Florida congress members who have signed on as co-sponsors of the RTPA, and urges the entire Florida Congressional Delegation to sign on as co-sponsors of the legislation.

Section 3. That the Florida League of Cities, Inc., urges the State of Florida to pass legislation needed to comply with the RTPA.

Section 4. That a copy of this resolution be provided to President Barack Obama, the Florida Congressional Delegation, the National League of Cities; Florida Governor Rick Scott and the membership of the Florida League of Cities, Inc.

Section 5. That this resolution shall become effective upon adoption and shall remain in effect until repealed and hereby repeals all conflicting resolutions.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

\_\_\_\_\_  
Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff



## Go Local: Close the Online Sales Tax Loophole

**NLC calls on Congress to close the online sales tax loophole. E-fairness legislation will:**

- Level the playing field between online and brick-and-mortar retailers.
- Not introduce any new taxes.
- Provide local governments with the resources they need to invest in communities, build infrastructure and provide important services like emergency response.

**\$23 billion dollars**

in owed sales tax go uncollected from online transactions every year.

The brick-and-mortar businesses in our cities strengthen our local economies, provide needed jobs, and give our streets character. Despite their necessity to our cities, they currently compete at a five to ten percent disadvantage to online sellers by collecting legally required sales tax at the time of purchase - something online retailers are not compelled to do. This imbalance hurts local businesses and our cities.

As more Americans shop online, more and more economic activity is diverted away from our communities. In 1992, the Supreme Court told Congress in its Quill decision to resolve the issue of sales tax collection by remote sellers. In the intervening years, Congress has failed to act, and the dollar value of sales conducted online has increased exponentially.

If main street retailers cannot keep up as a result of this growing disadvantage, the ripple effect in lost jobs and revenue will threaten our communities' sustainability.

Congress can fix this unfairness. E-fairness legislation would close the online sales tax loophole. This legislation would modernize the sales tax by authorizing states and local governments to collect already-owed sales taxes for online sales. This path will not harm small businesses, impose any new taxes, or affect federal revenues or expenditures.

By passing e-fairness legislation, Congress will level the playing field for all sellers and will provide fiscal relief for state and local governments without a penny coming from the federal Treasury. Allowing local governments to collect an estimated \$23 billion in sales tax revenue every year that is already owed provides cities with more funding for basic services, such as roads and police officers, and fair competition for all businesses.



301 South Bronough Street, Suite 300 ♦ Post Office Box 1757 ♦ Tallahassee, FL 32302-1757  
(850) 222-9684 ♦ Fax (850) 222-3806 ♦ Website: [www.floridaleagueofcities.com](http://www.floridaleagueofcities.com)

July 9, 2015

The Honorable John Mica  
U.S. House of Representatives, District 7  
2187 Rayburn House Office Building  
Washington, D.C. 20515-0907

Dear Representative Mica:

On behalf of the Florida League of Cities, we are writing to ask for your support and co-sponsorship of the Remote Transactions Parity Act (H.R. 2775). This bill will modernize our nation's outdated sales tax collection process.

The Remote Transactions Parity Act does not impose a new tax, but instead levels the playing field between online and brick-and-mortar stores by closing the online sales tax loophole. Sales taxes are owed on all purchases, and it is unfair for online retailers to skip collecting taxes, while the stores in our communities collect all owed taxes.

The Act will also provide local governments with the resources needed to invest in communities, build infrastructure and provide important services like emergency response. Every year in Florida, approximately \$1.4 billion in owed sales tax goes uncollected from online transactions; funds that cities cannot use on public safety, fixing sidewalks, building libraries, and many more services for their residents. Congress can give states and local governments the power to require sellers who do not have a physical presence in their jurisdiction to charge and collect sales taxes.

I strongly urge you to support our local businesses and cosponsor H.R. 2775. Thank you for your leadership on this issue, and for all your hard work on behalf of Florida.

Sincerely,

Matthew D. Surrency, President  
Mayor, City of Hawthorne

President **Matthew D. Surrency**, Mayor, Hawthorne  
First Vice President **Susan Haynie**, Mayor, Boca Raton • Second Vice President **Vacancy**  
Executive Director **Michael Sittig** • General Counsel **Harry Morrison, Jr.**



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301 South Bronough Street, Suite 300 ♦ Post Office Box 1757 ♦ Tallahassee, FL 32302-1757  
(850) 222-9684 ♦ Fax (850) 222-3806 ♦ Website: [www.floridaleagueofcities.com](http://www.floridaleagueofcities.com)

July 9, 2015

The Honorable Dennis Ross  
U.S. House of Representatives, District 15  
229 Cannon House Office Building  
Washington, D.C. 20515-0912

Dear Representative Ross:

On behalf of the Florida League of Cities we would like to thank you for your support and leadership in co-sponsoring the Remote Transactions Parity Act (H.R. 2775). As you know, this bill will modernize our nation's outdated sales tax collection process.

The Remote Transactions Parity Act does not impose a new tax, but instead levels the playing field between online and brick-and-mortar stores by closing the online sales tax loophole. Sales taxes are owed on all purchases, and it is unfair for online retailers to skip collecting taxes, while the stores in our community collect all owed taxes.

The Act will also provide local governments with the resources needed to invest in communities, build infrastructure and provide important services like emergency response. Every year in Florida, approximately \$1.4 billion in owed sales tax goes uncollected from online transactions; funds that cities cannot use on public safety, fixing sidewalks, building libraries, and many more services for their residents. Congress can give states and local governments the power to require sellers who do not have a physical presence in their jurisdiction to charge and collect sales taxes.

Again, we thank you for your co-sponsorship, and for all your hard work on behalf of Florida.

Sincerely,

Matthew D. Surrency, President  
Mayor, City of Hawthorne

## 8. Municipal Financing

2015-08

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC., URGING THE OBAMA ADMINISTRATION AND CONGRESS TO PRESERVE THE CURRENT TAX-EXEMPT STATUS OF INTEREST EARNED ON MUNICIPAL BONDS AND REJECT ANY PROPOSAL THAT WOULD REDUCE OR ELIMINATE THE FEDERAL TAX EXEMPTION ON INTEREST EARNED ON MUNICIPAL BONDS.

WHEREAS, since 1913, when the federal income tax was imposed, the interest earned on municipal bonds has been exempt from federal taxation; and

WHEREAS, municipal bonds have been the primary method by which state and local governments finance public capital improvements and infrastructure construction such as schools, hospitals, water and sewer systems, roads, highways, utilities, public safety structures, bridges and tunnels; and

WHEREAS, the projects funded through municipal financing are engines of job creation and economic growth; and

WHEREAS, according to national statistics, state and local governments are responsible for building and maintaining more than 75 percent of the nation's infrastructure, which is financed mostly by tax-exempt municipal bonds; and

WHEREAS, on average, state and local governments save up to two percentage points on their borrowing rates through the use of tax-exempt municipal bonds; and

WHEREAS, these savings allow state and local governments to invest more in critical infrastructure and essential services and provide construction jobs while holding down the cost to taxpayers; and

WHEREAS, in 2013, a joint report titled "Protecting Bonds to Save Infrastructure and Jobs 2013" was issued by the U.S. Conference of Mayors, the National League of Cities and the National Association of Counties, with assistance from the Government Finance Officers Association; and

WHEREAS, the report estimates that 1,250 tax-exempt bonds financing more than \$103 billion in infrastructure improvements were issued over the last decade in the State of Florida; and

WHEREAS, the report also states that in 2012 alone, more than 6,600 tax-exempt bonds were issued financing more than \$179 billion in infrastructure projects across the nation; and

WHEREAS, several proposals have been discussed over the last few years as Congress and the Obama administration seek tax reform; and

WHEREAS, many of these proposals have included a proposed reduction or elimination of the current tax exemption on interest earned from tax-exempt municipal bonds; and

WHEREAS, in his fiscal year 2015 budget proposal, President Barack Obama has again proposed capping the value of the tax exemption for municipal bond interest at 28 percent; and

WHEREAS, it is estimated that if the proposed cap for municipal bonds was in effect over the last decade, it would have cost state and local governments an additional \$173 billion in interest expense; and

WHEREAS, it is estimated that if the tax exemption had been fully eliminated over the last decade, it would have cost state and local governments an additional \$495 billion in interest expense; and

WHEREAS, 2010 Internal Revenue Service data shows that 57 percent of municipal bond interest is paid to individuals 65 years of age and older, who in many cases live on fixed incomes, and 52 percent of municipal bond interest is paid to individuals who earn less than \$250,000 annually.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., urges President Barack Obama and Congress to preserve the current tax-exempt status of the interest earned on municipal bonds and oppose any attempt to cap or eliminate the tax exemption on the interest earned on municipal bonds.

Section 2. That a copy of this resolution be sent to President Obama, the Florida Congressional Delegation, the National League of Cities, and the membership of the Florida League of Cities, Inc.

Section 3. That this resolution shall become effective upon adoption and shall remain in effect until repealed and hereby repeals all conflicting resolutions.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

---

Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff



## Go Local: Protect Municipal Bonds

NLC calls on Congress and the Administration to preserve the municipal bond federal income tax exemption for the following reasons:

- The exemption is not a special interest loophole and should not be treated as such.
- Municipal bonds are the primary way local and state governments finance infrastructure, and have been for over a century.
- Over two-thirds of all public infrastructure projects in the United States are financed by municipal bonds.

### Percentage of public infrastructure financed by tax-exempt bonds:

Utilities:	87%	Environment:	54%	Transportation:	35%
Education:	65%	Health Care:	40%		

Municipal bonds are the primary way state and local governments finance the public infrastructure that supports everyday life. Bonds finance construction of schools, hospitals, bridges, water treatment facilities, libraries, and many other public projects.

Voters and governmental bodies approve issuance of these bonds, which are then purchased by private individuals, mutual funds and financial institutions. The interest gained by these investors is exempt from the federal income tax, and has been since the tax was instituted in 1913.

As the Administration and Congress look for ways to reduce the federal deficit and still fund programs, the federal income tax exemption provided to municipal bond interest is under threat. If the federal income tax exemption is eliminated or limited, states and localities will be forced to pay more to finance projects. That will mean less infrastructure

investment, fewer jobs, and a greater burden on local residents forced to pay higher taxes and fees.

Local governments save an average of 25 to 30 percent on interest costs with tax-exempt municipal bonds (as compared to taxable bonds), thanks to investors who are willing to accept a lower interest rate on tax-exempt bonds. The exemption is similar to the exemption for federal Treasury bonds – another stable investment vehicle – from state and local taxes.

Municipal-bond-funded projects create jobs, provide a stable investment vehicle for investors, and help reduce local tax and utility rates for community residents.

Congress must protect this critical tool for local governments to rebuild and improve America's infrastructure, and maintain the federal tax exemption for municipal bonds.

## 9. Tax on Internet Access

2015-09

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC.,  
URGING THE U.S. SENATE TO OPPOSE LEGISLATION THAT  
WOULD PREEMPT STATE AND LOCAL AUTHORITY OVER THE  
COLLECTION OF CERTAIN TAXES AND FEES RELATED TO  
INTERNET ACCESS.

WHEREAS, in October 1998, Congress passed the Internet Tax Freedom Act (ITFA) imposing a three-year moratorium on multiple and discriminatory taxes on electronic commerce and Internet access; and

WHEREAS, the moratorium was extended five times - 2001, 2004, 2007 and twice in 2014 - and is now set to expire on October 1, 2015; and

WHEREAS, the Internet-access moratorium was originally conceived at a time when the Internet was experiencing tremendous growth and Congress believed that in order to foster this growth it was necessary to halt any taxes that might constrain the Internet; and

WHEREAS, now the Internet is universal with more and more services moving from a telecommunications/cable delivery system to broadband, and it no longer needs special tax protection; and

WHEREAS, H.R. 235, the Permanent Internet Tax Freedom Act, by U.S. Representative Bob Goodlatte (R-6-VA), would permanently extend the moratorium on multiple and discriminatory taxes on electronic commerce and Internet access; and

WHEREAS, H.R. 235 passed the U.S. House of Representatives on June 9, 2015, and this legislation is now awaiting consideration by the U.S. Senate; and

WHEREAS, Florida law also prohibits any tax on Internet access; and

WHEREAS, over the next several years, most of the services known as telecommunications and cable services will transition to broadband and as a result, the scope of the services that ITFA shields from state and local taxation will greatly expand; and

WHEREAS, a temporary extension of the moratorium would allow more time to fully assess the transition from telecommunications and cable services to ITFA-protected broadband services; and

WHEREAS, a temporary extension of the moratorium would also allow more time to determine the impact on the relative tax obligations of industry sectors to which ITFA does not apply and provide Congress the opportunity to revisit the moratorium to correct any unintended consequences.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., urges the U.S. Senate to oppose H.R. 235 or any permanent extension of the moratorium on multiple and discriminatory taxes on Internet access and instead support a temporary extension of the current moratorium.

Section 2. That a copy of this resolution be provided to President Barack Obama, the Florida Congressional Delegation, the National League of Cities, the U.S. Conference of Mayors, the Government Finance Officers Association, Florida Governor Rick Scott and the membership of the Florida League of Cities, Inc.

Section 3. That this resolution shall become effective upon adoption and shall remain in effect until repealed and hereby repeals all conflicting resolutions.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

---

Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff

# Judiciary Committee Chairman Bob Goodlatte

## Press Releases

Jun 09 2015

### House Passes Permanent Internet Tax Freedom Act (PITFA) to Ban Internet Access Taxes

**CONTACT: Kathryn Rexrode or Michael Woeste (202) 225-3951**

**Washington, D.C.** – Today, the House of Representatives passed H.R. 235, the *Permanent Internet Tax Freedom Act* (PITFA), by a voice vote. This broadly bipartisan legislation permanently bans states from taxing Internet access or placing multiple or discriminatory taxes on e-commerce.

PITFA keeps the Internet affordable and drives innovation by banning access taxes permanently. If the moratorium is not renewed or made permanent, the potential tax burden on Americans would be substantial. It is estimated that Internet access tax rates could be more than twice the average rate of all other goods and services – and the last thing that Americans need is another tax bill on their doorsteps.

Original legislation that temporarily banned Internet access taxes, the *Internet Tax Freedom Act* (ITFA), was first enacted in 1998 and extended five times with nearly unanimous support. Last Congress, the House of Representatives passed PITFA by voice vote.

House Judiciary Committee Chairman Bob Goodlatte (R-Va.), Congresswoman Anna Eshoo (D-Calif.), Subcommittee on Regulatory Reform, Commercial and Antitrust Law Chairman Tom Marino (R-Pa.), Congressman Steve Chabot (R-Ohio), and Congressman Steve Cohen (D-Tenn.) issued the following statement after the passage of PITFA:

**“We applaud the bipartisan passage of the *Permanent Internet Tax Freedom Act* today in the House. PITFA is a necessary measure to keep Internet access free of taxation. Internet access drives innovation and the success of our economy. It is a gateway to knowledge, opportunity, and the rest of the world. The American people deserve affordable access to the Internet and the *Permanent Internet Tax Freedom Act* will help prevent unreasonable cost increases that hurt consumers and slow job creation.”**

Permalink: <http://judiciary.house.gov/index.cfm/2015/6/house-passes-permanent-internet-tax-freedom-act-pitfa-to-ban-internet-access-taxes>

### Related Posts

Chairman Goodlatte Floor Statement on H.R. 235, the “Permanent Internet Tax Freedom Act” (PITFA)



Florida League of Cities

**ALERT**

**FAST** Federal Action Strike Team

### **Alert from the National League of Cities**

## Preemption of Local Authority on Internet Taxation Legislation Headed to House Floor

This week, the full U.S. House is expected to consider H.R. 235, the Permanent Internet Tax Freedom Act (PITFA). As it has for years, NLC continues to vigorously oppose this legislation because it would preempt local authority to tax Internet access. Currently, a temporary ban blocks local governments from doing this except for in a handful of states. The temporary ban is set to expire on October 1, 2015, and this legislation would make the ban permanent for all states.

In general, taxation of Internet access refers to applying state and local taxes to the monthly charge that subscribers pay for access to the Internet through an Internet Service Provider. The original intent of the Internet Tax Freedom Act in 1998 was to encourage development of the Internet, which at the time was a new technology. This justification is no longer applicable given the substantial advancements in technology that have occurred since. A permanent tax moratorium on Internet access will result in increasing amounts of lost revenue on which state and local governments rely to fund essential services in their communities, like firefighters and police officers, schools, parks, libraries and continued investments to address aging infrastructure.

NLC urges you to contact your Representative and ask that they vote against H.R. 235, the Permanent Internet Tax Freedom Act.

### **Impact for Florida**

Florida law prohibits any tax on Internet access. The Florida League of Cities Opposes H.R. 235 because it makes the moratorium permanent. FLC supports a temporary extension of the moratorium for the following reasons:

- over the next several years, most of the services known as telecommunications and cable services will transition to broadband;
- as a result, the scope of the services that Internet Tax Freedom Act (ITFA) shields from state and local taxation will greatly expand;
- a temporary extension of the moratorium would allow more time to fully assess the transition from telecommunications and cable services to ITFA-protected broadband services; and
- a temporary extension of the moratorium would also allow more time to determine the impact on the relative tax obligations of industry sectors to which ITFA does not apply and provide Congress the opportunity to revisit the moratorium to correct any unintended consequences.

**Please contact your U. S. Representatives and urge them to Oppose a Permanent Extension of the Internet Tax Freedom Act.** Click [Here](#) for contact information for your Representative(s).

Attached is the FLC resolution that was adopted last year to federal legislation from 2014. Also attached is a joint letter from NLC and several National Local Government Organizations in Opposition to H.R. 235.

Please let me know what response you receive from your Members of Congress.

Allison Payne  
Manager, Advocacy & Federal Affairs

**National Association of Counties  
National League of Cities  
U.S. Conference of Mayors  
International City/County Management Association  
Government Finance Officers Association  
National Association of Telecommunications Officers and Advisors**

June 8, 2015

Dear Representative ,

On behalf of local governments across the nation, our organizations write to express our continuing opposition to H.R. 235, the *Permanent Internet Tax Freedom Act*. We urge you to oppose the legislation when it is considered on the House floor.

When the Internet Tax Freedom Act was first enacted in 1998, the Internet access and commerce industries were in their infancy and only beginning to be significantly available to households. The intent of the moratorium was to give the then-nascent Internet industry time to grow and become established. However, even at that time, Congress recognized that the ban should not be permanent.

In addition, estimates of previous versions of this bill provided by the Congressional Budget Office indicate that, if enacted, the *Permanent Internet Tax Freedom Act* would cost state and local governments hundreds of millions of dollars in lost revenues. These are revenues that local governments rely upon to fund essential services in their communities, including well-trained firefighters and police officers; investments to fix aging infrastructure; schools, parks, community centers and libraries to support youth. It is truly alarming to note the large number of co-sponsors from states where our members, state and local government officials and public servants, have resoundingly detailed the crucial nature of these revenues to their cities, counties and states and the impact of the potential loss of these revenues.

Finally, as the telecommunications and cable service industries increasingly transition to broadband, it is important that state and local governments are not preempted from their ability to govern their own tax structures. Over time, the Permanent Internet Tax Freedom Act would arbitrarily exempt this fast growing sector of the economy from taxation, and unfairly shift the burden of supporting essential local services onto other businesses and residents in a community.

For all of these reasons, we urge you to vote against the *Permanent Internet Tax Freedom Act*, H.R. 235.

Sincerely,

Matthew D. Chase  
Executive Director, National Association of Counties

Clarence E. Anthony  
Executive Director, National League of Cities

Tom Cochran  
Executive Director, U.S. Conference of Mayors

Robert J. O'Neill

Executive Director, International City/County Management Association

Jeffrey L. Esser  
Executive Director, Government Finance Officers Association

Stephen Traylor,  
Executive Director, National Association of Telecommunications Officers and Advisors

## 10. Transportation Funding

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC., URGING CONGRESS AND THE ADMINISTRATION TO ENACT A NATIONAL TRANSPORTATION PLAN THAT STRENGTHENS OUR INFRASTRUCTURE, CREATES JOBS, INCLUDES THE LOCAL VOICE IN PLANNING AND PROJECT SELECTION, AND CHOOSES THE BEST MIX OF TRANSPORTATION OPTIONS TO FIT THE NEEDS OF THE REGION.

WHEREAS, the current federal surface transportation program, Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), funds highway transit and other surface transportation programs, and is set to expire on July 31, 2015; and

WHEREAS, MAP-21 does not address the long-term funding challenges facing federal surface transportation funding and the Highway Trust Fund is nearing a major fiscal crisis; and

WHEREAS, previous federal programs have included the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) and the Intermodal Surface Transportation Efficiency Act (ISTEA); and

WHEREAS, the lack of investment in Florida's transportation system continues to impact our economy and cities, which are the economic engines of our state; and

WHEREAS, a new federal approach to surface transportation must include all levels of government at the table in establishing an effective transportation network; and

WHEREAS, continued federal funding of a successor program to MAP-21 and the need to provide flexibility to local governments to address local transportation needs are critical to Florida and its urban, suburban and rural communities.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., strongly urges the U.S. Congress to create a federal surface transportation program that provides adequate funding for federal transportation programs to support bridges, roads, highways and transit, and provides funding directly to local governments for transportation programs.

Section 2. That Congress considers input from local municipal officials as it contemplates the next federal surface transportation program.

Section 3. That a copy of this resolution be provided to the Florida Congressional Delegation, Florida Governor Rick Scott, the secretaries of the U.S. and Florida

Departments of Transportation, the National League of Cities, the chairs of the U.S. Congressional Transportation Committees and the membership of the Florida League of Cities, Inc.

Section 4. That this resolution shall become effective upon adoption and shall remain in effect until repealed and hereby repeals all conflicting resolutions.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

\_\_\_\_\_  
Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff



## Go Local: Invest in Local Transportation Priorities

**NLC calls on Congress to authorize a new, long-term federal surface transportation bill that:**

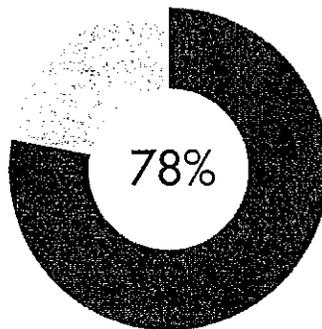
- Authorizes at least six years of transportation programs and funding,
- Enables more local control,
- Supports innovative programs and finance and
- Helps fix the Highway Trust Fund.

Local governments own and operate 78 percent of the nation's road miles, 43 percent of the nation's federal-aid highway miles, and 50 percent of the nation's bridge inventory. Local elected officials should have the authority to direct available transportation resources to projects serving their communities and regions.

However, local governments and their metropolitan and regional planning organizations directly receive less than 15 percent of current federal transportation funding. The last major transportation bill, the Moving Ahead for Progress in the 21st Century Act (MAP-21), consolidated programs important to local governments, reduced funding available for locally owned highways and bridges by 30 percent, and eliminated almost all discretionary programs for transit.

Congress can fix this imbalance. A new transportation bill should directly allocate greater funding to cities and metropolitan organizations and provide more flexibility to choose the best mix of transportation options to fit regional needs.

### Percentage of US Road Miles Owned by Local Governments



Source: U.S. Department of Transportation

Cities and towns are embracing innovation to create new opportunities for struggling commercial districts and neighborhoods in distress. Programs like the Transportation Alternatives Program (TAP) and Transportation Infrastructure Finance and Innovation Act (TIFIA) financing are tools that enable innovation.

A new transportation bill must be long-term. Crisis-driven legislation and short-term extensions create insurmountable obstacles for transportation and infrastructure projects. The next bill should authorize transportation programs and funding for at least six years to restore certainty and stability to the transportation planning process at the local and regional level.

Finally, the next transportation bill should be built on a stable foundation. The Highway Trust Fund, which finances the majority of transportation programs, has been unable to maintain sufficient revenue to support the nation's transportation needs. It is time for Congress to find a long-term solution that may, among other means, include an increase in the federal gasoline tax.

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# 11. Community Development Block

## Grant Program

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC.,  
URGING CONGRESS TO MAINTAIN FUNDING FOR THE  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

WHEREAS, the Community Development Block Grant (CDBG) program was enacted and signed into law by President Gerald Ford as the centerpiece of the Housing and Community Development Act of 1974; and

WHEREAS, the CDBG program has as its primary objective “the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income”; and

WHEREAS, the CDBG program has considerable flexibility to allow municipalities to carry out activities that are tailored to their unique affordable housing and neighborhood revitalization needs; and

WHEREAS, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and state and local government-sector associations are unanimous in their support of the CDBG and the need to keep this program intact; and

WHEREAS, according to the U.S. Department of Housing and Urban Development, the CDBG is most commonly used to support activities that improve the quality of life in communities; to promote energy conservation and renewable energy resources; for construction of and improvements to public infrastructure such as streets, sidewalks, and water and sewer facilities; and for small business assistance to spur economic development and job creation/retention; and

WHEREAS, since 2010, Congress has cut CDBG funding by more than \$1 billion; and

WHEREAS, Florida’s local governments will receive about \$130 million in CDBG grants in fiscal year 2015 to catalyze or support employment, housing and neighborhood revitalization efforts; and

WHEREAS, nationally, for every dollar of CDBG funding invested in a project another \$4.05 is leveraged from other sources; and

WHEREAS, over the past nine years, the CDBG program has created or retained 330,546 jobs for low- and moderate-income persons through a variety of economic development activities.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., urges Congress to provide at least \$3.3 billion in formula funding for CDBG.

Section 2. That a copy of this resolution be sent to the Florida Congressional Delegation, the National League of Cities, the secretary of the U.S. Department of Housing and Urban Development, and the membership of the Florida League of Cities, Inc.

Section 3. That this resolution shall become effective upon adoption and shall remain in effect until repealed and hereby repeals all conflicting resolutions.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

\_\_\_\_\_  
Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff

40 Years



Building Better Neighborhoods

# The Community Development Block Grant Program - Fact Sheet

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## Basic Program Components

- The CDBG Program is authorized by Title I of the Housing and Community Development Act of 1974. The funds are a block grant that can be used to address critical and unmet community needs including those for housing rehabilitation, public facilities, infrastructure, economic development, public services, and more.
- Primary objective is to develop viable urban and rural communities, by expanding economic opportunities and improving the quality of life, principally for persons of low and moderate income.
- Since 1974, it has invested \$144 Billion in communities nationwide.
- Appropriation level has varied over the 40 year program history – (3.10 B for FY 2014).
- Individual Community determines the need and use of funds.
- Each year approximately 95% of funds are invested in activities that primarily benefit low and moderate income persons.
- For FY 2014 there are 1220 grantees including cities, counties, states, and insular areas, and non-entitlement counties in Hawaii. However, potential reach is to every community either directly or indirectly—more than 7,250 local governments have access to funding.
- CDBG is an important catalyst for economic growth- helping local officials leverage funds for community needs.

## 2013 CDBG Program Accomplishments

- Nearly 28,000 Americans found new permanent jobs or were able to retain their jobs at businesses supported by CDBG economic development activities;
- More than 94,300 housing units received some level of housing rehabilitation assistance;
- More than 7,250 local governments, including more than 2,500 rural communities, participated in CDBG through the entitlement, urban county, or state programs; and

- More than 9.8 million people live in areas which benefited from CDBG-funded public service activities and almost 3.3 million live in areas which benefited from CDBG-financed public improvements.

## **Historic Program Outcomes by Category**

### **Job Creation and Retention**

- From fiscal year 2004-2013, CDBG economic development activities have directly created or retained more than 421,183 permanent jobs.
- Between fiscal years 2007-2013 CDBG helped more than 232,000 businesses expand economic opportunities for our country's most vulnerable citizens.

### **Public Facilities and Public Services**

- CDBG grantees historically expend one-third of their funds annually on public improvements.
- CDBG has improved public facilities that benefitted more than 33.7 million people between fiscal years 2005 and 2013. These improvements assist in providing the critical elements for suitable physical environments including sanitary water and sewer systems, safe streets and transit-ways, improved drainage systems, and other improvements that support our communities and help grow local economies.
- Up to 15 percent of CDBG funds can also be used by local governments on important public services. These investments assist the most vulnerable populations in a community, including children, the homeless, and victims of domestic violence. For low- and moderate-income families, these are life-changing services.

### **Housing Activities**

- Grantees historically spend approximately one quarter of their CDBG funds for housing activities, with the most significant activity being owner-occupied rehabilitation.
- From fiscal year 2004-2013 more than 1.3 million homes have been rehabilitated for low- and moderate-income homeowners and renters
- In fiscal year 2013, more than 94,000 households received housing assistance, ranging from minor emergency housing repairs enabling elderly and infirm residents to remain in their own homes to weatherization improvements that result in more affordable energy bills.

40 Years



Building Better Neighborhoods

# The Community Development Block Grant (CDBG) Program- Frequently Asked Questions

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## **1. What is the overall mission of the Community Development Block Grant (CDBG) Program?**

The CDBG program, authorized by Title I of the Housing and Community Development Act of 1974, provides annual grants to cities, counties and states to develop strong communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for low- and moderate-income persons. CDBG eligible activities are initiated and developed at the state and local level based upon a community's needs, priorities, and benefits.

## **2. What are the requirements for the use of the CDBG funds?**

Each grantee receiving CDBG funds is free to determine what activities it will fund as long as certain requirements are met, including that each activity is eligible and meets one of the following national objectives: benefits persons of low and moderate income; aids in the prevention or elimination of slums or blight; or meets an urgent development need which is defined as posing a serious and immediate threat to the health or welfare of the community in the past 18 months, and that the grantee is unable to finance on its own nor with other funding sources. Other Federal requirements such as environmental, labor standards, fair housing, nondiscrimination, also apply to the use of CDBG funds.

### **3. What is the overall appropriation level for this program and how much has been invested in communities since the program's authorization in 1974?**

The appropriation level has varied over the 40 year program history. The level is \$3.10 B for FY 2014. Since 1974, CDBG has invested \$144 billion in communities nationwide.

### **4. How many grantees across the nation will receive funding this year, Fiscal Year 2014?**

There are currently 1,220 CDBG grantees that are receiving funding throughout the United States directly from HUD including cities, counties, states, insular areas, and non-entitlement counties in Hawaii. However, the potential reach is to every community either directly or indirectly—more than 7,250 local governments have access to funding.

### **5. Does CDBG fund the local government, organizations or individuals?**

CDBG funds states, metropolitan cities and urban counties directly. Organizations and individuals cannot receive funds directly from HUD, but can apply for funding through their local government agency.

### **6. Can citizens participate in the planning/decision-making process around the use of CDBG funds?**

CDBG-funded projects have a better chance of success when citizens are involved from the beginning. The CDBG law requires that a grantee must develop and follow a detailed plan which provides for, and encourages, citizen participation and which emphasizes participation by persons of low- or moderate-income, particularly residents of predominantly low- and moderate-income neighborhoods, slum or blighted areas, and areas in which the grantee proposes to use CDBG funds. The plan must provide citizens with reasonable and timely access to local meetings, information, and records related to the grantee's proposed and actual use of funds.

## **7. What types of activities does the CDBG program fund?**

CDBG funds 28 eligible activities that include infrastructure, economic development projects, installation of public facilities, community centers, housing rehabilitation, public services, clearance/acquisition, microenterprise assistance, code enforcement, and homeowner assistance, to name a few.

## **8. What types of activities are most frequently funded with CDBG monies?**

Historically, CDBG grantees expend one-third of their funds on public facilities and improvement projects. CDBG has improved public facilities that benefitted more than 33.7 million people between fiscal years 2005 and 2013. Infrastructure projects such as sewer systems, sanitary water, safe streets and transit-ways, improved drainage systems, community centers and public parks, and other improvements that support our communities and help grow local economies.

## **9. How Does the CDBG Program Support Economic Growth and Recovery?**

From fiscal year 2004 to fiscal year 2013, CDBG economic development activities have directly created or retained more than 421,183 permanent jobs. In addition, grantees provide financial assistance to businesses as loan and grants and the recipients use the CDBG assistance to expand economic opportunities and create permanent jobs, primarily for low and moderate income Americans. Between fiscal years 2007-2013, CDBG helped more than 232,000 businesses expand economic opportunities for our country's most vulnerable citizens.

## **10. I need my home rehabilitated? Will CDBG pay for that?**

You will need to contact your local grantee to find out if the grantee is using CDBG funds for housing rehabilitation and for any program requirements.

## **11. How many homes have been rehabilitated using CDBG funds?**

From fiscal year 2004-2013, more than 1.3 million homes have been rehabilitated for low- and moderate-income homeowners and renters. In Fiscal year 2013 alone, more than 94,000 households received CDBG funding for some level of housing rehabilitation assistance ranging from emergency repairs to enable elderly and infirm residents to remain in their own homes to weatherization improvements that result in more affordable energy bills.

## **12. Can you leverage other funds with CDBG dollars and how is this done?**

CDBG funds can be leveraged with other Federal, state, local or private funds to increase the impact of the funds. Facing local budget shortfalls, CDBG funding remains a crucial source of funding that helps communities leverage funds for key infrastructure and economic development projects. On projects where leveraging was reported for the fiscal years of 2010-2012, grantees reported that every dollar of CDBG funds leveraged an additional \$4.07 of other funds.

## **13. How does CDBG's Section 108 Program work with economic developers who want to leverage jobs with other funds and to create jobs?**

The Section 108 Program is the loan guarantee provision of the Community Development Block Grant (CDBG) program that provides states and communities with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale development projects. This makes it one of the most important public investment tools that HUD offers to states and local governments. It allows them to transform a small portion of their CDBG funds into federally guaranteed loans large enough to pursue economic revitalization projects that can renew entire neighborhoods.

Such public investment is often needed to inspire private economic activity, providing the initial resources or simply the confidence that private firms and individuals may need to invest in distressed areas. Section 108 loans are not risk-free, however; local governments borrowing funds guaranteed by Section 108 must pledge their current and future CDBG allocations to cover the loan amount as security for the loan. For more information about the Section 108 program go to:

<https://www.onecpd.info/section-108/>

## **14. How do I contact a CDBG grantee to find out if funding is available or to support a project where I live?**

The following link provides a listing of all the CDBG grantees that currently receive funding directly from HUD:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/about/budget/budget14](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/budget/budget14)

## **15. How can a private citizen find out the projects that have received CDBG funding in their community?**

Interested persons can check the CDBG grantee's website for activities that were funded that program year and in some cases, in prior years. Please see the website below for the grantee contact information:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/communitydevelopment/programs/contacts](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/contacts)

## **16. Where can I learn more about the CDBG Program?**

To learn more about the Community Development Block Grant Program, click on the following links:

<https://www.onecpd.info/cdbg-entitlement/>

<https://www.onecpd.info/cdbg-state/>

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## 12. FEMA De-obligations

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC., URGING  
THE FEDERAL GOVERNMENT TO CLARIFY THE DE-OBLIGATION  
PROCESS OF PREVIOUSLY APPROVED DISASTER RELIEF FUNDS.

WHEREAS, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (The Stafford Act), establishes the statutory authority for most Federal disaster response activities especially as they pertain to the Federal Emergency Management Agency (FEMA) and FEMA programs; and

WHEREAS, the purpose of the Stafford Act is to provide continued and orderly assistance from the federal government to state and local governments to relieve hardship and assist in disaster recovery; and

WHEREAS, the Stafford Act authorizes FEMA to obligate funds to states and local governments to help recover from natural disasters that cause widespread damage to homes, businesses and critical infrastructure; and

WHEREAS, the ability of state and local governments to recover successfully from natural disaster events is due in large part to their partnership with FEMA and the financial assistance that it provides under the Stafford Act; and

WHEREAS, it is through this partnership that local governments seek FEMA's approval to develop recovery projects that include authorized costs to be reimbursed by FEMA once the projects are completed; and

WHEREAS, FEMA has sought to de-obligate previously approved recovery funds from local governments whenever the Department of Homeland Security Office of Inspector General determines that FEMA has erroneously obligated funds, even when the recipient has already lawfully spent the funds in accordance with the grant's requirements; and

WHEREAS, FEMA's de-obligation of previously approved recovery funds weakens the intent of the Stafford Act; and

WHEREAS, local governments do not have the resources or expertise to fully respond to the voluminous FEMA requests for information and documentation relating to their post disaster recovery expenses and efforts; and

WHEREAS, Congress enacted Section 705(c) of the Stafford Act, titled "Binding Nature of Grant Requirements," to protect recipients of disaster assistance from these retroactive de-obligations; and

WHEREAS, H.R. 1471, the FEMA Disaster Assistance Reform Act of 2015, is federal legislation sponsored by Congressman Lou Barletta (R-11-PA); and

WHEREAS, Congresswoman Lois Frankel (D-22-FL) worked to amend H.R. 1471 to include a provision that clarifies the three-year statute of limitations on FEMA's ability to reclaim funds, based on a change in policy determination, after a state or local government has spent the funds on previously determined eligible projects and when there is no evidence of fraud, waste or abuse; and

WHEREAS, Senator Bill Nelson and Congressman Mario Diaz-Balart and other members of congress have also been working to improve the FEMA Public Assistance Grant Program.

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., urges the federal government to clarify the process whereby FEMA can declare previously approved funds distributed to local governments for disaster relief efforts are de-obligated so as to ensure the de-obligation process:

1. complies with Section 705(c) of the Stafford Act,
2. includes a reasonable time frame for municipalities to respond to information requests, and
3. requires FEMA to make timely decisions on appeals filed by municipalities that face the potential rescission of previously appropriated federal funds.

Section 2. That the Florida League of Cities, Inc. expresses appreciation to Senator Bill Nelson and Representatives Lois Frankel and Mario Diaz-Balart, for their efforts to improve the FEMA de-obligation process and urges members of the Florida congressional delegation to support the FEMA Disaster Assistance Reform Act of 2015.

Section 3. That a copy of this resolution be sent to President Barack Obama, the Florida Congressional Delegation, the National League of Cities, and the membership of the Florida League of Cities, Inc.

Section 4. That this resolution shall become effective upon adoption and shall remain in effect until repealed and hereby repeals all conflicting resolutions.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89<sup>th</sup> Annual Conference, at the World Center Marriott, Orlando, Florida, this 15<sup>th</sup> Day of August 2015.

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Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

ATTEST: \_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: FLC Staff

## **FEMA De-Obligations:**

Since around 2011, the Department of Homeland Security's Office of Inspector General (OIG) has been auditing previously approved recovery projects in an attempt to recapture funds that it asserts should not have been awarded. Many of these audits are from the 2004 and 2005 storms and the moneys received have been long spent on recovery projects. These deobligations have run in the millions of dollars and have impacted the budgets of local governments across the state. Even though there is an appeals process, in many cases the process has resulted in lengthy delays and denials or because it happened so long ago, neither the relevant documentation nor local government staff remain to accurately appeal these audit findings. This situation has left local governments with no choice but to pay back moneys for recovery projects that, in some instances, were previously identified, developed and determined eligible by FEMA staff.

In a state where the question is not *if* a natural disasters will occur, but rather *when*, the Florida League of Cities believes improvements can be made to the process. FEMA has also acknowledged that there are problems and is currently considering reforms to the process. FLC is working to address the unlimited OIG timeframe for review of recovery projects, FEMA deobligations of previously approved recovery project funding years after the loss event and improvements to streamline the appeals process.

In September 2014, the U.S. District issued a ruling in *South Florida Water Management District v. FEMA (Case No. 13-80533-CIV)*. The South Florida Water Management District challenged a \$21 million FEMA deobligation and the court ordered FEMA to retract the deobligation. The U.S. Department of Justice did not appeal the decision. In light of this decision, the FLC and Florida Association of Counties (FAC) have questioned how the ruling will affect recovery projects throughout Florida and whether previous appeal decisions by the agency will be reconsidered.

In April, Congresswoman Lois Frankel (D-22) amended H.R. 1471, the FEMA Disaster Assistance Reform Act of 2015, to include language amending the Stafford Act to change the 3 year statute of limitations by which FEMA can recover payments to begin once the Project Worksheet is transmitted, rather than waiting until completion of the final expenditure report for the entire disaster.

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## 13. Solar Power Proposed

### Constitutional Amendment

A RESOLUTION OF THE FLORIDA LEAGUE OF CITIES, INC., DIRECTING STAFF TO SEEK PERMISSION FROM THE FLORIDA SUPREME COURT TO WITHDRAW ITS BRIEF IN OPPOSITION TO THE FLORIDIANS FOR SOLAR CHOICE BALLOT PETITION.

WHEREAS, on June 10, 2015, the Florida League of Cities, in conjunction with the Florida Municipal Electric Association, filed an initial brief with the Florida Supreme Court in opposition to the Floridians for Solar Choice ballot initiative; and

WHEREAS, members of the Florida League of Cities find that the submission of the brief was filed outside of the appropriate League protocol; and

WHEREAS, members of the Florida League of Cities find the arguments presented in the brief are alarmist, unsupported and speculative; and

WHEREAS, as a threshold matter, such legal filings should be subject to a vote of the Florida League of Cities and be reviewed and approved by the FLC Energy, Environment and Natural Resources Committee; and

WHEREAS, the solar petition language would allow the sale of power from an entity other than a utility limited to solar power systems with a size limitation of 2 megawatts (MW) and would provide more solar ownership and financing options to allow for solar development in the state; and

WHEREAS, arguments related to material future negative impacts to local municipalities due to reduced utility revenue and the local fees dependent on such revenue, such as franchise fees and public service tax is again, highly speculative and unfounded; and

WHEREAS, the Florida Financial Impact Estimating Conference (FIEC), an entity that reviews the impacts and costs of proposed petitions on state and local governments, found - after weeks of study and consideration of input from a number of interested parties, including the Florida League of Cities - that as it relates to reduced revenue: "the timing and magnitude of these decreases cannot be determined because they are dependent on various technological and economic factors that cannot be predicted with certainty;" and

WHEREAS, utility revenue can be influenced by any number of factors, including the economy and weather. It is uncertain any reduced revenue may take place, and should be considered in the context of additional fees and economic development increased solar development will create in our communities; and

WHEREAS, Florida is one of only four states in the United States that by law expressly denies citizens and businesses the freedom to buy solar power electricity directly from someone other than a power company<sup>1</sup>; and

WHEREAS, Florida's utilities currently have roughly 60,000 MW of generating capacity to service some 9 million electric customers and only 6,600 customers, or some 0.07% of all customers, generate a mere 60 MW through solar power; making the negative impacts to municipalities from reduced utility revenue so marginable as to not be measurable; and

WHEREAS, Florida spends about 58 billion dollars each year buying carbon-based fuels from other states and countries to power our homes, businesses and cars, while solar power will keep energy dollars at home in Florida and will create good paying local jobs; and

WHEREAS, in a recent poll, 74% of Florida voters said they support a proposal to change the state's current law and allow Floridians to contract directly with solar power providers for their electricity and removing barriers to solar choice will allow more Floridians to take advantage of the power of the sun.<sup>2</sup>

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA LEAGUE OF CITIES, INC.:

Section 1. That the Florida League of Cities, Inc., hereby directs staff to file a motion seeking to withdraw the initial brief in opposition to the Amendment to remove a barrier to customer-sited solar power, while giving the Florida Municipal Electric Association the opportunity to refile the same brief deleting any reference to the League.

Section 2. This resolution shall become effective upon adoption.

PASSED AND ADOPTED by the Florida League of Cities, Inc., in conference assembled at the League's 89th Annual Conference, at the World Center Marriott, Orlando, Florida, this 15th Day of August 2015.

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Matthew Surrency, President  
Florida League of Cities, Inc.  
Mayor, Hawthorne

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<sup>1</sup> Department of Energy, et. al, *Database of State Incentives for Renewables and Efficiency*, at [http://www.dsireusa.org/documents/summarymaps/3rd\\_Party\\_PPA\\_Map.pdf](http://www.dsireusa.org/documents/summarymaps/3rd_Party_PPA_Map.pdf)

<sup>2</sup> Northstar Opinion Research, Survey of Florida Registered Voters, October 2014, at: [http://www.cleanenergy.org/wp-content/uploads/FL\\_Energy\\_Presentation\\_for\\_Release.pdf](http://www.cleanenergy.org/wp-content/uploads/FL_Energy_Presentation_for_Release.pdf)

ATTEST:

\_\_\_\_\_  
Michael Sittig, Executive Director  
Florida League of Cities, Inc.

Submitted by: Mayor Cindy Lerner, Village of Pinecrest

# CONSTITUTIONAL AMENDMENT PETITION FORM

**Note:**

- All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.
- Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes]
- If all requested information on this form is not completed, the form will not be valid.

Your Name: \_\_\_\_\_  
(Please Print Name as it appears on your Voter Information Card)

Your Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

Please change my legal residence address on my voter registration record to the above residence address (check box, if applicable).

Voter Registration Number: \_\_\_\_\_ (or) Date of Birth \_\_\_\_\_

I am a registered voter of Florida and hereby petition the Secretary of State to place the following proposed amendment to the Florida Constitution on the ballot in the general election:

**BALLOT TITLE: Limits or Prevents Barriers to Local Solar Electricity Supply**

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

**ARTICLE AND SECTION BEING CREATED OR AMENDED:** Add new Section 29 to Article X

**FULL TEXT OF PROPOSED AMENDMENT:**

Section 29. Purchase and sale of solar electricity. –

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

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

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

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

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

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

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

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

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

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

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

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

Date: \_\_\_\_\_ X \_\_\_\_\_  
(Date of signature) (Signature of registered voter)

Initiative petition sponsored by Floridians for Solar Choice, Inc., 120 E. Oakland Blvd., Suite 105, Ft. Lauderdale, FL 33334

If paid petition circulator is used:

Circulator's Name \_\_\_\_\_

Circulator's Address \_\_\_\_\_

For official use only:

Serial number: 14-02

Date approved: 12/23/2014

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

**SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT**

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

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

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

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

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

### **FINANCIAL IMPACT STATEMENT**

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

## I. SUBSTANTIVE ANALYSIS

### A. Proposed Amendment

Ballot Title:

*Limits or Prevents Barriers to Local Solar Electricity Supply*

Ballot Summary:

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

Text of Proposed Amendment:

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

*Purchase and sale of solar electricity. –*

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

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

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

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

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

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

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

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

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

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

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

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

Effective Date:

*January 3, 2017*

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

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

## C. Background

### Sponsor of the Proposed Amendment

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

### Public Service Commission (PSC)

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

For electric utilities, the commission has regulatory authority over each public utility. "Public utility" is defined to mean every person or legal entity supplying electricity to or for the public within this state, but to expressly exclude both a rural electric cooperative and a municipality or any agency thereof.<sup>3</sup>

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

### Electric Utilities

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

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

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

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

<sup>4</sup> Florida Public Service Commission, "When to Call the Florida Public Service Commission" available at [http://www.psc.state.fl.us/publications/consumer/brochure/When\\_to\\_Call\\_the\\_PSC.pdf](http://www.psc.state.fl.us/publications/consumer/brochure/When_to_Call_the_PSC.pdf)

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

### *Investor-Owned Electric Utilities*

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

### *Municipal Electric Utilities*

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

### *Rural Electric Cooperatives*

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

### Solar Energy in Florida

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

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

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

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

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

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

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

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

### Net Metering

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

### Third-Party Financing Models

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

#### *Solar Leases*

A solar lease is a financial agreement in which a property owner enters into a lease for the installation of a solar energy system. The property owner pays the company for the use and maintenance of the solar equipment. Typically, the electricity produced by the solar energy system is consumed on the property with any excess being transferred to the electric utility serving the property. Solar leases are permitted under current law in Florida.

#### *Solar Power Purchase Agreements (PPAs)*

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

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

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

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

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

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

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

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

### State and Local Revenues

#### *Sales Tax*

Section 212.08(7)(hh), F.S., provides a sales tax exemption for solar energy systems and any component thereof. Section 212.02(26), F.S., defines "solar energy system" as "the equipment and requisite hardware that provide and are used for collecting, transferring, converting, storing, or using incident solar energy for water heating, space heating, cooling, or other applications that would otherwise require the use of a conventional source of energy such as petroleum

products, natural gas, manufactured gas, or electricity." The Florida Solar Energy Center publishes a comprehensive list of solar energy system components.

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

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

#### *Gross Receipts Tax*

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

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

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

#### *Ad Valorem Tax*

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

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

## *Franchise Fees*<sup>12</sup>

Article VIII, Section 2(b), Florida Constitution, provides:

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

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

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

When analyzing the validity of a home rule fee, judicial reliance is often placed on the type of governmental power being exercised. Generally, fees fall into two categories. Regulatory fees, such as building permit fees, inspection fees, impact fees, and stormwater fees, are imposed pursuant to the exercise of police powers as regulation of an activity or property. Such regulatory fees cannot exceed the cost of the regulated activity and are generally applied solely to pay the cost of the regulated activity.

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

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

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<sup>12</sup> The following discussion of franchise fees is based on materials contained in Nabors, Giblin & Nickerson, P.A., Primer on Home Rule & Local Government Revenue Sources (June 2014).

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

### *Public Service Tax*

Municipalities and charter counties may levy by ordinance a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service.<sup>14</sup> The tax is levied only upon purchases within the municipality or within the charter county's unincorporated area and cannot exceed 10 percent of the payments received by the seller of the taxable item. Services competitive with those listed above, as defined by ordinance, can be taxed on a comparable base at the same rates; however, the tax rate on fuel oil cannot exceed 4 cents per gallon.<sup>15</sup> The tax proceeds are considered general revenue for the municipality or charter county.

All municipalities are eligible to levy the tax within the area of its tax jurisdiction. In addition, municipalities imposing the tax on cable television service, as of May 4, 1977, may continue the tax levy in order to satisfy debt obligations incurred prior to that date. By virtue of a number of legal rulings in Florida case law, a charter county may levy the tax within the unincorporated area. For example, the Florida Supreme Court ruled in 1972 that charter counties, unless specifically precluded by general or special law, could impose by ordinance any tax in the area of its tax jurisdiction that a municipality could impose.<sup>16</sup> In 1994, the Court held that Orange County could levy a public service tax without specific statutory authority to do so.<sup>17</sup>

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

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

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

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

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

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

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

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

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

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

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

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

In Fiscal Year 2012-13, 327 municipal governments collected \$864.1 million in Public Service Tax revenues of which \$686.3 million (79.4 percent) was from public service taxes on electricity. Electricity public service tax revenues made up 2.1 percent of total municipal revenues in that fiscal year. Also in Fiscal Year 2012-13, 12 charter county governments collected \$255.8 million in Public Service Tax revenues, of which \$224.1 million (87.6 percent) was from public service taxes on electricity. Similar to the municipalities, the electricity public service taxes made up 0.8 percent of the counties total revenues in that fiscal year. Summaries of prior years' revenues reported by county and municipal governments are available on EDR's website.<sup>24</sup>

#### *Regulatory Assessment Fees*

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

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

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

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

- Public Workshop on April 10, 2015

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

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

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

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

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

#### A. FISCAL ANALYSIS BACKGROUND

##### Requested Information from State Entities and other Organizations

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

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

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

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

Solar Business Models

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

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

Tax Treatment of Solar Equipment and Solar Energy in Florida

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

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

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

## B. FISCAL ANALYSIS CONCLUSIONS BY THE FIEC

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

### **Regulatory Assessment Fees**

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

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

### **Municipal Utility Revenues**

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

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

## **Local Government Franchise Agreements**

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

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

## **Ad Valorem Taxes**

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

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

## **Public Service Tax**

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

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

## **Gross Receipts Tax**

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

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

### **Sales Tax**

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

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

### **Implementation and Compliance Costs**

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

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

**IN THE SUPREME COURT OF FLORIDA**

Case Numbers SC15-780 and SC15-890

**ADVISORY OPINION TO THE ATTORNEY GENERAL  
RE: LIMITS OR PREVENTS BARRIERS TO  
LOCAL SOLAR ELECTRICITY SUPPLY**

**ADVISORY OPINION TO THE ATTORNEY GENERAL  
RE: LIMITS OR PREVENTS BARRIERS TO  
LOCAL SOLAR ELECTRICITY SUPPLY (FIS)**

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**BRIEF OF INTERESTED PARTIES  
FLORIDA LEAGUE OF CITIES, INC., and  
FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.**

**IN OPPOSITION TO THE PROPOSED AMENDMENT**

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## STATEMENT OF THE CASE AND FACTS

The Florida Attorney General has requested this Court's advisory opinion on the validity of an initiative petition titled, "Limits or Prevents Barriers to Local Solar Electricity Supply," which has been assigned Case No. SC15-780 by the Court. The Attorney General also has requested the Court's review of the Financial Impact Statement prepared for the amendment, assigned Case No. SC15-890. The Court will determine (1) Whether the ballot title and summary are clear and unambiguous and thus comport with the requirements of Section 101.161(1), Florida Statutes; and (2) Whether the proposed amendment violates Article XI, section 3 of the Florida Constitution, which requires that the proposed amendment embrace but one subject.

## STANDARD OF REVIEW

The issues before the Court are questions of law, and therefore the review is *de novo*.

## SUMMARY

The Solar Initiative does not comport with the requirements of the Florida Constitution or the Florida Statutes. It does not reveal its impacts to municipalities, electric utilities, utility customers, and the public at large. Moreover, it violates the single-subject requirement of the Florida Constitution by impacting multiple layers of government and, in particular, the Legislature.

The proposed amendment will disrupt contractual relationships between and among municipalities and utilities that enter into franchise agreements to provide electric utilities to municipal citizens. The Solar Initiative will reduce revenues available to municipalities and utilities under Florida law and, as a result, municipalities will curtail services to citizens or will be forced to pass additional fees inequitably onto non-solar customers in order to recoup revenue losses. These impacts are not disclosed to the electors in the ballot title and summary, as required.

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The Solar Initiative will significantly impact the ability of the state and local governments from protecting the health, safety, and welfare. Irrespective of how reasonable or necessary such protections are, if they have the effect of prohibiting in a particular instance the generation or supply of solar energy, the protections will be disallowed.

The Solar Initiative violates the constitutional single-subject requirement by engaging in logrolling in that it forces a voter to balance a preference for solar power against the adverse fiscal impacts that the Initiative may have by resulting in inequitable rate structures between solar and non-solar utility customers. The Solar Initiative also performs multiple functions of government, including local governments and the state, and impairs the lawmaking power of the Florida

Legislature. The impacts are unauthorized and therefore the Solar Initiative should not be placed on the ballot for elector consideration.

### **STATEMENT OF INTEREST**

#### **A. THE FLORIDA LEAGUE OF CITIES, INC.**

The Florida League of Cities, Inc. ("League") has a special interest in the ballot initiative titled, "Limits or Prevents Barriers to Local Solar Electricity Supply" ("Solar Initiative") as a result of the anticipated financial and operating impacts of the Solar Initiative on Florida municipalities.

The League is a voluntary organization whose membership consists of municipalities and other units of local government rendering municipal services in the State of Florida. The League membership comprises more than 400 municipalities. Under its Charter, its purpose is to work for the general improvement of municipal government and its efficient administration, and to represent its members before various legislative, executive, and judicial branches of government on issues pertaining to their general and fiscal welfare.

The issues of interest to the League with respect to the Solar Initiative are:

- The material financial impact to municipalities based upon a reduction in franchise fees and public service tax revenues that will be received by Florida's municipalities.

- The financial impact on Florida's municipally-owned electric utilities because the proposal appears to prohibit a municipal utility from charging fees and conditioning service on solar energy customers that are rationally related to a utility's cost of accommodating the solar energy customer.
- The lack of clarity in the Solar Initiative language that will cause confusion and require litigation in order to ascertain its parameters.

The League does not oppose solar energy. In fact, the League currently is appearing as an amicus in a pending case in this Court in support of a law that permits cities to loan money to citizens to fund energy efficiency and renewable energy improvements to their homes. See, *Florida Bankers Association v. Florida Development Finance Corporation*, Case No. SC14-1603. For the reasons indicated above, however, the League brings to the attention of the Court the significant financial and operating impacts the Solar Initiative will have on Florida's municipalities.

**B. THE FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.**

The Florida Municipal Electric Association, Inc. ("FMEA"), is the statewide trade association for 33 of Florida's public power retail electric utilities.<sup>1</sup> Founded in 1942 in response to the WWII fuel shortages, for more than 70 years FMEA has been committed to supporting its public power members in their goals for reliable

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<sup>1</sup> General information concerning FMEA as well as specific data about its public power members can be found at its website: [www.publicpower.com](http://www.publicpower.com).

and low-cost electric service to their communities. FMEA's member utilities provide approximately 15 percent of Florida's electric load, which translates to serving approximately three million Floridians.

Like the League, the FMEA is not opposed to solar energy. As the League has done, the FMEA also currently is appearing as an amicus in a pending case in support of a law that permits cities to loan money to citizens to fund energy efficiency and renewable energy improvements to their homes. See, *Florida*

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*Bankers Association v. Florida Development Finance Corporation*, Case No. SC14-1603.

If the Solar Initiative is approved, however, the retail customers of FMEA's members will be greatly incentivized to develop local solar facilities. This is an untenable position for FMEA's members, as they would be deprived of the right or ability under law to mitigate an ever-increasing cost shift to non-solar customers. Should more homes and businesses become solar customers as a result of the Solar Initiative, cost-shifting between solar and non-solar customers – as explained in greater detail, *infra* – could become quite substantial, particularly if municipal utilities are not allowed to fully recoup the cost of accommodating these solar customers.

## **C. EFFECT OF SOLAR INITIATIVE ON MUNICIPALITIES AND ELECTRIC UTILITIES**

The Solar Initiative would permit a “local solar electricity supplier” to use solar energy to generate up to two megawatts of electricity and to either consume it on the supplier’s property to sell it to the owners of “contiguous” property. The amendment prohibits electric utilities, including municipal electric utilities, from charging any fee or placing any service condition on the solar-generated electricity supplier’s customers that are not imposed on the utility’s other customers. The amendment permits laws designed to protect the public’s health, safety, and welfare so long as the laws don’t prohibit “the supply of solar-generated electricity by a local solar electricity supplier.”

### **(1) Effect on Franchise Agreements and Fees**

Many Florida municipalities charge franchise fees to electric utilities to permit the electric utility to provide electric service within the municipality’s jurisdiction. For the Fiscal Year ending September 30, 2012 (the most recent information available), Florida’s municipalities derived approximately \$563 million in franchise fees.<sup>2</sup>

Franchise fees are negotiated fees that are charged to the electric utility to provide electric service within the municipality. See, *Florida Power Corporation v. City of Winter Park*, 887 So. 2d 1237 (Fla. 2004); *City of Plant City v. Mayo*,

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<sup>2</sup> See, [edr.state.fl.us/content/local-government/data/revenues.expenditures/munifiscal.cfm](http://edr.state.fl.us/content/local-government/data/revenues.expenditures/munifiscal.cfm).

337 So. 2d 966 (Fla. 1976). The consideration from the municipality in exchange for the fees consists of three parts: (1) the privilege of using the municipality's rights-of-way, (2) the municipality's agreement not to compete with the electric utility, or to not allow others to compete with the electric utility, during the term of the franchise, and (3) a fee paid to the municipality to offset the costs incurred by the municipality as a result of the electric utility's disparate and exclusive use of public property. *City of Hialeah Gardens v. Dade Cnty.*, 348 So. 2d 1174 (Fla. 3rd DCA 1977); *Santa Rosa Cnty. v. Gulf Power Co.*, 635 So. 2d 96 (Fla. 1st DCA 1994), rev. denied, 645 So. 2d 452 (Fla. 1994); *Flores v. City of Miami*, 681 So. 2d 803 (Fla. 3rd DCA 1996). The electric utility collects the franchise fee from the customers who receive service within the municipality. See, Rule 15-6.100, F.A.C.

The prevailing practice in the electric industry is to account for solar-generated electricity through the use of a "net meter" installed by the electric utility. As electricity flows from the utility to the solar power generator, the meter records the amount of electricity flowing to the generator. When solar-generated electricity flows from the solar power generator to the electric utility, the meter literally "spins backwards." If the meter reads more than it did the last time it was read, this indicates that the solar generator has used more electricity than it generated, and the electric utility bills the owner the "net amount." For example,

assume that a customer's bill ordinarily would be \$200, but that customer generates \$125 in solar-generated electricity. In this case, the customer would only be billed \$75, the difference between the ordinary bill and the solar-generated electricity.

If the meter reads less than the last time it was read, that indicates that the solar energy generator generated more electricity than was used. In that case, the net amount is "banked" in the generator's account and is applied to the electric bill for the following month. As an example, if the customer's bill ordinarily would be \$125, and the same customer generates \$200 in solar energy, a \$75 credit will be banked to the customer's account. In either case, the generator results in lower revenues to the electric utility than otherwise as a result of the solar-generated electricity.

It is clear that the primary purpose of the Solar Initiative is to increase the amount of electricity generated by solar power. In doing so, the Solar Initiative undoubtedly will reduce the revenue streams of electric utilities. As a result, franchise fee revenues to municipalities will likewise be reduced, as franchise fees are based on a percentage of an electric utility's gross revenues. There will be impacts to the electric utility customer as a result. The electric rates will increase for those who cannot or do not generate solar energy, which would include seniors and middle-income citizens, and those who are not permitted to install solar

electric facilities, such as renters. Alternatively, municipalities will decrease services to accommodate the reductions in revenue occasioned by the Solar Initiative.

The Solar Initiative also will impair the consideration that the municipality provides to the electric utility in return for the franchise fee, as the municipality will no longer be able to prohibit others from providing electric services within the municipality. It therefore is likely that extant franchise agreements will no longer be valid due to decreased consideration, in that the franchise fee will no longer bear a reasonable nexus to the cost of using municipal rights-of-ways. See, *Alachua Cnty. v. State*, 737 So. 2d 1065 (Fla. 1999); see also, *Santa Rosa Cnty. v. Gulf Power Co.*, *supra*.

Further, franchise agreements often contain provisions that permit the electric utility to terminate the franchise agreement if any other person is permitted to provide electric services within the municipality, whether authorized by the municipality or through enactment of any law authorizing the same. Candidly, these provisions may be ameliorated somewhat by other provisions that may be contained in franchise agreement that give a municipality the right to purchase the electric utility's infrastructure upon termination of the agreement. Notwithstanding, it is clear that the Solar Initiative will disrupt the current

contractual relationships between municipalities and the electric utilities, as well as the franchise fee revenue that municipalities derive from the relationships.

**(2) Effect on Public Service Tax**

Florida law permits municipalities to levy a tax on the purchase of electricity in an amount not to exceed ten percent of the payments received by the electric utility. The tax is paid by customers who receive service from an electric utility within a municipality. Section 166.231, Fla. Stat. For the fiscal year ending December 30, 2012 (the most recent information available), municipalities received approximately \$666 million from the public service tax on electricity.<sup>3</sup> The Solar Initiative undoubtedly will cause a reduction in the public service tax revenues that municipalities currently derive from the public service tax on electricity.

The clear purpose of the Solar Initiative is to increase the production of solar-generated electricity. As stated above in “(1) Effect on Franchise Agreements and Fees,” the prevalent practice in the industry is to use “net metering” to account for solar-generated electricity. Those municipalities that levy the public service tax on electricity undoubtedly will experience a reduction in public service tax revenues as a result of the Solar Initiative.

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<sup>3</sup> See, [edr.state.fl.us/content/local-government/data/revenues.expenditures/munifiscal.cfm](http://edr.state.fl.us/content/local-government/data/revenues.expenditures/munifiscal.cfm).

In that case, it is likely that municipalities will be faced with two options. The municipality either will absorb the loss in revenues by decreasing municipal services, or recoup the lost revenues by increasing the public service tax – to the extent authorized by law – on all of its citizens. In the latter instance, the effect will be to shift a portion of the solar generator’s tax burden to those citizens who cannot install solar energy facilities, including those who are unable to afford the capital costs of the facilities, such as seniors and middle-income citizens, as well as those not allowed to install solar-electric facilities, such as renters.

**(3) Effect on Non-Solar Generating Customers**

The Solar Initiative seeks to limit or prevent

regulatory and economic barriers that discourage the supply of electricity generated from solar energy sources to customers who consume the electricity at the same or a contiguous property as the site of the solar electricity production.

“Contiguous property” is not defined in the proposed amendment, but clearly it includes individual parcels of real property that abut each other; large developments wherein real parcels abut one another, and shopping centers and shopping malls containing multiple businesses. Its impact therefore impacts a greater number of properties than may be inferred from its language.

The “regulatory and economic barriers” that are included within the terms of the Solar Initiative include “rate, service and territory regulations” that may be imposed by the state or local governments. Further, the “regulatory and economic

barriers” include “imposition by electric utilities of special rates, fees, charges, tariffs, or terms and conditions of service” on customers consuming solar electricity, unless they are also imposed on other customers of the “same type or class” who do not consume local solar electricity.

Solar-generated electricity is inherently sporadic and uncertain and is thus not dependable. Solar-generating facilities are unable to produce electricity when it is overcast, after sunset, and during storm events. They also are unable to generate electricity when they are shut down for maintenance reasons. Moreover, there is currently no economically viable method to store solar-generated electricity during these nonproductive periods. Therefore, solar electric customers must use conventional electricity when solar-generating facilities are unable to generate electricity. Concomitantly, electric utilities must continue to maintain the infrastructure necessary to provide electric service to solar energy customers irrespective of whether the customer is able to generate solar electricity.

Moreover, customers who generate solar electricity have a disparate cost impact on a utility’s infrastructure that is not shared by the customers who do not generate or consume solar electricity. As examples of the activities that will generate disparate cost impacts to solar and non-solar customers, electric utilities must monitor the flow of solar electricity through transmission lines and transfer stations, must account for the solar generated electricity, must conduct safety

inspections during the construction of solar generating facilities, must conduct safety reviews of the facilities' electrical systems, and must install meters. A fair reading of the Solar Initiative will not permit the utility to charge the solar energy customer for the disparate impact that the solar customer will have on the utility's system. Rather, citizens who do not generate or consume solar generated electricity will subsidize those who do.

This inequitable shifting of costs would be especially significant for smaller municipal utilities. Florida's municipal electric utilities vary greatly in size, from the Jacksonville Electric Authority – which has approximately 422,315 customers and a peak load of 2,665 MW – to the City of Moore Haven, which has approximately 1,058 customers and a peak load of 3.8 MW. In fact, of FMEA's 33 members, six utilities have peak loads less than 10 MW. The Solar Initiative would allow any person to enter into a municipal electric utility's service territory and supply electricity generated from a solar-generating facility of up to 2 MW to an existing customer and its contiguous properties, with no cap on the aggregate capacity of the generation on the utility's system.

As a result, the Solar Initiative could have a substantial impact on a municipal electric utility's system. It would not take many of these solar generating systems to engulf a small municipal electric utility's entire system. In such instance, however, the utility still would be required to maintain the generation and

distribution assets necessary to meet its entire load (i.e., its full potential load assuming all solar generation is offline).

Since the customers purchasing power from the solar generation would not be contributing fully to the fixed costs associated with the utility's generation and distribution system – and the Solar Initiative would prohibit the utility from directly assigning these costs to the solar generators or customers – these costs would be passed on to the non-solar customers. In a town with fewer than 1,000 customers to bear these costs, the impact to a non-solar customer would be quite significant.

Additionally, most municipal electric utilities require the solar energy customer to install a “disconnect switch” so that a utility worker repairing or maintaining the system is able to turn off the switch to disable temporarily the solar energy system. The owner in turn is able to switch the system back on when power is restored. Other electric utilities must remove the meter physically to assure that the solar energy system is turned off and the electric lines are not operating as “hot.” Again, when overall power is restored, the electric utility must return and reinstall the meter. The Solar Initiative, however, will not permit the electric utility to charge these costs to the solar energy customer. As a result, the Solar Initiative will require citizens who do not generate or consume solar generated electricity – inequitably – to subsidize the costs of those who do.

**(4) Effect on Public Health, Safety, and Welfare**

The Solar Initiative permits laws designed to protect the public's health, safety, and welfare so long as the laws do not operate to prohibit "the supply of solar-generated electricity by a local solar electricity supplier." In doing so, the initiative would impair numerous necessary public health, safety, and welfare regulations having the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier. To name a few, wetlands protection laws, construction setback lines, pollution abatement measures, and nuisance abatement ordinances effectively could operate to prohibit a local solar electricity supplier from generating solar energy on a parcel of property.

## ARGUMENT

### 1. BALLOT TITLE AND SUMMARY ARE NOT CLEAR AND UNAMBIGUOUS

The Solar Initiative's ballot summary and title do not meet the requirements set forth in section 101.161, Florida Statutes. The Solar Initiative fails to disclose to the electors a number of impacts to municipalities, regulated electric utilities under contract to municipalities, electric utility customers, and the citizenry at large through impacts to the public health, safety, and welfare.

In order to pass legal muster, a ballot title and summary must be clear and unambiguous and must fairly inform voters of the chief purpose of the amendment and not mislead the public. *Advisory Opinion to Attorney General re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo*, 959 So. 2d 210, 213-14 (Fla. 2007). To meet this requirement, a ballot's title and summary must, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment. *Id.*

The Court must determine whether the language of the ballot title and summary, as written, mislead the public. *Id.* The ballot title and summary may not be read in isolation, but must be read together when the Court makes this determination. *Advisory Opinion to the Attorney Gen. re Fla. Amendment to Reduce Class Size*, 816 So.2d 580, 585 (Fla. 2002). Since the ballot title and summary are the only information available to the electors, their completeness and

accuracy are of paramount importance in the determination as to whether the proposed amendment may appear on the ballot. *Armstrong v. Harris*, 773 So. 2d 11, 13 (Fla. 2000).

Although the title of the Solar Initiative, "Limits or Prevents Barriers to Local Solar Electricity Supply," may at first blush appear to be clear and unambiguous, the ballot summary is defective because it does not appropriately convey to the voter the reasonably foreseeable impacts that the proposed amendment will have on municipal franchise agreements with electric utilities, municipal revenues, additional costs to electric utility customers who do not generate or consume local solar electricity, and the public health, safety, and welfare. Further, the Solar Initiative ballot summary does not accurately reflect the provisions included within the proposed amendment itself.

The title and ballot summary convey a sentiment that the purpose of the amendment would be to remove barriers to solar production by implying that the true purpose of the amendment would be to remove restrictions on the harnessing and transmittal of solar energy. While the Solar Initiative does call for the removal of regulatory barriers on production, much of the amendment would have the de facto effect of repealing, or requiring the adjustment of, rates, fees, charges, and tariffs on customers.

As outlined above in the Statement of Interest in “(1) Effect on Franchise Agreements and Fees,” the Solar Initiative will disrupt the current contractual relationships between municipalities and the electric utilities, as well as the franchise fee revenues municipalities derive from the contractual relationships. For the reasons outlined, supra, the Solar Initiative doubtless will result in reduced revenues from franchise fees available to municipalities and utilities. These revenue reductions will result in reduced services to municipal citizens, or will result in utility rate increases passed on to citizens. None of these impacts are disclosed in the ballot title and summary of the Solar Initiative.

At the least, the Solar Initiative will impact and disrupt the current contractual relationships municipalities have with electric utilities. As outlined above in the “Statement of Interest,” municipalities enter into exclusive contracts with utilities to provide electricity to customers. The Solar Initiative would impact those contractual obligations without disclosing the impact thereof to the electors. And, while municipalities may ultimately choose to purchase an electric utility in these circumstances, any additional costs resulting therefrom will be passed along to municipal residents. This realistic potential is not disclosed to the voter.

Further, as discussed above in the Statement of Interests in “(2) Effect on Public Service Tax,” once again municipal revenues will be reduced as a result of the Solar Initiative. In such a case, a municipality will reduce its services to its

citizens, increase utility rates or increase taxes to recoup the losses in municipal revenues.

Likewise, as iterated above in the Statement of Interests in “(3) Effect of Cost Shift to Non-Solar Generating Customers,” the Solar Initiative does not permit the utility to charge the solar energy customer for the disparate impact that the solar customer will have on the utility’s system. In practice, solar generation requires utilities to monitor the flow of solar electricity through transmission lines and transfer stations, to account for the solar-generated electricity, to conduct safety inspections during the construction of solar-generating facilities, to conduct safety reviews of the facilities’ electrical systems, and to install net meters. Solar generation as contemplated by the Solar Initiative will result in inequitable cost shifts to citizens who do not generate or consume solar, and those citizens will be required to subsidize those who do. The ballot summary does not disclose these impacts to the electors.

The Solar Initiative therefore is misleading in that it does not reflect the true consequences of the amendment. The Solar Initiative incentivizes solar generation at the expense of non-solar customers. Solar customers benefit from the reliability and stability of the grid without paying their full share of its costs because the grid must be built and maintained to serve their full load, regardless of how much solar energy is actually produced. At the modest level of solar that currently exists, the

subsidy could potentially be remedied through additional charges and fees on solar customers, which the Solar Initiative will not allow, and the ballot summary does not reveal this to the electors.

As well, the Solar Initiative impairs government's ability to protect fully the public health, safety, and welfare. For example, governmental regulations that derive from delegated legislative authority could be negated by the Solar Initiative.

These could include regulations adopted: under the "Florida Air and Water Pollution Control Act," section 403.011, et seq.; under the "Pollution Prevention Act," section 403.072, et seq.; under the "Brownfields Redevelopment Act," section 376.77, et seq.; for the abatement of nuisances caused by storm water management or other water control systems, section 373.433; and for control of epidemics through quarantine by the Department of Health, section 381.00315. None of those potentially significant impacts to regulations protecting the public health, safety, and welfare are disclosed to the electors through the ballot summary.

Also in a broader sense, the purpose of the Solar Initiative is not simply to limit or prevent barriers for local solar electric supply, but instead to create favorable market conditions to solar energy providers that will impact adversely the general public through all of the impacts outlined above. Therefore, the title and summary effectively "hide the ball" as to the true purpose and consequences of

the amendment, which the Court has held to be unacceptable. *Armstrong*, 773 So. 2d at 16.

The Solar Initiative is unclear and ambiguous as to its application for customer-owned renewable generation. The ballot title and summary state that the Solar Initiative intends to limit or prevent barriers to entry to “local solar electricity supply.” The Solar Initiative defines a “[l]ocal solar electricity supplier,” as a person who supplies solar energy to “any other person.” It is not at all clear from a reading of this language as to the effect the Solar Initiative would have on customer-owned renewable generation, and its potential impact is not revealed to the voter.

**2. THE PROPOSED AMENDMENT DOES NOT MEET THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION**

Article XI, section 3 of the Florida Constitution states that any amendment proposed by the people, except those limiting the power of the government to raise revenue, shall embrace but one subject and matter directly connected therewith. Florida Constitution (1998). To accomplish this dictate, the amendment must manifest a “logical and natural oneness of purpose.” *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984).

The single-subject requirement has two distinct purposes. The first of these purposes is to prevent “logrolling,” the practice of including two separate issues

together to aid in the passing of an unpopular issue. *Advisory Opinion to the Attorney Gen. re the Med. Liab. Claimant's Comp. Amendment*, 880 So. 2d 675, 677 (Fla. 2004) (quoting *Advisory Opinion to the Attorney Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So. 2d 367, 369 (Fla. 2000)) The test for logrolling is met when a proposed amendment “may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.” *Advisory Opinion to Attorney Gen. re: Additional Homestead Tax Exemptions*, 880 So. 2d 646, 649 (Fla. 2004).

In this regard, the Solar Initiative engages in logrolling by placing the elector in the untenable position of balancing a preference for solar power against the adverse impacts that the Initiative may have in terms of eliminating special rates, fees, and charges for solar-generated electricity, and the accompanying potentially untoward economic consequences on customer utility rates overall. The balancing that the Solar Initiative would require of electors violates the single-subject requirements.

The second purpose of the constitutional single-subject requirement is to prevent a single amendment from substantially altering or performing the functions of multiple aspects of government. Here, the test is a functional one that examines what the amendment actually does. A proposed amendment can affect multiple

branches of government and still pass the court's review. See, *Advisory Opinion to the Attorney General – Limited Political Terms in Certain Elective Offices*, 592 So. 2d. 225, 227 (Fla. 1991) (“We have found proposed amendments to meet the single subject requirement even though they affected multiple branches of the government.”). But “where such an initiative performs the functions of different branches of government, it clearly fails the functional test of the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution.” *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984); *Advisory Op. re Property Rights*, 699 So. 2d 1304, 1308 (Fla. 1997) (“In addition, we find that this initiative would have a distinct and substantial effect on more than one level of government.”) The Solar Initiative violates these constitutional proscriptions in a number of ways.

First, the Florida Public Service Commission is statutorily authorized to approve “territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction” and to resolve disputes arising under the agreements. § 366.04, Fla. Stat. The Solar Initiative would not only impair contract rights existing pursuant to such agreements by providing that local solar electricity suppliers would not be “subject to any assignment, reservation, or division of service territory between or among

electric utilities” but would also deprive the Public Service Commission of its jurisdiction in these regards.

The Solar Initiative also would substantially affect Article III, Section 2 of the Florida Constitution. That section grants municipalities “governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services” not in conflict with state law. Some of municipalities own and operate municipal electric utilities under these constitutional provisions. The Solar Initiative would disallow municipal utilities the power to charge any rates that are in conflict with the Solar Initiative. It would further forbid these municipalities from entering into agreements or exercising rights provided by such agreements for exclusive geographical service territories in conflict with the Initiative.

The Initiative also substantially impacts Article III powers of both municipalities and counties by providing:

[N]othing in this section shall prohibit reasonable health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations, *which do not prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier* as defined in this section.

Solor Initiative § (b)(4) (emphasis added). As discussed in the Argument component regarding clarity of the ballot summary, supra, the Solar Initiative thus would impact the police powers of local governments by banning regulations

protecting the public health, safety, and welfare if they would prevent the operation of a solar electricity supplier notwithstanding a compelling need for, or the reasonableness of, the regulation.

Moreover, the Solar Initiative would deprive the Legislature of a significant component of its lawmaking power. See, *Evans v. Firestone*, 457 So. 2d at 1354 (“In *Fine*, we found multiplicity of subject matter because the proposed amendment would have affected several *legislative* functions.”) (emphasis in original).

The Initiative would preclude the Legislature from exercising its lawmaking power with respect to rates, service, or territories of a local solar electricity supplier. See, Initiative § (b)(1). The Solar Initiative also would restrict the Legislature’s lawmaking power over classifications, terms, or conditions of service of electric utilities in connection with customers of local solar electricity suppliers. See, Initiative § (b)(2).

Additionally, the Solar Initiative would block the Legislature from exercising its lawmaking power with respect to public policy formulations. The Legislature currently is empowered to make law with respect to solar energy, but would be fundamentally restricted under the Solar Initiative as to the extent of its public policymaking prerogatives. The Legislature, for example, would be prohibited from imposing rate restrictions with respect singularly to solar-

generated electricity, and would be stripped of its ability to prescribe utility rate guidelines unless in conformance with the Solar Initiative.

The effects on the multiple government powers are not authorized in a constitutional initiative. These effects are only authorized in a constitutional revision. The Solar Initiative thus violates the single-subject rule and cannot be countenanced by the Court and allowed on the ballot.

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## CONCLUSION

The Solar Initiative does not comport with the requirements of the Florida Constitution nor the dictates of the Florida Statutes. The Court should determine that the proposed amendment therefore cannot legally be placed on the ballot.

Respectfully submitted,

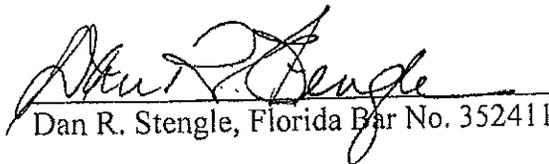
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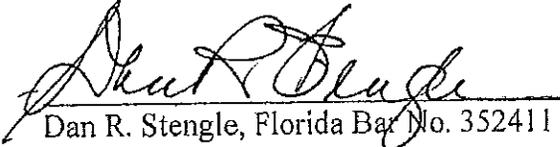
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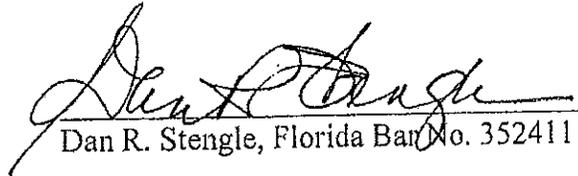
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