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The authors thank Drs. Mark Jamison, Sanford Berg, and Michelle Phillips of the Public Utility Research Center at the University of Florida for their review and suggestions on an earlier version of this article. This analysis, any mistakes, and any omissions are attributed solely to the authors.

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# Florida's Proposed Constitutional Amendment on Local Solar Electricity Supply

*A petition for a constitutional amendment that is circulating in Florida would remove barriers to local solar electricity supply. If it appears on the ballot and is ultimately approved by voters, this amendment would bypass the established regulatory process for determining cost allocation, establishing and enforcing service standards, and intervening in consumer-utility disputes, in one segment of the electricity market. These and other issues triggered by the Solar Amendment may, if the amendment is adopted, open the door to litigation and succeeding initiatives to 'tweak' the language if unforeseen consequences emerge.*

Lynne Holt and Mary Galligan

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## I. Background

On Dec. 23, 2014, a constitutional amendment petition<sup>1</sup> was filed with the Florida Secretary of State by Floridians for Solar Choice, Inc., a coalition of the Southern Alliance for Clean Energy, the Florida Solar

Energy Industries Association, the Florida Alliance for Renewable Energy, the Christian Coalition of America, the Libertarian Party of Florida, the Republican Liberty Caucus of Tampa Bay and the Republican Liberty Caucus of Florida. The proposed amendment

(hereinafter “Solar Amendment”) would authorize third-party local solar electricity suppliers to sell electricity from solar sources to retail customers in Florida. (See the Appendix for the text, some of which is referenced throughout the article.)

As stated in the petition, the intent of the proposed amendment is “to encourage and promote local small-scale solar-generated electricity production and to enhance the availability of solar power to customers.” States have taken many approaches to create incentives to expand the use of renewable energy, including solar sources. Such approaches include renewable portfolio standards, which require utilities to purchase a specified portion of electricity generated from renewable sources, found in 29 states and the District of Columbia, but not in Florida. (In addition, nine states have renewable portfolio goals.) Forty-three states, including Florida, have implemented net metering policies, which require utilities to purchase power from customer-generators. In some cases, net metering regulations require utilities to pay full retail rate for renewables purchased from such customers. In addition, over 40 states and the federal government offer tax credits for individuals, businesses, or both that purchase and install renewable technologies.

Some jurisdictions encourage solar development by altering the traditional utility service model to

permit non-utilities to sell electricity in some instances. This is the approach encompassed in the Solar Amendment as explained further below.

#### **A. Substance of the proposed Solar Amendment**

Under current Florida law, only electric utilities are authorized to sell electricity in the retail market. The Solar Amendment would

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permit electricity sales by non-utilities dubbed “local solar electricity suppliers.” In the proposed amendment, the term “local solar electricity supplier” is defined as “any person who supplies electricity generated from a solar electricity generating facility with a maximum rated capacity of 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.”<sup>2</sup> The capacity limit in the proposed Solar

Amendment is the same limit imposed on facilities of net metering customers in Florida. State or local regulation of local solar electricity suppliers would be prohibited for the most part. Local solar electricity suppliers, however, could be subject to “reasonable health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations” as long as those regulations do not effectively prohibit the local solar electricity provider from supplying such electricity. The electric utility that serves the area would be required to provide stand-by electricity to customers of the local solar electricity supplier and would be prohibited from subjecting the solar supplier’s customers to different rates, charges, tariffs, and terms or conditions of service than those imposed on other similarly situated customers who purchase electricity only from the electric utility. “Electric utility” is broadly defined in the Solar Amendment to include virtually any entity in the state that provides electricity to customers, except local solar electricity suppliers.

In advocating for the Solar Amendment, the coalition cites frustration with its lack of success in the Florida legislature.<sup>3</sup> However, simultaneous with the circulation of the Solar Amendment petition, two bills are under consideration by the Florida Legislature.<sup>4</sup> A thorough

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