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Governor Signs Energy Bill
**Climate Change
Legislation will
Impact Building
and Development
Industries**



*House of Representatives
Environmental and Natural
Resources Council Chairman Stan Mayfield of Vero Beach responds to
questions on the sweeping energy policy bill, debated and later approved,
during the final days of the 2008 Legislature.*

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Today Charlie Crist signed into law a sweeping energy bill during a ceremony at the Florida Summit on Global Climate Change, being held this week in Miami.

The Governor's signature on House Bill 7135 follows his approval last week of House Bill 697, which revises the Florida Energy Code for Building Construction. The two bills comprise Florida's climate change package enacted by the 2008 Legislature.

The legislation is a follow-up to a trio of executive orders enacted by the Governor in July 2007. These executive orders position Florida as a leader in creative methods of combating climate change, including directives for power generation, and building construction.

This report briefly outlines the major components of the climate change package that will impact clients in the building and development industries. The package provides new opportunities for income streams in existing and proposed

developments through incorporating renewable energy generation into projects in return for incorporating sustainable development principles into their projects.

■ **House Bill 7135: Florida Energy Bill**

This bill provides the legislative basis for developing a comprehensive energy policy for Florida that will make sure Floridians have affordable and responsibly generated energy in the future. Conservation is a key element to overall energy policy because the cheapest and cleanest watt is the one that does not have to be produced. The bill:

- Adds energy and climate change to the list of state comprehensive plan elements and the reduction of carbon emissions by encouraging the development of low-carbon-emitting electric power plants;
- Clarifies property tax exemptions for property owners installing renewable energy sources;
- New tax credits and incentives for businesses engaged in expanding or creating new renewable energy facilities;
- Creates legislative authority for Gov. Crist's executive order that all state buildings (construction (new or renovations) or leased properties) – including county, municipal, school district, water management districts, state universities and community colleges - be constructed using the U.S. Green Building Council's LEED system, GBI's Green Globes, the Florida Green Building Coalition green building standards, or another nationally recognized standard (together, "Sustainable Building Rating");
- Directs the Florida Building Commission ("FBC") to revise the Florida Energy Code for Building Construction to

increase the energy performance of new construction in Florida by:

- ▶ At least 20% from the 2007 Energy Code by 2010
- ▶ At least 30% from the 2007 Energy Code by 2013
- ▶ At least 40% from the 2007 Energy Code by 2016
- ▶ At least 50% from the 2007 Energy Code by 2019

(The FBC will identify different methods for achieving these increased performance goals after performing a cost-effective analysis, also in HB 697);

- Directs the Department of Management Services to develop a "Florida Climate-Friendly Preferred Products List";
- Benefits for drivers of hybrid cars in HOV lanes;
- Directs each Metropolitan Planning Organization ("MPO") to integrate transportation and land use planning for sustainable development and reduction of greenhouse gas emissions into their long range transportation plan;
- Directs the Public Service Commission ("PSC") to promote demand-side renewable energy systems, develop related goals and conduct cost-benefit analysis for participating customers and the general ratepayer public. Includes a grant of authority to the PSC to grant financial rewards to utilities that exceed goals;
- Directs each utility to direct a standard interconnection agreement and net metering program (consistent with PSC rule codified at Florida Administrative Code 25-6.065);

- Directs the PSC to develop a renewable portfolio standard to require each utility to provide their customers with electricity generated directly from renewable energy sources;
 - Creates the Florida Energy and Climate Commission to oversee state climate change initiatives;
 - Creates the Florida Climate Protection Act, which:
 - ▶ Provides incentives and funding “to diversify the state’s energy supplies, reduce dependence on foreign oil, and mitigate the effects of climate change”;
 - ▶ Creates the statutory authority for DEP to move forward with ongoing rulemaking:
 - Creating a cap and trade system for emissions for Florida electric utilities by adopting maximum allowable emissions level of greenhouse gases (DEP is already in rule making on these issues based upon Executive Order Number 07-127) and leaves the door open for regulating other industries in the future;
 - Adopting the California motor vehicle emission standards, upon approval of waiver by the US Environmental Protection Agency;
 - ▶ State-wide diesel engine idle reduction standards;
 - New regulations regarding the siting of transmission lines;
 - Directs DEP to develop a comprehensive recycling program that will increase recycling of solid waste such that a 75% reduction in solid waste disposal is realized by 2020; also includes encouragement for composting;
 - New renewable fuel standards; and
 - Provides that deed restrictions, covenants, declaration or similar types of agreements may not prohibit the installation of solar collectors, clotheslines or energy devices from being installed on buildings (also in HB 697).
- **CS/HB 697: Building Code Standards**
- Directs the Florida Building Commission (“FBC”) to revise the Florida Energy Code for Building Construction to increase the energy performance of new construction in Florida by:
 - ▶ At least 20% from the 2007 Energy Code by 2010
 - ▶ At least 30% from the 2007 Energy Code by 2013
 - ▶ At least 40% from the 2007 Energy Code by 2016
 - ▶ At least 50% from the 2007 Energy Code by 2019
- (The FBC will identify different methods for achieving these increased performance goals after performing a cost-effective analysis, also in HB 7135);
- Directs the Department of Community Affairs (DCA) to develop recommendations to incorporate energy efficiency into the Low-Income Home Energy Assistance Program;
 - Provides that deed restrictions, covenants, declaration or similar types of agreements may not prohibit the installation of solar collectors, clotheslines or energy devices from being installed on buildings. (also in HB 7135);
 - Provides that a condominium board may install, without owner consent, solar

collectors, clotheslines or energy devices for the benefit of all unit owners on the common elements;

- New Comprehensive Plan Requirements - New projects needing a comprehensive plan amendment will need to consider these new requirements and how the proposed amendment complies or can be mitigated:
 - ▶ Provides that the future land use plan element must in addition to existing requirements, also 1) discourage urban sprawl, 2) incorporate energy-efficient land use patterns accounting for existing and future electric power generation and transmission systems, and 3) incorporate greenhouse gas reduction strategies.
 - ▶ Provides that the traffic circulation and housing elements will incorporate transportation strategies to address reduction in greenhouse gas emissions from transportation. This will encourage the push towards transit oriented development.
 - ▶ Provides that the conservation element will include factors affecting energy conservation.
 - ▶ Provides that the housing element will incorporate energy efficiency in the design and construction of new housing. Many Florida communities have been adopting ordinances and resolutions already to encourage green building by use of the U.S. Green Building Council LEED system, or the Florida Association of Home Builders' approved green building standard promulgated by the Florida Green Building Coalition. Other systems include Green Globes and for energy only – Energy Star.

■ Florida Administrative Code Revisions

In addition to the legislation, a Public Service Commission (PSC) Rule was adopted in February 2008.

Florida Administrative Code 25-6.065 reduces the cost of connecting solar and other renewable energy technologies to Florida's power grid by adopting a particular standard for the uniform statewide interconnection standard for all utilities and rulemaking to authorize uniform method to allow customers who generate electricity from on-site renewable technologies of up to 2 MW to offset their consumption through net-metering (by allowing their electric meters to turn backwards when they generate electricity), and to retain ownership of any renewable energy credits that are generated by customer owned infrastructure.

This is significant because not only will owners of renewable energy generating facilities benefit by reducing their power charges by generating their own power on site, the power will also potentially have a separately saleable attribute: renewable energy credits. ■

Nicole Kibert is an associate attorney within the Real Estate & Finance and Government Law & Consulting Practice Groups. She represents developers in the creation of planned communities, condominiums (mixed-use, conversions, age restricted, commercial and residential) and subdivisions with a special emphasis on projects involving sustainable development, downtown and brownfields redevelopment, and historic preservation.



Ms. Kibert also leads Carlton Fields' "Go Green" initiative, a program that seeks to reduce the environmental impact of our business practices. Reach her at 813.229.4205 in Tampa.