

FECA's Florida Legislative Report

February 20, 2015

Two of the PSC reform bills passed out of their first committee in the Senate this week, and a bill related to municipal utility service areas (Vero Beach) passed out of its first committee in the House. The PSC reform bills were supported by the Florida Retail Federation, the Sierra Club of Florida, the League of Women Voters, AARP and the Southern Alliance for Clean Energy. We also have several new bills to report, including amendments to the Value Adjustment Board proceedings; a bill to protect utility workers from moving vehicles; and ad valorem tax exemptions for renewable energy generation and storage devices. There also is a new bill (HB 773) that would make municipal G&Ts (in this case just FMPA) a public utility that is subject to the same PSC regulation as IOUs. This bill is located in the portion of this report that has bills that only apply to IOUs and municipals.

The Legislature is taking next week off and then the Session officially begins on March 2. The biggest news this week was the announcement from Floridians for Solar Choice that they already have enough signatures to trigger the Supreme Court's review of their petition. In reality the signatures still have to be verified before any action is required by the state, the Attorney General, and the Court, but the fact that they already have 100,000 signatures is significant.

KEY BILL THAT IS YET TO BE FILED:

Renewable Energy Third-Party Sales - The bill would allow businesses and contracted third party ("parties") to install renewable generators and to sell the power to others that are located within the same parcel or on an immediately adjacent parcel. It does not matter whether the purchaser of the power is served by the same incumbent utility that serves the property where the generator is located, which could be a big issue if the generator is located on a very large tract of land. These sales would not be considered retail sales of electricity, meaning they would not be subject to the same taxes as utility sales such as the gross receipts tax, the public service tax, and possibly the sales tax. Of course they also would not be subject to franchise fees. The parties and the sales would not be subject to regulation by the PSC. IOUs would be allowed to be 3rd party sellers and

participate under the same terms as an unregulated utility. The legislation attempts to keep the electric utilities whole, by allowing utilities to recover the cost of providing backup generation and transmission service, and by allowing utilities to charge a capacity fee for backup power. The capacity fee would be based on actual costs or projected costs instead of just allowing cost recovery, but the charges for all utilities must be approved by the Commission (even for electric cooperatives). Any related Commission rulemaking would be focused only on electric utilities recovering their costs for providing the services. Obviously, this would need a lot of amending before we could support the bill, but we are encouraged that the sponsor recognized the need for utilities to have special charges for customers that self-generate part of their needs.

NEW BILLS

Electric Rate Study – SB 1062 by Sen. Stargel (R) and HB 777 by Lake Ray (R) would require a study that compares electric utility rates and assess each utility's expenses for each rate class. For reporting purposes, these rates and expenses will be averaged by type of utility. The report also would identify the taxes, fees, franchise expenses or other major expenses that are part of the net cost of power generation. In addition, the report would compare Florida's electric rates (and possibly fees and taxes) to rates in other states.

Renewable Exemption from Ad Valorem Taxes – HB 867 by Rep. Rodrigues (R) would exempt: renewable energy devices from the tangible personal property tax; devices that store energy from solar, wind, geothermal deposits from the ad valorem tax for residential property; and would create an ad valorem tax exemption for devices on commercial property that generate or store energy from solar, wind and geothermal deposits. The tax exemptions would be for 3 years beginning January 1, 2013 through December 31, 2016. After January 1, 2017, the exemption would become permanent if HJR 865 or a similar constitutional amendment is approved in the November 2016 general election.

Renewable Energy Source Device Exemption – House Joint Resolution 865 by Rep. Rodrigues (R) is a proposed amendment to the State Constitution to: 1) require the Legislature, by general law, to exempt the assessed value of a

renewable energy source device from tangible personal property tax; and 2) to allow the Legislature, by general law, to prohibit the consideration of renewable energy devices in the determination of the assessed value of residential or non-residential real property for ad valorem tax purposes

Priority Bills

Facilities in Rights-of-way and Platted Utility Easements - SB 896 by Sen. Brandes (R) and HB 391 by Rep. Ingram (R) would require others to pay to relocate our facilities when they are located in a platted utility easement (addresses the LCEC case). It also would clarify that when our facilities are in a right-of-way the utility will be reimbursed for relocation expenses unless the situation falls into one of the enumerated exceptions.

Secondary Metal Recyclers - SB 618 by Sen. Grimsley (R) and HB 813 by Rep. Combee would improve the regulation of metal recyclers and reduce copper theft by: transferring oversight of the secondary metal recycler's law from the Dept. of Revenue to the Dept. of Agriculture and Consumer Services; giving law enforcement officials additional tools to investigate recyclers; prohibiting secondary metal recyclers from disposing of property for a specified period if notified by law enforcement that the property is being investigated; and prohibiting purchases of regulated metals on Sundays. In addition, secondary metal recyclers and sellers of regulated metals would face stiffer criminal penalties for knowingly violating the provisions.

Assault or Battery on Utility Workers - SB 660 by Sen. Soto (D) would make assaults against utility workers and firefighters subject to the same increased criminal penalties that apply to assaults on law enforcement personnel. The bill would define a utility worker as a person who at all times displays at least one visible patch or emblem that clearly identifies the person as a utility worker or contracted employee.

BILLS THAT ARE MOVING

Water Bills - HB 7003 by Rep. Caldwell (R), SBs 584/586 by Sen. Dean (R), SB 714 by Sen. Grimsley (R) and HB 653 by Rep. Pigman (R) are bills that would increase springs protection, and would implement the recently passed constitutional amendment relating to water and land conservation and surface water classifications. SBs 584 and 586 passed out of their first committee and HB 7003 passed out of its only committee of reference and is ready for the floor.

PSC Ethics Reform and IOU Billing Cycles/Deposits - SB 288 by Sen. Latvala (R), SB 230 by Sen. Dean (R), HB 219 by Rep. Peters (R), and HB 81 by Rep. Dudley (D) all broadly pertain to the PSC. SB 288 and HB 219 would subject more PSC proceedings to the prohibition against ex parte communications. If the Office of Public Council participates in a proceeding, a settlement agreement may not be submitted unless the Office of Public Council is a party to the agreement, giving them much greater leverage in settlement negotiations. SB 288 and HB 219 also would impose other PSC reforms such as requiring PSC Commissioners to undergo ethics training and requiring anyone who lobbies a member of the PSC nominating Council to register as a lobbyist. SB 288 and HB 219 also would require IOUs to notify their customers if more than one rate is available within their customer class and would prohibit deposits that exceed the average of the total charges for two months of usage. All four bills would prohibit IOUs from extending billing cycles on accounts that are served on tiered rates. SB 288 and SB 230 passed out of their first committee.

OTHER BILLS OF INTEREST

Labor Regulations - SB 890 by Sen. Bullard would create the Florida Overtime Act of 2015, which would apply to non-exempt employees. The bill would change a legal day's work from 10 hours of labor, to 8 hours. Any work in excess of 8 hours but less than 12 hours in any workday (or work in excess of 40 hours in any workweek and the first 8 hours worked on the 7th day of any workweek) would be compensated at one and one-half times the employee's base rate of pay. Any work in excess of 12 hours in any workday (or work in excess of 8 hours on the 7th day of any workweek) would be compensated at twice the employee's base rate of pay. In the event that an alternative workweek schedule is adopted in a collective bargaining agreement, overtime compensation under the bill would not apply. The

bill would provide greater benefits than under the federal wage laws; therefore, the state wage laws would control for these issues.

Safe Work Environment – SB 892 by Sen. Bullard (D) and HB 297 by Rep. Campbell (D) would create the Safe Work Environment Act to provide legal relief for employees who have been harmed by being deliberately subjected to abusive work environments. The Act would provide incentives for employers to prevent and respond to abusive mistreatment of employees.

Value Adjustment Boards – HB 695 by Rep. Avila (R) and SB 972 by Sen. Flores (R) would allow a corporate (non-attorney) representative to represent the taxpayer before the Value Adjustment Board (VAB) to challenge county tax assessments. Taxpayers also could be represented by an attorney, a licensed property appraiser, a licensed realtor, a certified public accountant, or a certified tax specialist. If a county receives more than 10,000 petitions objecting to assessments, the Dept. of Revenue (DOR) must be notified and conduct a review of the VAB proceedings. DOR would be given the authority to administratively review VABs.

Utility Workers - SB 908 by Sen. Altman (R) would protect “vulnerable users” of public rights-of-ways, including persons working on utility facilities along roadways. The bill would require motorists to maintain at least 3 feet of space between the vulnerable user and the vehicle when passing. Violations would be non-criminal infractions and be in addition to the move over restrictions enacted last year.

Constitutional Amendment to Exempt Renewable Energy Devices from Ad Valorem and Tangible Personal Property Taxes - SJR 400 and SB 402 by Sen. Brandes (R). SJR 400 is a resolution to propose a constitutional amendment that would allow the Legislature to exempt from ad valorem taxation any improvements to commercial real property if the improvements are a renewable energy device and related tangible personal property. The amendments would only apply to work that begins on or after January 1, 2017. Presently the Constitution only allows an exemption for renewable device improvements to residential real property. If the resolution passes out of the Legislature, it would appear on the November general election ballot in 2016 for voter approval. SB 402 would implement the Constitutional amendment if it is approved by the voters.

PSC Reform - SB 170 by Sen. Legg (R) and HB 199 by Rep. Sprowls (R) would require each PSC Commissioner to be appointed to a specific district and to reside in that district. This would inevitably require commissioners to become advocates for the ratepayers in the district. The five districts would match the boundaries of the district courts of appeal. The bill also would limit each Commissioner to two four-year terms. Elected officials would have to be out of office for 2 years before they can be appointed to the PSC.

Siting Facilities - SB 484 by Sen. Simpson (R) and HB 873 by Mayfield (R) would require electric utilities to notify the affected county, rather than the regional planning council as currently required, of plans to site substations, transmission lines and power plants.

Rebates for Solar Installations - SB 868 by Sen. Soto (D) and HB 509 by Rep. Cortes (D) and SB 992 by Sen. Bullard would revive the defunct Solar Energy System Incentives Program for purchases of solar photovoltaic, solar hot water heaters, and solar pool heating systems between July 1, 2015 and June 30, 2020. SB 868 and HB 509 would provide \$4 per watt rebates on solar photovoltaic systems that are 2kw or larger with caps of \$10,000 on residential property and \$100,000 on non-residential property. Additionally, they would reserve the first \$50 million of the rebate funds for residents installing photovoltaic systems on their homesteaded property. The bill would cap rebates for solar hot water heaters at \$500 per residence and \$5,000 for non-residential properties. The rebate for solar pool heaters would be capped at \$100 per installation. SB 992 would not cap the size of the system and would have a higher a dollar cap of \$20,000 for residential. SB 992 also would give priority for to low-income residences by ensuring that 10% of the funds are available to low-income housing. If the 10% threshold is not met, the remainder of the funds must be used for energy efficiency measures for low-income residences. “Low income housing” means a residence owned or rented by someone whose income is at or below 125% the poverty level or a residential complex where at least 20% of the units are sold or rented to individuals whose income is at or below 12% of poverty level.

Utility Rates for Large Child Care Homes - SB 7006 by Sen. Legg (R) and EDC 15-01 by Rep. O'Toole (R) would add "large family day care homes" to the law that dictates utilities must bill "family day care homes" on a residential rate, even though these homes clearly have a commercial activity. SB 7006 passed out of its first committee.

BILLS THAT ONLY APPLY TO IOUS OR MUNICIPALS

FMPA PSC Regulation - HB 773 by Rep. Mayfield (D) would amend the definition of "public utility" to include certain entities created under the Florida Interlocal Cooperation Act of 1969, which is the Act that created FMPA.

Cost Recovery for Nuclear/IGCC Power Plants - HB 67 by Rep. Murphy (D), HB 4001 by Rep. Rehwinkle-Vasilinda (D), and HB 473 by Rep. Ahern (R) would repeal the pre-completion cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC power plants and HB 353 by Rep. Burgess (R) would limit the recovery to one plant at a time. HB 67 also would require the utility to refund any unspent pre-completion funds to the ratepayers, and HB 353 would require the utility to refund all funds collected for the plant if the utility elects does not complete construction. HB 473 also would prohibit IOUs from continuing to collect money for projects previously approved under this clause.

PSC Ethics Reform/Banning Cost Recovery for Fracking - HB 399 by Rep. Dudley (D) would subject more PSC proceedings to the prohibition against ex parte communications and would prohibit IOUs from recovering costs associated with the exploration for oil or natural gas.

Indian River Co./City of Vero Beach - SB 442 by Sen. Altman (R) and HB 337 by Rep. Mayfield (R) would allow a county to provide services and facilities to customers in unincorporated areas currently served by a municipality after a franchise or other consent agreement expires. This legislation is seeking to remedy the dispute between the City of Vero Beach and Indian River County, which was the subject of petitions for declaratory statements at the PSC, but would apply to all municipal utilities. In its current form, this legislation would undermine territorial agreements and the grid bill. HB 337 passed out of its first committee.