

FECA's Florida Legislative Report

February 27, 2015

We have new bills dealing with renewable 3rd party sales, drones, economic development, petroleum contamination, and a memorial on EPA's CO₂ rule for existing power plants. The Legislature took a break this week so there was no activity on existing bills, but new bills from members will continue to be filed next week.

The Session officially begins on Tuesday, but committees will meet on Monday too. So far the only bill of interest on an agenda is the metal theft bill, which is scheduled to be heard in its first senate committee on Monday afternoon.

Obviously we have a lot of concerns with the new 3rd party renewable bills, but so does at least one of the proponents of the solar petition. According to the article below, they oppose the ability of utilities to recover costs from customers that also purchase from solar generators.

<http://www.tampabay.com/news/business/solar-energy-bill-filed-by-jeff-brandes-opposed-by-solar-coalition/2218886>

NEW BILLS

Renewable Energy Third-Party Sales - SB 1118 by Sen. Brandes (R) and HB 1077 by Rep. Ahern would allow third parties ("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. The parties and the sales would not be considered retail sales of electricity, meaning they would not be regulated by the PSC and may not be subject to the same taxes and fees as utility sales such as the gross receipts tax, the public service tax, and the sales tax. An electric utility (including co-ops) would be allowed to contract with a commercial/industrial business as 3rd party renewable 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 to recover the utility's costs of providing

capacity, generation, and distribution for all customers including customers using a renewable energy source device. 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 a super-majority of the Commission (even for electric cooperatives). The Commission would be able to adopt rules to provide guidance and procedures to ensure that each utility recovers costs, including the costs of providing redundant capacity. Any renewable energy rebate or incentive would be the sole property of the owner of the renewable energy source device, not the customer of the electricity sale.

Drone Surveillance - SB 1178 by Sen. Richter (R) and HB 979 by Rep. Smith would create the Florida Drone Privacy Act, which would require the Dept. of Law Enforcement (FDLE) to adopt guidelines for the use of drones by state or local law enforcement agencies. The bill would specify when it is lawful to capture an image using a drone, including when the image is used by an electric utility for: operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity; inspecting utility facilities to determine repair, maintenance, or replacement needs; assessing vegetation growth to determine appropriate clearances on utility easements; and routing and siting of utility facilities. For uses other than the specified exemptions, it would be illegal to use a drone to capture an image of an individual or private property with the intent to conduct surveillance and is punishable as a misdemeanor of the second degree unless the drone user can show that they immediately destroyed the image without disclosing it to a third party. The drone would also be potentially subject to a civil action by the private property owner/tenant, which could include court costs and attorney fees. Any action brought under this section would have to commence within 2 years of when the image was captured or disclosed.

Contaminated Sites - SB 1302 by Sen. Evers (R) and HB 841 by Rep. Drake (R) would require DEP to include protocols for the use of long-term natural attenuation where site conditions warrant. “Long-term natural attenuation” means natural attenuation approved by DEP as a site rehabilitation program task for a period of more than 5 years instead of expensive active remediation. A site rehabilitation program must consider the interactive effects of contaminants as one clean up criterion. The bill would change how cleanup target levels are applied when

surface waters are exposed to contaminated groundwater. If alternative cleanup target levels are used, institutional controls are not required in certain circumstances.

Economic Development – HB 903 by Rep. Porter (R) would allow certain new and existing businesses that receive a tax credit under the Rural Job Tax Credit Program to become eligible for a tax refund of up to 50% of the amount of sales tax paid for electricity by the business. The tax refunds would not be allowed to exceed \$10 million during any calendar year. We passed similar legislation last year; however, our appropriation was for \$600,000.

Memorial to Congress Regarding EPA Regulations - SM 1228 by Sen. Evers (R) and HM 949 by Rep. Rodrigues (R) is a memorial to Congress to direct the EPA to revise the proposed regulations that address carbon dioxide emissions from existing fossil fuel fired electric generating plants. The memorial urges Congress to extend by 1 year the date states would be required to submit a plan; decrease the proposed interim and final state goals, extend by 5 years the date when the final goals for CO2 emission rates must be reached; and prohibit the retirement of an electric generating unit before the end of its useful life unless the utility has fully recovered the costs of construction and financing of the unit, the state has sufficient replacement capacity and grid reliability is maintained.

Priority 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.

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 (R) 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) and HB 231 by Rep. Passidomo 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.

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

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 1089 by Rep. Torres (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 HB 7017 (formerly 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.