

FECA's Florida Legislative Report

April 2, 2015

We had a lot of action in the Legislature this week. The Electric Rate Study Bill (HB 777 by Rep. Ray) was heard on Monday and passed out of its second committee without an amendment to change the bill to study only the taxes and fees added to electric rates. Apparently we will have to change our strategy to killing the bill. Additionally, the Right-of-way bill (SB 896 by Sen. Brandes) was amended in the Senate to address the concerns of the railroads. The amendment might be construed to force utilities to prove they are legally occupying certain areas. In an abundance of caution, we had a question asked to clarify that the amendment did not diminish our right to utilize platted easements and will duplicate the effort at the House bill's next stop. By establishing legislative intent, it can help us defend our position if the matter ever goes to court. Further, an opportunity arose to amend a Drone bill (HB 649 by Rep. Metz) that would give utilities an exemption when using drones for certain purposes. The House accepted the amendment and we are working to amend the Senate bill with the same language next week. We also added several bills to the list that would create new crimes and stiffen penalties for texting while driving, which are in the priority section. The texting bills do not affect our exemption for texting during a declared emergency.

In addition to the action on the bills above, the Joint Legislative Auditing Committee met on Monday to review the Auditor General's audit report of FMPA. The FMPA portion of the hearing begins at 1:04 and the interesting discussion/questions beginning around 2:09. There are some good lessons here on what not to do in this situation, but especially do not send an underling to take the heat at the hearing. For those that are not aware of the issue, last year the Legislature directed the Auditor General to audit FMPA. We believe the Vero Beach situation is what prompted the audit. The audit report includes several critical findings ranging from their hedging program to employee benefits and expenses for a Christmas party. Also, there is a recent report from the Florida TaxWatch with their analysis of the audit report. FMPA has to file specific response to each audit finding and there probably will be a follow up hearing to discuss FMPA's responses. So far, we have not been included in the discussion,

except that they keep referring to FMPA as a cooperative. The links below are to a recording of the hearing, an article about the hearing, FMPA's webpage about the audit, and an article about the TaxWatch report.

<http://thefloridachannel.org/videos/33015-joint-legislative-auditing-committee/>

<http://www.saintpetersblog.com/archives/220135>

<http://fmpa.com/news/audit-facts/>

<http://www.floridataxwatch.org/Library/FMPA.aspx>

PRIORITY BILLS THAT ARE MOVING

Drones - SB 766 by Sen. Hukill (R) and HB 649 by Rep. Metz (R) would prohibit a person, state agency, or political subdivision from using a drone equipped with an imaging device to record images of private property or individuals with the intent to conduct surveillance, without the individual's written consent. HB 649 was amended to exempt electric, gas and water utilities that use drones for purposes such as O&M of facilities, assessing vegetation in ROWs, construction, and environmental monitoring. SB 766 is expected to have the same amendment added next week in committee. HB 649 is ready for the House floor and SB 766 passed out of its second committee.

Texting While Driving – SB 246 by Sen. Sachs (D), SB 192 by Sen. Altman (R) and HB 1313 by Rep. Slosberg (D) would make a violation of the Texting While Driving Law a primary offense instead of a secondary offense. This would allow law enforcement to enforce the prohibition on texting while driving if they see someone texting, without the necessity of another violation related to motor vehicle. SB 492 by Sen. Thompson (D) and HB 17 by Rep. Slosberg (D) would prohibit the use of cell phones and other electronic communication devices (even if the driver is using hands free technology) in a school zone, school crossing or on school district property. A person who violates the school prohibitions commits a noncriminal traffic infraction, punishable as a moving violation. SB 246 would double the fine for a violation in a school zone or school crossing. If these bills pass, they will add more prohibitions to the uses of electronic communication devices while driving. These bills would not affect our exception that allows utility and utility contractor drivers to use handheld cell phones during a Level 1

activation of the State Emergency Operations Center or during a state of emergency declared by the Governor. SBs 192, 246, and 492 passed out their first committee.

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. HB 777 passed out of its second committee.

Affordable Housing - SB 1520 by Sen. Soto (D) and HB 1043 by Rep. Eagle (R) would amend the Housing Authorities Law to allow a housing authority to install renewable energy devices/systems in low income housing projects solely to "reduce utility costs" to its tenants. Currently, a housing authority can install utility facilities for the sole purpose of receiving utility services from an electric utility to distribute those utility services to its tenants (similar to how an RV park provides service to its individual spaces). The new language appears to allow the housing authority to generate renewable energy and provide it to its tenants as long as it reduces the tenant's utility costs. This provision is troubling and the obligation to reduce utility costs may be illusory since the costs associated with the renewable device may not have to be included on the tenant's bill. HB 1043 was amended to remove the onerous language and passed out of its second committee.

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. SB 1302 passed out of its first committee and HB 841 is ready for the House floor.

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. SB 896 was amended to address several concerns of the railroad companies. The amendment language alleviates the railroads' concern that the language requiring payment to a utility for relocating costs would circumvent or impair agreements between utilities and the railroads regarding their private rights-of-way. In addition, the amendment language fixes the railroads' concern that a utility could install facilities within any platted easement, even if they are not authorized to do so. The same amendment is expected to be added to HB 391 at its next stop. HB 391 and SB 896 passed out of their second committee.

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. HB 813 passed out of its first committee and SB 618 passed out of its second committee.

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. HM 949 passed out of its last committee.

PRIORITY BILLS THAT HAVE NOT BEEN HEARD YET

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.

Economic Development - SB 1556 by Sen. Montford (D) and 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.

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.

OTHER BILLS THAT ARE MOVING

Water Bills - HB 7003 by Rep. Caldwell (R), SBs 584/586 and 918 by Sen. Dean (R), HB 1291 by Rep. Boyd (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. SB 586 passed out of its last committee and is headed to the floor. SB 584 will go to conference to address policy differences between the Chambers. SB 918 passed out of its first committee. HB 7003 passed out of the House and is in the Senate. HB 653 passed out of its first committee and 1291 is ready for final passage in the House.

PSC Ethics Reform and IOU Billing Cycles/Deposits - SB 288 by Sen. Latvala (R), SB 230 by Sen. Dean (R), HB 7109 (formerly PCB EUS 15-01) by Rep. La Rosa (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 the bills would prohibit IOUs from extending billing cycles on accounts that are served on tiered rates. HB 7109 is the House's version of a PSC reform bill. It incorporates most of the provisions in bills that have passed out of the Senate utility committee, but it does not include the provision that would require all settlements to be approved by the Office of Public Counsel or the provision that would require a rate hearing in the district. SB 288 passed out of its first committee. HB 7109 and SB 230 passed out of their second committee.

Value Adjustment Boards – HB 695 by Rep. Avila (R), SB 972 by Sen. Flores (R), SB 260 by Sen. Bradley (R) and HB 489 by Rep. Sullivan (R) all broadly pertain to Value Adjustment Boards (VAB). SB 972 and HB 695 would allow a corporate (non-attorney) representative to represent the taxpayer before the 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. SB 260 and HB 489 would require the clerk of the value adjustment board, not just the property appraiser, to have available and distribute certain DOR forms relating to the VAB petition. Owners of multiple items of tangible personal property would be allowed to file a single joint petition if the property appraiser determines such items are substantially similar. The property appraiser would be required to include the property record card in an evidence list for a VAB hearing under certain circumstances. HB 695 passed out of its first committee. SB 972 passed out of its second committee and HB 489 (substituted for SB 260) is ready for final passage in the Senate.

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. HB 231 passed out of its second committee and HB 908 passed out of its first committee.

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. SJR 400 and SB 402 passed out of their first committee with each being amended to expire after twenty years.

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. HB 867 passed out of its first committee.

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. HJR 865 passed out of its first committee.

Siting Facilities - SB 484 by Sen. Simpson (R), HB 933 by Rep. La Rosa (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. SB 484 passed out of its second committee. HB 933 was amended before passage out of its first committee and is now a companion measure to SB 484.

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 second committee and HB 7017 is headed to the House floor.

Airport Zoning – SB 1554 by Sen. Brandes (R) would add "power generation equipment" as a defined structure and would require a permit from the Dept. of

Transportation if such equipment exceeds federal obstruction standards in order to prevent airport hazards. SB 1554 passed out of its first committee.

Transportation – SB 1186 by Sen. Brandes (R) would create the Northwest Florida Regional Transportation Finance Authority (Authority) and allow the Authority to acquire private or public property and property rights for certain purposes including replacement rights-of-way for relocated rail and utility facilities. SB 1186 passed out of its first committee.

Regulation of Oil and Gas Resources - SB 1468 by Sen. Richter (R) and HB 1205 by Rep. Rodrigues (R) would define “high-pressure well stimulation” (fracking) and would give DEP regulatory authority. DEP would also be required to monitor and inspect drilling operations during all phases of the fracking process. DEP would evaluate any past violations of rules or laws pertaining to the regulation of oil or gas by permit applicants, and a permit for fracking could be denied or increased bonding and monitoring could be imposed if the applicant has a history of violating oil or gas regulations in Florida or outside the state. Drilling any well, including fracking, would be prohibited unless a driller notifies DEP of their intention to drill, a fee is paid, and a permit is granted. DEP would have specific criteria to follow for issuing a permit to frack, ensuring that the fracking design would not contaminate groundwater and is consistent with public policy. To avoid unnecessary duplication, the bill would prohibit other political subdivisions from adopting programs to accomplish the purposes of this law. Fracking developers would be required to provide surety, through bonds or other cash securities, that their operations would be conducted in a safe manner. DEP would conduct a study on fracking and submit its findings to the Governor and the Legislature by March 1, 2016. The Department would also adopt rules to implement the findings of the study and recommend legislation if it is needed to protect groundwater. The national chemical registry, FracFocus, would be designated as Florida’s registry for chemical disclosure for all fracking sites. SB 1468 and HB 1205 passed out of their first committee.

Public Records Exemption for High-pressure Well Stimulations (Fracking) - SB 1582 by Sen. Richter (R) and HB 1209 by Rep. Rodrigues (R) would allow trade secrets relating to fracking held by DEP through the national chemical disclosure

registry to be exempt from public records laws if requested by the driller. Confidential and exempt trade secrets may be disclosed in certain legal proceedings. SB 1582 passed out of its first committee and HB 1209 passed out of its second committee.

OTHER BILLS OF INTEREST

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.

BILLS THAT ONLY APPLY TO IOUS OR MUNICIPALS

Gainesville Regional Utilities Commission – HB 1325 by Rep. Perry (R) is a local bill that would add Article VII to the charter of the City of Gainesville creating a regional independent utilities commission called the Gainesville Regional Utilities Commission (GRUC). GRUC would be a not-for-profit, municipal legal entity. GRUC would be governed by an independent commission of 5 members appointed by the city commission and would be owned by the citizens of Gainesville. The purpose of GRUC would be to acquire, construct, and operate utilities including the following utilities: electric, water, wastewater, reuse water, natural gas and communications. Further, the bill would provide general provisions for the operation and management of GRUC and its corporate structure. Any local laws or ordinances that which conflict with this bill would be repealed. If the bill passes, Article VII would take effect by referendum only if it is approved by a majority of voters in Gainesville. HB 1325 passed out of its second committee.

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.

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.

BILLS THAT HAVE BEEN WITHDRAWN OR APPEAR TO BE DEAD

Renewable Energy – HB 1227 by Rep. Rehwinkel-Vasilinda (D) would exempt entities that exclusively produce or sell renewable energy from the definition of a “public utility” under Chapter 366. The bill would revise the legislative intent of the renewable energy law and would find that renewable energy should be promoted.

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.

Federal Funding of Nuclear Plants - HB 1267 by Rep. Rehwinkle-Vasilinda (D) is a House Memorial urging Congress to stop funding the federal loan guarantee program for new nuclear plants and to rescind any remaining funds in the program.

Electromagnetic Pulse/Geomagnetic Storms - HB 1251 by Rep. Rehwinkle-Vasilinda (D) is a Memorial that would urge Congress to direct the U.S. Dept. of Homeland Security to prepare for EMPs and geomagnetic storms.

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.

Ratification of State Implementation Plan - HB 849 by Rep. Wood (R) and SB 1076 by Sen. Gibson (D) would require legislative ratification for a state implementation plan (SIP) pursuant to EPA's proposed 111(d) rule on existing power plants. HB 849 passed out of its first committee. However, the sponsors have determined that this legislation may be premature and for the time being will not continue to push the bill.

Labor Regulations - SB 890 by Sen. Bullard would have created the Florida Overtime Act of 2015.

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.