

FECA's Florida Legislative Report

November 20, 2015

Only one more committee week before the session starts on January 12. The easement bill already is headed to the Senate floor. The companion bill to the bill that would increase the regulation of FMPA has been filed in the Senate. There is a new bill that would allow 3rd party retail sales for solar generation, which is very similar to the proposed solar amendment, which we will oppose. In addition, there are new bills in both chambers that would prevent Florida from filing a state implementation plan with EPA pursuant to the Clean Power Plant rule, which we will oppose. This is going to be a busy session.

New Bills

3rd Party Retail Sales - HB 687 by Rep. Costello (R) would allow local renewable energy suppliers (LRES) to install renewable generators, up to 2 MW, and to sell the power to others that are located within the same parcel, or on property contiguous to, where the renewable generator is located. LRESs would not be regulated by the PSC. In addition, developers, HOAs and property owners' associations that own multiple individual contiguous parcels would be able to generate and sell renewable energy to these individual parcels without any PSC regulation. A renewable energy customer would have the option to interconnect with both the LRES and the incumbent utility or to go off grid by only interconnecting with the LRES. The PSC would be required to establish the terms for interconnection between IOUs and LRESs. Co-ops and munis also would need to establish interconnection terms, but would not be subject to the PSC's authority. LRESs would be allowed to net meter under the same provisions as customer-owned renewable generation and it appears that the LRES would become a customer of the utility for net metering purposes. This would mean that LRESs could deliver excess energy to the utility's grid, receive monthly credits for the excess, and be paid the utility's avoided cost for unused energy credits after 12 months. Electric utilities would be prohibited from imposing a new or additional fee that is designed to recover costs associated with providing access to or maintaining the utility's grid on any net metering customer or LRES, unless the fee is imposed on **all** customers of the same class. However, the PSC could approve

cost-based application fees for renewable energy systems of more than 10kw and cost-based interconnection fees for systems over 100kw. The bill also would prohibit local governments from imposing design and specification regulations on renewable energy devices that would be more stringent than the Florida Building Code (this same prohibition applies to HOA covenants beginning July 1, 2016). Lastly, if the Attorney General determines that the federal Clean Power Plan conflicts with the 10th Amendment of the U.S. Constitution by compelling the state to enact a federal regulatory program that is not supported by federal legislation, the Legislature, PSC and DEP are not required to act.

Clean Power Plan (CPP) - SB 838 by Sen. Evers (R) and HB 639 by Rep. Manny Diaz (R) would not allow state agencies to issue state implementation plans or to request a two-year extension to implement the CPP except under certain circumstances. The exceptions would be if Congress enacts legislation to regulate CO₂ emissions or if a federal court upholds the legality of addressing CO₂ emissions under the Clean Air Act.

Public Records/Utility Agencies Information Technology Security – SB 776 by Sen. Bradley (R) would create an exemption from the public records law for information related to security of technology for municipal electric utilities.

Environmental Control – HB 589 by Rep. Pigman (R) would prohibit water management districts from modifying or reducing consumptive use permit allocations under certain circumstances. Water management districts would be required to adopt rules on water conservation incentives. The bill also directs DEP to adopt classifications to protect surface waters used for treated potable water supply and establish rules concerning use of surface waters for the public water supply.

Priority Bills

Drone User Liability - SB 642 by Sen. Diaz de al Portilla (R) and HB 459 by Rep. Fitzenhagen (R) would make an owner and an operator jointly liable for damages arising out of drone use. In addition, the bill would make the manufacturer, distributor, owner, and operator jointly liable for damages arising from drone use caused by product defects. SB 642 passed out of its first committee.

Utilities Relocation – SB 416 by Sen. Flores (R) and HB 461 by Rep. Ingram (R) would require certain authorities to pay to relocate utility facilities when they are lawfully located in a platted utility easement (addresses the LCEC case). The bill also clarifies that FDOT and local government entities that have jurisdiction and control of public roads are authorized to prescribe and enforce reasonable rules on utilities with facilities placed across, on, or within the ROW- but not along or beside the ROW. SB 416 is ready for the floor.

Secondary Metal Recyclers - HB 407 by Rep. Broxson (R) would allow sheriffs and police chiefs to designate an agent to act on their behalf. This change would address law enforcement agencies use of third party vendors.

Contaminated Sites - SB 92 by Sen. Evers (R) and HB 351 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 instead of expensive active remediation. SB 92 is ready for the floor and HB 351 passed out its first committee.

FMPA Regulation - SB 840 by Sen. Simpson (R) and HB 579 by Rep. Mayfield (R) would add the Florida Municipal Power Agency (FMPA) to the definition of “public utility”, and the PSC would regulate the FMPA as a public utility (IOU) for everything except rates and service. In addition, FMPA would have to annually submit independently prepared financial statements for each generation asset to the PSC. The bill also would expand the duties of Public Counsel to initiate or participate in proceedings involving FMPA .

Self-Insurance Funds - SB 828 by Sen. Bean (R) and HB 467 by Rep. Broxson (R) would raise the assessment cap the insurance guaranty association (FWICGA) could charge workers comp self-insurance funds from 1.5 to 2%. The bill would not affect FRESIF as long as the fund maintains the exemption obtained from legislation enacted in 2009. HB 467 passed out of its first committee.

Utility Worker Certification - SB 608 by Sen. Stargel (R) would require utility personnel and others that deliver essential items and services to obtain a certification from the Division of Emergency Management after a storm event.

The bill is vague regarding how the law would work during storm recovery and how the certifications would apply to personnel coming in from out of state to aid in recovery. Staff is working with the stakeholders to remove the electric utility certification requirement from the bill due to its ambiguity.

Other Bills of Interest

Water - SB 552 by Sen. Dean (R) and HB 7005 by the State Affairs Committee and Rep. Caldwell (R) would revise policies relating to Florida's environmental resources. The legislation would require a water management district (WMD) to help large water users, such as an electric utility, find the necessary water for new projects within the WMD or from the regional water supply. The proposed process would make it more difficult to deny a water use permit for new generation that is not located within certain regions of the state. SB 552 and HB 7005 are ready for the floor.

Constitutional Amendment to Exempt Renewable Energy Devices from Ad Valorem and Tangible Personal Property Taxes - SJR 170 and SB 172 by Sen. Brandes (R) and HJR 193 and HB 195 by Rep. Rodriguez (R). SJR 170/HJR 193 are resolutions 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 172/HB 195 would implement the Constitutional amendment if it is approved by the voters. Additionally, SJR 170/SB 172 provides a sunset date of December 31, 2036. SJR 170, SB 172, HJR 193, and HB 195 all passed out of their first committee.

Utility Workers - SB 332 by Sen. Altman (R) and HB 253 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 2014. HB 253 passed of its first committee.

Texting While Driving - SB 328 by Sen. Altman (R), HB 537 by Rep. Perry (R), SB 246 by Sen. Sachs (D) and HB 25 by Rep. Stark (D) are bills relating to texting while driving. SB 328 and HB 537 would change violations relating to texting while driving from a secondary to a primary offense. SB 246 and HB 25 would double the fines for texting while driving in an active school zone. Additionally, the legislation would increase the penalties for subsequent offenses in active school zones within a five-year period, regardless of where the prior offenses occurred.

Regulation of Oil and Gas Resources - SB 318 by Sen. Richter (R) and HB 191 by Rep. Rodrigues (R) would: define “high-pressure well stimulation” (fracking); preempt local government fracking ordinances; and give DEP broad authority to regulate the industry. DEP would conduct a study on fracking and submit its findings to the Governor and the Legislature by June 30, 2017. DEP also would 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. HB 191 passed out of its first committee.

Open Carry of Firearms - SB 300 by Sen. Gaetz (R) and HB 163 by Rep. Gaetz (R) would allow persons that hold concealed weapons permits to carry firearms openly as well. The bill would not expand who could carry or where firearms could be carried. SB 300 passed out of its first committee and HB 163 passed out of its second committee.

BILLS THAT ONLY APPLY TO IOUS

Cost Recovery for Nuclear/IGCC Power Plants - HB 395 by Rep. Murphy (D) would repeal the pre-completion cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC power plants. The bill also would require the utility to refund any pre-completion funds to the ratepayers and would prevent the utility from charging the ratepayers to offset lost revenues.