

FECA's Florida Legislative Report

February 12, 2016

Four weeks to go and we have one less legislative issue to worry about thanks to the U.S. Supreme Court issuing a stay of EPA's Clean Power Plan. We do not expect to see any more action on the Clean Power Plan bills this session. Our other key bills are progressing. The utility relocation/right-of-way bill passed out of the Senate and is on the House floor. The contaminated sites legislation was amended in the Senate and now has to return to the House. In addition, HB 7099 was amended to create a sales tax exemption for electricity sales to qualifying data centers.

The solar presentations before the Senate's utility committee were relatively weak and focused on creating more subsidies for renewables. The highlight was when the First Solar presenter stated that without any subsidies solar is cost competitive in Florida, and "you can't beat Florida for solar." Next time we will ask the Chair to make them testify under oath! All three presentations can be found at the following link:

www.flsenate.gov/Committees/Show/CU/Meeting%20Packet/3432.

There was activity on the Smart Solar constitutional amendment this week. The late filed brief of Florida Energy Freedom was accepted by the Court, and the Consumer's for Smart Solar filed a supplemental brief that I believe dismantles Florida Energy Freedom's arguments. The supplemental brief is posted on the Court's website:

jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2015&p_casenum=2150

Bills Signed into Law

Water - SB 552 revises policies relating to Florida's environmental resources. The law requires 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 process makes it more difficult to deny a water use permit for new generation that is not located within certain regions of the state.

Priority Bills that are Moving

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. The House bill was amended to allow DEP to request an extension of time to file a SIP. HB 639 passed out of its first committee.

Drone User Liability - SB 642 by Sen. Diaz de al Portilla (R) and HB 459 by Rep. Fitzenhagen (R). HB 459 would make an owner and an operator jointly liable for damages arising out of drone use. In addition, the HB 459 would make the manufacturer, distributor, owner, and operator jointly liable for damages arising from drone use caused by product defects. SB 642 was amended to remove the jointly and severally liable language and now states that drones weighing more than .55 lbs. are a dangerous instrumentality and the owner of the drone can be held liable for damages caused by a third party who used the drone negligently. SB 642 is ready for the floor.

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 passed out of the Senate and HB 461 is ready for the floor.

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. HB 351 was picked up by the Senate and passed out with an amendment. The amendment does not affect the overall scope of the bill, but now HB 351 must go back to the House for final passage.

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 House bill no longer would expand the duties of Public Counsel to initiate or participate in proceedings involving FMPA, but the Senate bill still has that provision. HB 579 passed out of its second committee.

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. SB 828 and HB 467 are ready for the floor.

Utility Worker Certification - SB 608 by Sen. Stargel (R) and HB 775 by Rep. Ingram (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. The requirement for electric utility certification requirement has been removed from the Senate version and we expect to have the provision removed from the House bill. SB 608 passed out of its second committee and HB 775 passed out of its first committee.

Move Over Law - SB 1394 by Sen. Brandes (R) would require drivers to vacate the closest travel lane (or reduce speed to 20 mph below the posted speed limit if a lane is not available) if a utility service vehicle displaying any “visual signals” is performing a task related utility services on the roadside. The term seems to be very broad and could mean signals such as marker lights or flashing blinkers. SB 1394 passed out of its first committee.

Emergency Management - SB 1262 by Senator Simpson (R) and HB 1133 by Rep. Young (R) would create the Facilitating Business Rapid Response to State Declared Disasters Act, which would allow certain entities to enter into mutual aid agreements with out-of-state infrastructure companies in order to rapidly deploy

resources and personnel during an emergency without being hindered or delayed by regulatory and tax requirements. The bills would allow IOUs, electric cooperatives and municipal electric utilities to enter into these mutual aid agreements. SB 1262 passed out of its first committee and HB 1133 passed out of its second committee.

Building Codes – SB 704 by Community Affairs and Sen. Hutson (R) and HB 535 by Rep. Eagle (R) would change the building codes to allow builders to substitute solar panels for energy conservation measures such as insulation. HB 535 has one more committee of reference and SB 704 has 2 more committees.

Priority Bills

3rd Party Retail Sales - SB 1328 by Sen. Altman (R) and 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 10 kw and cost-based interconnection fees for systems over 100 kw. 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.

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.

Other Bills of Interest

Environmental Control - SB 1052 by Sen. Hays (R) and 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. SB 1052 and HB 589 passed out of their second committee.

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, the

measures provide a sunset date of December 31, 2036. SJR 170 and SB 172 have one stop left and HJR 193 and HB 195 are ready for the floor.

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. SB 332 passed out of its first committee and HB 253 passed of its second 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. SB 318 passed out of its second committee and HB 191 passed out of the House.

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 the House.

Airport Zoning - SB 756 by Sen. Brandes (R), SB 1508 by Sen. Simpson (R), and HB 7061 by the Transportation and Ports Subcommittee and Rep. Santiago (R) and, HB 1379 by Rep. Miller (R) would add “power generation equipment” as a defined structure and would not require a new DOT permit for changes to existing equipment as long as the height and location remain unchanged and the equipment received construction permits from the FCC prior to May 20, 1975. SB 756 is ready for the floor and HB 7061 passed out of the House. SB 1508 and HB 1379 passed out of their first committee.

Federal Funding of Nuclear Plants - SB 1706 by Sen. Sobel (D) and HB 1209 by Rep. Rehwinkle-Vasilinda (D) is a House Memorial that would urge Congress to stop funding the federal loan guarantee program for new nuclear plants and to rescind any remaining funds in the program. Additionally, the Memorial urges Congress to eliminate funding for mixed oxide plutonium fuel plants; to support energy efficiency and renewable sources of energy; to increase funding for environmental cleanup programs; and to fund nuclear waste immobilization. The Memorial also would urge the U.S. Dept. of Energy to comply with all cleanup and legacy management agreements.

Electromagnetic Pulse/Geomagnetic Storms - HB 1419 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.

Administrative Procedures Act - SB 1226 by Senator Ring (D) and HB 981 by Rep. Richardson (D) would allow interested parties involved in rulemaking to bolster the Statement of Estimated Regulatory Costs associated with the new or amended proposed rule by allowing parties to include any adverse impacts and regulatory costs that may occur within 5 years after the effective date of the proposed rule. SB 1226 passed out of its second committee and HB 981 is ready for the floor.

BILLS THAT ONLY APPLY TO IOUS

Cost Recovery for Nuclear/IGCC Power Plants - HB 4057 by Rep. Rehwinkle-Vasilinda (D) and 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. HB 395 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.

Renewable Energy Tax Credit – HB 7099 by the Finance and Tax Committee and Rep. Gaetz (R) and SB 1272 by Sen. Hukill (R) would extend the \$.01 per kWh energy production tax credit indefinitely, allowing participants to offset a portion of the corporate income tax, for new renewable facilities and facilities that increase the investment by 50%. The current credit cap of \$10,000,000 would be raised to \$15,000,000. The bill would also allow unused funds to rollover to the next fiscal year. HB 7099 was amended to create several tax exemptions for Data Centers, including a sales tax exemption on electricity they purchase. HB 7099 passed out of the House and SB 1272 passed out of its second committee.

BILLS THAT ONLY APPLY TO MUNIS

Public Records/Utility Agencies Information Technology Security – SB 776 by Sen. Bradley (R) and HB 1025 by Rep. Antone (D) would create an exemption from the public records law for information related to security of technology for municipal electric utilities. SB 776 passed out of its first committee and HB 1025 passed out of its second committee.

Gainesville Regional Utilities Authority – HB 1355 by Rep. Perry (R) is a local bill that would amend the City of Gainesville's charter, creating a regional independent utilities authority called the Gainesville Regional Utilities Authority (GRUA). GRUA would be governed by an independent commission of 5 members appointed by the city commission. The purpose of GRUA 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 GRUA and its corporate structure. Any local laws or ordinances 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 1355 passed out of its first committee