

FECA's Florida Legislative Report

March 3, 2017

We have spent a lot of time this week negotiating with ATT on a co-op exemption from the pole attachment bill, and appear to be making progress. The bill is scheduled to be heard in the Senate for the first time on Tuesday, so we are preparing amendments and testimony just in case, but since ATT is a very big dog we really need to negotiate. We also have the Senate's workers comp bill that was just released, and the House is scheduled to discuss and workshop the workers comp issues on Tuesday. The pollution notification rule also is scheduled to be heard for the first time in the Senate on Tuesday. New bills continue to pour out of bill drafting. Below are the bills of interest that we are working on:

New Bills

Workers' Compensation – SB 1582 by Sen. Bradley (R) would attempt to revise the workers' compensation law in response to recent Florida Supreme Court cases. The bill would repeal provisions that prohibit attorneys from accepting fees paid by an injured worker outside of an award against the insurer, and would provide express authority for attorneys to accept these fees. The current statutory attorney fee schedule would remain, however, a Judge of Compensation Claims (JCC) would have discretion, using criteria delineated in the bill, to increase or decrease the attorney fee up to a maximum hourly rate of \$250. The bill would convert workers' comp rates from an administered rate system to a loss costs system. This means that administrative costs, profits, and other expenses would not be included in the rate determined by NCCI (Florida's rating organization). NCCI rates would cover only losses and the insurer (i.e. FRESIF) would be required to separately file rates to cover expenses and profit for approval from the Office of Insurance Regulation (OIR). In addition, recent NCCI rate files have contained defense and cost containment expenses (DCCE) which range from 14.2% - 17.7% of incurred losses. The bill provides that DCCEs are excessive if they exceed 15% on average of the insurer's incurred losses for 3 consecutive years. If this occurs, the insurer (i.e. FRESIF) must return amounts over 15% of DCCE to policyholders (unless OIR determines the insurer is financially impaired or insolvent). Insurers (i.e. FRESIF) must file their DCCE and incurred losses annually with OIR.

East Nassau Stewardship District - HB 1075 by Rep. Byrd (R) is a local bill that would create a special and limited purpose special district for the East Nassau Stewardship District lands, within a portion of Nassau County. The establishment of this special district would provide for a comprehensive community development approach which would include general and special powers to: 1) develop or improve certain projects including projects for “power” or “utility” that currently exist or in the future; 2) exercise powers of eminent domain and condemnation; 3) provide sustainable or green infrastructure improvements and services including capping or trading carbon emissions or credits; and 4) exercise any of its powers “extraterritorially” within Nassau County. The bill would specifically disallow the district to provide electric service to retail customers or impair electric utility franchise agreements but is silent on the impairment of PSC approved territorial agreements.

Property Appraisers - SB 1366 by Sen. Artiles (R) and HB 1127 by Rep. Gruters (R) would ensure that if a taxpayer is the prevailing party in an action to contest a tax assessment the property appraiser may not increase the assessment in excess of the amount established by the court for 4 years. A taxpayer would be entitled to treble damages and attorney’s fees if it is shown the property appraiser willfully violated the statute. Further, the bill would provide that if a taxpayer challenges an increase of assessed value of more than 10%, the property appraiser must prove by clear and convincing evidence that they complied with Section 193.011, F.S. which are the 8 criterion used to derive just value. This would be a shift from the presumption of correctness/preponderance of the evidence burden of proof for other assessments.

IOU Investments in Natural Gas Reserves - SB 1238 by Sen. Bean (R) and HB 1043 by Rep. Brodeur (R) would give power to the PSC to approve cost recovery through an adjustment clause for an IOU’s prudent investments in natural gas reserves. These costs would include a rate of return and incurred expenses associated with the investments if the utility generates at least 65% of its electricity using natural gas.

Energy Economic Zones - SB 1090 by Sen. Clemens (D) and HB 887 by Rep. Berman (D) would make the Energy Economic Zone Designation Program a permanent, not a pilot, program. The purpose of this program would be to assist

communities to cultivate green economic development, encourage renewable electric energy generation as well as developing energy-efficient land use patterns and greenhouse gas reduction strategies in predominately urban service areas. The community asking for an energy economic zone designation would need to demonstrate a commitment to energy conservation, carbon reduction, green building and economic development. The local governing body may provide up to \$300,000 in state credits, refunds and exemptions to an energy economic zone.

Priority Bills

Wireless Companies and Pole Attachments - SB 596 by Sen. Hutson (R) and HB 687 by Rep. La Rosa (R) would limit the FDOT and local governments' ("authority or authorities) ability to regulate "small" wireless facilities in public rights-of-way when the wireless facilities attach to authority utility poles. The authorities would issue permits and require the wireless entities to provide information on the collocation similar to the information required for electric utilities. The bill would set rates and fees in statute for attachments on authority poles that may not exceed the lesser of the FCC pole attachment rate or \$15 per year. This is concerning since municipal electric (and cooperatives) pole attachment rates are not subject to the FCC formula and the \$15 rate is not cost-based. The bill would set a new standard with respect to permissible cubic feet of volume of the antenna and associated facilities. The antenna could be up to 6 cubic feet with associated equipment up to 28 cubic feet, excluding certain ancillary equipment. The authority would only be able to charge the wireless entity the actual cost, with certain limitations, for any additional work on authority utility poles necessitated to support the additional facilities. The bill would not apply to electric co-ops. However, the bad precedent set by this bill could be troublesome in the future.

Electricity Theft - SB 776 by Sen. Baxley (R) and HB 879 by Rep. Burgess (R) would establish criteria for an electric utility and the courts to follow for the recovery of losses associated with illegal marijuana grow houses. The criteria include processes to establish the amount of electricity that was stolen. After the utility follows these criteria, the burden of proof would shift to the defendant.

Linear Facilities - SB 1048 by Sen. Lee (R) and HB 1055 by Rep. Ingram (R) would exclude work by electric utilities on rights-of-way from the definition of “development” under the Florida Local Government Development Agreement Act. This is in response to an adverse decision against FP&L in the Third District Court of Appeals which ruled that under the Power Plant Siting Act, the Siting Board must consider local developmental regulations such as undergrounding when the project includes new transmission lines. This decision adds a new regulatory step to the power plant siting process when new linear facilities are included in the project which unnecessarily adds time and money to the process.

OPC/Government-owned Utilities - SB 1146 by Sen. Broxson (R) and HB 977 by Rep. Rommel (R) would allow the Office of Public Counsel (OPC) to represent the customers of local government-owned utilities that live outside the boundary of the local government in rate proceedings. The bill also would allow the OPC to represent residential customers before the PSC during proceedings to determine any utility’s rate structure.

Retail Wheeling for Solar Generators - SB 456 by Sen. J. Rodriguez (D) would exempt solar-based renewable energy systems up to 2.5 MW from the definition of public utility. These generators would not be regulated by the PSC and could sell electricity to end-users, including existing utility customers that are on the same property as the generator. The bill is silent as to whether these customers could be put on a special rate to ensure that the remaining customers do not subsidize the renewable generator’s consumers and does not address what entity will regulate the safety of these small utilities.

Renewable Device Taxation – SB 90 by Sen. Brandes (R) would implement Amendment 4 by excluding renewable energy source devices used for commercial purposes, such as solar panels and related equipment, from property value assessments. Further, the bill would exempt from ad valorem taxation renewable devices considered tangible personal property. The bill would grant the exemptions for all qualifying renewable devices regardless of installation date. The exemptions for residential and commercial renewable devices would expire on Dec. 31, 2037. The bill was amended with ambiguous language this week to address solar facilities utilized by electric utilities. However, the stated intent is to restrict the exemption to make sure it only includes the solar facilities and does not

include the grid or other equipment used to connect the arrays to the grid. SB 90 passed out of its second committee.

Public Notification of Pollution - SB 532 by Sen. Galvano (R) and HB 1065 by Rep. Peters (R) would create the Public Notice of Pollution Act. The goal would be to notify the public of a reportable pollution spill or release (as defined in statute) that may pose an immediate danger to the public health, safety or welfare. This bill attempts to mollify the onerous expectations for public notification of spills that DEP implemented last fall through an emergency rule. In the event of a reportable pollution release an entity would need to notify DEP within 24 hours of its discovery and provide detailed information regarding the spill. If multiple parties are subject to the notification requirement, a single notification by one party will suffice and will constitute compliance for all parties. Once DEP is notified of a spill, they would need to publish the notice on a website that is accessible to the public within 24 hours of receipt. In addition, DEP must create an electronic mailing list for notices that the public can request to be on. If an entity fails to provide notification to DEP they would be subject to civil penalties, which may include a \$10,000 fine. SB 532 and HB 1065 have fundamentally different approaches. SB 532 would allow DEP to promulgate rules for implementation whereas HB 1065 references existing statutes for reporting guidance.

Underground Facilities - SB 446 by Sen. Passidomo (R) and HB 379 by Rep. Leek (R) would require that participants in Sunshine State One-Call of Florida, Inc. (One-Call) report at least annually, by March 31 of each year, the damages to their underground facilities for the preceding year. Further, the bill would expand the information currently required to be submitted to the Legislature by the One-Call Board, which information would be analyzed to improve the program and prevent future dig ins. In addition, an excavator would need to call 911 and file a report with the One-Call system if damage to an underground facility results in the release of any natural or other gas or hazardous liquid. HB 379 passed out its first committee of reference.

Regulation of Drones - SB 832 by Sen. Young (R) and HB 1027 by Rep. Yarborough (R) would grant state government the primary authority to regulate drones, in accordance with FAA regulations, and would restrict the use of drones around critical infrastructure. Further, the bill's definition of critical infrastructure

includes electric utility facilities. The bill would create a second-degree misdemeanor for knowingly and willingly allowing a drone to fly too close, make contact, or fly over critical infrastructure. The bill would provide exemptions from penalties for certain drone operators including the owners and operators of critical infrastructure and their contractors who have written permission to utilize drones.

Other Bills of Interest

Florida Building Commission - SB 7000 by Committee on Community Affairs and Sen. Lee (R) and HB 901 by Rep. McClain (R) would require the Florida Building Commission (FBC) to use the most recently published edition of the Florida Building Code (Code) as the foundation for future updates to the Code. In addition, FBC would only have to review, not update, the Code every 3 years. Also, the FBC would only have to review other codes such as the International Building Code and the National Electrical Code, but not necessarily adopt any changes. SB 7000 passed out of its first committee.

Utility Workers - SB 408 by Sen. Passidomo (R), SB 432 Sen. Baxley (R) and HB 541 by Rep. Stone (R) are bills that would protect vulnerable users of public rights-of-ways, including persons working on utility facilities along roadways. SB 432/HB 541 would increase penalties in instances resulting in injury or death to vulnerable road users. SB 408 would also increase penalties as well as requiring motorists to maintain at least 3 feet of space between the vulnerable user and the vehicle when passing. Violations would be in addition to the move over restrictions and penalties enacted 2014.

Rural Economic Development - SB 600 by Sen. Grimsley (R) and HB 333 by Rep. Clemons (R) would direct the Office of Economic and Demographic Research and OPPAGA to analyze “rural areas of opportunities” which include rural areas adversely affected by economic distress and competitive disadvantages. The Rural Economic Development Initiative (REDI) would encourage job creation, improved community infrastructure such as roads and utilities, improved access to health care and expansion of a skilled workforce in these areas. The REDI would submit an annual report on its initiatives and accomplishments to the Governor, Senate and House.

Elimination of Certain Economic Programs - HB 7005 by the House Careers & Competition Subcommittee and Rep. Renner (R) would eliminate certain economic programs such as Enterprise Florida, Inc. The bill would allow current projects and existing contracts to be fulfilled with oversight from the Department of Economic Opportunity. The House is asserting that certain economic programs have not succeeded in their mission and should be abolished. The House's position is the polar opposite of the Governor, who believes these programs are not only successful, but necessary for Florida to remain competitive. The bill was amended this week to allow Visit Florida to continue, albeit with more regulations and a smaller budget. HB 7005 passed out of its last committee.

Municipal Special Assessment for Law Enforcement - SB 932 by Sen. Thurston (D) would authorize a municipality to levy a special assessment to fund the costs of providing law enforcement services under certain circumstances. If the assessment is levied, the municipality would reduce its ad valorem millage. The governing body would have discretion to allocate the assessment based upon a property's square footage, use, location or other factors, which appears to allow the government to put a higher burden of the assessment on commercial property than on residential property.

Bills That Only Apply to Munis

Gainesville Regional Utilities Authority - SB 1568 by Sen. Perry (R) and HB 759 by Rep. Clemons (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. The bill would supersede local ordinances if there are conflicts. If the bill passes, Article VII would take effect by referendum only if it is approved by a majority of voters in Gainesville. This bill virtually mirrors the legislation in 2016, except this bill does not provide a salary for the potential GRUA members.

Bills That Only Apply to IOUs

Public Utility Environmental Remediation Costs - SB 974 by Sen. Rodriguez (D) would allow local governments to file a request for a hearing with the PSC for a determination of prudence on environmental damage caused by an IOU. If the Commission determines that the IOU failed to act prudently, the utility may not recover any costs for the damages from ratepayers and they must develop a plan to remedy any remaining environmental damage.

Public Electric Utility Rates - SB 976 by Sen. Rodriguez (D) would require an IOU to lower its residential customer rate by 25% for the first 500 kwhs if they charge a flat residential schedule (RS) rate, like Gulf Power. For IOUs that have tiered RS rates (FPL, Duke, TECO) the second tier (over 1000 kwhs) must be reduced by 25%. This would be instituted following the IOUs' first rate case after July 1, 2017 or on July 1, 2021, whichever occurs first.

Cost Recovery for Nuclear/IGCC Power Plants - SB 1100 by Sen. Rodriguez (D) would repeal the pre-completion cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC power plants.