

FECA's Florida Legislative Report

April 14, 2017

They did a lot in 2 days and all the news is good this week. The electricity theft bill passed out of another Senate committee and has one more stop before a floor vote, and the House version is scheduled to be heard on Monday. The Workers' Comp bill advanced in the Senate and has one more stop before the floor, but there are significant differences from the House version, which is ready for the floor. The ad valorem tax bill has just one more stop in the Senate before a floor vote, but they have not added any of the consumer protection provisions that are in the House's version. The Senate's version of the Pollution Notification bill is now ready for its final vote in the Senate, but the House's version has not been heard. The One-Call and GRU bills advanced. There are three more weeks in the regular session.

Normally at this point we are able to move several bills to the "dead" list, but this session is unusual. There are several bills that are ready for a floor vote or have passed out of one chamber that have not even been heard in the other chamber. This means that a lot of important bills are going to die or we are headed for some serious horse trading in the last few weeks. We probably won't get much clarity next week, but we still will be able to take some bills off the watch list.

Below are the bills of interest we are working on:

New Bills

There are no new bills this week that impact co-ops.

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") 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 bills have been amended to expressly exclude poles owned by electric co-ops. However, the bad precedent set by this bill could be troublesome in the future as it still contains a reference to the FCC pole attachment rates. Both bills have one committee stop left.

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. SB 776 has one stop left and HB 879 passed out of its first committee.

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 that could make it much harder and more expensive to build new transmission lines under the Act. SB 1048 passed out of the Senate and HB 1055 passed out of its second committee.

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. SB 1146 was amended to limit the bill to only government-owned water and wastewater utilities, and this version is of no consequence to co-ops. SB 1146 passed out of its second committee but the House bill has not been heard.

Retail Wheeling for Solar Generators - SB 456 by Sen. J. Rodriguez (D) and HB 1251 by Rep. Davis (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. SB 456 was debated in committee, but no votes were taken on the bill.

Renewable Energy Source Devices - HB 1351 by Rep. Rodrigues (R) would implement Amendment 4, which passed in 2016 to exempt solar or renewable energy source devices, used for commercial purposes, from the assessed value of real property for devices installed on or after January 1, 2018. In the original bill, renewable energy source devices that are tangible personal property would have been exempt from ad valorem taxes regardless of the installation date, including Seminole's solar project, but HB 1351 was substantially amended in its last stop. The exemption for tangible personal property now only applies to facilities installed in 2018 or later. Also, the renewable energy source device definition now clarifies that the exemption does not apply to utility equipment that is on the utility's side of the interconnection with the renewable device. In addition, "utility scale renewable energy projects" planned in fiscally constrained counties before 2018 are not exempt from ad valorem assessments or tangible personal property taxes. The term "utility scale renewable energy project" is defined as an electrical generating facility that incorporates one or more renewable energy devices and is either certified under the Power Plant Siting Act or is more than 20 mw. However, with the other provision that limits the exemption to devices installed after 2017, this provision seems to be redundant. The bill also would require safety standards for installers of distributed energy systems and would protect consumers from potential fraud or misrepresentation by entities selling, financing or leasing

distributed energy generation systems. The entities must include certain provisions in their contracts with consumers including: 1) the right for the consumer to rescind the agreement up to 3 days after signing; 2) a description of the system and the expected amount of energy it will produce and/or a warranty of the energy production output; 3) the total cost to be paid including interest, installation fees, document preparation fees, services and other fees; 4) any payment terms; 5) disclosure of any tax credits; 6) identification of any tax obligations; 7) disclosure of whether the seller will insure the system against damage or loss; 8) any restrictions on transfer of ownership; and 9) an estimate on utility charges. In addition, the agreement must contain a statement informing the consumer that utility rates and rate structures change, therefore, projected savings from the system may also change and that tax credits and rebates are subject to change or termination. If a seller willfully and intentionally violates any provisions they commit a noncriminal violation subject to fines and damages. HB 1351 passed out of its second committee.

Renewable Device Taxation – SB 90 by Sen. Brandes (R) and HB 1141 by Rep. Berman (D) 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 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 has one stop left.

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 was amended to reference existing statutes for reporting guidance. Additionally, the amendment would require an additional report to be filed if a spill extends beyond the reporting entity's property boundaries within 24 hours of the initial report. SB 532 is ready for a final vote in the Senate.

Workers' Compensation – SB 1582 by Sen. Bradley (R) and HB 7085 (formerly PCB IBS 17-01) by the Insurance and Banking Subcommittee and Rep. Burgess (R) would attempt to revise the workers' compensation law in response to recent Florida Supreme Court cases. The bills 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 bills, to increase or decrease the attorney fee up to a maximum hourly rate of \$250. SB 1582 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. SB 1582 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. HB 7085 focuses on the quick and efficient

delivery of disability and medical benefits to an injured worker and would increase temporary wage replacement benefits from 104 weeks to 260 weeks. HB 7085 would attempt to fill a benefit gap that happens when temporary total disability ends and temporary partial disability begins. Further, HB 7085 would allow insurers to reduce premiums by no more than 5% of NCCI's rate for 1 year, subject to regulatory oversight, if they file an informational departure statement with the OIR. HB 7085 was amended and would set the maximum hourly attorney rate at \$150. Further, the amendment would require the claimant's attorney to file an attestation detailing the claimant's attorney hours to date. SB 1582 has one stop left and HB 7085 is ready for the floor.

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. SB 446 has one stop left and HB 379 passed out of the House.

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. SB 832 passed out of its second committee and HB 1027 is ready for the floor.

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 second committee and HB 901 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. SB 600 passed out of its second committee and HB 333 passed out of its first committee.

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 the House.

Municipal Special Assessment for Law Enforcement - SB 932 by Sen. Thurston (D) and HB 715 by Rep. Russell (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.

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. HB 1075 is ready for the floor.

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.

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.

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. HB 759 is ready for the floor.

Bills That Only Apply to IOUs

Public Service Commission and OPC - HB 7071 (formerly PCB EUS 17-01) by the Energy & Utilities Subcommittee and Rep. Peters (R) would: 1) require the PSC commissioners to be appointed to represent each of five regions in the state; 2) decrease term limits for commissioners to two 4 year terms; 3) prohibit the appointment of state legislators to the PSC within 6 years of leaving office; 4) transfer the Office of Public Counsel (OPC) to the Attorney General's office; 5) require the PSC to consider new criteria for IOU ratemaking related to performance by the utility; 6) authorize the PSC to establish financial incentives for IOUs to achieve excellent performance; and 7) specify that the PSC may not approve a planned reserve margin greater than 15% for IOUs unless extraordinary circumstances exist. HB 7071 passed out of its second committee.

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) and HB 6048 by Rep. Diamond (D) would repeal the pre-completion cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC power plants.

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. SB 1238 and HB 1043 passed out of their first committee.