

FECA's Florida Legislative Report

April 21, 2017

There are two weeks left in the regular session and there was a lot of action this past week on our bills, but the Linear Facility/Transmission Line Siting Act bill is stuck in the House. The bill has passed out of the Senate, but Miami-Dade has mounted a strong attack against the bill. The pole attachment bill was amended in the Senate, to remove any reference to the FCC rates and the maximum charge was changed to \$100 per year from \$15. Our exclusion is still in the bill. The grow house bill passed out of another committee in the House, and is scheduled to be heard in its final committee in the Senate on Tuesday, and we have asked for it be added to the Agenda for a final committee hearing in the House on Monday. The Workers' Comp bill passed out of the House and out of its final committee in the Senate, but there are significant differences. The ad valorem tax bills are ready for floor votes in both chambers, but again there are significant differences. The House version does not exempt commercial solar installed prior to 2018 and adds consumer protections. The Pollution Notification, Rural Economic Development, One-Call and GRU bills advanced.

We were able to move several bills to a new section for bills that should be dead. However, we have to keep vigilant in case someone tries to amend the language onto another bill.

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. SB 596 was amended to remove the FCC rates and the cap of \$15 per year. SB 596 would now cap the rates at \$100 per year for the attachments. SB 596 is ready for the floor and HB 687 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. Both bills have one stop left.

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 third committee but the House bill has not been heard.

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. 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. 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. 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. Further, the bill was amended and would no longer create a definition for "utility scale renewable energy projects" as projects certified through the Power Plant Siting Act or more than 20 MW. HB 1351 is ready for the floor.

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 is ready for the floor.

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 passed out of the Senate. Additionally, HB 753 was amended and would require DEP to publish on a publicly accessible website all reports of a release or a discharge of pollution not authorized by law submitted to the State Watch Office within 24 hours of receipt.

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 is ready for the floor and HB 7085 passed out of the House.

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 is ready for the floor 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 has one stop left and HB 1027 passed out of the House.

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 second committee.

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 is ready for the floor 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.

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.

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.

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.

Bills That Appear to be Dead

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. SB 456 was debated in committee, but no votes were taken on the bill.

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.

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.

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.

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.

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.

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%.

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.