

FECA's Florida Legislative Report

May 5, 2017

The Legislative session will continue at least through Monday, which is the first day they can vote on the budget. We still have a few bills in play, and are watching for bad amendments, but the drone bill is probably our last real chance at passing something that is relevant to co-ops. After today, any policy bills that have not passed should be dead.

We made a lot of progress this week. The grow house, pollution notification, solar ad valorem tax, and one-call bills are headed to the Governor. Unfortunately, the Linear Facility/Transmission Line Siting Act, Workers' Comp, and the Rural Economic Development bills appear to be dead.

We added 2 bills to the report that passed that you might be interested in. HB 1107 would exempt personal identifying information of an injured or deceased employee contained in documents related to workers' compensation claims held by the Department of Financial Services from public records requirements, and make this information confidential. We don't think this has any direct impact on your operations, but it is a reminder to be careful with this information. Also, HB 951 would amend the Charter of the Utility Board for the City of Key West to require 2 of the 5 Board members to be from outside the City limits starting with the 2018 elections, which addresses a representation issue that exists at many municipal utilities.

Bills Headed to the Governor

Electricity Theft - HB 879 by Rep. Burgess (R) (SB 776 by Sen. Baxley (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.

Renewable Device Taxation – SB 90 by Sen. Brandes (R) (HB 1351 by Rep. Rodrigues (R)) would implement Amendment 4 by excluding renewable energy source devices used for commercial purposes from 80% of the just value of the property, such as solar panels and related equipment, from both real and tangible

and property value assessments. For real property assessments, the bill applies to renewable energy source devices installed on or after January 1, 2018 except when the device is installed in a fiscally constrained county. For tangible property assessments, the bill applies to renewable energy source devices installed on or after January 1, 2018, but there is a provision that grandfather's certain devices installed for governmental entities prior to this 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. The bill would also institute several consumer protections that could help curtail predatory sales practices by solar companies.

Underground Facilities - HB 379 by Rep. Leek (R) (SB 446 by Sen. Passidomo (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.

Wireless Companies and Pole Attachments - HB 687 by Rep. La Rosa (R) (SB 596 by Sen. Hutson (R)) would restrict local governments' ("authority") ability to regulate "small" wireless facilities in public rights-of-way when the wireless facilities attach to the government's poles. Electric cooperative poles are expressly exempted from the bill, as are poles owned by municipal electric distribution utilities or IOUs. Some other poles also are off limits to wireless attachments. The bill does not reference the FCC pole attachment rates and limits attachment rates to no more than \$150 per pole annually. The \$150 standard should be helpful to fend off any future attempts by telecom providers to regulate our pole attachment rates. 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.

Public Notification of Pollution - SB 1018 by Sen. Grimsley (R) (SB 532 by Sen. Galvano (R) and HB 753 by Rep. Stone (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. Within 24 hours of DEP being notified of a spill, it must publish a notice on a website that is accessible to the public. 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. 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. The Governor has indicated that he will sign the bill.

Public Records Exemption for Workers' Comp - HB 1107 by Rep. Albritton (R) (SB 1008 by Sen. Perry (R)) would exempt personal identifying information of an injured or deceased employee contained in documents related to workers' compensation claims held by the Dept. of Financial Services (DFS) from public records requirements and make this information confidential. This information includes an employee's name, DOB, address, email or phone number. The bill provides several exceptions to the confidentiality status of this information in certain circumstances for litigation purposes. An entity receiving personal identifying information from DFS must maintain the confidential status of the information. A person who willfully and knowingly discloses this confidential information commits a first-degree misdemeanor.

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 passed out of the House.

Municipal Utility Governance - Local Bills for GRU and the Key West Utility Board - HB 951 by Rep. Raschein (R) amends the Charter of the Utility Board for the City of Key West to require 2 of the 5 Board members to be from outside the City limits starting with the 2018 elections. 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: electric, water, wastewater, reuse water, natural gas, and communications. The bill would take effect by only if it is approved by a majority of voters from within Gainesville’s city limits.

Bills that are on life support

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.

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 is ready for the floor and HB 1027 passed out of the House.

Bills That Appear to be Dead but Technically are Still Alive

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.

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.

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.

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.

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.

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.

Renewable Device Taxation - HB 1141 by Rep. Berman (D) would implement Amendment 4. SB 90 implemented Amendment 4.

Public Service Commission and OPC - HB 7071 (formerly PCB EUS 17-01) by the Energy & Utilities Subcommittee and Rep. Peters (R) would make significant changes to the PSC and IOU rate structures.

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.

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”.

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.

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.