

FECA's Florida Legislative Report November 17, 2017

Constitution Revision Commission

It was another active week in Tallahassee and there is much to report. **The most pressing concern is at the Constitutional Revision Commission (CRC) and Proposal 51 (P51), which if passed would deregulate the electric industry by Constitutional amendment.** The rules governing the CRC are vague at best, but we have learned a great deal since the last report. First, all Commissioner sponsored proposals, such as P51, must be heard unless it is withdrawn. Second, the CRC subcommittees have an ambitious agenda that would have all 103 proposals considered during their next two committee weeks which begin on 11/27 and 12/11, respectively. It is uncertain which week P51 will be heard, but the rumor is it will be in December. However, if it does come up during the week of 11/27, we will not know until the Wednesday before Thanksgiving. The gravity of P51's implications coupled with the aggressive hearing schedule is elevating P51 to the top priority at Statewide.

Currently, Statewide is pursuing several avenues to prepare for the eventual hearing of P51, absent the proposal being unexpectedly withdrawn. Today, Staff spoke with the Governor, to express opposition to P51. The Gov. seems to understand the concerns and said he will request the Director of the CRC to contact Statewide for further discussion. In addition, Staff placed a call with the Governor's Chief of Staff to express the same concerns. Among all the officers who make CRC appointments, the Governor has the most appointments including naming the Chairman. Further, Staff reached out to NRECA to try and locate an expert on the deregulation disasters that have occurred around the country. The purpose is to retain an expert in this field who can testify before the CRC subcommittee to illustrate the problems deregulation has caused nationwide. Many of the states that deregulated in the 1990's reversed course and re-regulated the industry after this experiment with customer choice failed. Re-regulation was possible if the state's legislature acted to deregulate but in this case, once P51 is enshrined in Florida's Constitution, it will be extremely difficult to reverse or repeal. Additionally, Statewide is working with the IOUs and the Munis to come up with an effective strategy since P51 could affect all electric utilities. Further, Staff will be prepared to testify on how this proposal would

affect co-op members and their consumers. Finally, Staff is reaching out to an attorney with Holland & Knight to make plans for legal council should the need arise.

There is still a chance, albeit slim, that P51 could be withdrawn and these preparations may be in vain. However, the accelerated timing of the CRC's actions mean that Statewide must make certain plans now. It is not time to hit the panic button, but this is a serious situation and is being treated as such.

Legislative

This week, the Linear Facilities legislation passed out of its first committee of reference in both Chambers. The Senate Subcommittee on General Government Appropriations continued their discussion on hurricane preparedness with several presentations by agencies, IOUs and municipalities. Chair Simmons mentioned his intentions to file a proposed committee bill that will address preparation and hardening of electric utility infrastructure. Previously, Chair Simmons alluded that the PSC would have oversight over the extra efforts to strengthen the grid and it is unclear if he intends to include the co-ops.

The House Select Committee on Hurricane Preparedness heard presentations by agencies and impacted industries on a variety of issues. Various committee members are now charged to work with committee staff to develop potential policy recommendations for discussion at future meetings. The upcoming discussions will determine the final recommendations that will be presented to the full body.

Below are the current bills of interest that have been filed thus far. Each week, the report will prioritize in the following manner: New legislation filed, priority, monitor, and tracking. New bill information (i.e. new committee assignments, companion bills, etc.) can easily be seen in **RED** text. The new bills will be moved to their proper category in subsequent reports. Legislators continue to file bills that surround the process and care given to our most vulnerable populations during storms or emergency events. Although most of these bills do not have a direct impact on coops, there are issues that could impact the restoration process. Rather than outline each bill that is filed that address substantially the same subject matter, they will be listed as "related bills" under the bill that is already being followed and most likely to move.

If you would like more detailed information or an explanation on any legislation or Constitutional Amendments by the Constitution Revision Commission, please do not hesitate to reach out to Allison or Mike.

NEW

Disaster Preparedness Tax Exemption

(SB 620/HB____)

Sponsors: Sen. Passidomo / _____

Summary:

This bill establishes a 10-day sales tax exemption in June 2018 on certain items relating to disaster preparedness and protection. During the exemption period, the following items, will be exempt from state sales and use tax and county discretionary sales surtaxes: certain light sources, radios, tarps, "tie-down" kits, fuel tanks, batteries, first aid kits, cellular telephone chargers, food storage coolers, portable generators, storm shutter devices, carbon monoxide detectors, reusable ice, personal locator beacons, and emergency position-indicating radio beacons

Committee Assignments:

SB 620: Appropriations on Finance and Tax; Appropriations

ACTION RECOMMENDED: NEUTRAL

ACTION ITEM: Senate Commerce and Tourism (11/13) – Passed (As Amended)

Amendment Action: Inserted the nonrecurring funds that will be appropriated to administer the tax exemption.

REPORT LOCATION: Tracking

Theft

(SB 928/HB 713)

Sponsors: Sen. Bracy / Rep. Donalds

Summary:

The theft of utility services is punishable as provided in Section 812.014, F.S. Currently under this Section, a person could be convicted of grand theft and a felony of the third degree if the property stolen is valued at several amounts but the lowest amount is \$300 or more, but less than \$5,000. This legislation would raise the lowest amount for this conviction from \$300 to \$1500 which could reduce the number of eligible convictions for theft of utility services.

Committee Assignments:

SB 928: Not yet available

HB 713: Not yet available

ACTION RECOMMENDED: NEUTRAL

REPORT LOCATION: Monitor

PRIORITY

Linear Facilities

(SB 494/HB 405)

Sponsors: Sen. Lee / Rep. Williamson

Summary: This bill is identical to SB 1048 from last Session. The bill died in House Messages last year.

The legislation excludes 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.

Impact / Importance to Co-ops:

This legislation was filed in response to a ruling by an appeals court and would impact how electric utilities proceed in securing undergrounding and/or transmission lines under the Power Plant Siting Act.

Committee Assignments:

SB 494: Community Affairs

HB 405: Natural Resources & Public Lands Subcommittee; Commerce Committee

ACTION RECOMMENDED: SUPPORT

ACTION ITEM: Senate Communications, Energy and Public Utilities (11/14) – PASSED; House Energy & Utilities Subcommittee (11/15) – PASSED

Public Utility Power Restoration

(SB ____/HB 245)

RELATED BILLS: SB 896/ HB 655

Sponsors: ____ /Rep. Harrison

Summary: *There are currently several bills that will address the nursing home power restoration situation in varying manners. It is anticipated that if any action will take place on this issue, one bill would become the vehicle. Thus, we will monitor for amendments that will merge concepts and ideas into one bill.*

The Division of Emergency Management’s (“DEM”) State Comprehensive Emergency Management Plan includes a post-disaster response and recovery component. The legislation would include guidelines for prioritizing restoration of electrical services, which potentially includes co-ops, to critical end-use facilities in post disaster response. The definition of critical end-use facilities includes, but not limited to, critical medical facilities, hospitals, and nursing homes under certain designated statutes.

Impact / Importance to Co-ops:

All electric utilities would be included in this legislation. The legislation would create guidelines within the State Comprehensive Emergency Management Plan that could interfere with the priorities set by the local governments, County EOC’s and electric utilities. This could reduce a utility’s flexibility to determine priority accounts during an emergency.

Committee Assignments:

HB 245: Energy & Utilities Subcommittee; Health & Human Services Committee; Commerce Committee

ACTION RECOMMENDED: OPPOSE

Exempting Renewable Energy Sources from Definition of Public Utility

(SB 292/HB ____)

Sponsors: Sen. Rodriguez / ____

Summary:

Exempt certain renewable energy sources from the definition of “public utility” which would make them unregulated by the PSC. The eligibility would meet the following criteria: Property owner must own and operate on their property; max capacity of 2.5MWs; produces and sells energy to users located on the property.

Impact / Importance to Co-ops:

Entities generating renewable energy would be selling electricity at retail without oversight. The bill is silent on many aspects such as wheeling power, safety requirements, and interconnection agreements with incumbent utilities.

Committee Assignments:

SB292: Communications, Energy & Public Utilities; Community Affairs; Rules

ACTION RECOMMENDED: OPPOSE

MONITOR**Campaign Financing**

(SB 122/HB 43)

Sponsors: Sen. Steube /Rep. Gruters

Summary:

Lessens reporting requirements that were added in the 2013 legislation by reducing the number of reporting periods during the election cycle from 20 to 11. The new legislation would eliminate the current daily reports required leading up to the final days of the elections. It also allows for quarterly, not monthly reports during the non-election years. Also, changes the requirements of reporting transfers of money to and from political action committees to and from electioneering communications organizations.

Committee Assignments:

SB 122: Ethics and Elections; Judiciary; Rules

HB 43: Oversight Trans and Admin Sub; Public Integrity and Ethics Committee

ACTION RECOMMENDED: NEUTRAL

Exemption of Certain Manufacturing Equipment

(SJR 136 /HJR ____)

Sponsors: Sen. Steube/ ____

Summary:

Exempt certain manufacturing equipment from Tangible Personal Property tax or allowing such equipment to be assessed at less than just value through an accelerated depreciation method. Upon passage, the legislature would define which manufacturing equipment would qualify by statute. **A Joint Resolution is a bill, if passed, would be placed on the next general election ballot to be considered as a Constitutional Amendment. The measure would require 60% support for passage.**

Committee Assignments:

SJR 136: Finance and Tax, Appropriations, Rules

ACTION RECOMMENDED: NEUTRAL

ACTION ITEM: Senate Judiciary Committee (11/14) – PASSED -

Employment Discrimination

(SB ___/HB 225)

Sponsors: ___/Rep. Davis

Summary:

The legislation would prohibit employers from taking any retaliatory personnel action on an employee that evacuated under any emergency evacuation order. The Legislation states that the residence or place of employment must be included in the evacuation order; the employee must return to work within 14-days after the state of emergency is lifted. Prohibited personnel action would include termination, suspension, demotion or any other adverse employment action. The legislation exempts any employees that are considered emergency personnel, including those that provide safety and well-being to the public. This appears to apply to electric utilities' personnel, but it is unclear which personnel would be included.

Committee Assignments:

HB 225: Careers & Competition Subcommittee; Civil Justice & Claims Subcommittee; Commerce Committee

ACTION RECOMMENDED: OPPOSE

Public Electric Utility Rates

(SB 626/HB ___)

Sponsors: Sen. J. Rodriguez /___

Summary: This bill is identical to SB 976 from last session. Last year, it did not have a companion and was never heard in committee.

The legislation 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, 2018 or on July 1, 2022, whichever occurs first.

Committee Assignments:

SB 626: Communications, Energy, and Public Utilities; Community Affairs; Appropriations; Rules

ACTION RECOMMENDED: NEUTRAL

Public Utility Environmental Remediation Costs

(SB 656/HB ____)

Sponsors: Sen. J. Rodriguez / ____

Summary:

If the Department of Environmental Protection makes a determination that a public utility has caused environmental damage within the state; a municipality or county in which the damage occurred must file a request for a hearing before the Public Service Commission. The PSC will determine if the public utility acted prudently in the events leading up to or causing the environmental damage. If it is determined that the public utility failed to act prudently they may not recover any expenditures to remedy the environmental damages from ratepayers. They must develop a plan that specifies how they will remedy the situation and how the costs will be incurred through internal methods within the public utility. The plan must be approved by the PSC.

Committee Assignments:

SB 656: Communications, Energy, and Public Utilities; Community Affairs; Environmental Preservation and Conservation; Rules

ACTION RECOMMENDED: NEUTRAL

TRACKING

Operation of Vehicles

(SB 116/HB 117)

Sponsors: Sen. Baxley /Rep. Stone

Summary:

Current law dictates the required driving behavior used when encountering any emergency, sanitation, utility service or wrecker vehicle on any drivable roadway. The legislation amends current statute to clarify that this includes any worker for those mentioned service providers. It also states that you must allow four feet of distance between any vehicle and a worker that is performing duties associated with their service position.

Committee Assignments:

SB 116: Transportation, Appropriations Subcommittee on Transportation, Tourism & Econ. Dev, Appropriations

HB 117: Transportation & Infrastructure Subcommittee; Government Accountability Committee

ACTION RECOMMENDED: NEUTRAL

Nursing Home and Assisted Living Facilities

(SB 284/HB ____)

Sponsors: Sen. Book / ____

Summary:

This bill would require AHCA to determine compliance standards for electricity and emergency power sources including electrical equipment, emergency power source and supply of fuel for nursing homes during any power outage. The same requirements must be developed by DEA for all assisted living facilities. The nursing homes must be inspected every 15-months to ensure that they meet the set criteria for safety. The Assisted Living Facilities must be inspected every 24 months for compliance.

Committee Assignments:

SB 284: Health Policy; Appropriations Subcommittee on Health and Human Services;
Appropriations; Rules

ACTION RECOMMENDED: NEUTRAL

Emergency Power for Health Care Facilities

(SB ___/HB 327)

Sponsors: ___/Rep. Richardson

Summary:

This legislation would require AHCA to develop outlined standards for emergency power that includes enough power to maintain the temperature of 82 degrees or below. The power must also function to a level to keep items refrigerated. Requires AHCA to have announced inspections each May to ensure that the standards are met. The same requirements must be developed by DEA for all assisted living facilities.

Committee Assignments:

HB 327: Health Innovation Subcommittee; Health Care Appropriations Subcommittee; Health and Human Services Committee

ACTION RECOMMENDED: NEUTRAL

Post-hurricane Relief for Residents of Health Care Facilities

(SB 372/HB ___)

Sponsors: Sen Garcia / ___

Summary:

This bill would require the PSC to ensure that IOUs include critical medical facilities with 50 or more residents as priority accounts in the event of an emergency. The critical medical facilities must be inspected annually by DOH. The inspections will ensure each facility has an emergency power source and sufficient fuel for at least 4 days in the event of an emergency. That power must provide enough energy to maintain a temperature of 81 degrees and meet refrigeration standards for food and beverages for their residents. The facility must also be able to store and maintain ice.

Committee Assignments:

SB 372: Health Policy; Appropriations Subcommittee on Health and Human Services;
Appropriations; Rules

ACTION RECOMMENDED: NEUTRAL

Electric Vehicles

(SB 384/HB __)

Sponsors: Sen. Brandes / ____

Summary:

This bill would require the Florida Transportation Commission (FTC) to review all sources of revenue for transportation infrastructure and maintenance projects and when the FTC determines that electric vehicles make up over 2% of the total number of vehicles registered in the state, they would submit a report to the Governor and Legislature. The report will assess transportation infrastructure with respect to emergency evacuations to determine the availability of electric vehicle charging stations and other needs throughout the state. The report would make recommendations to the legislature for continued adequate funding for existing infrastructure and for continued growth and improvements in infrastructure and capacity projects for electric vehicle including evacuations.

Committee Assignments:

SB 384: Transportation; Appropriations Subcommittee on Transportation, Tourism and Economic Development; Appropriations

ACTION RECOMMENDED: NEUTRAL

Building Standards for Health Care Facilities

(SB __/HB 437)

Sponsors: __/Rep. Lee, Jr.

Summary:

This bill would change the Florida Building Code requiring all public and private health care facilities to have an operational emergency power source. It defines operational emergency power source as a system that provides an independent source of electric power during a loss of a power supply. The legislation would require a fuel supply for up to 7-days of emergency power. The emergency power may include generator, batteries, and other essential accessories needed to sustain an emergency power system.

Committee Assignments:

HB 437: Health Innovation Subcommittee; Health Care Appropriations Subcommittee; Health & Human Services Committee

ACTION RECOMMENDED: NEUTRAL

Nuclear Cost Recovery

(SB 716/HB ____)

Sponsors: Sen. J Rodriguez/ ____

Summary:

This bill would repeal provisions relating to cost recovery mechanisms for the siting, design, licensing, and construction of nuclear and integrated gasification combines cycle power plants. This would take away the IOUs' ability to recover costs incurred prior to commercial operation of a power plant.

Committee Assignments:

SB 716: **Communications, Energy & Public Utilities; Community Affairs; Rules**

ACTION RECOMMENDED: NEUTRAL

OGSR/Local Government Electric Utility

(SPB 7008/HB __)

Sponsors: Committee Bill Communications, Energy & Public Utilities /Rep

Summary:

This bill is a proposed committee bill and an Open Government Sunset Review issue which evaluates a public records exemption to verify that the exemption is still needed and worthy of the protection under the state. This OGSR allows for proprietary confidential business information held by electric utilities to be exempt from public record requests. Trade Secrets; internal auditing controls and reports; security measures; information concerning bids or contractual data; and information relating to competitive interests are all considered to be proprietary and confidential business information that will be exempt from public record.

NOTE: Upon passage in committee, this bill will receive a new Senate Bill number and a member sponsorship should be assigned.

Committee Assignments:

SPB 7008: Not available yet

ACTION RECOMMENDED: NEUTRAL

CONSTITUTION REVISION COMMISSION PROPOSALS

Deregulation of Electric Utilities

(Proposal 51)

Sponsor: Rich Newsome

Summary: The proposed constitutional amendment would create the right for all electric customers to choose their electric provider. This would allow customers to choose from multiple providers in a competitive electricity market, produce electricity for themselves or with others, but the proposal is open to other unidentified forms of deregulation. The proposal uses very broad language and its vagueness is more dangerous for what it does not say and what it could be interpreted to mean by the legislature and the courts. The ambiguous language of the proposal creates more questions than answers on how a deregulated electric market would look like in Florida. We believe that numerous issues must be resolved before there is a serious discussion about customer choice in Florida, including but not limited to the following:

- Will the electric utility market be open for competition for, only wholesale sales, only retail sales, or both wholesale and retail?
- Will State and local governments retain their powers to protect the public health, safety and welfare with respect to power generation equipment, the electric grid including building codes, electrical codes, safety codes and pollution control regulations?
- Who will govern the safety aspects of unregulated non-utility renewable generators to ensure that linemen, first responders, and the public are not in danger?

- If unregulated non-utility generators are allowed to operate in the state, who will protect consumers from fraudulent and misleading practices?
- Which entity has the ultimate obligation to serve the end-user?
- Who should pay for the system upgrades and that may be required in order to accommodate intermittent generators, such as solar or wind?
- Will the PSC or another agency have any jurisdiction over third party retailers to resolve disputes with utilities, and disputes between the customers and their renewable energy providers?
- Will anyone regulate the siting, installation, and the safety of generating facilities?
- Who pays for stranded costs if existing generation is forced to shut down?
- If customers want choice in the type of power generation they use (i.e. they want to buy electricity that is produced by a renewable generator) are there more efficient and cost-effective methods to do this, such as community solar projects?
- Will customers who reject choice have to subsidize the costs of backup power and electric grid access to those who do?

The devil is definitely in the details but it is a dangerous proposal to set forth and codify in Florida's Constitution since it could result in higher electric rates, an unstable transmission grid, unforeseen power outages and downgraded reliability.

Committee Assignment: General Provisions; Executive

ACTION RECOMMENDED: OPPOSE

Right to Clean and Healthful Environment

(Proposal 23)

Sponsor: Jacqui Thurlow-Lippisch

Summary: This is an amendment to Article II, Section 7 that would state that every person has the right to a clean and healthful environment. This environment includes clean air and water; pollution control; and conservation and restoration of the natural, scenic, historic and aesthetic values of the environment. Any person has the right to enforce this right against any party, public or private, with reasonable limitations.

Committee Assignment: Judicial; General Provisions

ACTION RECOMMENDED: OPPOSE