

FECA Florida Legislative Report

May 6, 2013

The bills that are of concern to co-ops are listed below. More information on each bill can be found by visiting either www.myfloridahouse.gov or www.flsenate.gov.

Overall it was an excellent session for the electric co-ops and we have a lot of Legislators to thank, including President Gaetz, Speaker Weatherford, Sen. Minority Leader Smith, Sen. Simpson, Sen. Evers, Sen. Dean, Sen. Bradley, Sen. Grimsley, Sen. Diaz de la Portilla, Sen. Hayes, Rep. Goodson, Rep. Raulerson, Rep. Patronis, Rep. Cummings, Rep. Pigman, and Rep. Stuebe. Our electricity theft bill passed, legislation passed to mitigate the harm of EPA's potential coal residual and NNC rules, we eliminated provisions in two bills in each chamber that would authorize third-party retail wheeling for government buildings, and several business friendly bills passed that will help with economic development, worker's comp rates, natural gas storage, and water management. We also (with assistance from FPL) created an exemption that allows utility drivers and utility contractors to use cell phones during restoration events if the EOC is at level 1 or if the Governor declares a state of emergency. On the down side legislation passed that may make it more difficult to build a nuclear plant in Florida, and the campaign finance bill will add reporting requirements for Florida ACRE and will increase contribution limits, putting more pressure on us to increase ACRE contributions. We also were surprised that the House democrats largely voted against our key bills – electricity theft and coal residuals - after those bills passed out of the Senate without a single negative vote.

Bills That Have Become Law

Electricity Theft - SB 338 by Sen. Simpson (HB 191 by Rep. Raulerson) increases penalties for stealing electricity and increases the minimum award in a civil action against the thief \$1,000 to \$3,000. Currently, the criminal penalty is a first-degree misdemeanor, regardless of the dollar value of the electricity that is stolen. On October 1, the law will allow penalties that vary depending upon the value of the

electricity that was stolen. The increased minimum award should mitigate the utility's time and cost of recovering its losses.

Campaign Financing – HB 569 by Rep. Schenck (1382 by Sen. Latvala) eliminates Committees of Continuous Existence (CCE) by the end of September. Florida ACRE is a CCE and we will have to transfer to a Political Committee, which has more reporting requirements than a CCE. The limits for campaign contributions per election increase from \$500 to \$3,000 for a candidate for statewide office or retention as a Supreme Court justice, and from \$500 to \$1,000 for Legislative candidates and for retention of lower court judges. Successful candidates can rollover up to \$20,000 for their re-election. Most of the provisions take effect on July 1, but our CCE can transfer funds to a new political committee as of May 1.

Bills That Passed and are headed to the Governor

Coal Combustion Residuals (CCRs) - SB 682 by Sen. Simpson (HB 659 by Rep. Goodson) would address a proposed rule by the U.S. Environmental Protection Agency (EPA) that could regulate CCRs as hazardous waste. Currently, CCRs in Florida are recycled for use in cement, wallboard, materials for roads, and other uses, or stored in landfills. However, Florida law prohibits storage of hazardous material in landfills, and EPA's rule could require CCRs to be shipped out of Florida for storage costing Seminole more than \$100 million per year. Additionally, EPA's rule could prevent electric utilities from recycling CCRs. This bill would exempt CCRs from Florida's laws that prohibit the storage of hazardous waste in landfills, allowing CCRs to continue to be landfilled in Florida even if EPA adopts the rule. The bill also would make it easier to recycle CCRs if EPA does not adopt the rule, and hopefully would make it possible for electric utilities to continue recycling CCRs in Florida if EPA adopts the rule.

Numeric Nutrient Criteria - SB 1808 by Sen. Dean (HB 7115 by Rep. Crisafulli) is legislation that would allow Florida's DEP to amend its NNC rules to conform to the agreement that Florida reached with EPA on March 15. Note that the DEP/EPA settlement agreement is still subject to challenge in the courts.

Total Maximum Daily Loads - SB 1806 by Sen. Dean (HB 7113 by Rep. Caldwell) would allow total maximum daily load (TMDL) rules to be exempt from legislative ratification requirements. This exemption would significantly eliminate delays in the process of restoring water quality. This is a companion bill to the NNC rule bill SB 1808.

Water Quality Trading Credits – HB 713 by Rep. Pigman (SB 754 by Sen. Grimsley) would allow water quality trading programs to be established throughout Florida, building on a pilot program in the lower St. John River basin. The water quality credit trading would be a voluntary, market based approach to promote water protection and restoration. The trading would allow pollutant reductions to be environmentally valued in the form of credits, which could be traded on a local market. This provision potentially will be very helpful in complying with the NNC rules.

Permit Streamlining - HB 999 by Rep. Patronis (SB 1684 by Sen. Altman) would streamline permitting at the local and state level and reduce Title V fees. In addition, projects to construct interstate natural gas pipelines subject to certification by FERC would be eligible for an expedited permitting process at DEP.

Establishment of TMDLs by DEP - HB 7157 by Rep. Santiago (SB 1864 by Sen. Dean) would ratify rules adopted by Florida's DEP that set total maximum daily loads (TMDLs) for specific impaired water bodies in Florida, but they are not connected to the NNC rules.

Workers' Compensation - SB 662 by Sen. Hays (HB 605 by Rep. Hudson) would close a loophole in the workers' compensation system that allows physicians to dispense repackaged drugs and charge employers drug prices that greatly exceed the statutory reimbursement for the same medications dispensed by pharmacies. SB 662 would limit the fee schedule for reimbursement to 112.5% of the average wholesale price, plus \$8.00 for the dispensing fee, and should reduce workers' compensation rates.

Public-Private Partnerships – HB 85 by Rep. Steube (SB 84 by Sen. Diaz de la Portilla) would encourage partnerships between public and private entities to

develop and operate qualifying projects. The language regarding leasing power-generating facilities to local governments is not in the final bill and there is no mention of 3rd party retail wheeling.

Underground Natural Gas Storage - HB 1083 by Rep. Eagle (SB 958 by Sen. Richter) would allow permitting of underground natural gas storage facilities. The bill would provide for expedited permitting of storage and related pipeline facilities. In addition, the bill would protect drinking water resources by prohibiting storage facilities in drinking water aquifers. HB 1085 would exempt from public records requirements, information relating to plans to establish an underground natural gas storage facility.

Public Records – HB 649 by Rep. Cummings (SB 714 by Sen. Simmons) would exempt from the public records laws any proprietary confidential business information of a private or out-of-state entity that submits a bid for a utility project to a municipal electric utility. Utility projects include renewable energy and improving delivery or diversification of fuel.

Ad Valorem Exemptions - HB 277 by Rep. Rehwinkle-Vasilinda (SB 1064 by Sen. Latvala) would implement a Constitutional amendment that passed in 2008, which prohibits the taxation of improvements to residential property if the improvements are a renewable energy device. The legislation does not include an exemption for improvements that strengthen the property's resistance to wind damage. The exemption only applies to work done on or after January 1, 2013.

Cost Recovery for Nuclear/IGCC Power Plants - SB 1472 by Sen. Legg (HB 7167 by Rep. Diaz) would create additional steps for the approval process and modify the cost recovery mechanism for the licensing and construction of nuclear and IGCC power plants. After a determination of need is granted and during the time a utility seeks a license or certification, the utility can recover only costs related to obtaining the license or certificate. After a license/certificate is obtained, a utility must petition the PSC for approval before proceeding with preconstruction work for costs necessary to maintain a license. Then, a utility must petition the PSC for approval of any preconstruction materials or equipment purchases over 1% of the

total projected cost of the project. Next, a utility must petition the PSC for approval before beginning construction. In order to approve the construction, the PSC must determine: 1) the plant is feasible; and 2) the projected costs for the plant are reasonable. If the utility has not started construction within 10 years, it must again petition the PSC to preserve the opportunity for future recovery of costs and must prove by a preponderance of the evidence that it has committed sufficient resources to complete the project. If the plant is not built within 20 years future costs are not recoverable.

Natural Gas for Vehicles - HB 579 by Rep. Ray (SB 560 by Sen. Simpson) would establish standards for the distribution, sale, and taxation of natural gas for vehicles that will essentially mirror regulations for diesel fuel. Currently, Florida law treats natural gas as an alternative fuel with a unique licensing structure and system of fees and taxes. A rebate program is created for natural gas vehicles that allows up to \$25,000 per vehicle and a total of \$250,000 per fiscal year. Additionally, local governments would be allowed to use the local surtax to provide funding to installers of natural gas fueling stations.

Ban Texting While Driving - SB 52 by Sen. Detert (HB 13 by Rep. Holder) would ban typing messages on electronic devices while operating a vehicle, unless the vehicle is stationary. The bill would not prevent the safe usage of mobile or radio devices for verbal communication. The penalty would be a secondary offense meaning that law enforcement could not stop a motorist just for texting while driving.

Use of cell phones during storm restoration – HB 7125 prohibits truck drivers from texting or using a handheld mobile phone while driving. The penalties include fines and may include suspension of the driver's license. In addition, if a company allows the driver to violate the law, the company may be fined up to \$11,000. Thanks to Sen. Evers, HB 7125 includes an exception that allows utility and utility contractor drivers to use handheld cell phones during a Level 1 activation of the State Emergency Operations Center or during a state of emergency declared by the Governor.

Repeal of Renewable Gasoline Standard - HB 4001 by Rep. Gaetz (SB 320 by Sen. Evers) would repeal the Florida Renewable Fuel Standard Act that was enacted in 2008 (HB 7135). The Act required that all gas sold after 2010, with exceptions, must contain 9-10% fuel ethanol.

Office of Homelessness - HB 93 by Rep. Reed (SB 402 by Sen. Joyner) would create the Office of Homelessness within the Dept. of Children and Families. The Office would have funds that could be used to help families pay bills including past due utility costs.

Adverse Possession – HB 903 by Rep. Davis (SB 1166 by Sen. Bradley) would amend terminology by changing “occupant” and “occupation” to “possessor” and “possession” of real property so that a person claiming adverse possession must be in possession of, but not actually occupying, the property. The bill deletes the provision which requires that the property be “occupied and maintained” to be deemed possessed.

Water Supply – SB 948 by Sen. Grimsley (HB 1063 by Hutson) would add utility companies, private landowners, water consumers and the Department of Agriculture and Consumer Services to the list of entities that should cooperate with municipalities, counties, water management districts and the DEP to meet the water needs without adverse effects on the areas from which water is withdrawn.

Water Management Districts – SB 244 by Sen. Dean would provide guidance to water management districts (WMDs) regarding minimum water flows and levels, water reservations, recovery or prevention strategies, and multi-district projects, by requiring proposed water bodies that may be affected by water withdrawals in an adjacent WMD to be identified on a WMD’s annual priority list.

Employment Benefits – HB 655 by Rep. Precourt would prohibit political subdivisions from requiring an employer to provide employment benefits or a minimum wage that is not required by state or federal law.

Economic Development – HB 7007 by the Economic Development and Tourism Subcommittee would create an Economic Development Programs Evaluation to

provide a detailed analysis of current economic development programs, which should tighten accountability and reporting requirements for economic incentives and tax breaks used to lure businesses. The bill also would extend the exemption from sales tax on the purchase of industrial machinery and equipment by eligible manufacturing businesses until April 30, 2017. HB 7007 also would place restrictions on eligibility for unemployment compensation. There is a question of whether this bill required a 2/3 vote and the House Democrats have stated they will challenge it in the courts.

Economic Development Programs Evaluation - SB 406 by Senator Gardiner (HB 641 by Rep. Rodriguez) would create an Economic Development Programs Evaluation report, which would provide an analysis of certain economic development programs and determine each program's economic benefit to the state. The bill also exempts natural gas used to generate electricity in a non-combustion fuel cell from sales tax and to repeal incentives for redevelopment of brownfields.

Manufacturing Competitiveness Act - HB 357 by Rep. Boyd directs the Department of Economic Opportunity to create a model ordinance for local governments to use as a guide to establish local manufacturing development programs. The bill creates an expedited permit approval process for manufacturers who participate in the program.

Bills of concern that died

Regulation of Municipal Electric Utilities – SB 1620 by Sen. Garcia and HB 733 by Rep. Mayfield would attempt to regulate municipal utilities. HB 733 would provide that every municipality that sells electricity, gas, or water/wastewater outside of its incorporated limits is subject to full regulation by the Public Service Commission. SB 1620 would not allow a municipality to extend into unincorporated areas of a county without the consent of the county commissioners.

Retail Wheeling for Renewable Generators - SB 498 by Sen. Thompson and HB 309 by Rep. Rehwinkle-Vasilinda would exempt renewable energy systems of up

to 5 MW from the definition of public utility. These generators would not be regulated by the PSC and could sell electricity to existing utility customers (it is silent as to whether they must be customers of the same utility) that are on property adjacent to, contiguous with, or located within a half mile of the generator. The bill is silent as to whether we can put these customers on a special rate to insure that the remaining customers do not subsidize the renewable generator's consumers. Additionally, the bill would require public utilities to purchase the renewable energy at the same rate they sell energy to ratepayers, instead of at avoided cost.

Other Bills of Interest that died

Transportation – HB 7127 by Rep. Artiles would have increased a utility's ability to show a compensable property right which would then require FDOT or local governments to pay for relocation of electric facilities. FDOT or local governments would also pay for relocation of electric facilities if the relocation was necessitated by the construction of a commuter rail service or an intercity passenger rail service project when the cost of the project is eligible for reimbursement by the Federal Government. The Bill died in messages.

Enterprise Zones - SB 480 by Sen. Stargel and HB 221 by Rep. Albritton would allow the cities of Auburndale, Bartow, Eagle Lake, Fort Meade, Frostproof, Lake Wales, Mulberry, and Polk City to individually or jointly apply for enterprise zone designation. Only eight designations would be allowed and the Dept. of Economic Opportunity would administer the program. HB 221 passed out its first committee.

Cost Recovery for Nuclear/IGCC Power Plants - HB 4003 by Rep. Rehwinkle-Vasilinda and Rep. Fasano would repeal the pre-completion cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC facilities.

Termination of Service Prohibition - HB 749 by Rep. Lee and SB 508 by Sen. Thompson would prevent an electric or gas utility from disconnecting service,

because of nonpayment, to seniors or low-income families during extreme weather days (40°F or below or 90°F and above). The bill would not allow disconnections on the day or the following two days (also any day before a holiday or weekend) when the temperature standards are met. The bill does not define “senior citizen” or “low income”.

Economic Opportunities for Minority Businesses – SB 1452 by Sen. Braynon and HB 1377 by Rep. Williams would authorize an act to enhance economic opportunities for minority businesses (including businesses owned by women and disabled veterans) by encouraging regulated utilities to expand procurement of technology, equipment and services with these types of businesses. The PSC would require each regulated utility to annually submit a plan for increasing procurements from minority businesses. Electric cooperatives and other non-regulated utilities would not be required to submit a procurement plan but would be encouraged to voluntarily adopt such a plan.

Assault or Battery on Utility Workers - SB 344 by Sen. Soto and HB 511 by Rep. Fullwood would increase the criminal penalties for committing assault or battery on a utility worker.

Elected PSC – SB 1744 by Sen. Bullard and HB 447 by Rep. Dudley would require PSC commissioners to be elected rather than appointed. Candidates would not be able to raise campaign funds from any entity regulated by the PSC. Additionally, it would require the PSC to consult with the Public Counsel before ruling on any rate changes for a regulated entity.

Federal Funding of Nuclear Plants - HB 567 by Rep. Vasilinda is a House Memorial urging Congress to stop funding the federal loan guarantee program for new nuclear plants and to rescind any remaining funds in the program. Additionally, the Memorial urges Congress to eliminate funding for mixed oxide plutonium fuel plants; to support energy efficiency and renewable sources of energy; to increase funding for environmental cleanup programs; and to fund nuclear waste

immobilization. The Memorial also would urge the U.S. Dept. of Energy to comply with all cleanup and legacy management agreements.

Tangible Personal Property - HB 505 by Rep. Vasilinda would allow counties to impose a discretionary sales surtax on the entire sale of tangible personal property. Currently, there is a \$5,000 cap on which the surtax can apply. This bill would remove the cap on electricity sales and everything else except sales involving a motor vehicle, aircraft, boat, manufactured home, modular home, or mobile home.

Economic Development Zones - SB 192 by Sen. Legg and HB 299 by Rep. Grant would allow the Department of Economic Opportunity (DEO) to create economic development zones relating to science, technology, engineering, and mathematics (STEM) in counties that have state universities that specialize in research. Counties that have a qualifying research institution must apply to the DEO to receive STEM zone designation. The DEO would develop a high-tech grant program for STEM zones to solicit competitive applications to entities that propose groundbreaking ideas. The total amount of state credits, refunds, and exemptions that may be provided by the county of each STEM zone is \$300,000 per year.