

FECA Florida Legislative Report

March 24, 2014

This is a big week. It is supposed to be the last week for House policy subcommittees to meet, which means a lot of bills that haven't been heard in the House by the end of the week are supposed to be dead. While this will be good news in most cases, we need to get our rural area sales tax refund bill (HB 611 by Rep. Beshears) incorporated into HB 7023 this week to keep it alive. This week we also expect to fix the Senate's metal theft bill (SB 1182) to delete the proposed changes that would have weakened the special protections for utility wire and to match the House's bill.

We are very fluid on Commissioner Putnam's sales and gross receipts tax bill. Last week, after the House F&T suggested reducing the current sales tax from 7% to 4% and increasing the gross receipts tax from 2.5% to 5.5% (no net reduction and actually would increase bills due to other taxes and fees), we suggested they simply allocate a portion of the sales tax revenue to PECO, which would not require any changes on our part. We will update you as soon as we hear anything. In addition, the Senate's Transportation Procurement bill (SB 1290) was amended to limit the bill to transportation services.

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.

NEW BILLS

Workers' Compensation – SB 1580 by Sen. Hays and HB 1351 by Rep. Stone would change the basis for determining the maximum reimbursement allowances for inpatient hospital care, from a schedule of per diem rates to 140% of the Medicare inpatient prospective payment system. In addition, the basis for determining all compensable charges for hospital outpatient care would be changed from 75% of usual and customary charges, to 140% of the Medicare inpatient prospective payment system. There are several flaws with the bill as drafted and other aspects of the workers' compensation system would likely be harmed by its passage. HB 1351 passed out of its first committee, but is not expected to be heard again.

BILLS THAT HAVE PASSED AND HEADED TO THE GOVERNOR

Motor Vehicle Registration Fees –SB 156 by Sen. Negron (HB 7123 by F & T) would reduce some of the registration fees and license taxes on motor vehicles. The license taxes on trucks weighing less than 2,000 pounds is reduced \$5; on trucks weighing between 2,000 and 3,000 pounds the tax is reduced \$8 and; on trucks weighing over 3,000 pounds the tax is reduced \$11.50. The reductions would take effect September 1, 2014.

PRIORITY BILLS

Vero Beach Survey Bill – HB 1287 by Rep. Mayfield would require the Town of Indian River Shores (Indian River Shores) and Indian River County (County) to survey each electric metered customer of Vero Beach regarding their preferred electric provider (i.e., Vero Beach or FPL). If a majority of the responding surveys of metered customers residing outside Vero Beach and who reside or do business in Indian River Shores or the County vote to have FP&L provide their service, then Indian River or the County may remit the results as a notice to the PSC, which would be considered a motion by the PSC to initiate a territorial dispute proceeding.

Vero Beach Regulation Bill - HB 1289 by Rep. Mayfield would require full rate regulation by the PSC over customers of Vero Beach who reside outside the municipal boundaries. The Office of Public Counsel would provide legal representation for these customers.

Independent Board for the Gainesville Regional Utility - HB 1369 by Rep. Perry would require Gainesville Regional Utility (GRU) to conduct a proxy vote of all account holders by October 1 to decide whether an independent utility authority should be created to manage and operate GRU. GRUA would be responsible for providing fair and reasonable rates and the City of Gainesville would be ensured an annual return on its investment of not more than 10% of the prior year revenues. If a majority vote in favor of an independent authority, the Gainesville Regional Utility Authority (GRUA) will be established. GRUA's board would include the Mayor, 3 private, nonelected citizen members (2 of which would be jointly appointed with the County) and 3 others to be appointed by the Governor. The bill

would also create a Ratepayer Advisory Committee to provide nonbinding recommendations to the board.

PSC Regulation of Certain Municipal Electric Utilities - SB 1294 by Altman and HB 861 by Rep. Mayfield would expand the definition of public utility to include municipal electric utilities that purchases power from the Florida Municipal Power Agency (FMPA). Those utilities would become subject to the PSC's full regulation. The bill would not directly affect electric co-ops.

Retail Wheeling for Renewable Generators - SJR 1374 by Sen. Thompson and HJR 695 by Rep. Dudley is a proposed Constitutional amendment that would exempt renewable energy systems from the definition of public utility. These generators would not be regulated by the PSC and could sell electricity to existing utility customers. If the resolution passes out of the Legislature, it would appear on the November general election ballot for voter approval.

Power Plant Cost Recovery - SJR 1392 by Sen. Thompson and HJR 693 by Rep. Dudley is a proposed Constitutional amendment that would prohibit electric utilities, including cooperatives, from collecting the cost of new power plants before the plant begins commercial operation. If the resolution passes out of the Legislature, it would appear on the November general election ballot for voter approval.

Utility Rates for Large Child Care Homes - HB 7069 (formerly EDC 14-01) by Rep. O'Toole would add "large family day care homes" to the law that dictates utilities must bill "family day care homes" on a residential rate, even though these homes clearly have a commercial activity. While the existing law for the small homes is offensive to ratemaking principals, the addition of the "large family day care home" is even more offensive as they must employ at least two full-time staff that may or may not be residents of the home. This bill passed out of its first committee.

GHG Regulation - SB 1174 by Sen. Gibson and HB 1027 by Rep. Wood is a Memorial that would urge Congress to direct the U.S. Environmental Protection Agency (EPA) to consider the remaining economic life of fossil fuel power plants and other factors when promulgating the rule to regulate emissions from existing

plants. The Memorial also would urge Congress to direct EPA to allow states to implement less stringent standards or longer compliance periods, and to give states maximum flexibility on implementing the proposed rule.

Sales and Gross Receipt Taxes - HB 899 by Rep. Hill would eliminate the 7% sales tax imposed on commercial accounts and raise the gross receipts tax by 3.5%, over three years starting in 2015. SB 1076 by Sen. Flores was amended and now would reduce the 7% sales tax imposed on commercial accounts to 1.75% and raise the gross receipts tax by 1.75%, over three years starting in 2015. The increase in the gross receipts tax rate would not apply to sales to residential accounts and some other sales that currently are exempt from sales taxes. There are issues with the gross receipts tax increase that need to be resolved before we can support this change. Additionally, the bill would create a sales tax holiday for energy efficient appliances designated as Energy Star or WaterSense by the U.S. Dept. of Energy. The sales tax holiday would span 19-21 September 2014 and apply on the first \$1500 of qualifying purchases. This proposal is part of Commissioner Putnam's energy package for 2014. SB 1076 passed out of its first committee of reference.

Secondary Metal Recyclers - SB 1182 by Sen. Brandes and HB 771 by Rep. Combee would transfer oversight of the secondary metal recycler's law from the Dept. of Revenue to the Dept. of Agriculture and Consumer Services. The bill gives law enforcement officials additional tools to investigate recyclers. In addition, secondary metal recyclers would be prohibited from disposing of property for a specified period if notified by law enforcement that the property is being investigated. Purchases of regulated metals on Sundays also would be prohibited. A recycler would be charged with a second-degree felony if money is received for restricted regulated metals. HB 771 passed out of its first committee with an amendment to remove the potentially harmful changes to the utility wire definitions. As of now, we expect the Senate sponsor to add the same amendment at its first committee stop.

Economic Opportunities for Minority Businesses – SB 636 by Sen. Braynon would enhance economic opportunities for minority and female owned businesses by encouraging regulated utilities to purchase from, and contract with, these types of

businesses. Further, the bill would require the PSC to provide guidelines to assist regulated utilities in developing such a program, and would require each regulated utility to annually submit a plan to the PSC 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. SB 636 passed out of its first committee of reference.

Energy Policy Revisions - SB 1044 by Sen. Simpson and HB 7147 by Rep. Diaz would revise the energy resources statute. The bill would replace the word solar with “renewable energy source” throughout the chapter. This would require DACS to promote all renewables instead of just solar. Additionally, the bill would remove the requirement that the Florida Solar Energy Center set standards for all solar systems manufactured or sold in Florida. Lastly, the bill would delete language relating to expired programs such as the PV solar rebates and previous sales tax holidays on energy efficient appliances. Both bills passed out of their first committees.

Sales Tax Refund - SB 1116 by Sen. Grimsley and HB 611 by Rep. Beshears would allow qualifying new businesses in designated rural areas to apply for refunds of up to 50% of the sales tax paid on electricity. The bill caps the amount paid for eligible refunds at \$10,000,000.

Move Over Act - SB 478 by Sen. Evers and HB 469 by Rep. Raschein would require drivers to either move over or slow down to a certain speed when utility vehicles are working along roadsides. Therefore, utility vehicles would be entitled to the same protection as law enforcement vehicles. The penalty would be a noncriminal infraction. HB 469 passed out of its last committee and is ready for the floor.

New Crime for leaving the scene after injuring a utility employee - SB 102 by Sen. Diaz de la Portilla and HB 183 by Rep. Nelson would create a second-degree felony for a driver who leaves the scene of an accident that causes an injury to utility personnel and others working on facilities along the road. The bill would create a first-degree felony for a driver who leaves the scene of an accident resulting in the death of utility personnel (and others) working on facilities along

the roadside. SB 1312 by Sen. Evers and HB 1159 by Rep. Dudley would create second-degree and first-degree misdemeanors, respectively, for the same crimes. SB 102 is on the floor and HB 183 has one committee stop remaining.

Cyber Security - SB 364 by Sen. Brandes and HB 641 by Rep. La Rosa would create a third-degree felony for anyone who knowingly, willingly and without authorization gains access to a public utility's computer systems. Further, the bill would create a second-degree felony for a perpetrator who, after gaining access, tampers with the computer system either by physical or electronic means. Both bills have one committee stop remaining.

Assault or Battery on Utility Workers - SB 100 by Sen. Soto would increase the criminal penalties for committing assault or battery on a utility worker. SB 100 passed out its first committee of reference.

Commissioner of Energy - HJR 1175 by Rep. Rehwinkle-Vasilinda is a proposed Constitutional amendment that would create the Commissioner of Energy, which would be a statewide elected position, an additional Cabinet position, and would be responsible for energy matters in Florida. If the resolution passes out of the Legislature, it would appear on the November general election ballot for voter approval.

OTHER BILLS OF INTEREST

Transportation Procurement - SB 1290 by Sen. Altman and HB 973 by Rep. Wood would require the Dept. of Management Services to implement rules for the procurement of transportation services for potential vendors. Vendors would be required to disclose how its service would reduce pollutants including the reduction of regulated pollutants from mobile and stationary sources, probably including power plants. SB 1290 by Sen. Altman passed out of its first committee with an amendment that would limit the bill to transportation services.

Aquatic Preserves – SB 1094 by Sen. Dean and HB 1123 by Rep. Porter would create a Nature Coast Aquatic Preserve in designated areas of Pasco, Hernando, and Citrus counties. Only minimum dredging and spoiling of submerged lands would be authorized for preservation, and drilling wells would be prohibited in most cases. These new regulations appear to be additional restrictions to the

Power Plant Siting Act. SB 1094 has one committee stop remaining and HB 1123 passed out of its first committee.

Government Owned Utility Facilities - SB 218 by Sen. Grimsley and HB 345 by Rep. Beshears would allow FDOT to pay for the relocation of municipal or county owned utility facilities on public roads in counties designated as rural areas of economic concern (RACEC). If FDOT determines the government-owned facility is unable to pay for the relocation, the FDOT may pay some or all of the relocation costs. Additionally, both bills now have amended language that would allow the affected local governments in RACEC areas to apply for Small County Outreach Program funds to relocate utility facilities. SB 218 has one committee stop left and HB 345 is ready for the floor.

Southern States Energy Board (SSEB) - HB 4007 by Rep. Jose Diaz would remove the Dept. of Agriculture and Consumer Services' responsibility to represent Florida on the SSEB.

Cost Recovery for Nuclear/IGCC Power Plants - SB 1408 by Sen. Thompson and HB 4001 by Rep. Rehwinkle-Vasilinda would repeal the pre-completion cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC facilities.

Tangible Personal Property - SB 818 by Sen. Margolis and HB 217 by Rep. Rehwinkle-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.

Energy Efficient Appliances - SB 740 by Sen. Sobel and HB 769 by Rep. Rehwinkle-Vasilinda would create a sales tax exemption during October on purchases of up to \$1,500 on energy efficient appliances for residential purposes. The bill would define an energy efficient appliance as meeting or exceeding the energy efficiency guidelines provided by the U.S. Department of Energy.

Utility Projects - SB 910 by Senator Legg and HB 1107 by Rep. Wood would allow "publicly owned utilities" who provide water, wastewater, electric or

stormwater services to finance the costs of utility projects using the proceeds of utility cost containment bonds. As defined in this proposal, a “publicly owned utility” must already be owned and operated by a local governmental entity. SB 910 passed out of its first committee.

Ratepayer Representation Act/Water/Wastewater - SB 1248 by Sen. Latvala and HB 813 by Rep. Mayfield would allow a water and sewer ratepayer in an unincorporated area of a county to petition the PSC (or the county if the municipality is located in a county that has elected to regulate water/sewer utilities) for a review of the rates, fees or charges being imposed by the municipality. The PSC or regulating county must accept the petition and determine whether the rates are just and equitable. Any water and sewer utility rates, fees, charges and surcharges imposed by a municipality on customers outside of the city's boundaries would be limited (cannot exceed 25% of the rates and fees of ratepayers within the city limits) and would need to be approved by the PSC. HB 813 died in its first committee, although the bill could be reconsidered due to a procedural move. It is unlikely that HB 813 would be reconsidered, but we will continue to monitor the bill.

Water & Wastewater Utilities - SB 272 by Senator Simpson and HB 1321 by Rep. Murphy would authorize the PSC to revoke a water/wastewater utility's certificate of authorization if the customers file a petition that is signed by at least 65% of the utility's customers. The bill would also add secondary water standards to the criteria the PSC must consider when setting rates for water/wastewater services. SB 272 passed out of its last committee and is ready for the floor.

SB 1050 by Sen. Hays and HB 357 by Rep. Santiago would expand the availability of low-interest loans to IOU water utilities. In addition, the bill would provide a sales tax exemption for sales or leases to IOU water utilities. The bill would authorize the PSC to create an individual IOU reserve fund to be used for projects identified by the IOU's capital improvement plan and prohibits the recovery of certain rate case expenses. HB 357 has one committee stop remaining.

Elected PSC - SB 964 by Sen. Legg would carve Florida into five districts and require that each Commissioner represent a district. The bill also would impose

term limits of eight years on the Commissioners. The changes would affect PSC Commissioners appointed after 1 July 2014.

Ad Valorem Exemptions - SJR 916/SB 922 by Sen. Brandes and HJR 825/HB 827 by Rep. La Rosa would prohibit the taxation of improvements to real property if the improvements are a renewable energy device. For purposes of the bill, real property includes commercial and residential property. If the resolution passes out of the Legislature, it would appear on the November general election ballot for voter approval. The exemptions would only apply to work done on or after January 1, 2015. SJR916/SB 922 passed out of its first committee of reference.

Federal Funding of Nuclear Plants - HB 1423 by Rep. Rehwinkle-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.

Electromagnetic Pulse/Geomagnetic Storms - SB 1454 by Sen. Thompson is a Senate Resolution that would encourage awareness of the potential threats to the electric grid that could come from electromagnetic pulses (EMP) or geomagnetic storms. HB 1343 by Rep. Rehwinkle-Vasilinda is a Memorial that would urge Congress to direct the U.S. Dept. of Homeland Security to prepare, protect, and establish plans to recover from EMPs and geomagnetic storms.

WITHDRAWN BILLS/BILLS THAT WE ARE NO LONGER TRACKING

Underground Facilities/Sunshine State One-Call (SSOC) - SB 288 by Sen. Richter and HB 213 by Rep. Santiago would require members with state-owned underground facilities in state highway ROWs to be notified of excavations. Additionally, the bill would allow underground facility owners to declare all or parts of their system as high-priority. The bill would expand the definition of pre-mark to include electronic marking or other industry-approved methods. Finally, the bill would provide a noncriminal infraction for failure to notify facility owners

of excavations using hand tools. Both bills have been withdrawn from further consideration.

GHG Performance Standards - SB 1464 by Sen. Simpson and HB 703 by Rep. Patronis no longer include provisions that would address a proposed rule by the U.S. Environmental Protection Agency that could regulate emissions from existing coal-fired power plants.