

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: May 21, 2004

TO: Braulio L. Baez, Chairman
J. Terry Deason, Commissioner
Lila A. Jaber, Commissioner
Rudy Bradley, Commissioner
Charles M. Davidson, Commissioner

FROM: Cindy B. Miller, Director, Office of Federal & Legislative Liaison

RE: Legislative Wrap-Up for 2004 Session

Although there was intense activity on a number of regulatory issues, very few bills significant to the FPSC passed this year. No bills on energy or telecommunications were enacted that have a direct impact on the agency. We will provide an additional memorandum once we know which bills have become law and which ones were vetoed. Attached is more detail in case it is useful.

KEY BILLS THAT PASSED

Water and Wastewater

SB 1922, Water/Wastewater Utilities – This bill contained a provision supported by the FPSC which requires the water/wastewater companies to file regulatory assessment fees twice a year. In addition, there are provisions on separate legal entities that create a “host government” review process. Also, there is a gain-on-sale provision which will allow the gain or loss from a sale of a utility to inure to the shareholders.

HB 987, Pasco County Water Quality – This local bill is aimed at addressing the black water and rotten egg odor in a monopoly water utility in Pasco County. It allows the county commission to set up an ad hoc committee that can make technical recommendations. The technical standards may not conflict with the FPSC, DEP or EPA standards. If a monopoly water utility has to spend money to comply with any new technical standards, the FPSC must pass through the reasonable and prudent costs incurred in complying.

HB 293, Water Resources – This is a comprehensive water/wastewater bill that addresses reuse and other water conservation initiative matters.

Electric and Gas

SB 1070, Natural Gas Eminent Domain Authority. This bill amends 361.05, F.S., to allow interstate natural gas companies to use a “quick take” eminent domain process to acquire right of

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way for pipelines. For many years, the quick take provision has been used in Florida by gas companies. However, a recent court case ruled that gas companies did not have legal authority to use this provision of the eminent domain chapter. This potentially could lead to multi-year delays in constructing or re-routing pipelines. The use of the “quick take” provision of Florida law does facilitate the timely siting of natural gas pipelines.

HB 1857, Energy Office transfer to DEP. Chapter 377, F.S., the State Energy Program, is transferred from DCA to DEP. It is an organization bill that takes effect July 1, 2004. This codifies the transfer that occurred last year between the DCA and DEP under a memorandum of understanding.

Telecommunications

CS/CS/SB 206, Florida Coordinating Council for Deaf and Hard of Hearing – This creates a Council that will recommend policies to address the deaf and hard of hearing. However, the legislation does not extend to areas within FPSC oversight.

SB 2574, Spamming – This creates the Electronic Mail Communications Act to address unsolicited e-mail. The Department of Legal Affairs is authorized to take certain actions.

KEY BILLS THAT FAILED

HB 1631 and SB 2798, Air Quality Bills

CS/CS/CS/CS/SB 1316, Alternative Energy

CS/CS/SB 1982, Electric Transmission Line Siting

CS/CS/SB 1492, Renewable Energy

HB 1829, SB 2302, Telecommunications

CBM:tf

Attachment

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KEY BILLS THAT PASSED

Water and Wastewater

SB 1922 on Water/Wastewater

This bill began as the proposal endorsed by the FPSC to require large water and wastewater companies to file regulatory assessment fees twice a year, rather than once a year, in order to improve cash flow. In addition, amendments were added to the bill that address separate legal entities and gain-on-sale.

Separate Legal Entities

The separate legal entity provisions revise Chapter 163, F.S., and create a “host government” process. There is no role for the FPSC. A “host government” means the governing body of the county, if the largest number of equivalent residential connections currently served by a utility system are located in the unincorporated area. Otherwise, the governing body of the municipality is the host government.

A separate legal entity that seeks to acquire any utility shall notify the host government in writing by certified mail about the contemplated acquisition not less than 30 days before any proposed transfer of ownership, use, or possession of any utility assets by such separate legal entity.

Within 30 days following receipt of the notice, the host government may adopt a resolution to become a member of the separate legal entity, adopt a resolution to prohibit the utility acquisition by the separate legal entity if the host government determines that the proposed acquisition is not in the public interest. A resolution adopted by the host government which prohibits the acquisition may include conditions that would make the proposal acceptable to the host government.

If a host government adopts a membership resolution, the separate legal entity must accept the host government as a member on the same basis as its existing members before the transfer of any ownership, use or possession of the utility or facilities. Additional powers are set forth for the local government.

Any transfer or payment to a member, special district or other local government must be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member, special district, or local government receiving the transfer of payment.

FPSC Regulatory Assessment Fees

In addition, this bill modifies Section 367.145 on regulatory assessment fees so that each large water and wastewater company (\$200,000 or more annual revenues) must pay the fees twice a year.

Finally, a new provision 367.0813 is added on gains or losses on purchase or condemnation by governmental authority. The intent is “to provide appropriate incentives to

encourage the private sector to participate in the investment in water and wastewater infrastructure, to protect private sector property rights of a utility's shareholders and to avoid an additional burden of costs placed on ratepayers by re-litigating this issue."

Gains or Losses on Sales

The legislature clarifies the clear policy of this state that gains or losses from a purchase or condemnation of a utility's assets which results in the loss of customers served by such assets and the future revenue stream must be borne by the utility shareholders. There is somewhat unusual language that reads, "this section applies to all transactions prior to and after the effective date of this section."

A severability clause is included so that the invalidity of one section does not affect the other provisions. The Act takes effect upon becoming law, and applies to all contracts pending on or after that date.

HB 987, Pasco County Water Quality

The Legislature recognizes that by extending the privilege of monopoly status to certain utilities, Chapter 367, F.S., creates a class of captive customers who cannot choose to purchase service from an open market. Accordingly, the Legislature finds that it is a priority to ensure that drinking water delivered to captive customers meets appropriate quality standards.

It is the legislative intent to establish a pilot program in Pasco County which is intended to allow Pasco County the ability to respond to consumer complaints regarding black water, rotten-egg odor arising from local variations in raw water chemistry, and customer service. It is also the legislative intent to maintain a statewide system of regulation of water quality standards. Only the FPSC, the Department of Environmental Protection, and the Environmental Protection Agency are authorized to establish statewide water quality requirements. Nonetheless, it is recognized that technology may be available to assist in lessening the black water and rotten egg odor. Also, the utilities have varying degrees of customer service programs to respond to complaints.

The Pasco County Commission Chair may establish a monopoly water utility ad hoc committee, which shall be in existence for no more than two years, to:

- Review and evaluate customer service complaints and, if necessary, recommend to the county commission the establishment of uniform customer service criteria to be applied by all monopoly water utilities.
- Review and evaluate black water and rotten-egg odor concerns expressed by customers if similar complaints have also been filed with the FPSC
- If deemed necessary, recommend to the county commission the propriety of requiring new technology or new uniform minimum technology standards for use by monopoly water utilities in the treatment of black water and rotten egg odor and the delivery of customer service. The committee may evaluate a utility's operational protocol "only insofar as it relates to customer service and water quality issues related to local variations in water chemistry."
- The ad hoc committee may not recommend water quality standards which would conflict with standards of the FPSC, DEP or EPA

However, the committee may recommend the establishment of local technological standards or methods of processing relating to black water and rotten egg odor or other minimum standards regarding responsiveness to customer complaints. The standards on rotten egg odor must be economically, technologically and environmental feasible. The committee shall consult with the FPSC, DEP and EPA as necessary.

On the ad hoc committee's recommendation, the Pasco County Commission can choose to adopt additional technological standards upon demonstration that there will be a substantial improvement in black water and rotten egg odor conditions and that the standards don't conflict with FPSC, DEP or EPA standards.

The county commission may also choose to adopt other minimum standards for customer service responsiveness. If so, each monopoly water utility must be informed of the standards, and will be given 3 months to submit to the county a compliance plan. The county must allow for a reasonable time to bring the systems into compliance with the new standards.

The county commission is prohibited from adopting standards that deal with the financial aspects of a monopoly water utility or those that conflict with other agencies' standards.

The county's action is subject to Chapter 120 challenges. If the county prevails in an administrative challenge to the proposed standards, the full amount of any reasonable and prudent costs incurred in complying with the county requirement and any legal or other costs incurred by the utility in participating in the process in this section are recoverable by a monopoly water utility under section 367.081(4)(b) with is the FPSC pass-through statute, if the utility is subject to FPSC regulation.

The act is intended to supersede the provisions of Chapter 367, to the extent that the provisions are inconsistent with the Act. It takes effect upon becoming law.

HB 293, Water Resources

This is a broad bill addressing a number of subjects. Each local government is required to address in its comprehensive plan the water supply sources necessary to meet and achieve the existing and projected water use demand for the established planning period.

A new section is created on preferred water supply sources. It authorizes the governing board of a water management district to adopt rules that identify preferred water supply sources for consumptive uses based on projected reasonable-beneficial uses of a water supply planning region.

A reuse provision is added that authorizes the water management district to require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water in environmentally, economically and technically feasible and of such quality and reliability as is necessary to the user. This provision, however, does not authorize a water management district to require a provider of reclaimed water to redirect it from one user to another.

A new Sec. 373.227 on water conservation is created. The Legislature recognizes that the proper conservation of water is an important means of achieving the economical and efficient utilization of water necessary, in part, to constitute a reasonable-beneficial use. The overall water conservation goal of the state is to prevent and reduce wasteful, uneconomical, impractical or unreasonable use of water resources. The Legislature finds that the social, economic and cultural conditions of the state relating to the use of public water supply vary by service area and that public water supply utilities must have the flexibility to tailor water conservation measures to best suit their individual circumstances. Where water is provided by a public water supply utility, the legislature intends that a variety of conservation measures be made available and used to encourage efficient water use. The state should emphasize goal-based, accountable, tailored, and measurable water conservation programs for public water supply. For purposes of this section, the term “public water supply utility” includes both publicly owned and privately owned public water supply utilities that sell potable water and on a retail basis to end users.

The DEP, in cooperation with water management districts and other stakeholders, shall develop a comprehensive statewide water conservation program for public water supply. It should:

- (a) encourage utilities to implement water conservation programs that are economically efficient, affordable and appropriate;
- (b) allow no reduction in, and increase where possible utility-specific water conservation effectiveness over current programs;
- (c) be goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- (d) include cost and benefit data on individual water conservation practices to assist in tailoring practices to be effective for the unique characteristics of particular utility service areas, focusing upon cost-effective measures;
- (e) use standardized public water conservation definitions and standardized quantitative and qualitative performance measures for an overall system of assessing and benchmarking the effectiveness of conservation programs and practices.
- (f) create a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities which will provide an integrated statewide database for information on conservation programs and their effectiveness;
- (g) develop a standardized water conservation planning process for utilities.
- (h) develop a Florida-specific water conservation guidance document, including utility-specific water conservation plans tailored for their individual service areas.

Regarding the use of water conservation or drought rate structures as a conservation practice, a water management district shall afford a public water supply utility wide latitude in selecting a rate structure and shall limit its review to whether the utility has provided reasonable assurance that the rate structure contains a schedule of rates designed to promote efficient use of water by providing economic incentives. A water management district shall not fix or revise rates.

As part of its application for a consumptive use permit, a public water supply utility may propose a goal-based water conservation plan that is tailored to its individual circumstances.

By December 1, 2005, the DEP must submit a report to the Legislature on progress made in implementing the comprehensive statewide water conservation program for public water supply. The DEP or water management district may implement the section through rulemaking.

- There are provisions relating to regional water supply planning and the holding of a workshop, and the basis of population projections used for determining needs.
- There are provisions on water supply development or water resource development projects. The water management districts and DEP are encouraged to implant water resource development quickly in areas subject to regional water supply plans.
- If a proposed alternative water supply development project is identified in the relevant approved regional water supply plan, the project receives a 20-year consumptive use permit, if it otherwise meets statutory requirements; and consideration for priority funding.
- Funding assistance by the water management districts for a water reuse system project may include certain conditions relating to: metering of reclaimed water, reclaimed water rate structures, implementation of educational programs, development of location date for key reuse development.
- Additional data must be provided by each district, when submitting its budget, regarding identification of projects in the work program that will provide water.

Section 403.064 on reuse of reclaimed water is revised to add that the legislature encourages the development of incentive-based programs for reuse implementation. Language on reuse feasibility studies is augmented so that a water management district may not require a separate study when a reuse feasibility study has been completed.

Utilities implementing reuse projects are encouraged, except in the case of use by electric utilities, to meter use of reclaimed water by all end users and to charge for the use of reclaimed water based on the actual volume used when such charges can be shown to encourage water conservation. Metering and use of volume-based rates are effective water management tools for certain enumerated reuse activities. Starting on January 1, 2005, each domestic wastewater utility that provides reclaimed water for listed reuse activities shall include a summary of its metering and rate structure as part of its annual reuse report.

A new Section 403.0645 is created on reclaimed water use at state facilities. Each state agency and water management district must submit to the Secretary of DEP by February 1 of each year a summary of activities designed to utilize reclaimed water at its facilities, along with a summary of the amounts of reclaimed water actually used for beneficial purposes.

Administrative penalties are addressed. DEP may impose penalties of the above provisions of not less than \$1,000 per day per violation against a public water system of a certain size.

A provision is added regarding the lower East Coast Regional Water Supply Plan approved by the South Florida Water Management District. It addressed groundwater levels benefiting from augmentation. A study is required on feasibility of discharging reclaimed wastewater into canals and the aquifer system.

The Act takes effect upon becoming law.

Telecommunications

CS/CS/SB 206, Florida Coordinating Council for Deaf and Hard of Hearing

A council is created, and the Governor shall make recommendations for membership, in coordination with certain entities. The group will serve as an advisory and coordinating body in the state to recommend policies to address the deaf and hard of hearing. The Act does not extend the duties of the council to areas within the oversight of the FPSC.

All executive branch state agencies are instructed, and all other state agencies are requested, to assist the council in accomplishing its purposes. The Act takes effect upon becoming a law.

SB 2574, Spamming

This creates the “Electronic Mail Communications Act” and addresses unsolicited commercial electronic mail. The Department of Legal Affairs is authorized to bring actions for damages or injunctive relief or impose civil penalties.

KEY BILLS THAT FAILED

HB 1631 and SB 2798, Air Quality Bills

Senator Argenziano, the sponsor of SB 2798, announced that there were too many problems with the bill and stated that it would be worked on during the summer to create a better bill. While the environmental portions of the bill were generally supported, the rate freeze provision drew criticism especially from the large retail customers like the Florida Retail Federation.

CS/CS/CS/CS/SB 1316 Alternative Energy

The bill by Senator Bennett would have created a Florida Alternative Energy Center, which would not be a unit of government, but would be a corporation.

CS/CS/SB 1982, Electric Transmission Line Siting

This bill sailed through House and Senate Committees and passed the full Senate. However it was not taken up by the House.

Renewable Energy

Several bills on renewable energy were introduced, yet none passed. SB 1492 was passed by the full Senate, but no action was taken on the House floor. It would have required public utilities to continuously offer a purchase contract to producers of renewable energy containing payment provisions for energy and capacity based on a utility’s full avoided cost.

HB 1829, SB 2302, Telecommunications

A short bill was passed by the House which would have prohibited certain local exchange telecommunications companies from reducing retail service quality requirements below those in effect on July 1, 2003, or increase rates for residential basic local telecommunications service above those in effect on July 1, 2003. The freeze would remain in effect until the end of the regular legislative session following issuance of a final order in U.S. Telecom Association v. FCC, 359 F.3d 554 (D.C. Cir. 2004) and a final order of the FPSC in response to final determination of Crist v. Jaber and McLean v. Jaber.

A Senate version of the bill was added onto a telecommunications tax bill, SB 2302. It would have created two different study groups—one on Government-owned Communications services, and other on a Florida Telecommunications Policy Strategy Task Force.

The Telecommunications Policy Strategy Task Force would have studied and then made recommendations on key taxation and regulatory issues. Certain principles were set forth.

The Senate bill also contained a rate freeze provision. The FPSC's December 24 decision on access charges would not be allowed to take effect before May 10, 2005, if the bill had passed.