

COMMUNICATIONS

CS/CS/SB 80 — Electronic Mail

by Commerce and Consumer Services Committee; Communications and Public Utilities Committee; and Senators Aronberg and Lynn

The bill amends the Electronic Mail Communications Act, creates criminal penalties for sending unsolicited false or misleading commercial electronic mail messages, and creates the “Anti-Phishing Act,” prohibiting the acquisition and fraudulent use of a Florida resident’s personal identifying information through the use of a website or e-mail.

The bill requires that any state or local agency, as defined in s. 119.011, F.S., or any legislative entity that operates a website and uses electronic mail to post the following statement in a conspicuous location on its website:

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

The bill also provides that a violation of the statutes on unsolicited false or misleading electronic mail is a misdemeanor of the first degree or, under specified circumstances, a felony in the third degree, and provides that the existing civil penalties and the new criminal penalties are cumulative remedies.

Finally, the bill creates the “Anti-Phishing Act” to: prohibit the acquisition and fraudulent use of a Florida resident’s personal identifying information through the use of a website or e-mail; create a civil cause of action for internet access providers, financial institutions, web page, or trademark owners harmed by a violation, or the Attorney General; provide remedies of injunctive relief and damages, including potential treble damages under specified circumstances, attorney’s fees and costs; and create a three-year statute of limitations; and provide for exemptions from the Act.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 36-0; House 120-0

CS/CS/SB 142 — Telecommunications/Price Regulation

by Government Efficiency Appropriations Committee; Communications and Public Utilities Committee; and Senators Fasano, Argenziano, Klein, Atwater, Aronberg, Saunders, and Peadar

In 2003, the Legislature enacted the Tele-Competitive Innovative and Infrastructure Enhancement Act that created a process to phase-out regulation. After the rebalancing phase, where intrastate interexchange network access charges were reduced to a specified level and basic local rates were increased in a revenue neutral manner, an incumbent local exchange telecommunications company could elect to have its basic local telecommunications services treated as its nonbasic services (i.e., minimal regulatory oversight). One feature of nonbasic treatment is the ability to raise rates up to 20 percent in any given 12-month period for services. Another provision was reduced quality of service standards. The Act required incumbent local exchange telecommunications companies to continue their obligation as carrier-of-last-resort.

The bill deletes the provision that allows an incumbent telecommunications company to elect to have its basic services treated as nonbasic and requires a company to request from the Public Service Commission (commission) that its service quality requirements be treated the same as competitive local exchange companies. The bill allows the company to petition the commission, after parity is reached, for minimal regulatory treatment of its retail services, at a level no greater than that currently imposed on competitive local exchange telecommunications providers. In its petition, it must show and the commission must find that:

- The change would be in the public interest;
- The level of competition has been demonstrated to be sufficient and sustainable to allow the commission's regulation to be supplanted by competitive forces; and
- The company has reduced its intrastate switched network access rates to its local reciprocal interconnection rate upon grant of the petition.

The bill allows the incumbent telecommunications company to change the prices for its nonbasic services on only one day's notice and to publicly publish price lists rather than file tariffs. The commission may establish guidelines for publicly publishing the price lists.

The bill provides definitions and creates an automatic waiver of the carrier-of-last-resort obligation for a local exchange telecommunications company under certain circumstances. Notice to the commission in a timely manner is required for automatic waivers. The bill also allows a local exchange company to petition for waiver for good cause shown based upon the facts and circumstances. Notice to the building owner or developer is required. The commission is required to initiate rulemaking to implement this provision and the commission's limitations of jurisdiction are maintained under ss. 364.011 and 364.013, F.S.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-0; House 118-0

HB 871 — Telephone Calling Records

by Rep. Ryan and others (CS/CS/SB 1488 by Criminal Justice Committee; Communications and Public Utilities Committee; and Senators Aronberg, Miller, Campbell, and Crist)

The bill makes it a violation for a person to obtain or attempt to obtain the calling record of another person without that person's permission by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a telecommunications company or to a customer of a telecommunications company or by providing a document to an officer, employee, or agent of a telecommunications company, knowing that the document was forged, counterfeit, lost or stolen, fraudulently obtained, or contained false, fictitious, or fraudulent statements or representations. Included in the term "telecommunications company" are land-line, cellular, and voice-over-Internet-protocol (VoIP) calling records. It is also a violation to ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in any manner just described. The bill provides that a person who violates these provisions for the first time commits a first degree misdemeanor; a second or subsequent violation is a third degree felony.

Finally, the bill provides that it is not a violation for a law enforcement agency to obtain a calling record in connection with the performance of the official duties of that agency in accordance with other applicable laws, or for a telecommunications company, or its officer, employee, or agent, to obtain a calling record of that company in the following circumstances: in the course of testing security procedures or systems; investigating an allegation of misconduct or negligence on the part of an officer, employee, or agent; or recovering a calling record that was obtained or received by another person in any manner described in the new section as an unlawful means of obtaining a calling record.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 38-0; House 116-0

ENERGY

CS/CS/CS/SB 888 — Energy

by Ways and Means Committee; Environmental Preservation Committee; Communications and Public Utilities Committee; and Senators Constantine, Aronberg, Dockery, Atwater, Baker, Diaz de la Portilla, Bennett, Klein, Campbell, Bullard, Wilson, Crist, and Alexander

The bill can be divided into six general subjects: the Florida Energy Commission; nuclear power plant siting; alternative energy incentives; energy-related reporting requirements; streamlining of the siting acts for power plants and transmission lines; and water projects.

Florida Energy Commission

The bill creates the Florida Energy Commission to develop recommendations for legislation to establish a state energy policy based on specified principles. The commission is to be located within the Office of Legislative Services. It is to have nine members, with the President of the Senate and the Speaker of the House of Representatives each to appoint four members, and to jointly appoint a chair. Each member must be an expert in one or more specified fields and must disclose specified financial or employment interests.

The commission is to file an annual report by December 31 of each year, beginning in 2007. The first report must:

- Identify incentives for alternative energy research, development, or deployment projects;
- Set forth policy recommendations for conservation of all forms of energy;
- Recommend consensus-based public-involvement processes that evaluate greenhouse gas emissions in this state and make recommendations regarding related economic, energy, and environmental benefits;
- Include recommended steps and a schedule for the development of a comprehensive state climate action plan with greenhouse gas reduction through a public-involvement process, including transportation and land use; power generation; residential, commercial, and industrial activities; waste management; agriculture and forestry; emissions-reporting systems; and public education; and
- Set forth a plan of action, together with a timetable, for addressing additional issues.

Nuclear Power Plant Siting

The nuclear power plant siting provisions can be divided into three areas: determination of need, exemption from the bid rule, and early cost recovery.

The bill provides that in making a determination of the need for a nuclear power plant, the Public Service Commission (PSC) is to consider whether the proposed nuclear power plant will 1) provide needed base-load capacity, 2) enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas, and 3) provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

The bill exempts an applicant for a determination of need for a proposed nuclear power plant from the PSC's bid rule requirement of securing competitive proposals for power supply prior to

making application under this act or receiving a determination of need from the commission. This simply means that the applicant does not have to seek proposals from other utilities to build and operate a nuclear plant, selling the electricity to the applicant. The applicant's expenses in siting and constructing the power plant will still be subject to PSC review and must be prudent and reasonable.

Finally, the bill provides for recovery of costs of siting, design, licensing, and construction of a nuclear plant before it is placed into production. All of these costs are recoverable under current law. The bill does allow the applicant to recover them earlier than under current law, but this also has the effect of avoiding inclusion of these costs in rate base, phasing in the cost recovery on ratepayers, and avoiding some of the interest accruals, which would also be recoverable.

Alternative Energy Incentives

The bill creates the Renewable Energy Technologies Grants Program within the Department of Environmental Protection to provide matching grants for demonstration, commercialization, research, and development projects relating to renewable technologies. The bill defines renewable energy technology as any technology that generates or utilizes a renewable energy resource, defined to include electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power. As a part of this program, DEP is to work with the Department of Agriculture and Consumer Services to coordinate grants for bioenergy projects.

The bill designates the period from 12:01 a.m., October 5 through midnight October 11, 2006, as a tax holiday for sales tax on a new energy-efficient product sold during that period and having a selling price of \$1,000 or less. The exemption is only for items purchased for personal use, and includes items like a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that meet certain criteria.

The bill also creates a rebate program for purchasers of solar photovoltaic systems or solar thermal systems, including pool heaters. To be eligible, the systems must meet certain requirements. The maximum rebates are provided and vary depending on the type of system and its intended use.

The bill also creates an exemption from sales tax for stated types of products relating to hydrogen-powered vehicles, commercial stationary hydrogen fuel cells, and materials used in distributing biodiesel and ethanol.

It creates an investment tax credit for costs related to investments in hydrogen-powered vehicles and hydrogen fueling stations; fuel cells; and biodiesel and ethanol.

Finally, it creates a renewable energy production tax credit for expanded or new facilities producing renewable energy

Energy-related Reporting Requirements

The bill requires the PSC to direct a study of the electric transmission grid to review electric system reliability and emergency contingency conditions, including an examination of the hardening of infrastructure to address issues arising from the 2004 and 2005 hurricane seasons. The PSC must report the results of the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007.

The bill also requires the PSC to conduct a review to determine what should be done to enhance the reliability of Florida's transmission and distribution grids during extreme weather events, including the strengthening of distribution and transmission facilities. Considerations may include:

- Recommendations for promoting and encouraging underground electric distribution for new service or construction provided by public utilities;
- Recommendations for promoting and encouraging the conversion of existing overhead distribution facilities to underground facilities, including any recommended incentives to local governments for local-government-sponsored conversions;
- Recommendations as to whether incentives for local-government-sponsored conversions should include participation by a public utility in the conversion costs as an investment in the reliability of the grid in total, with such investment recognized as a new plant in service for regulatory purposes; and
- Recommendations for promoting and encouraging the use of road rights-of-way for the location of underground facilities in any local-government-sponsored conversion project, provided the customers of the public utility do not incur increased liability and future relocation costs.

The PSC must submit its report on this study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2007.

Finally, the bill requires the Department of Environmental Protection to provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by November 1, 2006, a report detailing the state's leadership by example in energy conservation and energy efficiency. The report must include a description of state programs designed to achieve energy conservation and energy efficiency at state-owned facilities, such as the guaranteed energy performance savings contracting and the inclusion of alternative fuel vehicles in state fleets. The report must describe the costs of implementation, details of the programs, and current and

projected energy and cost savings. The report must also set forth recommendations on a rebate program for purchases of energy-efficient appliances.

Streamlining of the Power Plant and Transmission Line Siting Acts

The bill streamlines both the Power Plant Siting Act and the Transmission Line Siting Act, primarily by: combining the determinations of completeness and sufficiency; eliminating mandatory land use and certification hearings under certain conditions, and changing deadlines.

Water Projects

The bill deletes existing requirements to be met in order to obtain state grants for stormwater and waste water management projects.

If approved by the Governor, these provisions take effect upon becoming law except as otherwise provided.

Vote: Senate 39-0; House 119-1

PUBLIC UTILITIES

HB 789 — Underground Facilities/Safety

by Rep. Murzin and others (CS/CS/CS/SB 1394 by Community Affairs Committee; Regulated Industries Committee; Communications and Public Utilities Committee; and Senator Miller)

The Underground Facility Damage Prevention and Safety Act creates the Sunshine State One-Call of Florida, Inc., to establish and operate a system whereby excavating contractors and the public can provide notification of their intent to engage in excavation or demolition. The bill modifies this system by:

- Creating a “positive-response” process to facilitate communications between member operators and excavators;
- Reducing the number of days that an excavator must provide information before beginning any excavation or demolition from “not less than 2 or more than 5” business days to “not less than 2” business days;
- Extends the period for validity of the information in the notice from the current 20 calendar days to 30 calendar days;
- Revising the enforcement provisions to: clarify local government enforcement by a government code inspector or code enforcement officer; require that court costs be added to the civil penalty; and provide for allocation of a civil penalty, with 80 percent of a civil penalty for a citation issued by a local government entity to be distributed to that local

government entity and with the penalty for a citation issued by a state law enforcement officer to be retained by the clerk for deposit into the fine and forfeiture trust fund;

- Providing that Sunshine State One-Call is neither required nor permitted to locate or mark underground facilities, that a right of recovery does not exist against the system for failing to mark or locate underground facilities, and that the system is not liable for the failure of a member operator to comply with the requirements of the Act;
- Providing additional exemptions from the Act for certain pest control services and for certain situations where mechanized equipment is not used; and
- Directing the One-Call system to study the feasibility of designated zones where no notification is required and report the findings of the study to the Legislature.

If approved by the Governor, these provisions take effect October 1, 2006.

Vote: Senate 39-0; House 117-0

PUBLIC SERVICE COMMISSION

HB 7237 — Public Service Commission

by Utilities and Telecommunications Committee and Rep. Littlefield (CS/SB 1872 by Communications and Public Utilities Committee and Senator Constantine)

The Auditor General issued an operational audit report in September 2005, (Report Number 2006-021, Public Service Commission Regulatory Audits And Personnel Administration) that found that specified statutes related to the Florida Public Service Commission are obsolete. This bill makes the changes recommended in the Auditor General report. It also clarifies when a commissioner's term begins and ends and requires that a sitting commissioner give notice of intent to seek reappointment 30 days earlier than is currently required.

The bill provides that each commissioner's term begins on January 2 of the year the term commences and ends four years later on January 1. A person serving on the commission who intends to seek reappointment must file notice of that intent 210 days prior to the expiration of the term, as opposed to the current 180 days.

The bill also deletes obsolete references to:

- Maximum regulatory assessment fees which conflict with the maximums set forth in the industry-specific statutes;
- Regulation of coal slurries, which have never been used in Florida;
- Regulation of railroads, which the commission no longer regulates; and

- Measures relating to commission operations, such as a position of Chief Auditor, an office of hearing examiners, official reporters, and transcript and copying fees, none of which reflect current practice.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 37-0; House 116-0

