

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 364

INTRODUCER: Senator Collins

SUBJECT: Regulatory Assessment Fees

DATE: January 23, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Schrader</u>	<u>Twogood</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 364 amends s. 120.80, F.S., to specify certain rules that may be adopted by the Florida Public Service Commission without being subject to potential rule ratification under s. 120.541(3), F.S. Specifically, rules regarding the Florida Public Service Regulatory Trust Fund and the regulatory assessment fees charged to utilities in Florida are added to the section. The bill also deletes a temporary provision, limited to the 2023-2024 fiscal year, that allowed such rules to be exempt from all provisions of s. 120.80, F.S, which includes requirements to provide statements of estimated regulatory costs.

The bill is effective upon becoming a law.

II. Present Situation:

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.¹ The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.² In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.³

¹ Section 350.001, F.S.

² See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Nov. 30, 2023).

³ Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Nov. 30, 2023).

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid⁴ and may order the addition or repair of infrastructure as necessary.⁵ The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.⁶ However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁷ Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of electric and gas utility regulations for Florida. While ch. 366, F.S., does not provide a definition, per se, for a “municipal utility,” variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state's electric utility customers.⁸ Florida also has 27 municipally-owned gas utilities and four special gas districts.⁹

Rural Electric Cooperatives in Florida

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives.¹⁰ These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million customers.¹¹ Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.¹²

⁴ Section 366.04(5) and (6), F.S.

⁵ Section 366.05(1) and (8), F.S.

⁶ Section 366.05, F.S.

⁷ Florida Public Service Commission, *About the PSC*, *supra* note 3.

⁸ Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Nov. 30, 2023).

⁹ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 13, Apr. 2023 (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf>).

A “special gas district” is a dependent or independent special district, setup pursuant to ch. 189, F.S., to provide natural gas service. Section 189.012(6), F.S., defines a “special district” as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.”

¹⁰ Florida Electric Cooperative Association, *Members*, <https://feca.com/members/> (last visited Nov. 30, 2023).

¹¹ Florida Electric Cooperative Association, *Our History*, <https://feca.com/our-history/> (last visited Nov. 30, 2023).

¹² *Id.*

Public Electric and Gas Utilities in Florida

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).¹³ In addition, there are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, FPUC, FPUC-Fort Meade Division, FPUC-Indiantown Division, Sebring Gas System, and St. Joe Natural Gas Company. Of these eight gas IOUs, five engage in the merchant function servicing residential, commercial, and industrial customers: Florida City Gas, FPUC, FPUC-Fort Meade Division, Peoples Gas System, and St. Joe Natural Gas Company. Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.¹⁴

Electric IOU and Gas IOU rates and revenues are regulated by the PSC and the utilities must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.¹⁵

Section 366.041(2), F.S., requires public utilities to provide adequate service to customers. As compensation for fulfilling that obligation, s. 366.06, F.S., requires the PSC to allow the IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.¹⁶

Water and Wastewater Utilities

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide "service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation."¹⁷ The PSC also does not regulate utilities in counties that are exempt from PSC regulation pursuant to s. 367.171, F.S.

¹³ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 9, at 5.

¹⁴ *Id.* at 14. Firm transportation service is offered to customers under schedules or contracts which anticipate no interruption under almost all operating conditions. *See* Firm transportation service, 18 CFR s. 284.7.

¹⁵ PSC, *2022 Annual Report*, p. 6, (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf>) (last visited: Nov. 30, 2023).

¹⁶ *Id.*

¹⁷ Section 367.022(2), F.S.

As of March, 2023, the PSC has over 149 water, wastewater, and water and wastewater utilities that are under its regulatory authority.¹⁸

Telecommunications Carriers

Under ch. 364, F.S., telecommunications carriers in Florida are also subject to only limited PSC regulation. During the 2011 legislative session, the “Regulatory Reform Act” (act) was passed and signed into law by the Governor, effective July 1, 2011.¹⁹ Under the act, the Legislature eliminated most of the PSC’s jurisdiction over telecommunications. However, the PSC still:

- Maintains the authority to ensure that incumbent local exchange carriers meet their obligation to provide unbundled access, interconnection, and resale to competitive local exchange companies in a nondiscriminatory manner;
- Administers the system to provide Telecommunications Relay Services; and
- Oversees the Federal Lifeline Assistance program for Florida.²⁰

Natural Gas Transmission

Natural gas transmission companies are regulated by the PSC under ch. 368, F.S. The term “natural gas transmission company,” as defined in s. 368.103, F.S., “means any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas.” The term does not include “any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof, or a special district created by special act to distribute natural gas.” Section 364.104, F.S., authorizes the PSC to “fix and regulate rates and services of natural gas transmission companies, including, without limitation, rules and regulations for:”

- Determining customers and services classifications;
- Determining rate applicability; and
- “Ensuring that the provision (including access to transmission) or abandonment of service by a natural gas transmission company is not unreasonably preferential, prejudicial, or unduly discriminatory.”

Section 368.105, F.S., provides the procedures for the PSC to set rates and services requirements for natural gas transmission companies in Florida.

Under chapter 368, F.S., the PSC is authorized to inspect intrastate natural gas systems to ensure compliance with rules and regulations regarding safety standards.²¹ Currently, Florida has 3 major pipelines: Florida Gas Transmission Company, Gulfstream Natural Gas System, and Sabal Trail Interstate Pipeline. The state also has two minor pipelines: Gulf South Pipeline Company and Southern Natural Gas.²²

¹⁸ Email from Mark Futrell, Deputy Executive Director—Technical, Florida Public Service Commission, to Senate Regulated Industries Staff (Mar. 19, 2023)(on file with the Senate Regulated Industries Committee).

¹⁹ Ch. 2011-36, Laws of Fla.

²⁰ Florida Public Service Commission, *About the PSC*, supra note 3.

²¹ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, supra note 9, at 13.

²² *Id.*

Regulatory Assessment Fees

The PSC collects Regulatory Assessment Fees (RAFs) from all of the utilities under its jurisdiction. RAFs, license fees, other fees, and any other charges collected by the PSC are credited to the Florida Public Service Regulatory Trust Fund (PSC Trust Fund).²³ Florida law generally directs the PSC to manage its trust fund in such a manner that each utility industry funds its own regulation.²⁴ Thus, the RAF rate for each industry is designed to correlate with the complexity and cost of regulating that industry. The PSC's budget is set annually by the Legislature, as approved by the Governor. However, the operations of the PSC are funded from the PSC Trust Fund as appropriated in the General Appropriation Act approved by the Legislature. The PSC does not receive any funding from the General Revenue Fund.²⁵

Water and wastewater utilities can include the cost of RAFs utilizing the “pass-through” provisions in s. 367.081(4)(b), F.S. This provision allows utilities to revise their rates automatically to account for changes in certain specified expenses (such as RAFs, certain governmental fees and permitting costs, and taxes). A utility using this provision must provide verified notice to the PSC 45 days prior to the implementation of the increase or decrease. The electric and gas utility industries do not have a similar “pass-through” provision.

Rates for RAFs are set by PSC rule, subject to maximum rates established by statute. RAFs are charged as a percentage of gross operating revenues derived from intrastate business, subject to certain exclusions. Chart 1 below provides the current RAFs for Florida utilities, by industry.

²³ Section 350.113, F.S.

²⁴ Specifically:

- Section 364.336(2) and (3), F.S., requires the PSC to reduce the RAFs for the telecommunications industry after the Regulatory Reform Act of 2011 to reflect the PSC's reduced regulatory oversight of that industry;
- Section 367.145(3), F.S., requires that RAFs collected pursuant to the water and wastewater RAF collection authorization may only be used to cover the cost of regulating water and wastewater systems. Also, fees collected under the electricity utility industry, gas utility industry, and telecommunications industry RAF collection authorizations may not be used to pay for the cost of water and wastewater regulation; and
- Section 368.109, F.S., states that the RAFs set by the PSC for the natural gas transmission (i.e. natural gas pipeline) industry must, to the extent practicable, be related to the cost of regulating that industry.

²⁵ Florida Public Service Commission, *Bill Analysis for SB 364*, Nov. 9, 2023 (on file with the Senate Regulated Industries Committee).

Chart 1: Regulatory Assessment Fees by Florida Utility Industry

Utility Type	Current RAF	Statutory Maximum
Investor-owned Gas Utilities	0.5% ²⁶	0.5% ²⁷
Municipal Gas Utilities and Gas Districts	0.1919% ²⁸	0.25% ²⁹
Natural Gas Transmission	0.25% ³⁰	0.25% ³¹
Telecommunications Companies	0.16% ³²	0.25% ³³
Water and Wastewater Utilities	4.5% ³⁴	4.5% ³⁵
Investor-owned Electric Utilities	0.072% ³⁶	0.125% ³⁷
Municipal Electric Utilities and Rural Electric Cooperatives	0.015625% ³⁸	0.015625% ³⁹

In its analysis of the bill, the PSC points out that the Legislature has granted rule ratification exemptions “for certain agency rules where ratification would be redundant and unnecessary because of the presence of one or more compelling legislative policy factors.”⁴⁰ These factors may include:

²⁶ Fla. Admin. Code R. 25-7.0131.

²⁷ Section 366.14, F.S.

²⁸ Fla. Admin. Code R. 25-7.0131.

²⁹ Section 366.14, F.S.

³⁰ Fla. Admin. Code R. 25-7.101.

³¹ Section 368.109, F.S.

³² Fla. Admin. Code R. 25-4.0161.

³³ Section 364.336, F.S.

³⁴ Fla. Admin. Code R. 25-30.120.

³⁵ Section 367.145, F.S.

³⁶ Fla. Admin. Code R. 25-6.0131. On September 12, 2023, the PSC published Notices of Development of Proposed Rules and Negotiated Rulemakings regarding this rule for the purpose of updating RAFs for investor-owned electric utilities, municipal electric utilities, and rural electric cooperatives, *see* 49.177 Fla. Admin. Reg. 3329 (Sep. 12, 2023) (available at: https://www.flrules.org/Gateway/View_Notice.asp?ID=27528132).

³⁷ Section 366.14, F.S.

³⁸ Fla. Admin. Code R. 25-6.0131, (2013). On September 12, 2023, the PSC published Notices of Development of Proposed Rules and Negotiated Rulemakings regarding this rule for the purpose of updating RAFs for investor-owned electric utilities, municipal electric utilities, and rural electric cooperatives, *see* 49.177 Fla. Admin. Reg. 3329 (Sep. 12, 2023) (available at: https://www.flrules.org/Gateway/View_Notice.asp?ID=27528132).

³⁹ Section 366.14, F.S.

⁴⁰ Florida Public Service Commission, *Bill Analysis for SB 364*, *supra* note 25.

- The existence of comprehensive statutory control over the rule’s subject matter, including detailed guidance for agency rulemaking;
- The presence of direct oversight or engagement by the Legislature or the public through another process;
- That public policy would be frustrated by unnecessary delays in the rulemaking process; and
- That the Legislature clearly intends, understands, or makes explicit the regulatory cost in the enabling legislation.⁴¹

For RAFs, as shown above, each statute authorizing the PSC to charge RAFs includes a statutory cap on what the PSC can charge. The maximum RAFs that could be charged by the PSC are subject to statutory control of the maximum fiscal impact.

Rulemaking Authority and Legislative Ratification

A rule is an “agency statement of general applicability that implements, interprets, or prescribes law or policy.”⁴² Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.⁴³ An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.⁴⁴ The statutory authority for rulemaking must be specific enough to guide an agency’s rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁴⁵

Prior to the adoption, amendment, or repeal of any rule, an agency must file a notice of the proposed rule in the Florida Administrative Register.⁴⁶ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency’s statement of estimated regulatory costs procedures (SERC), if one is prepared.⁴⁷

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁴⁸

⁴¹ *Id.*, citing Eric H. Miller & Donald J. Rubottom, *Legislative Rule Ratification: Lessons from the First Four Years*, 89-FEB FLA. B.J., 36 (2015).

⁴² Section 120.52(16), F.S.

⁴³ Section 120.52(17), F.S.

⁴⁴ *See* ss. 120.52(8) and 120.536, F.S.

⁴⁵ *See Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

⁴⁶ *See* ss. 120.54(2)(a) and 120.55(1)(b), F.S.

⁴⁷ Section 120.54(3)(a)1., F.S.

⁴⁸ *See* ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

SERC and Rule Ratification Requirements

Pursuant to s. 120.541, F.S., agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within one year after implementation of the rule.⁴⁹

A SERC must include estimates of the following:

- The number of people and entities affected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.⁵⁰

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,⁵¹ productivity, or innovation; or
- Regulatory costs, including any transactional costs.⁵²

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect (unless such rule is otherwise exempted from this requirement by statute).⁵³

Current Public Service Commission Exemptions to SERC and Rule Ratification

Currently, the PSC has exemptions to SERC and rule ratification requirements, as provided under s. 120.541, F.S., for the following rulemaking delegations:

- Pole attachment provisions under s. 366.04(8), F.S.;
- Safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communication services providers under s. 366.04(9), F.S.; and
- Redundancy and transfer of ownership provisions regarding poles under s. 366.97, F.S.

The 2023 General Appropriations Act implementing bill, SB 2502,⁵⁴ also provided, for the 2023-2024 fiscal year only, the PSC with exemptions to SERC and rule ratification requirements, as provided under s. 120.541, F.S., for the following rulemaking delegations:

- The establishment and operational requirements of the Florida Public Service Regulatory Trust Fund under 350.113, F.S.;
- Telecommunications company RAFs under s. 364.336, F.S.;

⁴⁹ Section 120.541(1)(a), F.S.

⁵⁰ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

⁵¹ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

⁵² Section 120.541(2)(a), F.S.

⁵³ Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

⁵⁴ Chapter 2023-240, s. 51, Laws of Fla.

- Investor-owned electric utility, investor-owned gas utility, municipal gas utility and gas district, and municipal electric utility and rural electric cooperative RAFs under 366.14, F.S.
- Water and wastewater utility RAFs under 367.145, F.S.; and
- Natural gas transmission company RAFs under 368.109, F.S.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 120.80, F.S., to only make ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S., exempt from the rule ratification requirements under s. 120.541(3), F.S., and not the entirety of s. 120.541, F.S. (the bill also removes the 2023-2024 fiscal year provision currently in statute). Thus, for those sections regarding RAFs, the PSC must still follow the SERC preparation requirements provided in ss. 120.541(1), (2), and (5), F.S.

Section 2 of the bill provides that it shall become effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

While the bill does not substantially financially impact the private sector, it does revise the process requirements for the PSC to amend RAFs by rule. Specifically, it eliminates the requirement that such rule amendments be ratified by the Legislature. If the PSC were

to amend the RAF rates paid by utilities, such amended costs would likely impact utility rates.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 120.80 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.