Tab 1	**SB 366** by **Yarborough**; (Identical to H 00081) Gas Safety
Tab 2	**SB 480** by **DiCeglie**; (Similar to H 00683) Renewable Natural Gas
Tab 3	**SB 496** by **Perry**; (Identical to H 00535) Low-voltage Alarm System Projects
Tab 4	**SB 334** by **Burgess**; (Similar to CS/H 00303) Rabies Vaccinations

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Gruters, Chair
Senator Hooper, Vice Chair

MEETING DATE: Tuesday, January 9, 2024
TIME: 2:30—4:00 p.m.
PLACE: *James E. "Jim" King, Jr Committee Room,* 401 Senate Building

MEMBERS: Senator Gruters, Chair; Senator Hooper, Vice Chair; Senators Bradley, Brodeur, Hutson, Jones, and Osgood

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 366** Yarborough (Identical H 81)	Gas Safety; Increasing the maximum penalty per violation to which a person may be subject to for any violations of part I of ch. 368, F.S.; increasing the maximum authorized civil penalty for any related series of violations, etc. RI 01/09/2024 AEG FP	
2	**SB 480** DiCeglie (Similar H 683)	Renewable Natural Gas; Authorizing a public utility to recover prudently incurred renewable natural gas infrastructure project costs through an appropriate Florida Public Service Commission cost-recovery mechanism; specifying eligible renewable natural gas infrastructure projects; revising the required contents of a basin management action plan for an Outstanding Florida Spring to include identification of certain water quality improvement projects; encouraging counties and municipalities to develop regional solutions to certain energy issues; authorizing the farm-to-fuel initiative to address the production and capture of renewable natural gas, etc. RI 01/09/2024 AEG FP	
3	**SB 496** Perry (Identical H 535)	Low-voltage Alarm System Projects; Specifying that a nonelectric fence or wall must enclose the outside perimeter of a low-voltage electric fence; permitting low-voltage electric fences to be installed in areas within more than one zoning category; prohibiting a municipality, county, district, or other entity of local government from adopting or maintaining certain ordinances or rules that provide additional requirements for low-voltage alarm system projects, etc. RI 01/09/2024 CA RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 334** Burgess (Similar CS/H 303, Compare H 261, H 849, S 1040, S 1100, S 1162)	Rabies Vaccinations; Authorizing certain persons to administer rabies vaccinations to certain animals under the indirect supervision of a veterinarian; providing that a supervising veterinarian assumes responsibility for any person working under the veterinarian's supervision or at his or her direction; defining the term "indirect supervision", etc. AG 12/05/2023 Favorable RI 01/09/2024 RC	

Other Related Meeting Documents

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 Regulated Industries

BILL:	SB 366
INTRODUCER:	Senator Yarborough
SUBJECT:	Gas Safety
DATE:	January 9, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 366 revises the maximum civil penalties for violations of Florida's Gas Safety Law (part I of ch. 368, F.S.), and rules adopted pursuant to that law, to be substantially similar to the maximum penalties provided under federal pipeline safety regulations. The bill sets the state maximum penalties to be $257,664 (increased from $25,000) for each violation for each day such violation persists, and $2,576,627, in aggregate, (up from $500,000) for any related series of violations.

The bill has an effective date of July 1, 2024.

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 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 Jan 4, 2024).
[3] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Jan 4, 2024).

Gas Utilities

The PSC has broad jurisdiction over the rates and service of gas utilities.[4] However, the PSC does not fully regulate municipal gas utilities (utilities owned or operated on behalf of a municipality) or gas districts. The PSC does have jurisdiction over these types of utilities with regard to territorial boundaries and safety.[5] Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards.

Municipal Gas Utilities and Special Gas Districts in Florida

A municipal gas utility is a gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of gas utility regulations for Florida (along with electric utility regulations). 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 27 municipally-owned gas utilities and four special gas districts.[6]

Public Gas Utilities in Florida

There are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, Florida Public Utilities Company (FPUC), FPUC-Fort Meade Division, FPUC-Indiantown Division, Peoples Gas System, 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.[7]

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.[8]

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.[9]

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[4] Section 366.05, F.S.
[5] Florida Public Service Commission, *About the PSC*, *supra* note 3.
[6] 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."
[7] *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.
[8] PSC, *2022 Annual Report*, p. 6, (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf) (last visited Jan 4, 2024).
[9] *Id*.

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 368.104, 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.[10] Currently, Florida has three 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.[11]

Pipeline and Hazardous Materials Safety Administration

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is part of the United States Department of Transportation. PHMSA's purpose is to protect the public and the environment by advancing safe transportation of energy and other essential potentially hazardous materials. PHMSA "establishes national policy, sets and enforces standards, educates, and conducts research to prevent incidents." The agency is also involved in preparation of the public and first responders to deal with hazardous materials incidents.[12]

PHMSA Office of Pipeline Safety

PHMSA's Office of Pipeline Safety "is responsible for carrying out a national program to ensure the safe, reliable, and environmentally-sound operation of the nation's natural gas and hazardous liquid pipeline transportation system." As part of this responsibility, the Office of Pipeline Safety:

[10] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 6, at 13; ss. 368.03 and 368.05, F.S.
[11] *Id.*
[12] Pipeline and Hazardous Materials Safety Administration, *About PHMSA*, https://www.phmsa.dot.gov/about-phmsa/phmsas-mission (last visited Jan. 4, 2024).

- Develops, proposes, and implements policy initiatives and regulations regarding operation of pipelines;
- Directs education and outreach efforts to promote adoption and the increased use of pipeline safety programs by state and local governments, pipeline operators, and the public; and
- Administers a national pipeline safety program to support compliance with Federal pipeline safety regulations.[13]

PHMSA State Programs

Although PHMSA has ultimate authority over all federal pipeline safety standards (for both interstate and intrastate pipelines), federal law allows states to assume safety authority over intrastate gas pipelines, hazardous liquid pipelines, and underground natural gas storage through certifications and agreements with PHMSA.[14] Currently, the District of Columbia, Puerto Rico, and all states except Alaska and Hawaii participate in PHMSA's pipeline safety program.[15] Fourteen states participate in PHMSA's underground natural gas storage program.[16]

To participate in PHMSA's state programs, states must adopt the minimum federal pipeline safety regulations—currently under 49 C.F.R. s. 100-199.[17] States are free, however, to adopt more stringent regulations, if they so choose, and still participate in PHMSA's state programs.[18]

Florida Gas Safety Law

Florida's Gas Safety Law of 1967 (part I of ch. 368, F.S.),[19] authorizes the PSC to establish "rules and regulations covering the design, fabrication, installation, inspection, testing and safety standards for installation, operation and maintenance of gas transmission and distribution systems."[20] Such systems include "gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains, and gas services up to the outlet of the customer's meter set assembly, gas-storage equipment of the closed-pipe type fabricated or forged from pipe or fabricated from pipe and fittings, and gas-storage lines."[21] Section 368.05, F.S., establishes the jurisdiction for the PSC to enforce the Gas Safety Law and authorizes the PSC to adopt rules "covering the design, fabrication, installation, inspection, testing and safety standards for installation, operation and maintenance of gas transmission and distribution systems."

Section 368.061, F.S., establishes the penalties that may be assessed for violations of the Gas Safety Law or the PSC rules implementing the law. The civil penalties authorized under this

[13] Pipeline and Hazardous Materials Safety Administration, *Office of Pipeline Safety*, https://www.phmsa.dot.gov/about-phmsa/offices/office-pipeline-safety (last visited Jan. 4, 2024).
[14] Pipeline and Hazardous Materials Safety Administration, *State Programs Overview*, https://www.phmsa.dot.gov/working-phmsa/state-programs/state-programs-overview (last visited Jan. 4, 2024); 49 U.S.C. s. 60105- 60106.
[15] *Id.*
[16] *Id.* Florida is not one of the states participating in the underground natural gas storage program. Pipeline and Hazardous Materials Safety Administration, *Appendix F—State Program Certification/Agreement Status: CY 2023 States Participating in the Federal/State Underground Natural Gas Safety Program*, https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2023-11/2023-Appendix-F-State-UNGS-Certification-Agreement-Status.pdf (last visited Jan. 4, 2024).
[17] *Id.*
[18] *Id.*
[19] Sections 368.01-368.061, F.S.
[20] Section 368.03, F.S.
[21] *Id.*

section are assessed by the PSC and may not exceed $25,000 for each day that a violation exists—up to a maximum aggregate penalty of $500,000 for a related series of violations.[22] The last time these penalties were updated was 1993.[23] These maximum state penalties are significantly less than those authorized by federal law for pipeline safety violations. Currently, as of December 28, 2023, the maximum federal administrative penalty for pipeline safety violations is $266,015 for each day that a violation exists, up to a maximum aggregate penalty of $2,660,135, for a related series of violations.[24]

According to the PSC, the difference in penalties proscribed under federal and Florida law "has been consistently raised by PHMSA as part of its annual evaluation of the pipeline safety program activities carried out by the [PSC]."[25] If PHMSA was to determine that Florida was not satisfactorily enforcing safety regulation compliance, PHMSA could reject the PSC's certification after notice and an opportunity for a hearing.[26] With the loss of such certification, the PSC would only be able to conduct safety inspections and identify violations (if an agreement is reached with PHMSA), but would no longer have the authority to conduct violation enforcement.[27] Instead, PHMSA would conduct the enforcement of violations.[28]

III. Effect of Proposed Changes:

Section 1 of the bill revises the maximum penalties for violations of Florida's Gas Safety Law (part I of ch. 368, F.S.), or rules adopted pursuant to that law, to be $257,664 (increased from $25,000) for each violation for each day such violation persists and $2,576,627 in aggregate (up from $500,000) for any related series of violations. This would mirror the maximum fines provided under federal law for pipeline safety violations as such existed at the time SB 366 was filed.[29]

Section 2 of the bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[22] Section 368.061(1), F.S.
[23] *See* ch. 93-035, Laws of Fla.
[24] 49 C.F.R. s. 190.223.
[25] Florida Public Service Commission, *Bill Analysis for SB 366,* Nov. 9, 2023 (on file with the Senate Regulated Industries Committee).
[26] 49 U.SC. s. 60105(f).
[27] 49 U.SC. s. 60105(f); and 49 U.S.C. s. 60106.
[28] Florida Public Service Commission, *Bill Analysis for SB 366, supra* note 25 at 2.
[29] However, as of December 28, 2023, the maximum federal fines increased to $266,015 for each day that a violation exists, up to a maximum aggregate penalty of $2,660,135, for a related series of violations. 88 Fed. Reg. 89,560 (Dec. 28, 2023) (codified at 49 C.F.R. s. 190.223).

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:

The bill will likely increase the fiscal impact on private sector Gas Safety Law violators in Florida if the PSC raises penalties above the current statutory limit.

C. Government Sector Impact:

The bill will likely increase the fiscal impact on local government-owned entities subject to PSC jurisdiction if such entities violate Florida's Gas Safety Law and the PSC raises penalties above the current statutory limit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The new maximum fines for pipeline safety violations specified in the bill ($257,664 for each day that a violation exists, up to a maximum aggregate penalty of $2,576,627 for a related series of violations) matched the maximum federal fines for such violations at the time the bill was filed. However, as of December 28, 2023, the maximum federal fines increased to $266,015 for each day that a violation exists, up to a maximum aggregate penalty of $2,660,135, for a related series of violations.[30] Thus, if this bill was to pass, the state penalties would still be less than those authorized by federal law. In addition, the federal penalties will likely continue to increase, as the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires federal agencies to adjust, by rule, civil monetary penalties for inflation annually.[31]

[30] 49 C.F.R. s. 190.223.
[31] Sec. 701 of Pub. L. 114-74.

VIII. Statutes Affected:

This bill substantially amends section 368.061 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Yarborough

4-00174-24 2024366__

A bill to be entitled

An act relating to gas safety; amending s. 368.061, F.S.; increasing the maximum penalty per violation to which a person may be subject to for any violations of part I of ch. 368, F.S.; increasing the maximum authorized civil penalty for any related series of violations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 368.061, Florida Statutes, is amended to read:

368.061 Penalty.—

(1) A ~~Any~~ person who violates ~~any provision of~~ this part, or any regulation issued hereunder, is ~~shall be~~ subject to a civil penalty not to exceed $257,664 ~~$25,000~~ for each violation for each day that such violation persists, except that the maximum civil penalty may ~~shall~~ not exceed $2,576,627 ~~$500,000~~ for any related series of violations.

Section 2. This act shall take effect July 1, 2024.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 13, 2023

I respectfully request that **Senate Bill #366**, relating to Gas Safety, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Clay Yarborough

Senator Clay Yarborough
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

Date: November 9, 2023

Agency Affected:	Public Service Commission	
Program Manager:	Lance Watson	Telephone: 413.6125
Agency Contact:	Katherine Pennington	Telephone: 413.6596
Respondent:	Katherine Pennington	Telephone: 413.6596

RE: SB 366

I. SUMMARY:

Senate Bill (SB) 366 increases permissible monetary penalties for any violation of The Gas Safety Law of 1967 (Gas Safety Law) by amending Section 368.061(1), Florida Statutes (F.S.). Each day a violation persists results in a penalty. The maximum possible daily penalty is raised from $25,000 to $257,664. For any related series of violations, the maximum aggregate penalty cap is raised from $500,000 to $2,576,627.

The bill will take effect on July 1, 2024.

II. PRESENT SITUATION:

The Gas Safety Law (Section 368.01-.061, F.S.) was enacted to protect the public welfare by ensuring the safe transmission and distribution of natural gas in the state. The law gives the Public Service Commission (Commission) exclusive jurisdiction over "all persons, corporations, partnerships, associations, public agencies, municipalities, or other legal entities engaged in the operation of gas transmission or distribution facilities with respect to their compliance with the rules and regulations governing safety standards." Section 368.05(1), F.S; *see also* Section 368.021, F.S. (providing more descriptive list of entities subject to Commission jurisdiction); Rule 25-12.004(2)–(3), F.A.C. (establishing comprehensive definition of regulated entities).

The Commission received rulemaking authority pursuant to Sections 368.03 and 368.05(2), F.S., and promulgated rules covering the design, improvement, fabrication, installation, inspection, repair, reporting, testing, and safety standards of gas transmission and gas distribution systems. Those rules are located in Chapter 25-12, Florida Administrative Code.

The U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (PHMSA) implements federal pipeline safety standards for intrastate gas pipelines, hazardous liquid pipelines, and underground natural gas storage. While the Federal government is primarily responsible for developing, issuing, and enforcing the safety regulations, the federal pipeline safety statutes provide for state assumption of the intrastate regulatory, inspection, and enforcement responsibilities under an annual certification with PHMSA. To qualify for certification, a state must adopt the Federal regulations and may adopt additional or more stringent state regulations as long as they are not incompatible with the Federal regulations. A

state must also provide for enforcement sanctions substantially the same as those authorized by the pipeline safety statutes. The Commission has received and maintained certification since 1997 from PHMSA through its annual evaluation of the pipeline safety activities carried out by the Commission. *See* 49 U.S.C. § 60105 (2023).

A state agency that does not satisfy the criteria for certification may enter into an agreement to undertake certain aspects of the pipeline or underground natural gas safety programs for intrastate facilities on behalf of PHMSA. While the state agency under such an agreement will inspect pipeline or underground natural gas storage operators to ascertain compliance with the Federal safety regulations, any probable violation(s) are reported to PHMSA for enforcement action. 49 U.S.C. §§ 60105- 60106.

Currently, any person who violates the Gas Safety Law or any associated agency regulation is subject to a civil penalty not to exceed $25,000 for each day a violation persists. Section 368.061(1), F.S. The total maximum aggregate penalty for any related series of violations shall not exceed $500,000. *Id.* The proceeds from penalties imposed by the Commission are deposited in the general revenue fund of the state.

Florida's monetary penalty scheme, however, is much lower than that established by PHMSA. *Compare id. with* 49 C.F.R. § 190.223(a) (2023). PHMSA's current (effective January 6, 2023) maximum penalty for each pipeline safety violation is $257,664 and the maximum penalty for a related series of pipeline safety violations is $2,576,627.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 require federal agencies to adjust minimum and maximum civil penalty amounts to preserve their deterrent impact. The 2015 Act requires annual adjustments of civil penalty amounts based upon inflation. Annual adjustments are implemented through agency rulemaking proceedings.

This difference between the maximum penalties under Florida Law and PHMSA has been consistently raised by PHMSA as part of its annual evaluation of the pipeline safety program activities carried out by the Commission. As mentioned above, were PHMSA to decide Florida is not satisfactorily enforcing compliance, PHMSA may enter into an agreement with the Commission under 49 U.S.C. § 60106 whereby the Commission would conduct safety inspections and identify violations, but PHMSA would conduct enforcement of violations.

III. EFFECT OF PROPOSED CHANGES:

SB 366 increases permissible monetary penalty thresholds for any violation of the Gas Safety Law or associated agency regulation. The maximum possible daily penalty per violation is increased from $25,000 to $257,664. The maximum aggregate penalty cap for any related string of violations (i.e., a violation that persists for many days) is increased from $500,000 to $2,576,627. The new penalty schedule will take effect July 1, 2024.

The proposed legislation will harmonize state and Federal penalty schemes by mirroring those currently in effect and used by PHMSA, thus mitigating the point of contention with PHMSA

during Florida's re-certification process. *See id.* § 60105(b)(7) (requiring Commission have legal discretion to enforce safety standards by injunctive relief and civil penalties substantially the same as provided under 49 U.S.C. § 60122). PHMSA's maximum penalties, however, can be expected to increase in the future as prescribed by federal law and explained above.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

	(FY 24-25) Amount / FTE	(FY 25-26) Amount / FTE	(FY 26-27) Amount / FTE
A. Revenues			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
B. Expenditures			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

SB 366 does not impact regulatory standards the Commission previously adopted by rule; therefore, the bill will not cause additional compliance costs. However, the bill could increase fiscal impacts on local government-owned entities subject to Commission jurisdiction if the Commission assesses a penalty above the current statutory limit.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

SB 366 does not impact regulatory standards the Commission previously adopted by rule; therefore, the bill will not cause additional compliance costs. However, the bill will increase fiscal impacts if the Commission assesses a penalty above the current statutory limit.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No. The change in law will harmonize conflicting penalty schemes between state law and Federal regulations currently in effect. Maximum monetary penalties will now mirror those of PHMSA, until federal penalties are adjusted as required by federal law.

B. Does the proposed legislation raise significant constitutional concerns under the U.S.

or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

No.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

Commission-regulated utilities and operators may be more likely to contest alleged violations due to the potential for higher penalties.

D. Other:

N/A

VIII. COMMENTS:

Florida assumes intrastate regulatory, inspection, and enforcement responsibility through annual certification with PHMSA. The proposed legislation will mitigate a point of contention with PHMSA during Florida's annual re-certification process due to current monetary sanctions not being substantially similar.

Prepared by: [Carlos M. Marquez II, Esq.]
Date: November 9, 2023

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 Regulated Industries

BILL:	SB 480
INTRODUCER:	Senator DiCeglie
SUBJECT:	Renewable Natural Gas
DATE:	January 9, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 480 amends s. 366.91, F.S., relating to Florida's renewable energy policy, in the following ways:

- The bill allows public utilities to recover, through an appropriate cost-recovery mechanism administered by the Florida Public Service Commission, reasonably incurred costs for certain renewable natural gas (RNG) infrastructure projects.
- The bill specifies limitations and approval requirements for cost recovery for renewable natural gas infrastructure projects.

The bill also provides additional revisions to Florida statutes to encourage the use and development of RNG by:

- Amending s. 373.807, F.S., to require the Department of Environmental Protection, in adopting basin management action plans (BMAPs) for Outstanding Florida Springs, to include identification of water quality improvement projects that can also produce and capture RNG;
- Amending s. 403.067, F.S., to require, when implementing total maximum daily loads for BMAPs, under certain circumstances where a wastewater treatment plan is necessary, to include in that plan any renewable energy opportunities stemming from the production and capture of RNG;
- Amending s. 403.7055, F.S., to add municipalities and RNG in a provision in current law encouraging counties to form multicounty regional solutions to the capture and reuse or sale of methane gas from landfills and wastewater treatment facilities; and
- Amending s. 570.841, F.S., to revise the farm-to-fuel initiative program to provide that the initiative may address the production and capture of RNG.

The bill has an effective date of July 1, 2024.

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]

The PSC monitors the safety and reliability of the electric power grid[4] 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. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

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).[8] 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, Peoples Gas System, 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.[9]

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[1] Section 350.001, F.S.
[2] *See* Florida Public Service Commission, *Florida Public Service Commission Homepage*, available at http://www.psc.state.fl.us (last visited Jan. 5, 2024).
[3] Florida Public Service Commission, *About the PSC*, available at https://www.psc.state.fl.us/about (last visited Jan. 5, 2024).
[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 Public Service Commission, *2022 Facts and Figures of the Florida Utility Industry*, pg. 5, Apr. 2022 available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202022.pdf.
[9] *Id.* 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.

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.[10]

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.[11]

Public Utilities under Chapter 366, Florida Statutes

Pursuant to s. 366.02(8), F.S., "public utility," as used in ch. 366, F.S., means "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state." However, all of the following types of utilities are exempted from this definition:

- Rural electric cooperatives.
- Municipal electric and gas utilities.
- Dependent or independent special natural gas districts.
- Any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers.
- Any entity, selling or arranging for sales of natural gas, that neither owns nor operates natural gas transmission or distribution facilities within the state.
- A person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

Renewable Energy

Section 366.91, F.S., establishes a number of renewable policies for the state. The purpose of these policies, as established in this section, states that it is in the public interest to promote the development of renewable energy resources in this state.[12] Further, the statute is intended to encourage fuel diversification to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[13]

The section defines "renewable energy" as:

> [E]lectrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil

[10] PSC, *2022 Annual Report*, p. 6, (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf) (last visited Jan. 5, 2024).
[11] *Id*.
[12] Section 366.91(1), F.S
[13] *Id*.

fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.[14]

Renewable Natural Gas

Natural gas is a fossil energy source which forms beneath the earth's surface. Natural gas contains many different compounds, the largest of which is methane.[15] Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and hydraulic fracturing, commonly referred to as "fracking." The term renewable natural gas (RNG) refers to biogas that has been upgraded to use in place of fossil fuel natural gas (i.e. conventional natural gas).[16]

Section 366.91, F.S., identifies sources for producing RNG as a potential source of renewable energy.[17] The section specifically defines renewable natural gas as anaerobically generated biogas,[18] landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater. Under the definition, such gas may be used as a transportation fuel or for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production facilities, and organic waste management operations.[19] Raw biogas has a methane content between 45 and 65 percent.[20] Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements. After this process, the nitrogen and oxygen content is reduced and the RNG has a methane content comparable to natural gas and is thus a suitable energy source in applications that require pipeline-quality gas, such as vehicle applications.[21]

[14] Section 366.91(2)(e), F.S.
[15] United States Energy Information Administration, *Natural gas explained*, Dec. 27, 2022, available at https://www.eia.gov/energyexplained/natural-gas/ (last visited Jan. 5, 2024)
[16] Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, available at https://www.epa.gov/lmop/renewable-natural-gas (last visited Jan. 5, 2024).
[17] Section 366.91(2)(e), F.S., defines "renewable energy, in part, as energy produced from biomass. Section 366.91(2)(b), F.S., defines "biomass" in part, as "a power source that is comprised of, but not limited to, combustible residues or gases from…waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas." RNG would be such a combustible gas.
[18] Section 366.91(2)(a) defines "biogas" as a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas.
[19] Environmental Protection Agency, *supra* note 16.
[20] *Id.*
[21] United States Department of Energy, *Renewable Natural Gas Production*, available at https://afdc.energy.gov/fuels/natural_gas_renewable.html (last visited Jan. 5, 2024).

RNG that meets certain standards qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.[22] This program was enacted by Congress in order to reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation's renewable fuels sector.[23]

Nationally, there were 538 landfill gas facilities in operation as of August 2022, and, as of May 2022, 330 anaerobic digester systems operating at commercial livestock farms in the United States.[24] Of the more than 16,000 wastewater treatment plants in operation in the United States, approximately 1,200 have anaerobic digesters on site, and 860 of those have the equipment to use their biogas on site.[25]

FPL Woodford Decision

In *Citizens of State v. Graham*, 191 So. 3d 897 (Fla. 2016), the Florida Supreme Court found that the PSC lacked statutory authority to approve cost recovery for FPL's investment in a natural gas production facility in the Woodford Shale Gas Region in Oklahoma (Woodford Project). The Woodford Project involved exploration and production of natural gas and not the purchase of actual fuel—something that would generally be within the types of activities an electric utility would engage in. The Supreme Court cited to s. 366.02(2), F.S. (2014), which defines an "electric utility" as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state," and found that the Woodford Project activities did not fall within this definition.[26]

However, in making its decision, the Supreme Court noted the following:

> This may be a good idea, but whether advance cost recovery of speculative capital investments in gas exploration and production by an electric utility is in the public interest is a policy determination that must be made by the Legislature. For example, in contrast to natural gas exploration and production, the Legislature has authorized the PSC to approve cost recovery for capital investments in nuclear power plants and energy efficient and renewable energy power sources. See ss. 366.8255; 366.92; 366.93, Fla. Stat. (2014). Without statutory authorization from the Legislature, the recovery of FPL's costs and capital investment in the Woodford Project through the fuel clause is overreach.[27]

Thus, while the Supreme Court determined that the PSC could not approve cost recovery for capital electric utility investments in natural gas production, it indicated that the Legislature has the authority to allow for such if it chose to do so.

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[22] United States Department of Energy, *Renewable Fuel Standard*, available at https://afdc.energy.gov/laws/RFS#:~:text=The%20Renewable%20Fuel%20Standard%20(RFS,Act%20of%202007%20(EISA) (last visited Jan. 5, 2024).
[23] Environmental Protection Agency, *Renewable Fuel Standard Program*, available at https://www.epa.gov/renewable-fuel-standard-program (last visited Jan. 5, 2024).
[24] United States Department of Energy, *supra* note 21.
[25] *Id.*
[26] *Citizens of State v. Graham*, 191 So. 3d 897, 901-2 (Fla. 2016).
[27] *Id.* at 902.

Florida Department of Environmental Protection

The Florida Department of Environmental Protection (DEP) is a state agency created by s. 20.255, F.S., and is the state's lead agency for environmental management and stewardship.[28] The department has nine statutorily created divisions:

- Division of Administrative Services;
- Division of Air Resource Management;
- Division of Water Resource Management;
- Division of Environmental Assessment and Restoration;
- Division of Waste Management;
- Division of Recreation and Parks;
- Division of State Lands;
- Division of Water Restoration Assistance; and
- Division of Law Enforcement.[29]

As part of its responsibilities regarding water resources, the DEP protects and monitors water quality, sets restoration goals for surface waters, and oversees restoration activities. As part of these activities, the DEP:

- Implements state laws regarding the protection of drinking water quality, groundwater, rivers, lakes, estuaries and wetlands; reclamation of mined lands; and state beach and dune preservation;
- Assists local governments and other entities by providing funding for drinking water, stormwater, and wastewater projects; and
- Oversees the state water management districts as they implement water supply and water quality protection programs.[30]

Water Quality and Nutrients

Nutrient pollution and the excessive accumulation of nitrogen and phosphorus in water is one of the most widespread, costly, and challenging environmental problems.[31] In Florida, 35 percent of waterbodies are impaired for nutrients, and 87 percent of counties have nutrient-impaired waters within their boundaries.[32]

The nutrients nitrogen and phosphorus are a natural part of aquatic ecosystems.[33] They support the growth of algae and aquatic plants, which provide food and habitat for fish, shellfish, and smaller organisms that live in water. However, the presence of too much nitrogen and phosphorus can cause algae to grow faster than ecosystems can handle. These algal blooms can harm water quality, food resources, and habitats, and decrease the oxygen that fish and other

[28] Florida Department of Environmental Protection, *Homepage*, https://floridadep.gov/ (last visited Jan. 5, 2024).
[29] Section 20.255(3)(a), F.S.
[30] Florida Department of Environmental Protection, *Water Topics*, https://floridadep.gov/water-topics (last visited Jan. 5, 2024).
[31] U.S. Environmental Protection Agency, *Basic Information on Nutrient Pollution*, https://www.epa.gov/nutrientpollution/problem (last visited Jan. 5, 2024).
[32] Florida Department of Environmental Protection, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting*, 2 (2023), (on file with the Senate Committee on Environment and Natural Resources).
[33] U.S. Environmental Protection Agency, *Nutrient Pollution: The Problem*, *supra* note 31.

aquatic life need to survive. Algal blooms can also be harmful to humans because they produce elevated toxins and bacterial growth that can make people sick if they come into contact with polluted water, consume tainted fish or shellfish, or drink contaminated water.[34] Nutrient pollution in ground water—used by millions of people in the United States as their drinking water source—can be harmful even at low levels.[35] Infants are especially vulnerable to a nitrogen-based compound called nitrates in drinking water.[36]

One of the primary sources of excess nitrogen and phosphorus is stormwater runoff.[37] This runoff typically traverses impervious surfaces, such as concrete and asphalt, flowing directly into waterbodies or storm drains without the benefit of natural filtration through soil and vegetation or processing by a water treatment facility.[38] Human activities frequently exacerbate the problem by introducing nitrogen and phosphorus pollutants derived from fertilizers, yard and pet waste, and certain soaps and detergents.[39]

Impaired Waters

Under section 303(d) of the federal Clean Water Act, states must establish water quality standards for waters within their borders and develop a list of impaired waters that do not meet the established water quality standards.[40] States must also develop a list of threatened waters that may not meet water quality standards in the following reporting cycle.[41]

Due to limited funds and the wide variety of surface waters in Florida, the DEP sorted those waters into 29 major watersheds, or basins, and further organized them into five basin groups for assessment purposes.[42] If the DEP determines that any waters are impaired, the waterbody must be placed on the verified list of impaired waters and a total maximum daily load (TMDL) must be calculated.[43] A TMDL is a calculation of the maximum amount of a pollutant that a

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[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] U.S. Environmental Protection Agency, *Nutrient Pollution: Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Jan. 5, 2024). Other sources of excess nitrogen and phosphorus include agriculture, wastewater, fossil fuels, and fertilizers.
[38] U.S. Environmental Protection Agency, *Nutrient Pollution: Sources and Solutions: Stormwater*, https://www.epa.gov/nutrientpollution/sources-and-solutions-stormwater (last visited Jan. 5, 2024).
[39] *Id.*
[40] U.S. Environmental Protection Agency, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA*, https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa (last visited Jan. 5, 2024); 40 C.F.R. 130.7. Following the development of the list of impaired waters, states must develop a total maximum daily load for every pollutant/waterbody combination on the list. A total maximum daily load is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards. Florida Department of Environmental Protection, *Watershed Evaluation and Total Maximum Daily Loads (TMDL) Section*, https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Jan. 5, 2024).
[41] *Id.*
[42] Florida Department of Environmental Protection, *Assessment Lists*, https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists (last visited Jan. 5, 2024).
[43] *Id.*; Florida Department of Environmental Protection, *Verified List Waterbody Ids (WBIDs)*, https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about (last visited Jan. 5, 2024); s. 403.067(4), F.S.

waterbody can receive and still meet water quality standards.[44] A waterbody may be removed from the verified list at any time during the TMDL process if it attains water quality standards.[45] If the DEP determines that a waterbody is impaired but further study is needed to determine the causative pollutants or other factors contributing to impairment before the waterbody is placed on the verified list, the waterbody will be placed on a statewide comprehensive study list.[46]

Basin Management Action Plans

Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,[47] for a watershed. There are currently 34 adopted BMAPs in Florida.[48]

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by implementing appropriate best management practices (BMPs) or conducting water quality monitoring.[49] A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district for failure to implement these requirements.[50]

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.[51] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations.[52]

BMAPs must include five-year milestones for implementation and water quality improvement and an associated water quality monitoring component to evaluate the progress of pollutant load reductions.[53] Every five years an assessment of progress toward these milestones must be conducted and revisions to the plan made as appropriate.[54]

Each BMAP must also include:
The management strategies available through existing water quality protection programs to achieve TMDLs;

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[44] Section 403.067(6)(a), F.S. *See also* 33 U.S.C. § 1251, s. 303(d) (the Clean Water Act).
[45] Section 403.067(5), F.S.
[46] Section 403.067(2), F.S.; Fla. Admin. Code R. 62-303.150.
[47] "Point source" is defined as any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are sources of pollution that are not point sources. Fla. Admin. Code R. 62-620.200(37).
[48] Florida Department of Environmental Protection, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Jan. 5, 2024).
[49] Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[50] Section 403.067(7)(b)2.h., F.S.
[51] *Id.*
[52] *Id.*
[53] Section 403.067(7)(a)6., F.S.
[54] *Id.*

A description of BMPs adopted by rule;
For the applicable five-year implementation milestones, a list of projects that will achieve the pollutant load reductions needed to meet a TMDL or other established load allocations, including a planning-level cost estimate and an estimated date of completion;
A list of regional nutrient reduction projects submitted by the Department of Agriculture and Consumer Services which will achieve pollutant load reductions established for agricultural nonpoint sources;[55]
The source and amount of financial assistance to be made available; and
A planning-level estimate of each project's expected load reduction, if applicable.[56]

Outstanding Florida Springs

In 2016, the Florida Legislature enacted the Florida Springs and Aquifer Protection Act (the act) and identified 30 Outstanding Florida Springs (OFSs) that require additional protections to ensure their conservation and restoration for future generations.[57] These springs are a unique part of the state's scenic beauty, provide critical habitat, and have immeasurable natural, recreational, and economic value.[58] The act requires the DEP to assess the water quality in the OFSs. Based on these assessments, the DEP determined that 24 of these springs are impaired.[59] For these impaired springs, the DEP must adopt (or re-adopt) a BMAP to implement all the protections of the act, including:

- Prioritized lists of restoration projects along with planning level estimates for cost, schedule, and nutrient load reduction;
- Phased milestones (five-year, 10-year, and 15-year) to achieve water quality restoration targets in 20 years;
- Estimated nutrient pollutant loads, allocated to each source or category of sources;
- Completed remediation plans for OSTDSs where septic loading accounts for at least 20 percent of the estimated nutrient input;[60] and
- Prohibited certain activities within the BMAP. [61]

The activities prohibited within a springs BMAP include:

- New domestic wastewater disposal facilities with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, on an annual permitted basis, or a more stringent treatment standard if necessary to attain a TMDL;

[55] This is required only where agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges or the DEP determines that additional measures are necessary to achieve a TMDL. Section 403.067(7)(e)1., F.S.
[56] Section 403.067(7)(a)4., F.S.
[57] Florida Department of Environmental Protection, *Springs*, https://floridadep.gov/springs/ (last visited Jan. 5, 2024). OFSs include all historic first magnitude springs and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. Section 373.802(4), F.S.
[58] Florida Department of Environmental Protection, *Protect and Restore Springs*, https://floridadep.gov/springs/protect-restore (last visited Jan. 5, 2024).
[59] *Id*.
[60] Although OSTDS remediation plans were first only required for springs, in 2020, the requirement was expanded to BMAPs statewide as part of the Clean Waterways Act. *See* ch. 2016-1, s. 27 and 2020-150, s. 13, Laws of Fla. Notably, OSTDS remediation plans for springs are only required within the priority focus areas, whereas the laws governing BMAPs require OSTDS remediation plans more generally within the entire BMAP.
[61] Florida Department of Environmental Protection, *Protect and Restore Springs*, *supra* note 58; prohibitions within the "priority focus area" for the spring was broadened in 2023 to include the entire BMAP. Ch, 2023-169, Laws of Fla.

- New OSTDSs on lots of less than one acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP;
- New facilities for the disposal of hazardous waste;
- The land application of Class A or Class B domestic wastewater biosolids not in accordance with a DEP-approved nutrient management plan; and
- New agriculture operations that do not implement BMPs, measures necessary to achieve pollution reduction levels established by the DEP, or groundwater monitoring plans.[62]

There have been recent legal challenges to the DEP's development of BMAPs for OFSs. In *Sierra Club v. Department of Environmental Protection,* the court held that the DEP failed to comply with ss. 403.067(6)(b) and 373.801(1)(b), F.S., in creating the BMAPs because the BMAPs failed to include an identification of each *specific* point source or category of nonpoint sources and an estimated allocation of the pollutant for each point source or category of nonpoint sources.[63] Instead, the BMAPs included pie charts that only showed current estimated nitrogen loading in the various springsheds by source and allocations to entire basins, not to any point or nonpoint source.[64]

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACS) is a state agency created by s. 20.14, F.S., and is headed by an elected Commissioner of Agriculture—who is also designated by the Florida Constitution as one of the three members of the Florida cabinet.[65] The DACS's responsibilities are wide-ranging, however, in general, they are to:

- Support and promote Florida agriculture;
- Protect the environment;
- Safeguard consumers; and
- Ensure the safety and wholesomeness of food.[66]

Florida Farm-to-Fuel Initiative

Section 570.841, F.S., was created in 2006 to enhance the market for and promote the production and distribution of, renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. Additionally, the initiative seeks to enhance the value of agricultural products or expand agribusiness in the state through such production and distribution. The initiative authorizes the DACS to conduct a statewide comprehensive information and education program aimed at educating the general public about the benefits of renewable energy and the use of alternative fuels.

Biogas in Florida

According to the American Biogas Council, Florida has 70 operational biogas systems:

[62] Section 373.811, F.S.
[63] *Sierra Club v. DEP*, 357 So. 3d 737, (Fla. 1st DCA 2023).
[64] *Id.* at *5.
[65] FLA. CONST. art. IV, s. 4.
[66] Florida Department of Agriculture and Consumer Services, *About Us*, https://www.fdacs.gov/About-Us (last visited Jan. 5, 2023).

- 40 wastewater systems;
- 21 landfills;
- Five food waste; and
- Four manure processing locations.[67]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 366.91, F.S., regarding renewable energy policy in Florida.

The bill creates s. 366.091(10), F.S., which allows public utilities to recover, through an appropriate cost-recovery mechanism administered by the PSC, incurred costs for RNG fuel projects located in Florida. Such costs must be reasonable and facilitate the goals of s. 366.091(1), F.S. Under the bill, RNG may include mixtures of natural gas and RNG. Eligible projects include, but are not limited to:

- Capital investment in projects necessary to prepare, clean, or otherwise produce RNG and for pipeline distribution and usage;
- Capital investment in facilities, including pipelines that are necessary to inject and deliver RNG throughout this state;
- RNG storage facilities;
- Operation and maintenance expenses associated with any such RNG infrastructure projects; and
- An appropriate return on investment consistent with that allowed for other utility plants used to provide service to customers.

Once the PSC determines that project costs were reasonable and facilitate the goals stated in s. 366.091(1), F.S., the PSC must deem the project and associated costs prudent for purposes of cost recovery and may not further subject the project to disallowance except for fraud, perjury, or intentional withholding of key information by the public utility.

Cost recovery for an RNG project must be approved by the PSC. In making its determination, the PSC must consider whether the projected costs for the project are reasonable and consistent with the provisions of proposed s. 366.091(10), F.S. Such recovery may not begin until the project is placed into service; however, upon approval by the PSC, costs incurred before the facility is placed into service may be deferred on the public utility's books for recovery once the facility is in service. This prohibition does not preclude the application of any other regulatory accounting rules that are otherwise deemed appropriate (such as normal recovery costs for construction work in progress).

Section 2 amends s. 373.807, F.S., to require that the DEP, in adopting BMAPs for OFSs must include identification of water quality improvement projects that can also produce and capture RNG through the use of anaerobic digestion (or other similar treatment technologies) at wastewater treatment plants, livestock farms, food production facilities, and organic waste management operations.

[67] American Biogas Council at https://americanbiogascouncil.org/resources/state-profiles/florida/ (last visited Jan. 7, 2024).

Section 3 amends s. 403.067, F.S., regarding the implementation of TMDLs for an impaired waterbody as part of a BMAP. Under current law, if the DEP identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as the contributors of at least 20 percent of point source or nonpoint source nutrient pollution, or if the DEP determines remediation is necessary to achieve the TMDL, a BMAP for a nutrient total maximum daily load must include a wastewater treatment plan developed by each local government which addresses domestic wastewater. This plan must be done in cooperation with the DEP, the water management district for that area, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government. The bill adds to the requirements for such plans a requirement that the plans include any renewable energy opportunities stemming from the production and capture of RNG.

Section 4 amends s. 403.7055, F.S., which currently encourages counties to form, with the support of the DEP, multicounty regional solutions to the capture and reuse or sale of methane gas from landfills and wastewater treatment facilities. The bill expands this provision to apply to municipalities, to include RNG as well as methane, and the processing of both methane and RNG. The bill also makes technical changes to implement these revisions.

Section 5 amends s. 570.841, F.S., to revise the farm-to-fuel initiative program to provide that the initiative may address the production and capture of RNG through the use of digesters and other treatment technologies at livestock farms, food production facilities, and other operations that address agricultural waste management. The bill also expands the DACS's informational and educational program regarding the farm-to-fuel initiative program to allow it to include agricultural producers and the production of alternative fuels.

Sections 6 and 7 reenact ss. 403.0671 and 403.0673, F.S., relating to relating to basin management action plan wastewater reports and the water quality improvement grant program, respectively, to incorporate changes made by the bill.

Section 8 provides an effective date of July 1, 2024.

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:

Under, public utilities will likely expand their use and sale of RNG.

C. Government Sector Impact:

The bill expands the responsibilities of the DEP, the DACS, and the PSC. The PSC has advised that it estimates that the expected increased workload can be handled by existing staff, and thus would not have a substantive fiscal impact. The DEP and the DACS have not yet issued analysis of this bill, so it is unknown at this time the extent to which the bill would impact those agencies' operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its analysis of the bill, the PSC raised a concern that the bill requires, once the PSC determines that a projected cost is reasonable and meets the objectives of s. 366.091(1), F.S., that it must deem the project and associated costs prudent. Their analysis states that this appears to remove the PSC's "ability to ensure that the costs were prudently incurred by the utility when actually working on the project that was initially considered eligible for cost recovery."[68] This is a departure from PSC practice when assessing the prudence of incurred costs. In addition, the PSC states that the bill "would not allow substantially affected parties due process, as has been traditionally afforded, in the rate setting process for actual utility costs in a cost recovery clause mechanism."[69]

With regard to the cost recovery clause mechanisms, the PSC also raised a concern that the bill does not grant authority to the PSC to establish rules to administer the cost recovery mechanism contemplated by the bill.[70]

[68] Florida Public Service Commission, *Bill Analysis for SB 480*, Dec. 20, 2023 (on file with the Senate Regulated Industries Committee).
[69] *Id*.
[70] *Id*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.91, 373.807, 403.067, 403.7055, and 570.841.

The bill reenacts the following sections of the Florida Statutes: 403.0671 and 403.0673.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator DiCeglie

18-00388A-24 2024480__

A bill to be entitled

An act relating to renewable natural gas; amending s. 366.91, F.S.; authorizing a public utility to recover prudently incurred renewable natural gas infrastructure project costs through an appropriate Florida Public Service Commission cost-recovery mechanism; providing that such costs are not subject to further actions except under certain circumstances; specifying eligible renewable natural gas infrastructure projects; requiring that cost recovery for such projects be approved by the commission; providing requirements for the approval determination; prohibiting cost recovery until a facility is placed in service; providing that certain other regulatory accounting rules may apply to such cost recovery; amending s. 373.807, F.S.; revising the required contents of a basin management action plan for an Outstanding Florida Spring to include identification of certain water quality improvement projects; amending s. 403.067, F.S.; revising the required contents of a wastewater treatment plan within a basin management action plan; amending s. 403.7055, F.S.; encouraging counties and municipalities to develop regional solutions to certain energy issues; requiring the Department of Environmental Protection to provide guidelines and technical assistance to such counties and municipalities; amending s. 570.841, F.S.; authorizing the farm-to-fuel initiative to address the production and capture of renewable natural gas;

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revising the purposes of the department's statewide comprehensive information and education program; reenacting ss. 403.0671(1)(a) and (3) and 403.0673(2)(e) and (f), F.S., relating to basin management action plan wastewater reports and the water quality improvement grant program, to incorporate the amendment made to s. 403.067, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (10) is added to section 366.91, Florida Statutes, to read:

366.91 Renewable energy.—

(10) A public utility may recover, through an appropriate cost-recovery mechanism administered by the commission, prudently incurred costs for renewable natural gas infrastructure projects. If the commission determines that such costs were reasonable and that the project will facilitate achieving the goals of subsection (1), the commission must deem the project and associated costs prudent for purposes of cost recovery and may not further subject the project to disallowance except for fraud, perjury, or intentional withholding of key information by the public utility. For purposes of utility cost recovery under this subsection only, the term "renewable natural gas" may include a mixture of natural gas and renewable natural gas. Eligible renewable natural gas projects must be located within this state. Types of costs eligible for cost recovery include, but are not limited to, capital investment in projects

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necessary to prepare, clean, or otherwise produce renewable natural gas for pipeline distribution and usage; capital investment in facilities, including pipelines that are necessary to inject and deliver renewable natural gas and renewable natural gas storage facilities; operation and maintenance expenses associated with any such renewable natural gas infrastructure projects; and an appropriate return on investment consistent with that allowed for other utility plants that provide service to customers. Cost recovery for any renewable natural gas infrastructure project sought pursuant to this subsection must be approved by the commission.

(a) In assessing whether cost recovery for a renewable natural gas infrastructure project is appropriate, the commission must consider whether the projected costs for such renewable natural gas infrastructure project are reasonable and consistent with this subsection.

(b) Recovery of costs incurred by a public utility for a renewable natural gas project approved for cost recovery under this subsection may not be allowed until such facility is placed in service. Upon approval of cost recovery by the commission, costs incurred before the facility is placed in service may be deferred on the public utility's books for recovery once the facility is in service. This does not preclude application of any other regulatory accounting rules that are otherwise deemed appropriate, including, but not limited to, normal recovery of costs for construction work in progress.

Section 2. Paragraph (b) of subsection (1) and subsection (3) of section 373.807, Florida Statutes, are amended to read:

373.807 Protection of water quality in Outstanding Florida

Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(1)

(b) A basin management action plan for an Outstanding Florida Spring must ~~shall~~ be adopted within 2 years after its initiation and must include, at a minimum:

1. A list of all specific projects and programs identified to implement a nutrient total maximum daily load;

2. A list of all specific projects identified in any incorporated onsite sewage treatment and disposal system remediation plan, if applicable;

3. A priority rank for each listed project;

4. For each listed project, a planning level cost estimate and the estimated date of completion;

5. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project;

6. An estimate of each listed project's nutrient load reduction;

7. Identification of each point source or category of nonpoint sources, including, but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources; ~~and~~

8. Identification of water quality improvement projects that can also produce and capture renewable natural gas through the use of anaerobic digestion or other similar treatment technologies at wastewater treatment plants, livestock farms, food production facilities, and organic waste management operations; and

9. An implementation plan designed with a target to achieve the nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan.

The department shall develop a schedule establishing 5-year, 10-year, and 15-year targets for achieving the nutrient total maximum daily load. The schedule shall be used to provide guidance for planning and funding purposes and is exempt from chapter 120.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a basin management action plan contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan must identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by

subparagraph (1)(b)9. ~~subparagraph (1)(b)8.~~ The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and

(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.

In addition to the requirements in s. 403.067, the plan must include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a basin management action plan that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial

contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

Section 3. Paragraph (a) of subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a waterbody, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the waterbody. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable

extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least 5 days, but not more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan must include all of the following:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151.

b. A description of best management practices adopted by rule.

c. For the applicable 5-year implementation milestone, a list of projects that will achieve the pollutant load reductions needed to meet the total maximum daily load or the load allocations established pursuant to subsection (6). Each project must include a planning-level cost estimate and an estimated date of completion.

d. A list of projects developed pursuant to paragraph (e), if applicable.

e. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable.

f. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement this section.

6. The basin management action plan must include 5-year milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must ~~shall~~ be conducted every 5 years, and revisions to the plan must ~~shall~~ be made as appropriate. Any entity with a specific pollutant load reduction requirement established in a basin management action plan shall identify the projects or strategies that such entity will undertake to meet current 5-year pollution reduction milestones, beginning with the first 5-year milestone for new basin management action plans, and submit such projects to the department for inclusion in the appropriate basin management action plan. Each project identified must include an estimated amount of nutrient reduction that is reasonably expected to be achieved based on the best scientific information available. Revisions to the basin management action plan must ~~shall~~ be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other

pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The department's rule relating to the equitable abatement of pollutants into surface waters does ~~do~~ not apply to water bodies or waterbody segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local

government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, which ~~that~~ addresses domestic wastewater. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; any renewable energy opportunities stemming from the production and capture of renewable natural gas; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated

through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment

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and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 373.807.

10. The installation of new onsite sewage treatment and disposal systems constructed within a basin management action plan area adopted under this section, a reasonable assurance plan, or a pollution reduction plan is prohibited where connection to a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2)(a). On lots of 1 acre or less within a basin management action plan adopted under this section, a reasonable assurance plan, or a pollution reduction plan where a publicly owned or investor-owned sewerage system is not available, the installation of enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater treatment systems that achieve at least 65 percent nitrogen reduction is required.

11. When identifying wastewater projects in a basin management action plan, the department may not require the higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load and meets or exceeds the pollution reduction requirement of the original project.

12. Annually, local governments subject to a basin management action plan or located within the basin of a waterbody not attaining nutrient or nutrient-related standards must provide to the department an update on the status of construction of sanitary sewers to serve such areas, in a manner

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prescribed by the department.

Section 4. Section 403.7055, Florida Statutes, is amended to read:

403.7055 Methane and renewable natural gas processing and capture.—

(1) Each county and municipality is encouraged to develop ~~form multicounty~~ regional solutions to the processing, capture, and reuse or sale of methane gas and renewable natural gas as defined in s. 366.91(2) from landfills and wastewater treatment facilities.

(2) The department shall provide planning guidelines and technical assistance to each county and municipality to develop and implement such regional ~~multicounty~~ efforts.

Section 5. Section 570.841, Florida Statutes, is amended to read:

570.841 Farm-to-fuel initiative.—

(1) The department may develop a farm-to-fuel initiative to enhance the market for and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass and to enhance the value of agricultural products or expand agribusiness in this ~~the~~ state. The initiative may address the production and capture of renewable natural gas through the use of digesters and other treatment technologies at livestock farms, food production facilities, and other agricultural waste management operations.

(2) The department may conduct a statewide comprehensive information and education program aimed at educating the general public and agricultural producers about the benefits of

renewable energy and the use and production of alternative fuels.

Section 6. For the purpose of incorporating the amendment made by this act to section 403.067, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsection (3) of section 403.0671, Florida Statutes, are reenacted to read:

403.0671 Basin management action plan wastewater reports.—

(1) By July 1, 2021, the department, in coordination with the county health departments, wastewater treatment facilities, and other governmental entities, shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the costs of wastewater projects identified in the basin management action plans developed pursuant to ss. 373.807 and 403.067(7) and the onsite sewage treatment and disposal system remediation plans and other restoration plans developed to meet the total maximum daily loads required under s. 403.067. The report must include:

(a) Projects to:

1. Replace onsite sewage treatment and disposal systems with enhanced nutrient-reducing onsite sewage treatment and disposal systems.

2. Install or retrofit onsite sewage treatment and disposal systems with enhanced nutrient-reducing technologies.

3. Construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan required under s. 403.067(7)(a)9.

4. Connect onsite sewage treatment and disposal systems to domestic wastewater treatment facilities;

(3) Beginning January 1, 2022, and each January 1 thereafter, the department shall submit to the Office of Economic and Demographic Research the cost estimates for projects required in s. 403.067(7)(a)9. The office shall include the project cost estimates in its annual assessment conducted pursuant to s. 403.928.

Section 7. For the purpose of incorporating the amendment made by this act to section 403.067, Florida Statutes, in references thereto, paragraphs (e) and (f) of subsection (2) of section 403.0673, Florida Statutes, are reenacted to read:

403.0673 Water quality improvement grant program.—A grant program is established within the Department of Environmental Protection to address wastewater, stormwater, and agricultural sources of nutrient loading to surface water or groundwater.

(2) The department may provide grants for all of the following types of projects that reduce the amount of nutrients entering those waterbodies identified in subsection (1):

(e) Projects identified pursuant to s. 403.067(7)(a) or (e).

(f) Projects identified in a wastewater treatment plan or an onsite sewage treatment and disposal system remediation plan developed pursuant to s. 403.067(7)(a)9.a. and b.

Section 8. This act shall take effect July 1, 2024.

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THE FLORIDA SENATE
SENATOR NICK DICEGLIE
District 18

Kathleen Passidomo
President of the Senate

Dennis Baxley
President Pro Tempore

December 21, 2023

Dear Chair Gruters,

I respectfully request that **SB 480 – Renewable Natural Gas** be placed on the agenda of the Regulated Industries Committee at your earliest convenience.
If my office can be of any assistance to the committee please do not hesitate to contact me at DiCeglie.Nick@flsenate.gov or (850) 487-5018. Thank you for your consideration.

Sincerely,

Nick DiCeglie

State Senator, District 18

CC: Staff Director: Booter Imhof
Administrative Assistant: Susan Datres

Proudly Serving Pinellas County

Transportation Committee, Chair ~ Banking and Insurance Committee, Vice Chair ~
Fiscal Policy Committee ~ Judiciary Committee ~
Rules Committee ~ Joint Legislative Auditing Committee

Date: December 20, 2023

Agency Affected:	Public Service Commission	
Program Manager:	Lance Watson	Telephone: 413.6125
Agency Contact:	Katherine Pennington	Telephone: 413.6596
Respondent:	Katherine Pennington	Telephone: 413.6596

RE: SB 480

I. SUMMARY:

SB 480 creates Section 366.91(10), Florida Statutes (F.S.), to allow public utilities to recover prudently incurred costs for renewable natural gas infrastructure projects. New criteria is established for the eligibility of such projects for cost recovery. Subsection (10) states that a public utility may recover, through the appropriate cost-recovery mechanism administered by the Florida Public Service Commission (Commission), prudently incurred costs for renewable natural gas infrastructure projects. This bill takes effect July 1, 2024.

II. PRESENT SITUATION:

Section 366.02(8), F.S., defines a public utility as an entity that supplies electricity or natural gas to the public. The term excludes rural electric cooperatives, municipal electric or natural gas utilities, and natural gas districts. Public utilities are often referred to as investor-owned utilities in recognition of the ownership of the entity by equity shareholders.

Section 366.91(1), F.S., establishes that it is in the public interest to promote the development of renewable energy resources to help diversify fuel types for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

Section 366.91(2)(e), F.S., defines renewable energy as electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

Section 366.91(2)(f), F.S., defines renewable natural gas as anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline.

Section 366.91(9), F.S., currently allows the Commission to approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but which are otherwise deemed reasonable and prudent by the Commission.

Current rate setting mechanisms include base rates, cost recovery clauses, and limited surcharges to recover specific costs. Base rates allow a utility to recover capital investment in facilities, and operating and maintenance expenses used to provide service to customers, along with the opportunity to earn a fair rate of return on its capital investment. Base rates are set during a general rate case, which is a large evidentiary proceeding where the utility's rate base is investigated and a revenue requirement is established. Base rates are then set to recover that revenue requirement, and will remain fixed until the next rate case.

Cost recovery clauses are mechanisms by which electric and gas investor-owned utilities may petition the Commission for recovery of specified costs not otherwise recovered in base rates. Historically, cost recovery clauses allow utilities to recover volatile costs that are not easily controlled by the utility, such as the cost of complying with new environmental regulations or fuel costs that rise and fall with the market. These costs are recovered through separate rates that are adjusted by the Commission annually.

The cost recovery clauses now available to investor-owned utilities in Florida include Fuel and Purchased Power, Capacity, Environmental, Energy and Natural Gas Conservation, the Purchased Gas Adjustment, Nuclear Cost Recovery, and the Storm Protection Plan Cost Recovery Clause. Specific parameters for the environmental, energy conservation, nuclear, and storm protection plan cost recovery clauses are established by statute.

The Commission has also exercised its ratemaking authority to establish surcharges to recover utility costs over a limited period or for a limited purpose. Examples include electric utility storm restoration costs and natural gas utility accelerated infrastructure replacement program costs.

To date, the treatment of Renewable Natural Gas (RNG) projects has been decided on a case by case basis. In the recent Peoples Gas System rate case (Docket No. 20230023), through stipulation with parties two approaches were taken with proposed RNG projects. The New River and Brightmark RNG projects were approved for inclusion in rate base under Commission jurisdiction. However, costs related to the Alliance Dairies RNG project will be recovered on a below-the-line basis, by an unregulated affiliate not under the Commission's jurisdiction.

III. EFFECT OF PROPOSED CHANGES:

The bill creates Section 366.91(10), F.S., which states that a public utility may recover, through an appropriate cost-recovery mechanism administered by the Commission, prudently incurred costs for renewable natural gas infrastructure projects. This bill will apply to the four investor-owned electric utilities, as well as seven natural gas local distribution companies.

Eligible infrastructure projects include, but are not limited to, capital investment in projects

necessary to prepare or produce renewable natural gas; capital investment in facilities, such as fuel storage; operation and maintenance expenses associated with any such renewable natural gas infrastructure projects; and an appropriate return on investment consistent with that allowed for other utility plants used to provide service to customers. The bill states that eligibility for cost recovery under this bill only applies to projects located in Florida, and that cost recovery may not be allowed until the facilities are placed in service.

This bill states that for the purposes of cost recovery for infrastructure projects, renewable natural gas may include a mixture of natural gas and renewable natural gas. The bill does not provide a ratio of renewable natural gas to regular natural gas in the fuel mixture in order for an infrastructure project to be eligible. As a result, it appears that any injection of renewable natural gas, no matter how small, would make an infrastructure project eligible under the bill.

It is unclear what the bill intends as an appropriate cost-recovery mechanism. Currently, costs for fuel infrastructure used in the generation of electricity or in the distribution of natural gas are recovered in base rates. An alternative option for cost-recovery would be through a new or existing clause. Cost recovery clauses for gas utilities include the Purchased Gas Adjustment (PGA) and the Natural Gas Conservation Cost Recovery Clause (NGCCR). The PGA is intended to compensate for day-to-day fluctuations in the cost of gas; however, it does not account for costs related to infrastructure. The NGCCR is intended for the recovery of costs associated with conservation programs for natural gas local distribution companies. As such, these two existing clauses may not be compatible with the type of capital cost recovery addressed in the bill. Therefore, the Commission may need to establish a new cost recovery clause or other surcharge mechanism to implement the bill; however, the bill does not provide the Commission with authority to establish rules to administer a cost recovery mechanism for the intended purpose of the bill.

Section 1 of this bill is the only section anticipated to affect the Commission's jurisdiction. The bill takes effect on July 1, 2024.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

Incremental workload on the Commission will be dependent upon utility decisions to seek cost recovery of contracts and infrastructure projects. It is estimated that expected workload can be handled by existing staff.

	(FY 24-25) Amount / FTE	(FY 25-26) Amount / FTE	(FY 26-27) Amount / FTE
A. Revenues			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
B. Expenditures			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring			

$0/0 FTE	$0/0 FTE	$0/0 FTE

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

None known at this time.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

None known at this time.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

None known at this time.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

None known at this time.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

The Office of Public Counsel, customers, or substantially affected parties may participate in a Commission rulemaking proceeding to implement the legislation and in the Commission's cost recovery mechanism to review utility costs to be charged to customers.

D. Other:

VIII. COMMENTS:

The bill appears to require a two-step process for cost recovery: first a consideration of whether a project is eligible for cost recovery and then approval for cost recovery once the project is "placed in service." This is a similar approach to the existing Environmental Cost Recovery Clause, which is designed to allow recovery of cost to comply with new environmental regulations.

Under the proposed Section 366.91(10)(a), F.S., the bill states that in assessing whether cost recovery for a project is appropriate (i.e., the project is eligible), the Commission must consider

whether the projected costs are reasonable. This is normal Commission practice when addressing projected costs for a cost recovery clause. However, in the first paragraph of subsection (10), the bill states that if the Commission determines that costs for a project are reasonable, it "must" deem the project and associated costs prudent. This is departure from Commission practice when assessing the prudence of incurred costs.

When evaluating projected costs, the Commission determines whether those projections are reasonable. When evaluating actual incurred costs, looking back to the same period or project that was previously projected, the Commission then determines whether those actual costs were prudently incurred. This involves an evaluation of utility management decisions when incurring those costs. Prudence is generally defined as whether a reasonable utility manager would make a similar decision, given the information that was known or should have been known at the time. If costs are deemed to be imprudently incurred, they will be disallowed for inclusion in rates.

When the bill states "If the commission determines that such costs were reasonable and that the project will facilitate achieving the goals of subsection (1), the commission must deem the project and associated costs prudent," it appears to remove the Commission's ability to ensure that the costs were prudently incurred by the utility when actually working on the project that was initially considered eligible for cost recovery. This provision also would not allow substantially affected parties due process, as has been traditionally afforded, in the rate setting process for actual utility costs in a cost recovery clause mechanism. Also, the bill does not provide the Commission with authority to establish rules to administer the cost recovery mechanism contemplated by the legislation.

The final sentence of the first paragraph of Subsection (10) states that, "Cost recovery for any renewable natural gas infrastructure project sought pursuant to this subsection must be approved by the commission." This sentence conflicts with earlier provisions of Subsection (10) that provide the Commission with authority to determine the costs that are appropriate for recovery from customers. This sentence appears to bind the Commission to allow cost recovery for any eligible project that is proposed.

When defining the types of costs eligible for cost recovery, the bill includes facilities for the production of renewable natural gas. The Supreme Court of Florida has previously decided that the production of natural gas was not part of the generation, transmission, or distribution of electricity, for which an investor-owned utility is allowed cost recovery. The bill appears to depart from that decision by allowing an investor-owned electric utility to recover costs related to the production of renewable natural gas.

Prepared by: Daniel Temprano, Jacob Imig
Date: December 20, 2023

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 Regulated Industries

BILL:	SB 496
INTRODUCER:	Senator Perry
SUBJECT:	Low-voltage Alarm System Projects
DATE:	January 9, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 496 revises s. 553.793, F.S., concerning streamlined low-voltage alarm system installation permitting. The bill provides that a nonelectric fence or wall must completely enclose the outside perimeter of a low-voltage electric fence. Current law provides that a nonelectric fence or wall must completely enclose a low-voltage electric fence, but it is unclear whether the enclosing nonelectric fence or wall must be located on each side of the low-voltage electric fence, or solely on the outside perimeter.

The bill specifies that an area that is within more than one zoning category is not considered to be zoned exclusively for single-family or multifamily residential use. Under the bill, low-voltage electric fences will be allowed in areas within multiple zoning categories. Current law prohibits installation of a low-voltage electric fence in an area zoned exclusively for single-family or multifamily use.

The bill clarifies that additional requirements for the installation or maintenance of low-voltage alarm system projects, beyond those set out in s. 553.793, F.S., may not be adopted or maintained by local governments. Under current law, local governments are prohibited from adopting or maintaining low-voltage alarm system project ordinances or rules that are inconsistent with s. 553.793, F.S.

The bill takes effect July 1, 2024.

II. Present Situation:

Under current law, when a low-voltage electric fence meets the specified requirements for a low-voltage alarm system project,[1] no further permit may be required for the project.[2]

A low-voltage electric fence is composed of an alarm system, as defined in s. 489.505, F.S.,[3] that operates in conjunction with a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.[4]

Section 553.793(3), F.S., specifies that a low-voltage electric fence meeting all of the following requirements must be permitted as a low-voltage alarm system project, and no further permit may be required. A low-voltage electric fence:

- Must produce an electric charge upon contact that may not exceed certain energizer characteristics that are set forth in International Electrotechnical Commission Standard No. 60335-2-76;[5]
- Must be completely enclosed by a nonelectric fence or wall;
- May be up to two feet higher than the perimeter nonelectric fence or wall;
- Must be identified with attached warning signs at intervals that may not exceed 60 feet;
- May not be installed in areas zoned exclusively for single-family or multifamily residential use; and
- May not enclose portions of a property which are used for residential purposes.

Section 553.793(10), F.S., prohibits a municipality, county, district, or other entity of local government from adopting or maintaining in effect any ordinance or rule regarding a low-voltage alarm system project which is inconsistent with s. 553.793, F.S. The interpretation of whether an ordinance or rule relating to a low-voltage alarm system project is inconsistent with Florida law as set forth in s. 553.793, F.S., was addressed in two Florida trial courts, with differing results.

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[1] Section 553.793(1)(b), F.S., defines a "low-voltage alarm system project" as "a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, [F.S.,] including video cameras and closed-circuit television systems used to signal or detect a burglary, fire, robbery, or medical emergency, that is hardwired and operating at low voltage, as defined in the National Electrical Code Standard 70, Current Edition, or a new or existing low-voltage electric fence. The term also includes ancillary components or equipment attached to a low-voltage alarm system or low-voltage electric fence, including, but not limited to, home-automation equipment, thermostats, closed-circuit television systems, access controls, battery recharging devices, and video cameras.

[2] *See* s. 553.793(3), F.S.

[3] Section 489.505, F.S., defines an alarm system as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."

[4] *See* s. 553.793(1)(c), F.S.

[5] The limits on energizer characteristics are those set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission (IEC) Standard No. 60335-2-76, Current Edition (the Energizer Standard); however, the Energizer Standard does not appear to be incorporated as a reference in the Florida Administrative Code, and use of the Energizer Standard document is subject to copyright protection. *See* https://webstore.iec.ch/preview/info_iec60335-2-76%7Bed2.0%7Den.pdf (last visited Jan. 4, 2024). The Energizer Standard is not published on the Internet and must be purchased from the IEC.

In a case filed in Hillsborough County, [6] the trial court found in favor of the plaintiff fence company because the court held that the county "is attempting to prohibit Plaintiff's low-voltage electric fence that complies with s. 553.793, [F.S.,] and is located in an area not zoned exclusively for single- or multiple-family residential use," as the fence at issue is located in a planned development zoning district which is a mixed use district. (Footnote omitted.)

The court held that s. 553.793, F.S., preempted the local ordinance "to the extent that this ordinance prohibits or imposes additional requirements for low-voltage electric fences.[7]

In a case addressing a requirement in the City of Orlando's zoning code which prohibited the installation of electric fences in a certain heritage zoning district,[8] the trial court determined that the case before it was unlike the Hillsborough County case where there had been a finding that additional requirements had been imposed on electric fences. The court held that the standard is not whether the city's code imposes additional requirements, but whether:

- Those requirements conflict with [s. 553.793, F.S.]; and
- The code and the statute cannot coexist, or if the Plaintiff must violate one to comply with the other.[9]

As to the prohibition that a municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project which is inconsistent with the requirements in s. 553.793, F.S, the court held that "as long as the ordinance is not inconsistent with [that section], a municipality is not prevented from enacting regulations regarding electric fences."[10]

The court also found that the city's ordinance was not preempted by s. 553.793, F.S, as the ordinance at issue:

> Does not require an additional permit for an electric fence--it only regulates where the electric fences can be installed. It is within Orlando's police powers to maintain its communities, and the city has a legitimate interest in maintaining the appearance of the [heritage zoning] district with importance to the community.[11]

Accordingly, the City of Orlando's regulation prohibiting low-voltage electric fences in certain locations did not constitute an additional requirement for installing such fences, and the court found in favor of the City of Orlando and against the fence company.

III. Effect of Proposed Changes:

Section 1 revises s. 553.793, F.S., concerning streamlined low-voltage alarm system installation permitting. The bill provides that a nonelectric fence or wall must completely enclose the outside

[6] *See Electric Guard Dog, LLC v. Hillsborough Co., Fla.*, (Case No. 17-CA-010362, Fla.13th Jud. Cir. 2019), at pp. 1-2 (on file with the Senate Regulated Industries Committee).
[7] *Id*. at p. 1.
[8] *See Amarok Security, LLC v. City of Orlando, Fla.*, (Case No. 2022-CA-011454-0, Div. 35, Fla. 9th Jud. Cir. 2023), (on file with the Senate Regulated Industries Committee).
[9] *Id*. at p. 8.
[10] *Id*. at p. 9.
[11] *Id*.

perimeter of a low-voltage electric fence. Current law provides that a nonelectric fence or wall must completely enclose a low-voltage electric fence, but it is unclear whether the enclosing nonelectric fence or wall must be located on each side of the low-voltage electric fence, or solely on the outside perimeter.
The bill specifies that an area that is within more than one zoning category is not considered to be zoned exclusively for single-family or multifamily residential use. Under the bill, low-voltage electric fences will be allowed in areas that are within multiple zoning categories. Current law prohibits installation of a low-voltage electric fence in an area zoned exclusively for single-family or multifamily use.

The bill clarifies that additional requirements for the installation or maintenance of low-voltage alarm system projects, beyond those set out in s. 553.793, F.S., relating to streamlined permitting of such projects, may not be adopted or maintained by a municipality, county, district, or other entity of local government (local governments). Under current law, local governments may adopt or maintain low-voltage alarm system project ordinances or rules that are consistent with s. 553.793, F.S. Under the bill, the adoption or maintenance of supplemental requirements, other than those set forth in s. 553.793, F.S., is prohibited. The bill appears to seek a resolution of court decisions addressing this issue with differing results, by revising current law to provide that requirements not set out in s. 553.793, F.S., may not be adopted or maintained by a municipality, county, district, or other entity of local government.

Section 2 provides that the bill takes effect July 1, 2024.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 553.793 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Perry

9-00550-24 2024496__

A bill to be entitled

An act relating to low-voltage alarm system projects; amending s. 553.793, F.S.; specifying that a nonelectric fence or wall must enclose the outside perimeter of a low-voltage electric fence; permitting low-voltage electric fences to be installed in areas within more than one zoning category; prohibiting a municipality, county, district, or other entity of local government from adopting or maintaining certain ordinances or rules that provide additional requirements for low-voltage alarm system projects; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (b) and (d) of subsection (3) and subsection (10) of section 553.793, Florida Statutes, are amended to read:

553.793 Streamlined low-voltage alarm system installation permitting.—

(3) A low-voltage electric fence must meet all of the following requirements to be permitted as a low-voltage alarm system project, and no further permit shall be required for the low-voltage alarm system project other than as provided in this section:

(b) A nonelectric fence or wall must completely enclose the outside perimeter of the low-voltage electric fence. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

9-00550-24 2024496__

(d) A ~~The~~ low-voltage electric fence is allowed ~~shall not be installed~~ in any ~~an~~ area unless the area is zoned exclusively for single-family or multifamily residential use. An area is not considered to be zoned exclusively for single-family or multifamily residential use if the area is within more than one zoning category.

(10) A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that provides additional requirements beyond those set out in this section for the installation or maintenance of a low-voltage alarm system project or that is otherwise ~~is~~ inconsistent with this section.

Section 2. This act shall take effect July 1, 2024.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 5, 2023

I respectfully request that **Senate Bill #496**, relating to Low-voltage Alarm System Projects, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 9

File signed original with committee office

Filing # 180557934 E-Filed 08/25/2023 03:50:07 PM

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 2022-CA-011454-O

DIVISION 35

AMAROK SECURITY, LLC, a
Delaware Limited Liability
Company,

Plaintiff,

vs.

CITY OF ORLANDO, FLORIDA

Defendant.
_____/

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This matter having come before the Court on June 27, 2023, on Plaintiff, Amarok Security, LLC's, Motion for Summary Judgment and on Defendant, City of Orlando, Florida's Motion for Summary Judgment, and the Court having reviewed both Motions and Responses thereto, the legal memoranda submitted by the parties, the court file, and the argument of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

THE UNDISPUTED FACTS

1. The facts in this case are not in dispute.

2. Plaintiff owns, installs and maintains low-voltage electric fences within the City of Orlando for businesses with high-value outdoor assets that need 24/7 protection against crimes such as theft and vandalism.

3. Plaintiff alleges it completed installation of a low-voltage electric fence for Maitland Importers, Inc. at 1008 W. Church Street, Orlando, Florida 32805 and, further, allege

the electric fence is installed just inside the footprint of an existing perimeter non-electrified fence.

4. The electric fence is installed within the City of Orlando and is located between 51 and 150 feet of a residential zoning district. Specifically, the electric fence is installed within the Parramore Heritage zoning overlay district and is not installed in an area zoned exclusively for single-family or multi-family residential use.

5. Section 58.930 of the Code of the City of Orlando contains certain regulations for the installation of "security fences" within city limits. Subsection (b) prohibits electrified fences between 51 feed and 150 feet of a school, a residential zoning district, or a planned development district with underlying residential zoning unless approved by special exception. Subsection (d) prohibits electrified fences within the Parramore Heritage zoning overlay district without regard for the underlying zoning district.

6. Plaintiff contends the City of Orlando regulations regarding electric fences are preempted by Florida Statute Section 553.793, which became effective in June, 2017. Section 553.793(10), Florida Statutes, specifically provides: "[a] municipality . . . may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with this section."

7. Plaintiff filed the instant action for declaratory and injunctive relief alleging the City is preempted by Section 553.793, Florida Statutes, from regulating low-voltage electric fences.

8. Both parties have filed competing motions for summary judgment; both parties agree there is no factual dispute; and both parties agree that the sole issue to be determined by the court is the issue of preemption.

THE LAW

Under section 553.793(3), Florida Statutes (2021),

> [a] low-voltage electric fence must meet all of the following requirements to be permitted as a low-voltage alarm system project, and no further permit shall be required for the low-voltage alarm system project other than as provided in this section:
>
> (a) The electric charge produced by the fence upon contact must not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission Standard No. 60335-2-76, Current Edition.
>
> (b) A nonelectric fence or wall must completely enclose the low-voltage electric fence. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.
>
> (c) The low-voltage electric fence must be identified using warning signs attached to the fence at intervals of not more than 60 feet.
>
> (d) The low-voltage electric fence shall not be installed in an area zoned exclusively for single-family or multifamily residential use.
>
> (e) The low-voltage electric fence shall not enclose the portions of a property which are used for residential purposes.

However, section 58.930(d), Code of the City of Orlando, prohibits electric fences within the Parramore Heritage zoning overlay district, where the electric fence in question was installed. Further, section 553.793(10) states that "[a] municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is *inconsistent* with this section." (Emphasis added.)

Municipal Authority

Section 166.021(1), Florida Statutes (2021) states, "[a]s provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and

render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law." Municipalities have the power to enact legislation except where the subject is expressly preempted by state or county government, or general law. Fla. Stat. § 166.021(3)(c) (2021). It "is well established under Florida law that local governments may legislate to protect the appearance of their communities as a legitimate exercise of their inherent police power." *Miami-Dade County ex rel. Walthour v. Malibu Lodging Investments, LLC*, 64 So. 3d 716, 720 (Fla. 3d DCA 2011).

"[C]ourts are 'careful in imputing an intent on behalf of the Legislature to preclude a local elected governing body from exercising its home rule powers.'" *Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010) (quoting *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.,* 681 So. 2d 826, 831 (Fla. 1st DCA 1996)).

Preemption

In Florida, there are two types of preemption: express and implied. *Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010) (citing *City of Hollywood v. Mulligan,* 934 So. 2d 1238, 1243 (Fla. 2006)). "Express preemption requires a specific legislative statement; it cannot be implied or inferred." *Id.* (citing *Mulligan,* 934 So. 2d at 1243). "Express preemption of a field by the Legislature must be accomplished by clear language stating that intent." *Id.* (citing *Mulligan*, 934 So. 2d at 1243). "In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended." *Id.* (citing *Tallahassee Med. Ctr., Inc.,* 681 So. 2d at 831).

"[P]reemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject." *Id.* (citing *Barragan v. City of Miami,* 545 So. 2d 252, 254 (Fla. 1989)). "Preemption is implied 'when the legislative scheme is so pervasive as to

evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.'" *Browning*, 28 So. 3d at 886 (quoting *Phantom of Clearwater, Inc. v. Pinellas County,* 894 So.2d 1011, 1018 (Fla. 2d DCA 2005)). Implied preemption occurs where the "state legislative scheme of regulation is" so pervasive that the local ordinance would be in danger of conflict with the legislative scheme. *Id.*

When determining if there is implied preemption, courts look to "the provisions of the whole law, and to its object and policy," including the nature of the power exerted by the legislature, the object sought to be attained by the statute, and the character of the obligations imposed by the statute. *Id.* (quoting *State v. Harden*, 938 So. 2d 480, 486 (Fla. 2006)).

A municipal ordinance may be inconsistent with state law if "(1) the Legislature 'has preempted a particular subject area' or (2) the local enactment conflicts with a state statute." *Id.* (quoting *Lowe v. Broward County*, 766 So. 2d 1199, 1206 (Fla. 4th DCA 2000)). A municipal ordinance conflicts with state law when "one must violate one provision in order to comply with the other . . . a conflict exists when two legislative enactments 'cannot co-exist'" *Id.* (quoting *Laborers' Int'l Union of N. Am., Local 478 v. Burroughs*, 541 So. 2d 1160, 1161 (Fla. 1989)).

"A local government cannot forbid what the Legislature has expressly licensed, authorized, or required, nor may it authorize what the Legislature has expressly forbidden." *Classy Cycles, Inc. v. Bay Cnty.*, 201 So. 3d 779, 784 (Fla. 1st DCA 2016) (citing *Rinzler v. Carson,* 262 So. 2d 661 (Fla. 1972)). In *Classy Cycles, Inc., supra,* the First District Court of Appeal found that the State of Florida had impliedly preempted the field of motor vehicle insurance when Bay County attempted to enact additional insurance requirements for rental scooters. Chapter 316 of the Florida Statutes specifically stated: "The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and

municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized." *Id.* at 785.

In *GLA & Assocs. v. City of Boca Raton,* 855 So. 2d 278 (Fla. 4th DCA 2003), the Fourth District Court of Appeal "found that a statute regulating state permits for dune rehabilitation projects did not preempt a local ordinance regulating coastal construction permits." *Browning*, 28 So. 3d at 887. "The court cited a statutory provision specifically requiring the Department of Environmental Protection to give deference to local setback requirements or building codes that were equal to or more strict than the state standards." *Id.* (citing *GLA & Assocs.*, 885 So. 2d at 282).

In *Phantom of Clearwater, Inc., v. Pinellas County*, 894 So. 2d 1011, 1020 (Fla. 2d DCA 2005), the Second District Court of Appeal found that state statutes regulating the sale and use of fireworks did not preempt a local ordinance regulating businesses selling fireworks. *Id.* The court found no public policy reason preventing a local government from enacting ordinances as long as they did not directly conflict with the statutes. *Id.* The court also stated, "[i]t is difficult for a court to imply preemption of the entire field of 'sale of fireworks' when the legislature affirmatively informs local government to act in this area." *Id.* at 1019.

Electric Guard Dog v. Hillsborough County Case

In a Hillsborough County circuit court case with similar facts to the instant case, the Thirteenth Judicial Circuit Court granted Electric Guard Dog's ("EGD") Motion for Temporary Injunction, enjoining Hillsborough County from applying county ordinances to the extent that they conflict with or add more regulation and requirements beyond section 553.793 to low-voltage electric fences. *Electric Guard Dog, LLC, v. Hillsborough County, Florida*, No. 2017-CA-010362-AO (Fla. Cir. Ct. Jan. 18, 2018).

In *Electric Guard Dog*, EGD installed a low-voltage electric fence for Camping World RV Center. However, Hillsborough County Code Enforcement issued a Notice of Violation to the owner of Camping World, requiring the removal of the fence and citing Hillsborough County Land Development Code section 6.07.02. The area where Camping World is located is zoned planned development and is a mixed-use area, not an exclusive single-family or multifamily, residential, zone. Section 6.07.02 of the Hillsborough County code prohibits electric fences in residential, SB, and commercial and office districts. In addition, in special public interest districts and planned development districts, the fences must "conform to fence requirements for similar uses." Furthermore, in community plan districts, fences within a community plan area with development standards must comply with any specified fence requirements for that area.

The Thirteenth Judicial Circuit Court found that section 553.793(10) expressly preempts all local laws that are inconsistent with the uniform statewide process outlined in section 553.793. It held that "to the extent that the County takes the position that it has the authority to permit or deny the fences beyond the requirements of section 553.793(a) through (e), this position is not permitted by statute and must be enjoined." The court also granted summary judgment in favor of EGD, finding that the Hillsborough County code prohibits or imposes additional requirements for low-voltage electric fences other than those areas zoned exclusively for single-family or multi-family residential use, where the fences satisfy the requirements of section 553.793. It held, "[b]ecause Defendant is attempting to prohibit Plaintiff's low-voltage electric fence that complies with § 553.793 and is located in an area not zoned exclusively for single- or multiple-family residential use, no genuine issues of material fact remain and Plaintiff is entitled to judgment as a matter of law."

Analysis:

This Court respectfully disagrees with the non-binding[1] decision in *Electric Guard Dog*. In that case, the court found that the county's code imposed additional requirements for electric fences than section 553. However, the standard is not whether the code imposes *additional* requirements, but whether those requirements *conflict* with the statute.[2] That is, whether the code and the statute cannot coexist or if the Plaintiff must violate one to comply with the other.

The Orlando City code prohibiting electric fences in the Parramore Heritage District can coexist with the statute prohibiting electric fences from a residential area. The prohibition could still apply even if the fence in question was not located in a residential area. The electric fence could still be installed in a non-residential area elsewhere within the City of Orlando that is also not within the Parramore Heritage district, thus complying with both and violating neither. There is no requirement here that Plaintiffs violate either the code or the statute in order to comply with the other.

Moreover, there is no express preemption here. With express preemption, there is no ambiguity, and the legislature would have clearly stated that municipalities were preempted from enacting regulations on electric fences. The legislature has not done that. Unlike *Classy Cycles*, there is no prohibition from enacting an ordinance on a matter covered by section 553 unless expressly authorized. Similar to *Phantom of Clearwater*, the statute contemplates municipalities

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[1] *See Jim Evans Academy of Professional Umpiring, Inc. v. The Nat. Ass'n of Professional Baseball Leagues, Inc.*, No. 48-2012-CA-13001-O, 2013 WL 12131789, at *1 (Fla. 9th Cir. Ct. Mar. 28, 2013) (citing *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992)) ("As a Florida circuit court, this Court is bound by the holdings of the Fifth District Court of Appeal[1], by the holdings of other Florida Courts of Appeal if no Fifth District precedent applies, and by the holdings of the Florida Supreme Court."); *see also West Villagers for Responsible Government v. City of North Port Florida*, No. 2021 CA 002673 SC., 2021 WL 5326727, at *10 (Fla. 12th Cir. Ct. Nov. 15, 2021) (finding that a decision of another circuit court is not binding on the twelfth judicial circuit court). Therefore, this Court is not required to follow the ruling in *Electric Guard Dog*.

[2] Section 553.793(10) "[a] municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is *inconsistent* with this section."

enacting ordinances on electric fences when stating, "[a] municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is *inconsistent* with this section." As long as the ordinance is not inconsistent with section 553, a municipality is not prevented from enacting regulations regarding electric fences.

Nor is there any implied preemption here because, as explained above, the state legislative scheme is not so pervasive that the local ordinance would be in danger of conflict with the legislative scheme. Section 553.793 was enacted to have a streamlined permitting process throughout the State. The ordinance here does not require an additional permit for an electric fence—it only regulates where the electric fences can be installed. It is within Orlando's police powers to maintain its communities, and the city has a legitimate interest in maintaining the appearance of the Parramore Heritage District as a historical district with importance to the community. Accordingly, Section 58.930 of the Code of the City of Orlando is not preempted by Florida Statute Section 553.793.

Based on the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion for Summary Judgment is **GRANTED.**
2. Plaintiff's Motion for Summary Judgment is **DENIED.**
3. Defendant is directed to submit a Final Judgment within ten (10) days which comports with this Order, and which reserves jurisdiction as needed to determine entitlement to and amount attorney's fees and costs.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida this 25th day of August, 2023.

08/25/2023 15:48:45

eSigned by Margaret H. Schreiber 08/25/2023 15:48:45 wy7fKlBd

MARGARET H. SCHREIBER
Circuit Judge

CERTIFICATE OF SERVICE

The foregoing was filed with the Clerk of the Court this 25th day of August, 2023 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

ELECTRIC GUARD DOG, LLC,

Plaintiff,

v.

HILLSBOROUGH COUNTY, FLORIDA,

Defendant.
_____/

CASE NO.: 17-CA-010362

DIVISION: R

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER came before the Court for hearing on July 30, 2018, on Plaintiff, Electric Guard Dog LLC's Motion for Summary Judgment, filed February 13, 2018. Having considered the Motion, Defendant Hillsborough County, Florida's "Notice of Filing and Serving of Evidence in Opposition to Plaintiff's Motion for Summary Judgment and Request for Judicial Notice," filed April 18, 2018, argument of counsel, the court file, and applicable law, the Court **GRANTS** the Motion.

The Court holds that § 553.793, Florida Statutes (2017), by its plain language and legislative history, preempts section 6.07.02 of the Hillsborough County Land Development Code, to the extent that this ordinance prohibits or imposes additional requirements for low-voltage electric fences in areas of Hillsborough County other than those areas zoned exclusively for single-family or multiple-family residential use, where these fences satisfy the requirements of § 553.793. Because Defendant is attempting to prohibit Plaintiff's low-voltage electric fence that complies with § 553.793 and is located in an area not zoned exclusively for single- or multiple-family

residential use[1], no genuine issues of material fact remain and Plaintiff is entitled to judgment as a matter of law. *See* Fla. R. Civ. P. 1.150.

WHEREFORE, it is **ORDERED** and **ADJUDGED** that

1. Plaintiff Electric Guard Dog, LLC's Motion for Summary Judgment is **GRANTED**.

2. The $5,000 temporary injunction cash bond posted by Plaintiff Electric Guard Dog to the Hillsborough County Clerk of Court Registry is hereby **DISCHARGED** and released.

DONE and **ORDERED** in Chambers in Tampa, Hillsborough County, Florida, this the _____ day of April, 2019.

Electronically Conformed 4/15/2019
Lisa Campbell

LISA D. CAMPBELL
CIRCUIT COURT JUDGE

Copies to:

All counsel of record via JAWS

[1] The fence at issue is located in a PD (planned development) zoning district, which is a mixed use zoning district.

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 Regulated Industries

BILL:	SB 334
INTRODUCER:	Senator Burgess
SUBJECT:	Rabies Vaccinations
DATE:	January 9, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burse	Becker	AG	**Favorable**
2.	Kraemer	Imhof	RI	**Pre-meeting**
3.			RC	

I. Summary:

SB 334 authorizes employees, agents, or contractors of an animal control authority to administer rabies vaccinations to impounded dogs, cats, and ferrets that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. The rabies vaccinations may be administered under the indirect supervision of a veterinarian, who must be available for consultation, through telecommunications, rather than be physically present during the consultation. Under the bill, the supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under the veterinarian's direction and supervision.

The bill is effective July 1, 2024.

II. Present Situation:

Veterinary Medicine, the Practice of Veterinary Medicine, and Exempted Persons

In 1979, the Legislature determined the practice of veterinary medicine to be potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners and that minimum requirements for the safe practice of veterinary medicine are necessary.[1] The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., on Veterinary Medical Practice.[2] A veterinarian is a health care practitioner licensed to engage in the practice of veterinary

[1] *See* s. 474.201, F.S.

[2] S*ee* s. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.

medicine in Florida under ch. 474, F.S.[3] In Fiscal Year 2021-2022, there were 12,360 actively licensed veterinarians in Florida.[4]

Veterinary medicine[5] includes, with respect to animals:[6]

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);[7] and
- Other branches or specialties of veterinary medicine.

The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.[8] Veterinarians who are incompetent or present a danger to the public are subject to discipline and may be prohibited from practicing in the state.[9]

Eleven categories of persons are exempt from complying with ch. 474, F.S.:[10]

- Faculty veterinarians with assigned teaching duties at accredited[11] institutions;
- Intern/resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;

[3] See s. 474.202(11), F.S.
[4] *See* Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2021-2022*, at page 18, at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf (last visited Jan. 4, 2024), which is the latest such Annual Report issued by the DBPR.
[5] *See* s. 474.202(13), F.S.
[6] Section 474.202(1), F.S., defines "animal" as "any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead."
[7] The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. *See* https://www.therio.org/ (last visited Jan. 4, 2024).
[8] Section 474.201, F.S. *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy, fertility, or infertility of animals.
[9] *See* s. 474.213, F.S., on prohibited acts, and s. 474.214, F.S., on disciplinary proceedings.
[10] *See* s. 474.203, F.S.
[11] Sections 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the United States and Canada, and may also approve foreign veterinary colleges. *See* https://www.avma.org/education/center-for-veterinary-accreditation/accreditation-policies-and-procedures-avma-council-education-coe/coe-accreditation-policies-and-procedures-accreditation (last visited Jan. 4, 2024). The AVMA Commission for Foreign Veterinary Graduates assists graduates of foreign, non- accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational equivalency assessment certification program. *See* https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx (last visited Jan. 4, 2024). In turn, the Council for Higher Education Accreditation, a national advocate for regulation of academic quality through accreditation, is an association of degree-granting colleges and universities. See http://chea.org/about (last visited Jan. 4, 2024).

- Students in a school or college of veterinary medicine who perform assigned duties by an instructor (no accreditation of the institution is required), or work as preceptors[12] (if the preceptorship is required for graduation from an accredited institution);
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties at the installations for which the services were engaged;
- Persons or their employees caring for the persons' own animals, as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd and flock animals, with certain limitations; however, the exemption is not available to a person licensed as a veterinarian in another state and temporarily practicing in Florida, or convicted of violating ch. 828, F.S., on animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;
- Certain entities or persons[13] that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods or techniques to diagnose or treat human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine;
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[14] of a licensed veterinarian;
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, and are assisting upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner;
- Employees, agents, or contractors of public or private animal shelters, humane organizations, or animal control agencies operated by a humane organization, county, municipality, or incorporated political subdivision, whose work is confined solely to implanting radio frequency identification device microchips in dogs and cats in accordance with s. 823.15, F.S;[15]
- Paramedics or emergency medical technicians providing emergency medical care to a police canine[16] injured in the line of duty while at the scene of the emergency or while the police canine is being transported to a veterinary clinic or similar facility; and

[12] A preceptor is a skilled practitioner or faculty member, who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. See https://www.merriam-Webster.com/dictionary/preceptor#medicalDictionary (last visited Jan. 4, 2024).
[13] *See* s. 474.203(6), F.S., which states that the exemption applies to "[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof. . . ."
[14] The term "responsible supervision" is defined in s. 474.202(10), F.S., as the "control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services" delegated to unlicensed personnel.
[15] *See* s. 823.15(5), F.S., which authorizes such persons to perform microchipping of dogs and cats.
[16] Section 401.254, F.S., defines the term "police canine" as "any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; the enforcement of laws; the investigation of fires; or the apprehension of offenders." A paramedic or an emergency medical

- Veterinarians who hold an active license to practice veterinary medicine in another jurisdiction in the United States, are in good standing in such jurisdiction, and who perform dog or cat sterilization services or routine preventative health services at the time of sterilization as an unpaid volunteer under the responsible supervision of a veterinarian licensed in Florida. Out-of-state veterinarians practicing pursuant to this exemption are not eligible to apply for premises permits for veterinary establishments.

Persons who are eligible faculty veterinarians, intern veterinarians, resident veterinarians, or state or federal veterinarians exempt from complying with ch. 474, F.S., are deemed to be duly licensed practitioners authorized to prescribe drugs or medicinal supplies.[17]

Rabies Vaccinations

In Florida, all dogs, cats, and ferrets[18] four months of age or older must be vaccinated against rabies at the expense of their owners by a licensed veterinarian.[19] Rabies is a fatal but preventable viral disease that can spread to people and pets bitten or scratched by a rabid animal.[20] According to the Centers for Disease Control and Prevention (CDC), a component of the United States Department of Health and Human Services, most rabies deaths in people around the world are caused by dog bites.[21] Because of laws in the United States requiring dogs to be vaccinated for rabies, dogs make up only about one percent of rabid animals reported nationally each year.[22]

Rabies vaccines are licensed by the United States Department of Agriculture, and revaccinations are required 12 months after the initial vaccine.[23] Thereafter, the interval between vaccinations is set by the vaccine manufacturer.[24]

A dog, cat, or ferret is exempt from vaccination against rabies if a licensed veterinarian has examined the animal and certified that vaccination at that time would endanger the animal's health because of its age, infirmity, disability, illness, or other medical considerations; however, an exempt animal must be vaccinated against rabies as soon as its health permits.[25]

After administering a rabies vaccination, the licensed veterinarian must provide a certificate to the animal's owner and the animal control authority, using the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV), or an equivalent

technician who acts in good faith to provide emergency medical care to an injured police canine is immune from criminal or civil liability.

[17] *See* s. 474.203, F.S. (flush left language).

[18] Ferrets that are vaccinated as required must be quarantined when necessary, in accordance with administrative rules of the Florida Department of Health. See s. 828.30(4), F.S., and Fla. Admin. Code R. 64D-3.040.

[19] *See* s. 828.30, F.S.

[20] *See* https://www.cdc.gov/rabies/index.html (last visited Jan. 4, 2024). In the United States, rabies is mostly found in wild animals like bats, raccoons, skunks, and foxes.

[21] *Id.*

[22] *Id.*

[23] *See* s. 828.30(1), F.S.

[24] *Id*. Evidence of rabies antibodies may not be substituted for a current vaccination in managing rabies exposure or determining the need for booster vaccinations.

[25] *See* s. 828.30(2), F.S.

form approved by the local government that contains the same information as the NASPHV certificate.[26] A signature stamp may be used in lieu of the veterinarian's actual signature.

An animal owner's name, street address, phone number, and animal tag number in a rabies vaccination certificate provided to an animal control authority is a public record exempt from the inspection and copying requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[27] However, all information in a rabies vaccination certificate for a particular animal biting, scratching, or otherwise causing exposure, may be provided to:

- A person who has been bitten, scratched, or otherwise exposed to a disease such as rabies that spreads between animals and people (zoonotic disease),[28] or that person's physician;
- A veterinarian treating an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease; or
- The owner of an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease.[29]

In addition, any person with an animal tag number may receive vaccination certificate information with regard to that animal. The following entities must be provided the information in rabies vaccination certificates for the purpose of controlling the transmission of rabies, but may not release the exempt information to third parties:

- Law enforcement and prosecutorial agencies;
- Other animal control authorities;
- Emergency and medical response and disease control agencies; or
- Other governmental health agencies.[30]

Release of exempt information contained in a rabies vaccine certificate is a civil infraction that could subject those cited for a violation to a civil penalty of up to $500.[31]

Municipalities and counties are not prohibited from establishing similar or more stringent requirements than those described above for rabies control ordinances; however, local governments may not mandate revaccination of currently vaccinated animals except in instances involving treatment for rabies after an exposure.[32]

III. Effect of Proposed Changes:

Section 1 amends s. 828.30, F.S., to authorize employees, agents, or contractors of an animal control authority to administer rabies vaccinations to impounded dogs, cats, and ferrets that will be transferred, rescued, fostered, adopted, or reclaimed by the owner.

[26] *See* s. 828.30(3), F.S.
[27] *See* s. 828.30(5), F.S.
[28] See information from the CDC about zoonotic diseases that are caused by germs that spread between animals and people at https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html (last visited Jan. 4, 2024).
[29] *See* s. 828.30(5), F.S.
[30] *Id.*
[31] *See* s. 828.30(6), F.S., and s. 828.27(2), F.S., authorizing the governing body of a county or municipality to enact ordinances relating to animal control or cruelty, and setting forth requirements for penalties, citations, and related procedures, respectively.
[32] *See* s. 828.30(7), F.S.

The rabies vaccinations may be administered under the indirect supervision of a veterinarian. Under the bill, the supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under the veterinarian's direction and supervision. The bill defines the term "indirect supervision" to mean the supervising veterinarian is required to be available for consultation through telecommunications, rather than be physically present during the consultation.

Section 2 amends s. 474.203, F.S. to revise the requirement that only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance, to allow those persons authorized by the bill to administer rabies vaccines, as discussed in **Section 1** above.

Section 3 amends s. 767.16, F.S., to revise the exemption from quarantine requirements for any service dog that bites another animal or human, if the dog has a current rabies vaccination administered by a licensed veterinarian or those persons authorized by the bill to administer rabies vaccines, as discussed in **Section 1** above.

Section 4 amends s. 828.29, F.S., to revise the requirements for rabies vaccines for dogs and cats offered for sale within the state that are over the age of three months to be administered by a licensed veterinarian or those persons authorized by the bill to administer rabies vaccines, as discussed in **Section 1** above.

Section 5 provides the bill is effective July 1, 2024.

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:

None.

C. Government Sector Impact:

Certain rabies vaccinations may be administered by employees, agents, or contractors of an animal control authority to impounded dogs, cat, and ferrets that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. This vaccination method may allow vaccination of impounded animals to occur more quickly and reduce costs to animal control authorities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 474.203, 767.16, 828.29, and 828.30.

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.

By Senator Burgess

23-00428A-24 2024334__

A bill to be entitled

An act relating to rabies vaccinations; amending s. 828.30, F.S.; authorizing certain persons to administer rabies vaccinations to certain animals under the indirect supervision of a veterinarian; providing that a supervising veterinarian assumes responsibility for any person working under the veterinarian's supervision or at his or her direction; defining the term "indirect supervision"; authorizing a veterinarian who indirectly supervises the administration of the rabies vaccination to affix or have affixed his or her signature stamp in lieu of an actual signature on the rabies vaccination certificate; amending ss. 474.203, 767.16, and 828.29, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (3) of section 828.30, Florida Statutes, are amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.—

(1)(a) All dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian, or a person authorized under paragraph (b), against rabies with a vaccine ~~that is~~ licensed by the United States Department of Agriculture for use in those species.

(b)1. When acting under the indirect supervision of a veterinarian, an employee, an agent, or a contractor of a county

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or municipal animal control authority or sheriff may vaccinate against rabies a dog, cat, or ferret in the custody of an animal control authority, sheriff, or shelter and that will be transferred, rescued, fostered, adopted, or reclaimed by its owner.

2. The supervising veterinarian assumes responsibility for any person vaccinating animals at the veterinarian's direction or under his or her supervision. As used in this paragraph, the term "indirect supervision" means that the supervising veterinarian is required to be available for consultation through telecommunications, rather than be physically present during the consultation.

(c) The owner of every dog, cat, and ferret shall have the animal revaccinated 12 months after the initial vaccination. Thereafter, the interval between vaccinations must ~~shall~~ conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies may ~~shall~~ not be used as a substitute for current vaccination in managing rabies exposure or determining the need for booster vaccinations.

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the animal control authority with a rabies vaccination certificate. Each animal control authority and veterinarian shall use the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government which ~~that~~ contains all the information required by the NASPHV Rabies Vaccination

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Certificate. The veterinarian who administers the rabies vaccination, or who supervises the administration of the rabies vaccination as provided in paragraph (1)(b), ~~vaccine~~ to an animal as authorized ~~required~~ under this section may affix or have affixed his or her signature stamp in lieu of an actual signature.

Section 2. Paragraph (a) of subsection (5) of section 474.203, Florida Statutes, is amended to read:

474.203 Exemptions.—This chapter does not apply to:

(5)(a) Any person, or the person's regular employee, administering to the ills or injuries of her or his own animals, including, but not limited to, castration, spaying, and dehorning of herd animals, unless title is transferred or employment provided for the purpose of circumventing this law. This exemption does not apply to any person licensed as a veterinarian in another state or foreign jurisdiction and practicing temporarily in this state. However, except as provided in s. 828.30, only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 3. Subsection (2) of section 767.16, Florida Statutes, is amended to read:

767.16 Police canine or service dog; exemption.—

(2) Any dog used as a service dog for blind, hearing

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impaired, or disabled persons that bites another animal or a human is exempt from any quarantine requirement following such bite if the dog has a current rabies vaccination that was administered as provided in s. 828.30 ~~by a licensed veterinarian~~.

Section 4. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 828.29, Florida Statutes, are amended to read:

828.29 Dogs and cats transported or offered for sale; health requirements; consumer guarantee.—

(1)

(b) For each dog offered for sale within the state, the tests, vaccines, and anthelmintics required by this section must be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics must be administered before the dog is offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the dog is not in the best medical interest of the dog, in which case the vaccine or anthelmintic may not be administered to that particular dog. Each dog must receive vaccines and anthelmintics against the following diseases and internal parasites:

1. Canine distemper.

2. Leptospirosis.

3. Bordetella (by intranasal inoculation or by an alternative method of administration if deemed necessary by the

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attending veterinarian and noted on the health certificate, which must be administered in this state once before sale).

4. Parainfluenza.

5. Hepatitis.

6. Canine parvo.

7. Rabies, provided the dog is over 3 months of age and the inoculation is administered as provided in s. 828.30 ~~by a licensed veterinarian~~.

8. Roundworms.

9. Hookworms.

If the dog is under 4 months of age, the tests, vaccines, and anthelmintics required by this section must be administered no more than 21 days before sale within the state. If the dog is 4 months of age or older, the tests, vaccines, and anthelmintics required by this section must be administered at or after 3 months of age, but no more than 1 year before sale within the state.

(2)

(b) For each cat offered for sale within the state, the tests, vaccines, and anthelmintics required by this section must be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics must be administered before the cat is offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the cat is not in the best medical interest

of the cat, in which case the vaccine or anthelmintic may not be administered to that particular cat. Each cat must receive vaccines and anthelmintics against the following diseases and internal parasites:

1. Panleukopenia.

2. Feline viral rhinotracheitis.

3. Calici virus.

4. Rabies, if the cat is over 3 months of age and the inoculation is administered as provided in s. 828.30 ~~by a licensed veterinarian~~.

5. Hookworms.

6. Roundworms.

If the cat is under 4 months of age, the tests, vaccines, and anthelmintics required by this section must be administered no more than 21 days before sale within the state. If the cat is 4 months of age or older, the tests, vaccines, and anthelmintics required by this section must be administered at or after 3 months of age, but no more than 1 year before sale within the state.

Section 5. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 6, 2023

I respectfully request that **Senate Bill # 334**, relating to Rabies Vaccinations, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 23

File signed original with committee office

S-020 (03/2004)