Tab 1	**SB 202** by **Jones;** Similar to H 00011 Municipal Water and Sewer Utility Rates

Tab 2	**SB 346** by **Rouson;** Identical to H 06009 State Preemption of the Regulation of Hoisting Equipment

Tab 3	**SB 578** by **Leek;** Identical to H 00161 Wine Containers

Tab 4	**SB 606** by **Leek;** Similar to H 00535 Public Lodging and Food Service Establishments

Tab 5	**SB 570** by **Gruters;** Similar to H 00453 Swimming Pool and Spa Contractors

Tab 6	**SB 928** by **Calatayud;** Similar to H 01277 Nonapproved Disposable Nicotine Dispensing Devices

326832	A	S	L	RI, Calatayud	Delete L.134 - 197:	03/11 03:12 PM

Tab 7	**SB 652** by **Bradley;** Identical to H 00729 Veterinary Professional Associates

164782	A	S		RI, Bradley	Delete L.57 - 59:	03/11 08:33 AM

Tab 8	**SB 354** by **Gaetz;** Public Service Commission

444212	D	S		RI, Gaetz	Delete everything after	03/10 05:48 PM
~~559828~~	SD	S	LWD	RI, Gaetz	Delete everything after	03/11 07:08 PM
948904	SD	S	L	RI, Gaetz	Delete everything after	03/11 07:10 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Bradley, Chair
Senator Pizzo, Vice Chair

MEETING DATE: Wednesday, March 12, 2025
TIME: 8:30—10:30 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bradley, Chair; Senator Pizzo, Vice Chair; Senators Bernard, Boyd, Burgess, Calatayud, Fine, Gruters, and Ingoglia

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 202** Jones (Similar H 11, Compare H 1523, S 1704)	Municipal Water and Sewer Utility Rates; Requiring a municipality to charge customers receiving its utility services in another municipality the same rates, fees, and charges as it charges consumers within its municipal boundaries under certain circumstances, etc. RI 03/12/2025 CA RC	
2	**SB 346** Rouson (Identical H 6009)	State Preemption of the Regulation of Hoisting Equipment; Deleting provisions preempting to the state the regulation of certain hoisting equipment, etc. RI 03/12/2025 CA RC	
3	**SB 578** Leek (Identical H 161, Compare H 6015)	Wine Containers; Providing that wine may be sold in recyclable containers of a specified volume, etc. RI 03/12/2025 CM RC	
4	**SB 606** Leek (Similar H 535)	Public Lodging and Food Service Establishments; Revising the instances under which the operator of any public lodging establishment may remove a guest; providing requirements for the notice an operator of a public lodging establishment or public food service establishment may give to a guest under specified circumstances; requiring a law enforcement officer to remove a guest who remains on the premises of any public lodging establishment after an operator makes a specified request, etc. RI 03/12/2025 CJ RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 570** Gruters (Similar H 453)	Swimming Pool and Spa Contractors; Revising definitions for purposes of part I of ch. 489, F.S., etc. RI 03/12/2025 CA RC	
6	**SB 928** Calatayud (Similar H 1277, S 1406)	Nonapproved Disposable Nicotine Dispensing Devices; Citing this act as the “Florida Age Gate Act”; defining the term “nonapproved disposable device”; revising which permitholders that the premises covered by the permit are subject to inspection and search by the Division of Alcoholic Beverages and Tobacco; revising the provision that, upon being granted a permit, such permitholder also consents to inspections by the Department of Law Enforcement for specified violations; prohibiting a dealer who sells nonapproved disposable devices from advertising, promoting, or displaying for sale such devices in certain locations, etc. RI 03/12/2025 AEG FP	
7	**SB 652** Bradley (Identical H 729)	Veterinary Professional Associates; Citing this act as the “Veterinary Workforce Innovation Act”; authorizing certain individuals to use the title “veterinary professional associate”; authorizing veterinary professional associates to perform certain duties only while under the responsible supervision of a licensed veterinarian; prohibiting such associates from prescribing certain drugs or controlled substances or performing certain surgical procedures, etc. RI 03/12/2025 AG RC	
8	**SB 354** Gaetz	Public Service Commission; Revising the membership of the Public Service Commission; requiring the commission to establish a certain schedule; revising the requirements for the annual report provided by the commission to the Governor and the Legislature, etc. RI 03/12/2025 AEG FP	
	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 202

INTRODUCER: Senator Jones

SUBJECT: Municipal Water and Sewer Utility Rates

DATE: March 11, 2025 REVISED:

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

I. Summary:

SB 202 creates an exception to the maximum rates that may be charged to municipal water and sewer utility customers who are outside of the corresponding municipality's boundaries. The bill provides that if a municipal utility provides water or sewer services to another municipality and serves that other municipality using a facility or water or sewer plant located within that other municipality, then the utility must charge its customers within that other municipality the same rates, fees, and charges as it does for those customers within its own municipal boundaries.

The bill has an effective date of July 1, 2025.

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 and reliable manner and at fair prices.[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] PSC authority over municipal utilities is more limited, however.

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[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 Feb. 13, 2025).

[3] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Feb. 13, 2025).

Water and Wastewater Utilities

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." In 2023, the PSC had jurisdiction over 146 investor-owned water and/or waste-water utilities in 38 of Florida's 67 counties.[4]

Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided in the chapter). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide "service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation," and others.[5] The PSC also does not regulate utilities in counties that have exempted themselves from PSC regulation pursuant to s. 367.171, F.S. However, under s. 367.171(7), F.S., the PSC retains exclusive jurisdiction over all utility systems whose service crosses county boundaries, except for utility systems that are subject to interlocal utility agreements.

Municipal Water and Sewer Utilities in Florida

A municipality[6] may establish a utility by resolution or ordinance under s. 180.03, F.S. A municipality may establish a service area within its municipal boundary or within five miles of its corporate limits of the municipality.[7]

Under s. 180.19, F.S., a municipality may permit another municipality and the owners or association of owners of lands outside of its corporate limits or within another municipality's corporate limits to connect to its utilities upon such terms and conditions as may be agreed upon between the municipalities.

Municipal Water and Sewer Utility Rate Setting

The PSC does not have jurisdiction over municipal water and sewer utilities, and as such, has no authority over the rates for such utilities. Municipally-owned water and sewer utility rates and revenues are regulated by their respective local governments, sometimes through a utility board or commission.

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[4] Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry,* https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202024.pdf (last visited Mar. 5, 2025).
[5] Section 367.022, F.S.
[6] Defined by s. 180.01, F.S., "as any city, town, or village duly incorporated under the laws of the state."
[7] Section 180.02, F.S., *see also* s. 180.06, F.S.

Municipal Water and Sewer Utility Rates for Customers Outside of Corporate Limits

Section 180.191, F.S., provides limitations on the rates that can be charged to customers outside their municipal boundaries. The first option is that such a municipality may charge the same rates outside as inside its municipal boundaries, but may add a surcharge of not more than 25 percent to those outside the boundaries.[8] The fixing of rates, fees, or charges for customers outside of the municipal boundaries, in this manner, does not require a public hearing.

Alternatively, a municipality may charge rates that are just and equitable and based upon the same factors used in fixing the rates for the customers within the boundaries of the municipality. In addition, the municipality may add a 25 percent surcharge. When a municipality uses this methodology, the total of all rates, fees, and charges for the services charged to customers outside the municipal boundaries may not be more than 50 percent in excess of the total amount the municipality charges consumers within its municipal boundaries, for corresponding service.[9] Under this scenario, the rates, fees, and charges may not be set until a public hearing is held and the users, owners, tenants, occupants of property served or to be served, and all other interested parties have an opportunity to be heard on the rates, fees, and charges. Any change in the rates, fees, and charges must also have a public hearing unless the change is applied pro rata to all classes of service, both inside and outside of the municipality.[10]

The provisions of s. 180.191, F.S., may be enforced by civil action. Whenever any municipality violates, or if reasonable grounds exist to believe that a municipality is about to violate, s. 180.191, F.S., an aggrieved party may seek preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.[11] A prevailing party under such an action may seek treble damages and, in addition, a reasonable attorney's fee as part of the cost.[12]

City of Miami Gardens v. City of North Miami Beach

The Norwood Water Treatment Plant (Norwood Plant), operated by the City of North Miami Beach (NMB), treats and distributes water for North Miami Beach's municipal water and wastewater utility which provides service to customers in NMB and the City of Miami Gardens. Though owned by NMB, the plant is physically located outside of the geographic boundaries of that municipality in what is now, as of May 13, 2003,[13] within the geographic boundaries of Miami Gardens.[14]

On January 7, 2003, NMB adopted an ordinance, pursuant to s. 180.191, F.S., increasing the surcharge on its water and wastewater customers residing outside of its municipal boundaries. On May 22, 2017, NMB entered into an agreement for a private entity to maintain, repair and manage the Norwood Plant; however, NMB retained ownership of the plant.[15]

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[8] Section 180.191(1)(a), F.S.
[9] Section 180.191(1)(b), F.S.
[10] *Id.*
[11] Section 180.191(2), F.S.
[12] Section 180.191(4), F.S.
[13] Miami Gardens was incorporated on May 13, 2003.
[14] City of Miami Gardens v. City of N. Miami Beach, 346 So. 3d 648, 650–51 (Fla. 3d DCA 2022). The City of North Miami Beach operated the Norwood Plant before the City of Miami Gardens was incorporated.
[15] *Id.*

In December of 2018, Miami Gardens brought a class action lawsuit, which sought to represent not only itself, but also its residents who purchase water from the Norwood Plant. In part, Miami Gardens sought a declaratory judgment seeking the answers to three questions:

- If NMB assigned to a private contractor all operational responsibility for water utilities it owns that are located outside its geographical bounds, is NMB still "operating" those water utilities?
- If NMB is no longer "operating" water utilities it owns that are located outside its geographical bounds, may NMB lawfully charge a 25 percent surcharge on water provided to consumers within the City of Miami Gardens?
- Does s. 180.191, F.S., provide for the imposition of a 25 percent surcharge per billing cycle by NMB upon the City of Miami Gardens and the members of the class for water drawn from the aquifer located within the boundaries of the City of Miami Gardens which is processed in and never leaves the boundaries of the municipality?[16]

After the parties were given a chance to resolve the dispute for six months, the trial court eventually dismissed the complaint on four bases:

- NMB had terminated the contract with the private entity to operate the Norwood Plant, and thus the complaint was moot;
- The complaint was not supported by the plain language of s. 180.191(1), F.S;
- Statute of limitations, as the complaint had been filed 15 years after Miami Gardens was incorporated and 16 years after the surcharge had been put in place (citing to the four-year statute of limitations provided in s. 95.11(3), F.S; and
- Sovereign immunity.[17]

Miami Gardens appealed this dismissal to the Florida Third District Court of Appeal. The Third District Court reversed the dismissal and remanded the case back to the trial court, stating that:

- Sovereign immunity did not bar the claims of Miami Gardens. The court found that sovereign immunity did not apply in this matter since s. 180.191(4), F.S., clearly provides a financial damages remedy for actions pursuant to s. 180.191, F.S. In addition, the court found that sovereign immunity did not apply to refunds of previously paid illegal fees;
- Miami Gardens' allegation that an NMB-owned water treatment plant, contracted to be operated by a private party, was not entitled to assess a 25 percent surcharge on non-NMB residents, was sufficient to state a claim under s. 180.191, F.S.; and
- The matter was not moot, even though, since October 30, 2019, NMB had removed the surcharges for the services supplied to the City of Miami Gardens itself (but not for other residential and business customers) and, as of August 6, 2020, NMB had terminated its contract with the private entity operating the plant. The court found that Miami Gardens and its class still had a case and controversy as to whether it, and its residents, were due a refund and that the cessation of the surcharge was not permanent.[18]

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[16] *Id.*
[17] *Id* at 653.
[18] *Id* at 653-58.

On January 16, 2025, the trial court issued a final order approving a settlement that pays $9 million to Miami Gardens and its class from NMB.[19]

III. Effect of Proposed Changes:

Section 1 of the bill creates an exception to the maximum rates that may be charged to municipal water and sewer utility customers that are outside of the municipality's boundaries under s. 180.191, F.S. The bill provides that if a municipal utility provides water and sewer services to a second municipality, and serves that second municipality using a facility or water or sewer plant located within that second municipality, that municipality must charge the customers within that second municipality the same rates, fees, and charges as the customers within its own municipal boundaries.

The bill provides the following definitions:

- "Facility" means a water treatment facility, wastewater treatment facility, intake station, pumping station, well, and other physical components of a water or wastewater system. The term "facility" in the bill does not include facilities that transport water from the point of entry to a wastewater treatment facility, or from a water source or treatment facility to the customer.
- "Wastewater treatment facility" means a facility that accepts and treats domestic or industrial wastewater.
- "Water treatment facility" means a facility within a water system which can alter the physical, chemical, or bacteriological quality of water.

Section 2 of the bill provides an effective date of the bill of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the

[19] *City of Miami Gardens v. City of North Miami Beach*, No. 2018-042450-CA-01 (Fla. 11th Cir. Ct. Jan. 16, 2025)(final order and judgment approving settlement agreement).

mandates requirements do not apply to laws having an insignificant impact,[20] which is $2.37 million or less for Fiscal Year 2024-2025.[21]

The Revenue Estimating Conference has not reviewed SB 202. Staff estimates an indeterminate impact to municipal utility revenues.

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:

Municipal water and sewer utility customers that are located in a different municipality than the municipality that operates the utility may see a water and sewer rate reduction under the provisions of the bill if that customer's municipality contains facilities or water or sewer plants for the utility.

C. Government Sector Impact:

Municipal governments that operate a municipal water and sewer utility, with facilities or water or sewer plants located in a second municipality, may see a reduction in utility revenue under the provisions of the bill.

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[20] FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Mar. 5, 2025).

[21] Based on the Demographic Estimating Conference's estimated population adopted on February 6, 2025. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/index.cfm (last visited Mar. 5, 2025).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 180.191 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 Jones

A bill to be entitled

An act relating to municipal water and sewer utility rates; amending s. 180.191, F.S.; requiring a municipality to charge customers receiving its utility services in another municipality the same rates, fees, and charges as it charges consumers within its municipal boundaries under certain circumstances; defining terms; making technical changes; providing an effective date.

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

Section 1. Present subsections (2), (3), and (4) of section 180.191, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:

180.191 Limitation on rates charged consumer outside city limits.—

(1) Any municipality within this ~~the~~ state operating a water or sewer utility outside of the boundaries of such municipality shall charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

(a) It may charge the same rates, fees, and charges as consumers inside the municipal boundaries. However, in addition ~~thereto~~, the municipality may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries, except as provided in subsection (2). Fixing of

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

such rates, fees, and charges in this manner does ~~shall~~ not require a public hearing except as may be provided for service to consumers inside the municipality.

(b) It may charge rates, fees, and charges that are just and equitable and that ~~which~~ are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries, except as provided in subsection (2). In addition ~~thereto~~, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for ~~said~~ services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries may ~~shall~~ not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. ~~No~~ Such rates, fees, and charges may not ~~shall~~ be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served thereby; and all others interested must ~~shall~~ have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of such rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, no hearing or notice is ~~shall be~~ required.

(2) A municipality within this state which operates a water or sewer utility providing service to customers in another recipient municipality, which also has a facility in that recipient municipality, shall charge consumers in the recipient

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

59 municipality the same rates, fees, and charges as it does the
60 consumers inside its own municipal boundaries. As used in this
61 subsection, the term:
62 (a) "Facility" means a water treatment facility, a
63 wastewater treatment facility, an intake station, a pumping
64 station, a well, and other physical components of a water or
65 wastewater system. The term does not include:
66 1. Pipes, tanks, pumps, or other facilities that transport
67 water from a water source or treatment facility to the consumer;
68 or
69 2. Pipes, conduits, and associated appurtenances that
70 transport wastewater from the point of entry to a wastewater
71 treatment facility.
72 (b) "Wastewater treatment facility" means a facility that
73 accepts and treats domestic wastewater or industrial wastewater.
74 (c) "Water treatment facility" means a facility within a
75 water system which can alter the physical, chemical, or
76 bacteriological quality of water.
77 Section 2. This act shall take effect July 1, 2025.

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

The Florida Senate

Committee Agenda Request

To: Senator Jennifer Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 13, 2025

I respectfully request that **Senate Bill #202**, relating to Municipal Water and Sewer Utility Rates, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Shevrin D. "Shev" Jones
Florida Senate, District 34

File signed original with committee office

S-020 (03/2004)

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 346

INTRODUCER: Senator Rouson

SUBJECT: State Preemption of the Regulation of Hoisting Equipment

DATE: March 11, 2025 REVISED:

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

I. Summary:

SB 346 deletes the provision in current law that preempts regulation of certain hoisting equipment that is not preempted by federal law to the state.

The bill has an effective date of July 1, 2025.

II. Present Situation:

Regulation of Hoisting Equipment

The federal government, through the Occupational Safety and Health Administration (OSHA), generally regulates hoisting equipment.[1]

Florida currently does not regulate the operation of mobile or tower cranes on construction sites or license crane operators, nor does it provide for hurricane or high-wind event standards or plans relating to on-site crane use.

In 2012, CS/HB 521 created s. 489.113(11), F.S., which prohibited any local act, law, ordinance, or regulation pertaining to the regulation of hoisting equipment and hoisting equipment operators in Florida. It preempted the regulation of that equipment, not already preempted by the federal government to the state.

Occupational Safety and Health Act and Regulation of Hoisting Equipment

The Occupational Safety and Health Act of 1970 (the OSH Act) created the Occupational Safety and Health Administration (OSHA), a federal agency that promulgates standards related to

[1] 29 CFR s. 1926.552.

workplace health and safety.[2] The Supreme Court has held that Congress intended to establish "uniform, federal occupational and health standards" in the OSH Act to avoid "duplicative, and possibly counterproductive regulation."[3] The Court has further held that "the OSH Act precludes any state regulation of an occupational or health issue, with respect to which a federal standard has been established, unless a state plan has been submitted."[4] This applies regardless of whether the state law requirement serves a dual purpose and has another non-occupational purpose.[5]

The OSH Act allows a state that desires to assume responsibility for development and enforcement of occupational safety and health standards relating to any occupational safety or health issue, where a federal standard has been promulgated, to do so by submitting a state plan for the development of such standards and their enforcement.[6]

However, unless a state plan has been submitted and approved, the OSH Act prohibits state and local governments from promulgating regulation related to workplace health or safety if an applicable OSHA standard is already in place.[7] Conversely, if a relevant OSHA standard is not in place, the OSH Act does not federally preempt state or local regulation regarding workplace health or safety.[8] As a result, regulation of workplace health and safety that is not addressed by existing OSHA standards generally may be adopted by state and local governments.

Currently, the state does not regulate the operations of mobile or tower cranes on construction sites or license crane operators, nor does it provide for hurricane or high-wind event standards or plans relating to on-site crane use. However, OSHA's occupational health and safety standards apply to both construction worksites and employees engaged in construction work.[9]

OSHA standards include general requirements for construction work involving cranes, derricks, material hoists, personnel hoists, and elevators.[10] OSHA regulations require compliance with the manufacturer's specifications and limitations applicable to the operation of all cranes, derricks, hoists, and elevators. In cases where the manufacturer's specifications are not available, the limitations assigned to the equipment are to be based on the determinations of a qualified engineer competent in the field.[11]

OSHA regulations also contain requirements for the inspection and certification of crane and hoisting equipment and standards for hand signals to crane and derrick operators.[12] Further, by incorporating the mandatory rules of the applicable American Society of Mechanical Engineers

[2] 29 U.S.C. § 651.
[3] *Gade v. National Solid Waste Management Association*, 505 U.S. 88, 102 (1992).
[4] *Id*.
[5] 505 U.S. 88 (1992).
[6] 29 U.S.C. s. 667(b).
[7] *See Gade v. National Solid Waste Management Association*, 505 U.S. 88, 98-99 (1992).
[8] 29 U.S.C. s. 667(a).
[9] 29 C.F.R. s. 1910.12(a).
[10] 29 C.F.R. s. 1926.550 & s. 1926.552.
[11] *Id*.
[12] *See Associated Builders v. Miami-Dade Co.,* No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd*, 594 F. 3d 1321 (11th Cir. 2010).

(ASME) standards, OSHA standards include inspection of cranes and standards for crane operator qualifications and certifications.

Miami-Dade County Ordinance Relating to the Safety of Hoisting Equipment

In March 2008, Miami-Dade County passed and adopted an ordinance that set binding regulations for the construction, installation, operation, and use of tower cranes, personnel, and material hoists.[13] The ordinance was subsequently challenged as being preempted by the OSH Act and OSHA standards that regulated occupational safety and health standards.[14] Miami-Dade County defended the provisions as valid saying it had targeted public safety rather than occupational safety.[15]

The United States District Court permanently enjoined the County from implementing certain provisions of the ordinance relating to wind load standards finding that the standards directly affected occupational safety and therefore were preempted by the federal standards, even if the ordinance served a dual purpose and addressed public safety issues as well.[16] The District Court also found that other parts of the Miami-Dade ordinance relating to public safety and hurricane preparedness were not preempted because the scope of OSHA's standards as they relate to cranes and hoists did not include regulation regarding hurricane preparedness or public safety.[17] The decision of the District Court was later affirmed by the 11th Circuit Court of Appeals finding that the Miami-Dade ordinance was preempted by OSHA with regard to wind load standards for tower cranes and hoists.[18]

Post *Associated Builders v. Miami-Dade Co*.

In January 2025 Miami-Dade County passed a resolution urging the Florida Legislature to repeal the preemption in current law and allow local governments to regulate and enforce crane safety in matters that are not preempted to the federal government, citing specifically **hurricane preparedness**.[19]

III. Effect of Proposed Changes:

Section 1 of the bill deletes the section of law that preempts regulations of certain hoisting equipment that is not preempted by federal law, to the state.

Section 2 of the bill provides an effective date of July 1, 2025.

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[13] Miami-Dade County, FL, Ordinance No. 08-34.
[14] *See Associated Builders v. Miami-Dade Co.,* No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd*, 594 F. 3d 1321 (11th Cir. 2010).
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Associated Builders v. Miami-Dade Co.*, 594 F. 3d 1321 (11th Cir. 2010).
[19] Miami-Dade County, FL, Resolution No. R-67-25.

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 repeals the following sections of the Florida Statutes: 489.113.

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 Rouson

16-00831-25 2025346__

1 A bill to be entitled
2 An act relating to state preemption of the regulation
3 of hoisting equipment; amending s. 489.113, F.S.;
4 deleting provisions preempting to the state the
5 regulation of certain hoisting equipment; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (11) of section 489.113, Florida
11 Statutes, is amended to read:
12 489.113 Qualifications for practice; restrictions.—
13 ~~(11) Any local act, law, ordinance, or regulation,~~
14 ~~including, but not limited to, a local building code or building~~
15 ~~permit requirement, of a county, municipality, or other~~
16 ~~political subdivision that pertains to hoisting equipment~~
17 ~~including power-operated cranes, derricks, hoists, elevators,~~
18 ~~and conveyors used in construction, demolition, or excavation~~
19 ~~work, that is not already preempted by the Occupational Safety~~
20 ~~and Health Administration under 29 C.F.R. parts 1910 and 1926,~~
21 ~~including, but not limited to, local worksite regulation~~
22 ~~regarding hurricane preparedness or public safety, is prohibited~~
23 ~~and is preempted to the state. This subsection does not apply to~~
24 ~~the regulation of elevators under chapter 399 or to airspace~~
25 ~~height restrictions in chapter 333.~~
26 Section 2. This act shall take effect July 1, 2025.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Vice Chair*
Agriculture
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Health and Human Services
Children, Families, and Elder Affairs
Ethics and Elections
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR DARRYL ERVIN ROUSON
16th District

March 3, 2025

Senator Jennifer Bradley
Chair, Committee on Regulated Industries
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Bradley,

I write today respectfully requesting SB 346, State Preemption of the Regulation of Hoisting Equipment, be added to the agenda of a forthcoming meeting of the Committee on Regulated Industries for consideration. I look forward to the opportunity to present SB 346 to the committee. I am available for any questions you may have about this legislation.

Thank you in advance for the committee's time and consideration.

Sincerely –

Senator Darryl E. Rouson
Florida Senate District 16

REPLY TO:
❒ 535 Central Avenue, Suite 302, St. Petersburg, Florida 33701 (727) 822-6828
❒ 212 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: *www.flsenate.gov*

BEN ALBRITTON
President of the Senate

JASON BRODEUR
President Pro Tempore

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 578

INTRODUCER: Senator Leek

SUBJECT: Wine Containers

DATE: March 11, 2025 REVISED: ________ ________ ________ ________

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

I. Summary:

SB 578 allows the sale of wine in recyclable glass containers holding 5.16 gallons. Current law only allows for reusable containers holding 5.16 gallons. Under current law, wine may also be sold in glass containers holding 4.5 liters, 9 liters, 12 liters, or 15 liters of wine.

The bill takes effect July 1, 2025.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces[1] the Beverage Law,[2] which regulates the manufacture, distribution, and sale of wine, beer, and liquor.[3] The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Wine

The term "wine" means:[4]

> all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added

[1] Section 561.02, F.S.

[2] Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

[3] *See* s. 561.14, F.S.

[4] Section 564.01(1), F.S.

to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

"Fortified wine" means all wines containing more than 17.259 percent of alcohol by volume.[5]

Wine Container Size Limits

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon (3.785 liters) of wine unless the wine is sold in a reusable container of 5.16 gallons (19.5 liters) or a glass container holding 4.5 liters, 9 liters, 12 liters, or 15 liters of wine.

Qualified distributors and manufacturers may sell wine to other qualified distributors or manufacturers in any size container. Except as provided in s. 564.09, F.S., wine sold or offered for sale by a licensed vendor to be consumed off the premises shall be in the unopened original container.[6]

Any person who violates the prohibition in s. 564.05, F.S., commits a misdemeanor of the second degree.[7]

Federal law specifies fill standards for wine containers.[8] The wine container must be filled to contain the quantity of wine authorized in the federal fill standards so as not to mislead the consumer.[9] The authorized standards of fill range from 50 milliliters to three liters. However, if the fill of the wine container is four liters or larger, the container must be labeled in even liters, e.g., four liters, five liters, etc.[10] There are also several exceptions to the standard fill requirements, including exceptions for certain imported wines in original containers, wines bottled before specified dates, and wine packed in containers of 18 liters or more.[11]

III. Effect of Proposed Changes:

The bill revises s. 564.05, F.S., to allow the sale of wine in recyclable glass containers holding 5.16 gallons. Current law only allows for reusable containers holding 5.16 gallons.

The bill takes effect July 1, 2025.

---

[5] Section 564.01(2), F.S.

[6] Section 564.09, F.S., allows restaurant patrons to leave a restaurant with an unsealed bottle of wine for consumption off the premises if the patron has purchased a meal and consumed a portion of the bottle of wine on the restaurant premises with certain requirements.

[7] Section 775.082(4), F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed $500.

[8] 27 C.F.R. s. 4.70 *et seq.*

[9] 27 C.F.R. s. 4.71.

[10] 27 C.F.R. s. 4.72.

[11] 27 C.F.R. s. 4.70. The standard wine barrel is 225 liters or 59 gallons. See Wine Industry Advisor, Living Large: Supersizing Barrels for a Subtler Impact, at: https://wineindustryadvisor.com/2020/08/11/living-large-supersizing-barrels-for-a-subtler-impact (last visited Feb. 25, 2025).

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 564.05 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 Leek

7-00684-25 2025578__

1 A bill to be entitled
2 An act relating to wine containers; amending s.
3 564.05, F.S.; providing that wine may be sold in
4 recyclable containers of a specified volume; providing
5 an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Section 564.05, Florida Statutes, is amended to
10 read:
11 564.05 Limitation of size of individual wine containers;
12 penalty.—It is unlawful for a person to sell within this state
13 wine in an individual container holding more than 1 gallon of
14 such wine, unless such wine is in a <u>recyclable or</u> reusable
15 container holding 5.16 gallons or a glass container holding 4.5
16 liters, 6 liters, 9 liters, 12 liters, or 15 liters. However,
17 qualified distributors and manufacturers may sell wine to other
18 qualified distributors or manufacturers in any size container.
19 Except as provided in s. 564.09, wine sold or offered for sale
20 by a licensed vendor to be consumed off the premises <u>must</u> ~~shall~~
21 be in the unopened original container. A person convicted of a
22 violation of this section commits a misdemeanor of the second
23 degree, punishable as provided in s. 775.082 or s. 775.083.
24 Section 2. This act shall take effect July 1, 2025.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

The Florida Senate

Committee Agenda Request

To: Senator Jennifer Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 21, 2025

I respectfully request that **Senate Bill #578**, relating to Wine Containers be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Sincerely,

Sen. Tom Leek
Florida Senator, District 7

File signed original with committee office

S-020 (03/2004)

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 606

INTRODUCER: Senator Leek

SUBJECT: Public Lodging and Food Service Establishments

DATE: March 11, 2025 REVISED:

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

I. Summary:

SB 606 revises the following terms related to public lodging establishments.

The term "transient public lodging establishment" is revised to mean any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 consecutive days or which is advertised or held out to the public as a place regularly rented to guests for periods of less than 30 consecutive days.

The term "nontransient public lodging establishment" is revised to mean any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 consecutive days or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 consecutive days.

Current law does not specify that the rental periods to qualify as a transient or nontransient public lodging establishment are based on consecutive days. The bill also removes references to one calendar month in these definitions.

The terms "transient establishment" and "nontransient establishment" are revised to mean any public lodging establishment that is rented or leased to guests by an operator for transient or nontransient occupancy, respectively. The bill removes the condition that establishment status as transient or nontransient is based on the establishment operator's intent regarding whether the guest's stay will be temporary.

The terms "transient occupancy" and "nontransient occupancy" are revised to provide that a guest's occupancy of a dwelling unit at a hotel, motel, vacation rental, bed and breakfast inn, or timeshare project, as defined in s. 509.242, F.S., is transient or nontransient, respectively, unless a written rental or leasing agreement expressly states that the unit may be the guest's sole

residence. The bill removes the rebuttable presumption providing that occupancy is a "transient occupancy" or "nontransient occupancy" based on the establishment operator's intent regarding whether the accommodation will be the guest's sole residence.

The bill amends the procedure for removal of guests from a public lodging or food establishment to provide that a notice that a guest must depart is effective upon delivery of the notice. It provides that a law enforcement officer may arrest a guest who remains after notice to leave has been provided to the guest.

The bill takes effect July 1, 2025.

II. Present Situation:

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

Definitions - Public Lodging Establishments

The term "public lodging establishments" includes transient and non-transient public lodging establishments.[1] The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A public lodging establishment is classified as a hotel, motel, vacation rental, non-transient apartment, transient apartment, bed and breakfast inn, or timeshare project if the establishment satisfies specified criteria.[2]

A "vacation rental" is defined in s. 509.242(1)(c), F.S., as:

> …any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.
>
> *Emphasis added.*

Section 509.013(2), F.S., defines the term "operator" to mean the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

[1] Section 509.013(4)(a), F.S.
[2] Section 509.242(1), F.S.

Transient Public Lodging Establishment

A "transient public lodging establishment" is defined in s. 509.013(4)(a)1., F.S., as:

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. (emphasis added)

"Transient occupancy" means:

> …occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.[3]

A "transient" is a guest in transient occupancy.[4]

Non-Transient Public Lodging Establishment

A "non-transient public lodging establishment" is defined in s. 509.013(4)(a)2., F.S., as:

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. (emphasis added)

Exemptions

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of "public lodging establishment":

- Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;
- Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072, F.S.;
- Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
- Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or one calendar month, whichever is less, and that

[3] Section 509.013(12), F.S.

[4] Section 509.013(13), F.S.

is not advertised or held out to the public as a place regularly rented for periods of less than one calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
- Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008 - 381.00895, F.S.;
- Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
- Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public;
- Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement; and
- Any rooming house, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, non-transient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.

Public Food Service Establishments

A "public food service establishment" is defined as:

> …any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.[5]

There are several exclusions from the definition of public food service establishment, including:
- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests;
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests;
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;

[5] Section 509.013(5)(a), F.S.

- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.[6]

Refusal of Admission and Ejection of Undesirable Guests

Section 509.141(1), F.S., permits an operator to remove, or cause to be removed, a person for specified causes, including any guest of a public lodging establishment or public food service establishment while on the premises of the establishment who:
- Illegally possesses or deals in controlled substances, as defined in ch. 893, F.S.,
- Is intoxicated, profane, lewd, or brawling;
- Indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment;
- Fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to check out;
- Fails to make payment for food, beverages, or services; or
- In the opinion of the operator, is a person the continued entertainment of whom would be detrimental to the establishment.

Section 509.141(3), F.S., provides that any guest who remains or attempts to remain in any such establishment after being requested to leave is guilty of a misdemeanor of the second degree.[7]

Section 509.141(4), F.S., provides that any guest who remains "illegally on the premises of any public lodging establishment or public food service establishment, the operator of such establishment may call upon any law enforcement officer of this state for assistance." Upon request of the operator of the establishment, it is the duty of the law enforcement officer to place the guest under arrest and take the guest into custody.

Section 509.142, F.S., permits an operator to refuse accommodation or service to any person whose conduct on the premises of the establishment:
- Displays intoxication, profanity, lewdness, or brawling;
- Indulges in language or conduct such as to disturb the peace or comfort of other guests;
- Engages in illegal or disorderly conduct;
- Illegally possesses or deals in controlled substances as defined in ch. 893, F.S.; or
- Engages in conduct constituting a nuisance.

Additionally, s. 509.143, F.S., permits an operator to take a person into custody and detain that person in a reasonable manner and for a reasonable time if the operator has probable cause to believe that the person was engaging in disorderly conduct in violation of s. 877.03, F.S.,[8] on the

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[6] Section 509.013(5)(b), F.S.

[7] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[8] Section 877.03, F.S., provides that a person is guilty of a misdemeanor of the second degree if that person commits "such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of

premises of the licensed establishment and that such conduct was creating a threat to the life or safety of the person or others. The operator is required to call a law enforcement officer to the scene immediately after detaining the person.

III. Effect of Proposed Changes:

Definitions

The bill amends s. 509.013, F.S., to revise the following definitions:

- "Transient public lodging establishment," is revised to specify that the 30-day rental period must be for periods of less than 30 consecutive days. It removes the one-calendar-month qualification and clarifies that an establishment qualifies if advertised or offered for rentals of less than 30 consecutive days.
- "Nontransient public lodging establishment" is revised to mean rentals of at least 30 consecutive days and removing the reference to one-calendar-month. It also allows an establishment to qualify if advertised for rentals for periods of at least 30 consecutive days.
- "Transient establishment" is revised to mean any public lodging establishment that is rented or leased to guests by an operator for transient occupancy, and removing the condition that temporary occupancy is based on the operator's intent.
- "Transient occupancy" is revised to mirror the changes to the term "transient public lodging establishment" by providing that the term means occupancy that is temporary. It also provides that a guest's occupancy of a dwelling unit at a hotel, motel, vacation rental, bed and breakfast inn, or timeshare project, as defined in s. 509.242, F.S., is transient unless a written rental or leasing agreement expressly states that the unit may be the guest's sole residence. The bill removes the rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.
- "Nontransient establishment" is revised to mean any public lodging establishment that is rented or leased to guests by an operator for nontransient occupancy. The bill removes the requirement that the operator intends the unit to be the guest's sole residence.
- "Nontransient occupancy" is revised to mirror the changes to the term "nontransient public lodging establishment" by providing that the term means occupancy that is not temporary. The bill also provides that a guest's occupancy of a dwelling unit at a hotel, motel, vacation rental, bed and breakfast inn, or timeshare project, as defined in s. 509.242, F.S., is transient unless a written rental or leasing agreement expressly states that the unit may be the guest's sole residence. The bill removes the rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

For the purpose of incorporating the amendment to s. 509.013, F.S., the bill reenacts the following provisions:

- Section 196.1978(3)(k), F.S., relating to affordable housing property exemption;
- Section 196.199(1)(a), F.S., relating to government property exemption;
- Section 212.031(1)(a), F.S., relating to tax on rental or license fee for use of real property;
- Section 404.056(5), relating to environmental radiation standards and testing, and notification on real estate documents;

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persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct."

- Section 413.08(1)(c), F.S., relating to defining the term "public accommodation" in the context of rights and responsibilities of an individual with a disability, and penalties;
- Section 480.043(14)(b), (c), and (e), F.S., relating to massage establishments, requisites, licensure inspection, and human trafficking awareness training and policies; and
- Section 559.955(5)(b), F.S., relating to home-based businesses.

Refusal of Admission and Ejection of Undesirable Guests

The bill amends s. 509.141(1), F.S., to provide that the check out time by which a guest's failure to make payment at the agreed-upon rent rate allows the operator to remove a guest is based on check out time specified by the public lodging establishment.

The bill amends s. 509.141(2), F.S., to revise the notice requirement that an operator must give a guest who is directed to immediately depart from a public lodging or food service establishment. The bill provides that the notice is effective upon the operator's delivery of the notice, whether in person, via a telephonic or electronic communications medium using the contact information provided by the guest, or, with respect to a public lodging establishment, upon delivery to the guest's lodging unit.

The bill amends s. 509.141(3) to provide that if a person remains in the establishment after the operator has requested the person to leave under subsection (2), then the person is guilty of a second degree misdemeanor.[9]

Section 509.141(4) and (5) is amended to provide that it is the duty of a law enforcement officer to remove a guest upon request of the operator and after notice under subsection (2) rather than requiring the officer to arrest the guest. The officer still may arrest the guest if necessary.

Section 509.141(5), F.S., is revised by the bill to remove the requirement that the violation of s. 509.141(3), F.S., must be in the presence of the officer.

For the purpose of incorporating the amendment to s. 509.013, F.S., the bill reenacts s. 721.13(14), F.S., relating to the management of timeshare projects.

Effective Date

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[9] *Supra* n. 7.

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:

The department has not submitted a fiscal analysis for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013 and 509.141.

This bill reenacts the following sections of the Florida Statutes: 196.1978, 196.199, 212.031, 404.056, 413.08, 480.043, 559.955, and 721.13.

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 Leek

1 A bill to be entitled
2 An act relating to public lodging and food service
3 establishments; amending s. 509.013, F.S.; revising
4 definitions; amending s. 509.141, F.S.; revising the
5 instances under which the operator of any public
6 lodging establishment may remove a guest; providing
7 requirements for the notice an operator of a public
8 lodging establishment or public food service
9 establishment may give to a guest under specified
10 circumstances; making technical changes; requiring a
11 law enforcement officer to remove a guest who remains
12 on the premises of any public lodging establishment
13 after an operator makes a specified request;
14 authorizing a law enforcement officer to arrest and
15 take into custody any guest under certain
16 circumstances; reenacting ss. 196.1978(3)(k),
17 196.199(1)(a), 212.031(1)(a), 404.056(5),
18 413.08(1)(c), 480.043(14)(b), (c), and (e), and
19 559.955(5)(b), F.S., relating to affordable housing
20 property exemption; government property exemption;
21 taxes and fees for use of real property; environmental
22 radiation standards and testing, and notification on
23 real estate documents; rights and responsibilities of
24 an individual with a disability, and penalties;
25 massage establishments, requisites, licensure
26 inspection, and human trafficking awareness training
27 and policies; and home-based businesses, local
28 government, and restrictions, respectively, to
29 incorporate the amendment made to s. 509.013, F.S., in

30 references thereto; reenacting s. 721.13(14), F.S.,
31 relating to management, to incorporate the amendment
32 made to s. 509.141, F.S., in a reference thereto;
33 providing an effective date.
34
35 Be It Enacted by the Legislature of the State of Florida:
36
37 Section 1. Paragraph (a) of subsection (4) and subsections
38 (11), (12), (14), and (15) of section 509.013, Florida Statutes,
39 are amended to read:
40 509.013 Definitions.—As used in this chapter, the term:
41 (4)(a) "Public lodging establishment" includes a transient
42 public lodging establishment as defined in subparagraph 1. and a
43 nontransient public lodging establishment as defined in
44 subparagraph 2.
45 1. "Transient public lodging establishment" means any unit,
46 group of units, dwelling, building, or group of buildings within
47 a single complex of buildings which is rented to guests more
48 than three times in a calendar year for periods of less than 30
49 consecutive days ~~or 1 calendar month, whichever is less,~~ or
50 which is advertised or held out to the public as a place
51 regularly rented to guests for periods of less than 30
52 consecutive days.
53 2. "Nontransient public lodging establishment" means any
54 unit, group of units, dwelling, building, or group of buildings
55 within a single complex of buildings which is rented to guests
56 for periods of at least 30 consecutive days ~~or 1 calendar month,~~
57 ~~whichever is less,~~ or which is advertised or held out to the
58 public as a place regularly rented to guests for periods of at

59 least 30 consecutive days ~~or 1 calendar month~~.
60
61 License classifications of public lodging establishments, and
62 the definitions therefor, are set out in s. 509.242. For the
63 purpose of licensure, the term does not include condominium
64 common elements as defined in s. 718.103.
65 (11) “Transient establishment” means any public lodging
66 establishment that is rented or leased to guests by an operator
67 for transient ~~whose intention is that such guests’~~ occupancy
68 ~~will be temporary~~.
69 (12) “Transient occupancy” means occupancy that is ~~when it~~
70 ~~is the intention of the parties that the occupancy will be~~
71 temporary. A guest’s occupancy of a dwelling unit at a hotel,
72 motel, vacation rental, bed and breakfast inn, or timeshare
73 project as defined in s. 509.242 is transient unless a written
74 rental or leasing agreement expressly states that the unit may
75 be the guest’s ~~There is a rebuttable presumption that, when the~~
76 ~~dwelling unit occupied is not the~~ sole residence ~~of the guest,~~
77 ~~the occupancy is transient~~.
78 (14) “Nontransient establishment” means any public lodging
79 establishment that is rented or leased to guests by an operator
80 for nontransient occupancy ~~whose intention is that the dwelling~~
81 ~~unit occupied will be the sole residence of the guest~~.
82 (15) “Nontransient occupancy” means occupancy that is not
83 ~~when it is the intention of the parties that the occupancy will~~
84 ~~not be~~ temporary. A guest’s occupancy of a dwelling unit at a
85 hotel, motel, vacation rental, bed and breakfast inn, or
86 timeshare project as defined in s. 509.242 is transient unless a
87 written rental or leasing agreement expressly states the unit

88 may be the guest’s ~~There is a rebuttable presumption that, when~~
89 ~~the dwelling unit occupied is the~~ sole residence ~~of the guest,~~
90 ~~the occupancy is nontransient~~.
91 Section 2. Section 509.141, Florida Statutes, is amended to
92 read:
93 509.141 Refusal of admission and ejection of undesirable
94 guests; notice; procedure; penalties for refusal to leave.—
95 (1) The operator of any public lodging establishment or
96 public food service establishment may remove or cause to be
97 removed from such establishment, in the manner hereinafter
98 provided, any guest of the establishment who, while on the
99 premises of the establishment, illegally possesses or deals in
100 controlled substances as defined in chapter 893 or is
101 intoxicated, profane, lewd, or brawling; who indulges in any
102 language or conduct which disturbs the peace and comfort of
103 other guests or which injures the reputation, dignity, or
104 standing of the establishment; who, in the case of a public
105 lodging establishment, fails to make payment of rent at the
106 agreed-upon rental rate by the ~~agreed-upon~~ checkout time
107 specified by the public lodging establishment; who, in the case
108 of a public lodging establishment, fails to check out by the
109 time specified ~~agreed upon in writing~~ by the ~~guest and~~ public
110 lodging establishment at check-in unless an extension of time is
111 agreed to by the public lodging establishment and guest prior to
112 checkout; who, in the case of a public food service
113 establishment, fails to make payment for food, beverages, or
114 services; or who, in the opinion of the operator, is a person
115 the continued entertainment of whom would be detrimental to such
116 establishment. The admission to, or the removal from, such

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117 establishment shall not be based upon race, creed, color, sex,
118 physical disability, or national origin.
119 (2) The operator of any public lodging establishment or
120 public food service establishment shall notify such guest that
121 the establishment no longer desires to entertain the guest and
122 shall request that such guest immediately depart from the
123 establishment. Such notice may be given orally or in writing.
124 <u>The notice is effective upon the operator’s delivery of the</u>
125 <u>notice, whether in person, via a telephonic or electronic</u>
126 <u>communications medium using the contact information provided by</u>
127 <u>the guest, or, with respect to a public lodging establishment,</u>
128 <u>upon delivery to the guest’s lodging unit.</u> If the notice is in
129 writing, it shall be as follows:
130
131 “You are hereby notified that this establishment no longer
132 desires to entertain you as its guest, and you are requested to
133 leave at once. To remain after receipt of this notice is a
134 misdemeanor under the laws of this state.”
135
136 If such guest has paid in advance, the establishment shall, at
137 the time such notice is given, tender to such guest the unused
138 portion of the advance payment; however, the establishment may
139 withhold payment for each full day that the guest has been
140 entertained at the establishment for any portion of the 24-hour
141 period of such day.
142 (3) Any guest who remains or attempts to remain in any such
143 establishment after <u>the operator’s request to depart pursuant to</u>
144 <u>subsection (2)</u> ~~being requested to leave~~ is guilty of a
145 misdemeanor of the second degree, punishable as provided in s.

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146 775.082 or s. 775.083.
147 (4) If any <u>guest remains</u> ~~person is illegally~~ on the
148 premises of any public lodging establishment or public food
149 service establishment <u>after the operator’s request to depart</u>
150 <u>pursuant to subsection (2)</u>, the operator of such establishment
151 may call upon any law enforcement officer of this state for
152 assistance. It is the duty of such law enforcement officer, upon
153 the request of such operator, to <u>remove</u> ~~place under arrest and~~
154 ~~take into custody for violation of this section~~ any guest who
155 <u>remains on the premises of such an establishment after the</u>
156 <u>operator’s request to depart pursuant to subsection (2).</u>
157 <u>(5) A law enforcement officer may place under arrest and</u>
158 <u>take into custody any guest who</u> violates subsection (3) ~~in the~~
159 ~~presence of the officer~~. If a warrant has been issued by the
160 proper judicial officer for the arrest of any violator of
161 subsection (3), the officer shall serve the warrant, arrest the
162 person, and take the person into custody. Upon arrest, with or
163 without warrant, the guest will be deemed to have given up any
164 right to occupancy or to have abandoned such right of occupancy
165 of the premises, and the operator of the establishment may then
166 make such premises available to other guests. However, the
167 operator of the establishment shall employ all reasonable and
168 proper means to care for any personal property which may be left
169 on the premises by such guest and shall refund any unused
170 portion of moneys paid by such guest for the occupancy of such
171 premises.
172 Section 3. For the purpose of incorporating the amendment
173 made by this act to section 509.013, Florida Statutes, in a
174 reference thereto, paragraph (k) of subsection (3) of section

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175 196.1978, Florida Statutes, is reenacted to read:
176 196.1978 Affordable housing property exemption.—
177 (3)
178 (k) Property receiving an exemption pursuant to s. 196.1979
179 or units used as a transient public lodging establishment as
180 defined in s. 509.013 are not eligible for this exemption.
181 Section 4. For the purpose of incorporating the amendment
182 made by this act to section 509.013, Florida Statutes, in a
183 reference thereto, paragraph (a) of subsection (1) of section
184 196.199, Florida Statutes, is reenacted to read:
185 196.199 Government property exemption.—
186 (1) Property owned and used by the following governmental
187 units shall be exempt from taxation under the following
188 conditions:
189 (a)1. All property of the United States is exempt from ad
190 valorem taxation, except such property as is subject to tax by
191 this state or any political subdivision thereof or any
192 municipality under any law of the United States.
193 2. Notwithstanding any other provision of law, for purposes
194 of the exemption from ad valorem taxation provided in
195 subparagraph 1., property of the United States includes any
196 leasehold interest of and improvements affixed to land owned by
197 the United States, any branch of the United States Armed Forces,
198 or any agency or quasi-governmental agency of the United States
199 if the leasehold interest and improvements are acquired or
200 constructed and used pursuant to the federal Military Housing
201 Privatization Initiative of 1996, 10 U.S.C. ss. 2871 et seq. As
202 used in this subparagraph, the term “improvements” includes
203 actual housing units and any facilities that are directly

204 related to such housing units, including any housing maintenance
205 facilities, housing rental and management offices, parks and
206 community centers, and recreational facilities. Any leasehold
207 interest and improvements described in this subparagraph,
208 regardless of whether title is held by the United States, shall
209 be construed as being owned by the United States, the applicable
210 branch of the United States Armed Forces, or the applicable
211 agency or quasi-governmental agency of the United States and are
212 exempt from ad valorem taxation without the necessity of an
213 application for exemption being filed or approved by the
214 property appraiser. This subparagraph does not apply to a
215 transient public lodging establishment as defined in s. 509.013
216 and does not affect any existing agreement to provide municipal
217 services by a municipality or county.
218 Section 5. For the purpose of incorporating the amendment
219 made by this act to section 509.013, Florida Statutes, in a
220 reference thereto, paragraph (a) of subsection (1) of section
221 212.031, Florida Statutes, is reenacted to read:
222 212.031 Tax on rental or license fee for use of real
223 property.—
224 (1)(a) It is declared to be the legislative intent that
225 every person is exercising a taxable privilege who engages in
226 the business of renting, leasing, letting, or granting a license
227 for the use of any real property unless such property is:
228 1. Assessed as agricultural property under s. 193.461.
229 2. Used exclusively as dwelling units.
230 3. Property subject to tax on parking, docking, or storage
231 spaces under s. 212.03(6).
232 4. Recreational property or the common elements of a

233 condominium when subject to a lease between the developer or
234 owner thereof and the condominium association in its own right
235 or as agent for the owners of individual condominium units or
236 the owners of individual condominium units. However, only the
237 lease payments on such property shall be exempt from the tax
238 imposed by this chapter, and any other use made by the owner or
239 the condominium association shall be fully taxable under this
240 chapter.
241 5. A public or private street or right-of-way and poles,
242 conduits, fixtures, and similar improvements located on such
243 streets or rights-of-way, occupied or used by a utility or
244 provider of communications services, as defined by s. 202.11,
245 for utility or communications or television purposes. For
246 purposes of this subparagraph, the term “utility” means any
247 person providing utility services as defined in s. 203.012. This
248 exception also applies to property, wherever located, on which
249 the following are placed: towers, antennas, cables, accessory
250 structures, or equipment, not including switching equipment,
251 used in the provision of mobile communications services as
252 defined in s. 202.11. For purposes of this chapter, towers used
253 in the provision of mobile communications services, as defined
254 in s. 202.11, are considered to be fixtures.
255 6. A public street or road which is used for transportation
256 purposes.
257 7. Property used at an airport exclusively for the purpose
258 of aircraft landing or aircraft taxiing or property used by an
259 airline for the purpose of loading or unloading passengers or
260 property onto or from aircraft or for fueling aircraft.
261 8.a. Property used at a port authority, as defined in s.

262 315.02(2), exclusively for the purpose of oceangoing vessels or
263 tugs docking, or such vessels mooring on property used by a port
264 authority for the purpose of loading or unloading passengers or
265 cargo onto or from such a vessel, or property used at a port
266 authority for fueling such vessels, or to the extent that the
267 amount paid for the use of any property at the port is based on
268 the charge for the amount of tonnage actually imported or
269 exported through the port by a tenant.
270 b. The amount charged for the use of any property at the
271 port in excess of the amount charged for tonnage actually
272 imported or exported shall remain subject to tax except as
273 provided in sub-subparagraph a.
274 9. Property used as an integral part of the performance of
275 qualified production services. As used in this subparagraph, the
276 term “qualified production services” means any activity or
277 service performed directly in connection with the production of
278 a qualified motion picture, as defined in s. 212.06(1)(b), and
279 includes:
280 a. Photography, sound and recording, casting, location
281 managing and scouting, shooting, creation of special and optical
282 effects, animation, adaptation (language, media, electronic, or
283 otherwise), technological modifications, computer graphics, set
284 and stage support (such as electricians, lighting designers and
285 operators, greensmen, prop managers and assistants, and grips),
286 wardrobe (design, preparation, and management), hair and makeup
287 (design, production, and application), performing (such as
288 acting, dancing, and playing), designing and executing stunts,
289 coaching, consulting, writing, scoring, composing,
290 choreographing, script supervising, directing, producing,

291 transmitting dailies, dubbing, mixing, editing, cutting,
292 looping, printing, processing, duplicating, storing, and
293 distributing;
294 b. The design, planning, engineering, construction,
295 alteration, repair, and maintenance of real or personal property
296 including stages, sets, props, models, paintings, and facilities
297 principally required for the performance of those services
298 listed in sub-subparagraph a.; and
299 c. Property management services directly related to
300 property used in connection with the services described in sub-
301 subparagraphs a. and b.
302
303 This exemption will inure to the taxpayer upon presentation of
304 the certificate of exemption issued to the taxpayer under the
305 provisions of s. 288.1258.
306 10. Leased, subleased, licensed, or rented to a person
307 providing food and drink concessionaire services within the
308 premises of a convention hall, exhibition hall, auditorium,
309 stadium, theater, arena, civic center, performing arts center,
310 publicly owned recreational facility, or any business operated
311 under a permit issued pursuant to chapter 550. A person
312 providing retail concessionaire services involving the sale of
313 food and drink or other tangible personal property within the
314 premises of an airport shall be subject to tax on the rental of
315 real property used for that purpose, but shall not be subject to
316 the tax on any license to use the property. For purposes of this
317 subparagraph, the term "sale" shall not include the leasing of
318 tangible personal property.
319 11. Property occupied pursuant to an instrument calling for

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320 payments which the department has declared, in a Technical
321 Assistance Advisement issued on or before March 15, 1993, to be
322 nontaxable pursuant to rule 12A-1.070(19)(c), Florida
323 Administrative Code; provided that this subparagraph shall only
324 apply to property occupied by the same person before and after
325 the execution of the subject instrument and only to those
326 payments made pursuant to such instrument, exclusive of renewals
327 and extensions thereof occurring after March 15, 1993.
328 12. Property used or occupied predominantly for space
329 flight business purposes. As used in this subparagraph, "space
330 flight business" means the manufacturing, processing, or
331 assembly of a space facility, space propulsion system, space
332 vehicle, satellite, or station of any kind possessing the
333 capacity for space flight, as defined by s. 212.02(23), or
334 components thereof, and also means the following activities
335 supporting space flight: vehicle launch activities, flight
336 operations, ground control or ground support, and all
337 administrative activities directly related thereto. Property
338 shall be deemed to be used or occupied predominantly for space
339 flight business purposes if more than 50 percent of the
340 property, or improvements thereon, is used for one or more space
341 flight business purposes. Possession by a landlord, lessor, or
342 licensor of a signed written statement from the tenant, lessee,
343 or licensee claiming the exemption shall relieve the landlord,
344 lessor, or licensor from the responsibility of collecting the
345 tax, and the department shall look solely to the tenant, lessee,
346 or licensee for recovery of such tax if it determines that the
347 exemption was not applicable.
348 13. Rented, leased, subleased, or licensed to a person

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349 providing telecommunications, data systems management, or
350 Internet services at a publicly or privately owned convention
351 hall, civic center, or meeting space at a public lodging
352 establishment as defined in s. 509.013. This subparagraph
353 applies only to that portion of the rental, lease, or license
354 payment that is based upon a percentage of sales, revenue
355 sharing, or royalty payments and not based upon a fixed price.
356 This subparagraph is intended to be clarifying and remedial in
357 nature and shall apply retroactively. This subparagraph does not
358 provide a basis for an assessment of any tax not paid, or create
359 a right to a refund of any tax paid, pursuant to this section
360 before July 1, 2010.
361 Section 6. For the purpose of incorporating the amendment
362 made by this act to section 509.013, Florida Statutes, in a
363 reference thereto, subsection (5) of section 404.056, Florida
364 Statutes, is reenacted to read:
365 404.056 Environmental radiation standards and projects;
366 certification of persons performing measurement or mitigation
367 services; mandatory testing; notification on real estate
368 documents; rules.—
369 (5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification
370 shall be provided on at least one document, form, or application
371 executed at the time of, or prior to, contract for sale and
372 purchase of any building or execution of a rental agreement for
373 any building. Such notification shall contain the following
374 language:
375
376 “RADON GAS: Radon is a naturally occurring radioactive gas
377 that, when it has accumulated in a building in sufficient

378 quantities, may present health risks to persons who are exposed
379 to it over time. Levels of radon that exceed federal and state
380 guidelines have been found in buildings in Florida. Additional
381 information regarding radon and radon testing may be obtained
382 from your county health department.”
383
384 The requirements of this subsection do not apply to any
385 residential transient occupancy, as described in s. 509.013(12),
386 provided that such occupancy is 45 days or less in duration.
387 Section 7. For the purpose of incorporating the amendment
388 made by this act to section 509.013, Florida Statutes, in a
389 reference thereto, paragraph (c) of subsection (1) of section
390 413.08, Florida Statutes, is reenacted to read:
391 413.08 Rights and responsibilities of an individual with a
392 disability; use of a service animal; prohibited discrimination
393 in public employment, public accommodations, and housing
394 accommodations; penalties.—
395 (1) As used in this section and s. 413.081, the term:
396 (c) “Public accommodation” means a common carrier,
397 airplane, motor vehicle, railroad train, motor bus, streetcar,
398 boat, or other public conveyance or mode of transportation;
399 hotel; a timeshare that is a transient public lodging
400 establishment as defined in s. 509.013; lodging place; place of
401 public accommodation, amusement, or resort; and other places to
402 which the general public is invited, subject only to the
403 conditions and limitations established by law and applicable
404 alike to all persons. The term does not include air carriers
405 covered by the Air Carrier Access Act of 1986, 49 U.S.C. s.
406 41705, and by regulations adopted by the United States

407 Department of Transportation to implement such act.
408 Section 8. For the purpose of incorporating the amendment
409 made by this act to section 509.013, Florida Statutes, in
410 references thereto, paragraphs (b), (c), and (e) of subsection
411 (14) of section 480.043, Florida Statutes, are reenacted to
412 read:
413 480.043 Massage establishments; requisites; licensure;
414 inspection; human trafficking awareness training and policies.—
415 (14) In order to provide the department and law enforcement
416 agencies the means to more effectively identify persons engaging
417 in human trafficking at massage establishments, the following
418 apply:
419 (b) If there is an outside window or windows into the
420 massage establishment's reception area, the outside window or
421 windows must allow for at least 35 percent light penetration and
422 no more than 50 percent of the outside window or windows may be
423 obstructed with signage, blinds, curtains, or other
424 obstructions, allowing the public to see the establishment's
425 reception area. A sign must be posted on the front window of the
426 establishment that includes the name and license number of the
427 massage establishment and the telephone number that has been
428 provided to the department as part of licensure of the
429 establishment. This paragraph does not apply to:
430 1. A massage establishment within a public lodging
431 establishment as defined in s. 509.013(4).
432 2. A massage establishment located within a county or
433 municipality that has an ordinance that prescribes requirements
434 related to business window light penetration or signage
435 limitations if compliance with this paragraph would result in

436 noncompliance with such ordinance.
437 (c) All employees within the massage establishment must be
438 fully clothed, and such clothing must be fully opaque and made
439 of nontransparent material that does not expose the employee's
440 genitalia. This requirement does not apply to an employee,
441 excluding a massage therapist, of a public lodging
442 establishment, as defined in s. 509.013(4), that is licensed as
443 a clothing-optional establishment and chartered with the
444 American Association for Nude Recreation.
445 (e) A massage establishment must conspicuously display a 2
446 inch by 2 inch photo for each employee, which, for massage
447 therapists, must be attached to the massage therapist's license.
448 Such display must also include the employee's full legal name
449 and employment position. All information required under this
450 paragraph must be displayed before the employee may provide any
451 service or treatment to a client or patient. A massage
452 establishment within a public lodging establishment as defined
453 in s. 509.013(4) may satisfy this requirement by displaying the
454 photos and required information in an employee break room or
455 other room that is used by employees, but is not used by clients
456 or patients.
457 Section 9. For the purpose of incorporating the amendment
458 made by this act to section 509.013, Florida Statutes, in a
459 reference thereto, paragraph (b) of subsection (5) of section
460 559.955, Florida Statutes, is reenacted to read:
461 559.955 Home-based businesses; local government
462 restrictions.—
463 (5) The application of this section does not supersede:
464 (b) Local laws, ordinances, or regulations related to

465 transient public lodging establishments, as defined in s.
466 509.013(4)(a)1., that are not otherwise preempted under chapter
467 509.
468 Section 10. For the purpose of incorporating the amendment
469 made by this act to section 509.141, Florida Statutes, in a
470 reference thereto, subsection (14) of section 721.13, Florida
471 Statutes, is reenacted to read:
472 721.13 Management.—
473 (14) With regard to any timeshare project as defined in s.
474 509.242(1)(g), the managing entity or manager has all of the
475 rights and remedies of an operator of any public lodging
476 establishment or public food service establishment as set forth
477 in ss. 509.141-509.143, and 509.162 and is entitled to have a
478 law enforcement officer take any action, including arrest or
479 removal from the timeshare property, against any purchaser,
480 including a deeded owner, or guest or invitee of such purchaser
481 or owner who engages in conduct described in s. 509.141, s.
482 509.142, s. 509.143, or s. 509.162 or conduct in violation of
483 the timeshare instrument.
484 Section 11. This act shall take effect July 1, 2025.

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The Florida Senate

Committee Agenda Request

To: Senator Jennifer Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 21, 2025

I respectfully request that **Senate Bill #606**, relating to Public Lodging and Food Service Establishments be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Sincerely,

Sen. Tom Leek
Florida Senator, District 7

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 570

INTRODUCER: Senator Gruters

SUBJECT: Swimming Pool and Spa Contractors

DATE: March 11, 2025 REVISED:

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

I. Summary:

SB 570 revises the scope of allowable work for commercial, residential, and servicing swimming pool contractors in the following ways:

Commercial Pool/Spa Contractor:

The bill amends the definition to include renovation, remodel and deconstruction of swimming pools, hot tubs, and spas and also includes splash pads, other interactive features, decorative water features, public bathing places and swimming pool and spa appurtenances. (Swimming pools and other structures)

It provides that the scope of work includes the scope for swimming pool/spa servicing contractors. It substantially amends the scope of work to include power wiring, lighting, and the construction of equipment rooms. It also includes excavation and earthmoving required for the installation of swimming pools and other structures. The installation of rebar and supportive materials, fiberglass, liners, and the application of finishes is also included in the scope of work.

Additionally, the installation of piping the construction and installation of retaining walls, bricks and pavers and footings for the construction of swimming pools and other structures under the scope of work.

The bill provides that the scope of work does **not** include the installation or upgrade of dedicated electrical disconnect or electrical circuits, or any work inside a main electrical panel.

Furthermore, the use of swimming pool, spa, hot tub, or interactive water feature equipment for the purposes of water treatment or cleaning do not require licensure unless such use involves installation, modification, or replacement of such equipment. The bill clarifies that water treatment, filter media changes, or the cleaning of a swimming pool, spa, hot tub, or interactive

water feature, or its associated equipment, which does not affect the structural integrity of the swimming pool, spa, hot tub or interactive water feature, does not require a license.

Residential Pool/Spa Contractor:

The bill amends the definition of a residential pool/spa contractor to mean a contractor whose scope of work is the same as a commercial pool/spa contractor under paragraph (j), except a residential pool/spa contractor may not construct any new commercial swimming pool, spa, hot tub, or public bathing place.

Swimming Pool/Spa Servicing Contractor:

The bill amends the definition of a swimming pool/spa servicing contractor to include all aspects of the repair, renovation, remodeling, or servicing of a swimming pool, hot tub, spa, splash pad, or other interactive water feature, decorative water feature, public bathing place, or swimming pool or spa appurtenance.

It provides that the scope of work includes the installation, repair, and replacement of all swimming pool, spa, hot tub, or interactive water feature equipment, (swimming pools) including, but not limited to pumps, filter, feeders, controllers, and heaters, whether electric, gas, or solar. It substantially amends the scope of work to include connection activities for power wiring on the load side electrical circuit lighting for swimming pool equipment.

It includes the repair, replacement, and sanitizing of lighting equipment, including partial dismantling of equipment. It also includes the repair of equipment rooms and the repair and replacement of perimeter and filter piping.

The scope includes draining the swimming pools for renovation or repair, the removal and reapplication of finishes and the installation, repair, or replacement of all tile and coping.

The bill provides that a swimming pool/spa servicing contractor's scope of work does **not** include the installation or upgrade of dedicated electrical disconnect or electrical circuits, or any work inside a main electrical panel.

Finally, the bill provides that the use of swimming pool, spa, hot tub, or interactive water feature equipment for the purposes of water treatment or cleaning do not require licensure unless such use involves installation, modification, or replacement of such equipment. The bill clarifies that water treatment, filter media changes, or the cleaning of a swimming pool, spa, hot tub, or interactive water feature, or its associated equipment, which does not affect the structural integrity of the swimming pool, spa, hot tub or interactive water feature, does not require a license.

The bill has an effective date of July 1, 2025.

II. Present Situation:

Contractors

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers construction contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers electrical/alarm system contracting regulated by the Electrical Contractors' Licensing Board. Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Construction contractors are either certified or registered by the CILB. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and to conduct informal hearings relating to discipline.[1]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by the DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[2]

"Registered contractors" are individuals who have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued. Registered contractors must register their license with the CILB after obtaining a local license.[3]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[4] of a certified or registered contractor, or fall under an exemption provided in current law.[5] The construction industry, in general, received 2,464 unlicensed activity complaints in the year fiscal year 2022-2023.[6]

Currently, a "general contractor" is required to subcontract all swimming pool work except for structural swimming pool work.[7]

Swimming Pool/Spa Contractors

"Commercial pool/spa contractors" are individuals who are certified or registered to construct, repair, and service any public or private swimming pool, hot tub, or spa including:[8]

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[1] Section 489.107, F.S.
[2] Section 489.105, F.S.
[3] Sections 489.105, and 489.117, F.S.
[4] "Employee" means a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law. Section 489.103(2)(b), F.S.
[5] Section 489.103(2), and 489.113, F.S.
[6] DBPR, *Fiscal Year 2022-2023 Annual Report on Unlicensed Activity*, https://www2.myfloridalicense.com/reg/documents/ULA%20Report%20FY22-23.pdf, (last visited March 11, 2025).
[7] Section 489.113(3)(c).
[8] Section 489.105(3)(j), F.S.

- Installing, repairing, or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment, interior finishes, package pool heaters, and perimeter piping and filter piping;
- Constructing equipment rooms or housing for pool/spa equipment; and
- The scope of work of a swimming pool/spa servicing contractor.

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of work for commercial pool/spa contractors; however, residential pool/spa contractors may only work on residential swimming pools, hot tubs, and spas.[9]

"Swimming pool/spa servicing contractors" are individuals who are certified or registered to repair and service any public or private swimming pool, hot tub, or spa including:[10]

- Repairing or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment and interior refinishing;
- Reinstalling or adding pool heaters;
- Repairing or replacing perimeter piping and filter piping;
- Repairing equipment rooms or housing for pool/spa equipment; and
- Substantially or completely draining a swimming pool, or hot tub or spa, for the purpose of repair or renovation.

The scope of work for all three types of swimming pool/spa contractors does not include direct connections to a sanitary sewer system or to potable water lines.[11]

Water treatment or cleaning a pool or spa does not require a license unless the structural integrity of the pool or spa is affected, or equipment attached to the pool or spa must be substantially or completely disassembled or replaced in order to treat the water or clean the pool. Installing an aboveground pool also does not require a license.[12]

A contractor, including pool/spa contractors, must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, and air-conditioning work, to a contractor certified or registered in the respective category, unless the pool/spa contractor also holds a state certificate or registration in the respective category.[13]

In order to obtain certification as a swimming pool/spa contractor, a person must:[14]

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[9] Section 489.105(3)(k), F.S.
[10] Section 489.105(3)(l), F.S.
[11] Section 489.105, F.S.
[12] Sections 489.103(6), and 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited March 11, 2025).
[13] Section 489.113(3), F.S.
[14] Sections 489.111, & 489.113, F.S.

- Apply to the DBPR in writing;
- Be 18 years of age;
- Be of good moral character;
- Pass the examination for the certification sought; and
- Have one of the following:
  - A bachelor degree from a four year college in the appropriate field of engineering, architecture, or building construction, and one year of proven experience;
  - Four years of experience as a foreman or a skilled worker with at least one year as a foreman;
  - A combination of college and experience as a foreman or skilled worker that equals four years with at least one of the years as a foreman; or
  - One year of experience and 60 hours of instruction courses approved by the CILB; however, this only applies to swimming pool/spa servicing contractors.

Swimming Pool/Spa Specialty Contractors

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as a drywall specialty license or a demolition specialty license. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[15]

The CILB has created eight types of pool/spa specialty contractor certifications. Pool/spa specialty contractors, except residential swimming pool/spa servicing specialty contractors, must work under contract with and under the supervision of a licensed swimming pool/spa contractor. However, they are not required to be employees of a licensed pool/spa contractor.[16]

In order to obtain certification as a certified specialty pool/spa contractor a person must:[17]

- Submit a written application to the CILB;
- Be at least 18 years of age;
- Be of good moral character;
- Pass a written examination for the specialty pool/spa contractor category sought; and
- Demonstrate four years of experience in the specialty pool/spa contractor category sought, or one year of experience and 60 hours of instruction courses approved by the CILB; however, the one year of experience only applies to residential swimming pool/spa servicing contractors.

Additionally, a pool/spa contractor (commercial, residential, and servicing) is required to complete 14 hours of continuing education and pay a renewal fee of $205 per year.[18]

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[15] Section 489.105(3)(q), F.S.
[16] Fla. Admin. Code R. 61G4-15.032; Rule 61G4-15.040.
[17] *Id.*
[18] DBPR, *Getting Started in the Construction Industry*, CE Requirements, https://www2.myfloridalicense.com/construction-industry/#ce (last visited March 11, 2025).

III. Effect of Proposed Changes:

SB 570 revises the scope of allowable work for commercial, residential, and servicing swimming pool contractors in the following ways:

Commercial Pool/Spa Contractor:

- Expands the definition of a commercial pool/spa contractor to provide that a commercial pool/spa contractor's scope of work involves but is not limited to:
  - All phases of construction repair, renovation, remodel, deconstruction, and servicing of a swimming pool, hot tub, or spa, splash pad, or other interactive water feature, decorative water feature, public bathing place, or a swimming pool or spa appurtenance.
- Expands the scope of work to:
  - The connection, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical circuit disconnect means for swimming pool, spa, hot tub, or interactive water feature equipment.
  - The installation of equipotential bonding; swimming pool, spa, or hut tub lighting; light transformers; light conduit; and any cleaning or sanitizing equipment that requires at least partial disassembling.
  - The construction of uninhabitable equipment rooms or housing for swimming pool, spa, hot tub, or interactive water feature equipment for the protection of the equipment from outside elements or preventing unauthorized access.
  - The excavation and earthmoving required for the installation of swimming pools, spas, hot tubs, or interactive water features and the operation of construction pumps for dewatering purposes for swimming pool, spa, hot tub, or interactive water feature excavation sites and draining swimming pools, spas, hot tubs, or interactive water features.
  - The installation of rebar or similar support materials for swimming pool, spa, hot tub, or interactive water feature structures, and the shaping and shooting of gunite dry mix and wet mix, concrete, or similar product mix used in the construction of swimming pools, spas, hot tubs, or interactive water features.
  - The installation of fiberglass swimming pool, spa, or hot tub shells and vinyl swimming pool, spa, or hot tub liners.
  - The application and removal of all interior swimming pool, spa, hot tub, or interactive water feature finishes.
  - The construction, maintenance, or remodel of decorative or interactive water features, displays, or areas that use recirculated water, including fountains, waterfalls, and spray nozzles.
  - The installation of all swimming pool, spa, hot tub, or interactive water feature piping, including, but not limited to, drain piping, perimeter piping, and circulation or filter piping used in the construction of swimming pools, spas, hot tubs, or decorative or interactive water feature displays or areas.
  - The construction and installation of retaining walls, concrete flatwork, pavers and bricks, and footings for the construction of a swimming pool, spa, hot tub, or interactive water feature, whether newly constructed or additions to or remodels of existing swimming pools, spas, hot tubs, or interactive water features.

- Limits the scope of work by providing that the installation or upgrade of dedicated electrical disconnect or electrical circuits, or any work inside a main electrical panel, is not included within the scope of work.
- Clarifies that licensure is not required when using equipment for:
  - Treating or cleaning a swimming pool, spa, hot tub, or interactive water feature unless such use involves installation, modification, or replacement of the equipment.
  - Treating water, filter media changes, or the cleaning of a swimming pool, spa, hot tub, or interactive water feature, or its associated equipment, which does not affect the structural integrity of the swimming pool, spa, hot tub, or interactive water feature.

Residential Pool/Spa Contractor:

- Revises the definition of a residential pool/spa contractor to mean:
  - A contractor whose scope of work is the same as a commercial pool/spa contractor under paragraph (j), except a residential pool/spa contractor may not construct any new commercial swimming pool, spa, hot tub, or public bathing place.

Swimming Pool/Spa Servicing Contractor:

- Revises the definition of a swimming pool/spa servicing contractor to include:
  - All aspects of the repair, renovation, remodeling, or servicing of a swimming pool, hot tub, spa, splash pad, or other interactive water feature, decorative water feature, public bathing place, or swimming pool or spa appurtenance.
- Clarifies a swimming pool/spa servicing contractor's scope of work by including but not limiting to:
  - The installation, repair, or replacement of all swimming pool, spa, hot tub, or interactive water feature equipment, including, but not limited to, pool pumps; filters; feeders; controllers; and swimming pool, spa, or hot tub heaters, whether electric, gas, or solar.
  - The connection, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical circuit disconnect means for swimming pool, spa, hot tub, or interactive water feature equipment.
  - The repair or replacement of equipotential bonding; swimming pool, spa, or hot tub lighting; light transformers; light conduit; and any cleaning or sanitizing equipment that requires at least partial disassembling.
  - The repair of uninhabitable equipment rooms or housing for swimming pool, spa, hot tub, or interactive water feature equipment.
  - The repair or replacement of all perimeter piping and filter piping.
  - The substantial or complete draining of a swimming pool, spa, or hot tub for repair or renovation and the operation of construction pumps for dewatering purposes for drained swimming pools, spas, hot tubs, or interactive water features.
  - The removal and reapplication of all interior swimming pool, spa, hot tub, or interactive water feature finishes.
  - The installation, repair, or replacement of all tile and coping for a swimming pool, spa, hot tub, or interactive water feature.
- Clarifies a swimming pool/spa servicing contractor's scope of work does not include:
  - The installation or upgrade of dedicated electrical disconnect or electrical circuits, or any work inside a main electrical panel.

- Clarifies that licensure is not required when using equipment for:
  - Treating or cleaning a swimming pool, spa, hot tub, or interactive water feature unless such use involves installation, modification, or replacement of the equipment.
  - Treating water, filter media changes, or the cleaning of a swimming pool, spa, hot tub, or interactive water feature, or its associated equipment, which does not affect the structural integrity of the swimming pool, spa, hot tub, or interactive water feature.

SB 570 would not impact the current ability of general contractors to complete the structural work of a swimming pool.

Sections 2 – 9 of the bill are for incorporating purposes.

The bill goes into effect July 1, 2025.

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 489.105 of the Florida Statutes.
This bill reenacts the following sections of the Florida Statutes: 489.107, 489.117, 489.118, 489.131, 489.141, 514.0315 and 514.075.

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 Gruters

22-00574B-25 2025570__

1 A bill to be entitled
2 An act relating to swimming pool and spa contractors;
3 amending s. 489.105, F.S.; revising definitions for
4 purposes of part I of ch. 489, F.S.; reenacting ss.
5 489.107(4)(b), 489.113(2), 489.117(1)(a), (2)(a) and
6 (b), and (4)(a), (d), and (e), 489.118(1), 489.131(10)
7 and (11), 489.141(2), 514.0315(3), and 514.075, F.S.,
8 relating to the Construction Industry Licensing Board,
9 qualifications for and restrictions on the practice of
10 contracting, registration requirements for specialty
11 contractors, certification of registered contractors,
12 applicability, conditions and eligibility for recovery
13 from the recovery fund, required safety features for
14 public swimming pools and spas, and public pool
15 service technician certification, respectively, to
16 incorporate the amendment made to s. 489.105, F.S., in
17 references thereto; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Paragraphs (j), (k), and (l) of subsection (3)
22 of section 489.105, Florida Statutes, are amended to read:
23 489.105 Definitions.—As used in this part:
24 (3) “Contractor” means the person who is qualified for, and
25 is only responsible for, the project contracted for and means,
26 except as exempted in this part, the person who, for
27 compensation, undertakes to, submits a bid to, or does himself
28 or herself or by others construct, repair, alter, remodel, add
29 to, demolish, subtract from, or improve any building or

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30 structure, including related improvements to real estate, for
31 others or for resale to others; and whose job scope is
32 substantially similar to the job scope described in one of the
33 paragraphs of this subsection. For the purposes of regulation
34 under this part, the term “demolish” applies only to demolition
35 of steel tanks more than 50 feet in height; towers more than 50
36 feet in height; other structures more than 50 feet in height;
37 and all buildings or residences. Contractors are subdivided into
38 two divisions, Division I, consisting of those contractors
39 defined in paragraphs (a)-(c), and Division II, consisting of
40 those contractors defined in paragraphs (d)-(q):
41 (j) “Commercial pool/spa contractor” means a contractor
42 whose scope of work includes ~~involves~~, but is not limited to,
43 all phases of the construction, repair, renovation, remodel,
44 deconstruction, and servicing of a ~~any~~ swimming pool, ~~or~~ hot
45 tub, ~~or~~ spa, splash pad or other interactive water feature,
46 decorative water feature, public bathing place, or swimming pool
47 or spa appurtenance, whether public, private, or otherwise,
48 regardless of use.
49 1. The scope of such work includes, but is not limited to,
50 all of the following:
51 a. The scope of work of a swimming pool/spa servicing
52 contractor.
53 b. The connection, replacement, disconnection, or
54 reconnection of power wiring on the load side of the dedicated
55 existing electrical circuit disconnect means for swimming pool,
56 spa, hot tub, or interactive water feature equipment.
57 c. The installation of equipotential bonding; swimming
58 pool, spa, or hot tub lighting; light transformers; light

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59 conduit; and any cleaning or sanitizing equipment that requires
60 at least partial disassembling.
61 d. The construction of uninhabitable equipment rooms or
62 housing for swimming pool, spa, hot tub, or interactive water
63 feature equipment for the protection of the equipment from
64 outside elements or preventing unauthorized access.
65 e. The excavation and earthmoving required for the
66 installation of swimming pools, spas, hot tubs, or interactive
67 water features and the operation of construction pumps for
68 dewatering purposes for swimming pool, spa, hot tub, or
69 interactive water feature excavation sites and draining swimming
70 pools, spas, hot tubs, or interactive water features.
71 f. The installation of rebar or similar support materials
72 for swimming pool, spa, hot tub, or interactive water feature
73 structures, and the shaping and shooting of gunite dry mix and
74 wet mix, concrete, or similar product mix used in the
75 construction of swimming pools, spas, hot tubs, or interactive
76 water features.
77 g. The installation of fiberglass swimming pool, spa, or
78 hot tub shells and vinyl swimming pool, spa, or hot tub liners.
79 h. The application and removal of all interior swimming
80 pool, spa, hot tub, or interactive water feature finishes.
81 i. The construction, maintenance, or remodel of decorative
82 or interactive water features, displays, or areas that use
83 recirculated water, including fountains, waterfalls, and spray
84 nozzles.
85 j. The installation of all swimming pool, spa, hot tub, or
86 interactive water feature piping, including, but not limited to,
87 drain piping, perimeter piping, and circulation or filter piping

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

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88 used in the construction of swimming pools, spas, hot tubs, or
89 decorative or interactive water feature displays or areas.
90 k. The construction and installation of retaining walls,
91 concrete flatwork, pavers and bricks, and footings for the
92 construction of a swimming pool, spa, hot tub, or interactive
93 water feature, whether newly constructed or additions to or
94 remodels of existing swimming pools, spas, hot tubs, or
95 interactive water features ~~The installation, repair, or~~
96 ~~replacement of existing equipment, any cleaning or equipment~~
97 ~~sanitizing that requires at least a partial disassembling,~~
98 ~~excluding filter changes, and the installation of new pool/spa~~
99 ~~equipment, interior finishes, the installation of package pool~~
100 ~~heaters, the installation of all perimeter piping and filter~~
101 ~~piping, and the construction of equipment rooms or housing for~~
102 ~~pool/spa equipment, and also includes the scope of work of a~~
103 ~~swimming pool/spa servicing contractor~~.
104 2. The scope of ~~such~~ work does not include direct
105 connections to a sanitary sewer system or to potable water
106 lines, the installation or upgrade of dedicated electrical
107 disconnect or electrical circuits, or any work inside a main
108 electrical panel. ~~The installation, construction, modification,~~
109 ~~or replacement of equipment permanently attached to and~~
110 ~~associated with the pool or spa for the purpose of water~~
111 ~~treatment or cleaning of the pool or spa requires licensure;~~
112 ~~however,~~
113 3. The use ~~usage~~ of swimming pool, spa, hot tub, or
114 interactive water feature ~~such~~ equipment for the purposes of
115 water treatment or cleaning does not require licensure unless
116 such use ~~the usage~~ involves installation ~~construction~~,

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

117 modification, or replacement of such equipment. Water treatment
118 that does not require such equipment; filter media changes; or
119 the cleaning of a swimming pool, spa, hot tub, or interactive
120 water feature, or its associated equipment, which does not
121 affect the structural integrity of the swimming pool, spa, hot
122 tub, or interactive water feature, does not require a license.
123 ~~In addition, a license is not required for the cleaning of the~~
124 ~~pool or spa in a way that does not affect the structural~~
125 ~~integrity of the pool or spa or its associated equipment.~~
126 (k) “Residential pool/spa contractor” means a contractor
127 whose scope of work is the same as a commercial pool/spa
128 contractor under paragraph (j), except a residential pool/spa
129 contractor may not construct any new commercial swimming pool,
130 spa, hot tub, or public bathing place ~~means a contractor whose~~
131 ~~scope of work involves, but is not limited to, the construction,~~
132 ~~repair, and servicing of a residential swimming pool, or hot tub~~
133 ~~or spa, regardless of use. The scope of work includes the~~
134 ~~installation, repair, or replacement of existing equipment, any~~
135 ~~cleaning or equipment sanitizing that requires at least a~~
136 ~~partial disassembling, excluding filter changes, and the~~
137 ~~installation of new pool/spa equipment, interior finishes, the~~
138 ~~installation of package pool heaters, the installation of all~~
139 ~~perimeter piping and filter piping, and the construction of~~
140 ~~equipment rooms or housing for pool/spa equipment, and also~~
141 ~~includes the scope of work of a swimming pool/spa servicing~~
142 ~~contractor. The scope of such work does not include direct~~
143 ~~connections to a sanitary sewer system or to potable water~~
144 ~~lines. The installation, construction, modification, or~~
145 ~~replacement of equipment permanently attached to and associated~~

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

146 ~~with the pool or spa for the purpose of water treatment or~~
147 ~~cleaning of the pool or spa requires licensure; however, the~~
148 ~~usage of such equipment for the purposes of water treatment or~~
149 ~~cleaning does not require licensure unless the usage involves~~
150 ~~construction, modification, or replacement of such equipment.~~
151 ~~Water treatment that does not require such equipment does not~~
152 ~~require a license. In addition, a license is not required for~~
153 ~~the cleaning of the pool or spa in a way that does not affect~~
154 ~~the structural integrity of the pool or spa or its associated~~
155 ~~equipment~~.
156 (l) “Swimming pool/spa servicing contractor” means a
157 contractor whose scope of work includes ~~involves~~, but is not
158 limited to, all aspects of the repair, renovation, remodeling,
159 or ~~and~~ servicing of a swimming pool, ~~or~~ hot tub, ~~or~~ spa, splash
160 pad or other interactive water feature, decorative water
161 feature, public bathing place, or swimming pool or spa
162 appurtenance, whether public or private, or otherwise,
163 regardless of use.
164 1. The scope of work includes, but is not limited to, all
165 of the following:
166 a. The installation, repair, or replacement of all swimming
167 pool, spa, hot tub, or interactive water feature equipment,
168 including, but not limited to, pool pumps; filters; feeders;
169 controllers; and swimming pool, spa, or hot tub heaters, whether
170 electric, gas, or solar.
171 b. The connection, replacement, disconnection, or
172 reconnection of power wiring on the load side of the dedicated
173 existing electrical circuit disconnect means for swimming pool,
174 spa, hot tub, or interactive water feature equipment.

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

175 c. The repair or replacement of equipotential bonding;
176 swimming pool, spa, or hot tub lighting; light transformers;
177 light conduit; and any cleaning or sanitizing equipment that
178 requires at least partial disassembling.
179 d. The repair of uninhabitable equipment rooms or housing
180 for swimming pool, spa, hot tub, or interactive water feature
181 equipment.
182 e. The repair or replacement of all perimeter piping and
183 filter piping.
184 f. The substantial or complete draining of a swimming pool,
185 spa, or hot tub for repair or renovation and the operation of
186 construction pumps for dewatering purposes for drained swimming
187 pools, spas, hot tubs, or interactive water features.
188 g. The removal and reapplication of all interior swimming
189 pool, spa, hot tub, or interactive water feature finishes.
190 h. The installation, repair, or replacement of all tile and
191 coping for a swimming pool, spa, hot tub, or interactive water
192 feature ~~the repair or replacement of existing equipment, any~~
193 ~~cleaning or equipment sanitizing that requires at least a~~
194 ~~partial disassembling, excluding filter changes, and the~~
195 ~~installation of new pool/spa equipment, interior refinishing,~~
196 ~~the reinstallation or addition of pool heaters, the repair or~~
197 ~~replacement of all perimeter piping and filter piping, the~~
198 ~~repair of equipment rooms or housing for pool/spa equipment, and~~
199 ~~the substantial or complete draining of a swimming pool, or hot~~
200 ~~tub or spa, for the purpose of repair or renovation~~.
201 2. The scope of the ~~such~~ work does not include direct
202 connections to a sanitary sewer system or to potable water
203 lines, the installation or upgrade of dedicated electrical

204 disconnect or electrical circuits, or any work inside a main
205 electrical panel. ~~The installation, construction, modification,~~
206 ~~substantial or complete disassembly, or replacement of equipment~~
207 ~~permanently attached to and associated with the pool or spa for~~
208 ~~the purpose of water treatment or cleaning of the pool or spa~~
209 ~~requires licensure; however,~~
210 3. The use ~~usage~~ of swimming pool, spa, hot tub, or
211 interactive water feature ~~such~~ equipment for the purposes of
212 water treatment or cleaning does not require licensure unless
213 such use ~~the usage~~ involves installation ~~construction~~,
214 modification, ~~substantial or complete disassembly,~~ or
215 replacement of such equipment. Water treatment that does not
216 require such equipment; filter media changes; or the cleaning of
217 a swimming pool, spa, hot tub, or interactive water feature, or
218 its associated equipment, which does not affect the structural
219 integrity of the swimming pool, spa, hot tub, or interactive
220 water feature does not require a license. ~~In addition, a license~~
221 ~~is not required for the cleaning of the pool or spa in a way~~
222 ~~that does not affect the structural integrity of the pool or spa~~
223 ~~or its associated equipment.~~
224 Section 2. For the purpose of incorporating the amendment
225 made by this act to section 489.105, Florida Statutes, in a
226 reference thereto, paragraph (b) of subsection (4) of section
227 489.107, Florida Statutes, is reenacted to read:
228 489.107 Construction Industry Licensing Board.—
229 (4) The board shall be divided into two divisions, Division
230 I and Division II.
231 (b) Division II is comprised of the roofing contractor,
232 sheet metal contractor, air-conditioning contractor, mechanical

233 contractor, pool contractor, plumbing contractor, and
234 underground utility and excavation contractor members of the
235 board; one of the members appointed pursuant to paragraph
236 (2)(j); and one of the members appointed pursuant to paragraph
237 (2)(k). Division II has jurisdiction over the regulation of
238 contractors defined in s. 489.105(3)(d)-(p).
239 Section 3. For the purpose of incorporating the amendment
240 made by this act to section 489.105, Florida Statutes, in a
241 reference thereto, subsection (2) of section 489.113, Florida
242 Statutes, is reenacted to read:
243 489.113 Qualifications for practice; restrictions.—
244 (2) A person must be certified or registered in order to
245 engage in the business of contracting in this state. However,
246 for purposes of complying with the provisions of this chapter, a
247 subcontractor who is not certified or registered may perform
248 construction work under the supervision of a person who is
249 certified or registered, provided that the work is within the
250 scope of the supervising contractor's license, the supervising
251 contractor is responsible for the work, and the subcontractor
252 being supervised is not engaged in construction work that would
253 require a license as a contractor under any of the categories
254 listed in s. 489.105(3)(d)-(o). This subsection does not affect
255 the application of any local construction licensing ordinances.
256 To enforce this subsection:
257 (a) The department shall issue a cease and desist order to
258 prohibit any person from engaging in the business of contracting
259 who does not hold the required certification or registration for
260 the work being performed under this part. For the purpose of
261 enforcing a cease and desist order, the department may file a

262 proceeding in the name of the state seeking issuance of an
263 injunction or a writ of mandamus against any person who violates
264 any provision of such order.
265 (b) A county, municipality, or local licensing board
266 created by special act may issue a cease and desist order to
267 prohibit any person from engaging in the business of contracting
268 who does not hold the required certification or registration for
269 the work being performed under this part.
270 Section 4. For the purpose of incorporating the amendment
271 made by this act to section 489.105, Florida Statutes, in
272 references thereto, paragraph (a) of subsection (1), paragraphs
273 (a) and (b) of subsection (2), and paragraphs (a), (d), and (e)
274 of subsection (4) of section 489.117, Florida Statutes, are
275 reenacted to read:
276 489.117 Registration; specialty contractors.—
277 (1)(a) A person engaged in the business of a contractor as
278 defined in s. 489.105(3)(a)-(o) must be registered before
279 engaging in business as a contractor in this state, unless he or
280 she is certified. Except as provided in paragraph (2)(b), to be
281 initially registered, the applicant must submit the required fee
282 and file evidence of successful compliance with the local
283 examination and licensing requirements, if any, in the area for
284 which registration is desired. An examination is not required
285 for registration.
286 (2)(a) Except as provided in paragraph (b), the board may
287 not issue a new registration after July 1, 1993, based on any
288 certificate of competency or license for a category of
289 contractor defined in s. 489.105(3)(a)-(o) which is issued by a
290 municipal or county government that does not exercise

291 disciplinary control and oversight over such locally licensed
292 contractors, including forwarding a recommended order in each
293 action to the board as provided in s. 489.131(7). For purposes
294 of this subsection and s. 489.131(10), the board shall determine
295 the adequacy of such disciplinary control by reviewing the local
296 government's ability to process and investigate complaints and
297 to take disciplinary action against locally licensed
298 contractors.
299 (b) The board shall issue a registration to an eligible
300 applicant to engage in the business of a contractor in a
301 specified local jurisdiction, provided each of the following
302 conditions are satisfied:
303 1. The applicant held, in any local jurisdiction in this
304 state during 2021, 2022, or 2023, a certificate of registration
305 issued by the state or a local license issued by a local
306 jurisdiction to perform work in a category of contractor defined
307 in s. 489.105(3)(a)-(o).
308 2. The applicant submits all of the following to the board:
309 a. Evidence of the certificate of registration or local
310 license held by the applicant as required by subparagraph 1.
311 b. Evidence that the specified local jurisdiction does not
312 have a license type available for the category of work for which
313 the applicant was issued a certificate of registration or local
314 license during 2021, 2022, or 2023, such as a notification on
315 the website of the local jurisdiction or an e-mail or letter
316 from the office of the local building official or local building
317 department stating that such license type is not available in
318 that local jurisdiction.
319 c. Evidence that the applicant has submitted the required

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320 fee.
321 d. Evidence of compliance with the insurance and financial
322 responsibility requirements of s. 489.115(5).
323
324 An examination is not required for an applicant seeking a
325 registration under this paragraph.
326 (4)(a)1. A person whose job scope does not substantially
327 correspond to either the job scope of one of the contractor
328 categories defined in s. 489.105(3)(a)-(o), or the job scope of
329 one of the certified specialty contractor categories established
330 by board rule, is not required to register with the board. A
331 local government, as defined in s. 163.211, may not require a
332 person to obtain a license, issued by the local government or
333 the state, for a job scope which does not substantially
334 correspond to the job scope of one of the contractor categories
335 defined in s. 489.105(3)(a)-(o) and (q) or authorized in s.
336 489.1455(1), or the job scope of one of the certified specialty
337 contractor categories established pursuant to s. 489.113(6). A
338 local government may not require a state or local license to
339 obtain a permit for such job scopes. For purposes of this
340 section, job scopes for which a local government may not require
341 a license include, but are not limited to, painting; flooring;
342 cabinetry; interior remodeling when the scope of the project
343 does not include a task for which a state license is required;
344 driveway or tennis court installation; handyman services;
345 decorative stone, tile, marble, granite, or terrazzo
346 installation; plastering; pressure washing; stuccoing; caulking;
347 and canvas awning and ornamental iron installation.
348 2. A county that includes an area designated as an area of

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349 critical state concern under s. 380.05 may offer a license for
350 any job scope which requires a contractor license under this
351 part if the county imposed such a licensing requirement before
352 January 1, 2021.
353 3. A local government may continue to offer a license for
354 veneer, including aluminum or vinyl gutters, siding, soffit, or
355 fascia; rooftop painting, coating, and cleaning above three
356 stories in height; or fence installation and erection if the
357 local government imposed such a licensing requirement before
358 January 1, 2021.
359 4. A local government may not require a license as a
360 prerequisite to submit a bid for public works projects if the
361 work to be performed does not require a license under general
362 law.
363 (d) Any person who is not required to obtain registration
364 or certification pursuant to s. 489.105(3)(d)-(o) may perform
365 contracting services for the construction, remodeling, repair,
366 or improvement of single-family residences, including a
367 townhouse as defined in the Florida Building Code, without
368 obtaining a local license if such person is under the
369 supervision of a certified or registered general, building, or
370 residential contractor. As used in this paragraph, supervision
371 shall not be deemed to require the existence of a direct
372 contract between the certified or registered general, building,
373 or residential contractor and the person performing specialty
374 contracting services.
375 (e) Any person who is not certified or registered may
376 perform the work of a specialty contractor whose scope of
377 practice is limited to the type of work specified under s.

378 489.105(3)(j), (k), or (l) for the construction, remodeling,
379 repair, or improvement of commercial or residential swimming
380 pools, interactive water features as defined in the Florida
381 Building Code, hot tubs, and spas without obtaining a local
382 license or certification as a specialty contractor if he or she
383 is supervised by a contractor who is certified or registered
384 under s. 489.105(3)(j), (k), or (l); the work is within the
385 scope of the supervising contractor's license; the supervising
386 contractor is responsible for the work; and the work does not
387 require certification or registration under s. 489.105(3)(d)-
388 (i), (m)-(o), or s. 489.505. Such supervision does not require a
389 direct contract between the contractor certified or registered
390 under s. 489.105(3)(j), (k), or (l) and the person performing
391 the work, or for the person performing the work to be an
392 employee of the contractor certified or registered under s.
393 489.105(3)(j), (k), or (l). This paragraph does not limit the
394 exemptions provided in s. 489.103 and may not be construed to
395 expand the scope of a contractor certified or registered under
396 s. 489.105(3)(j), (k), or (l) to provide plumbing or electrical
397 services for which certification or registration is required by
398 this part or part II.
399 Section 5. For the purpose of incorporating the amendment
400 made by this act to section 489.105, Florida Statutes, in a
401 reference thereto, subsection (1) of section 489.118, Florida
402 Statutes, is reenacted to read:
403 489.118 Certification of registered contractors;
404 grandfathering provisions.—The board shall, upon receipt of a
405 completed application and appropriate fee, issue a certificate
406 in the appropriate category to any contractor registered under

407 this part who makes application to the board and can show that
408 he or she meets each of the following requirements:
409 (1) Currently holds a valid registered local license in one
410 of the contractor categories defined in s. 489.105(3)(a)-(p).
411 Section 6. For the purpose of incorporating the amendment
412 made by this act to section 489.105, Florida Statutes, in
413 references thereto, subsections (10) and (11) of section
414 489.131, Florida Statutes, are reenacted to read:
415 489.131 Applicability.—
416 (10) No municipal or county government may issue any
417 certificate of competency or license for any contractor defined
418 in s. 489.105(3)(a)-(o) after July 1, 1993, unless such local
419 government exercises disciplinary control and oversight over
420 such locally licensed contractors, including forwarding a
421 recommended order in each action to the board as provided in
422 subsection (7). Each local board that licenses and disciplines
423 contractors must have at least two consumer representatives on
424 that board. If the board has seven or more members, at least
425 three of those members must be consumer representatives. The
426 consumer representative may be any resident of the local
427 jurisdiction who is not, and has never been, a member or
428 practitioner of a profession regulated by the board or a member
429 of any closely related profession.
430 (11) Any municipal or county government which enters or has
431 in place a reciprocal agreement which accepts a certificate of
432 competency or license issued by another municipal or county
433 government in lieu of its own certificate of competency or
434 license allowing contractors defined in s. 489.105(3)(a)-(o),
435 shall file a certified copy of such agreement with the board not

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436 later than 60 days after July 1, 1993, or 30 days after the
437 effective date of such agreement.
438 Section 7. For the purpose of incorporating the amendment
439 made by this act to section 489.105, Florida Statutes, in a
440 reference thereto, subsection (2) of section 489.141, Florida
441 Statutes, is reenacted to read:
442 489.141 Conditions for recovery; eligibility.—
443 (2) A claimant is not qualified to make a claim for
444 recovery from the recovery fund if:
445 (a) The claimant is the spouse of the judgment debtor or
446 licensee or a personal representative of such spouse;
447 (b) The claimant is a licensee who acted as the contractor
448 in the transaction that is the subject of the claim;
449 (c) The claim is based upon a construction contract in
450 which the licensee was acting with respect to the property owned
451 or controlled by the licensee;
452 (d) The claim is based upon a construction contract in
453 which the contractor did not hold a valid and current license at
454 the time of the construction contract;
455 (e) The claimant was associated in a business relationship
456 with the licensee other than the contract at issue; or
457 (f) The claimant had entered into a contract with a
458 licensee to perform a scope of work described in s.
459 489.105(3)(d)-(q) before July 1, 2016.
460 Section 8. For the purpose of incorporating the amendment
461 made by this act to section 489.105, Florida Statutes, in a
462 reference thereto, subsection (3) of section 514.0315, Florida
463 Statutes, is reenacted to read:
464 514.0315 Required safety features for public swimming pools

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465 and spas.—
466 (3) The determination and selection of a feature under
467 subsection (2) for a public swimming pool or spa constructed
468 before January 1, 1993, is at the sole discretion of the owner
469 or operator of the public swimming pool or spa. A licensed
470 contractor described in s. 489.105(3)(j), (k), or (l) must
471 install the feature.
472 Section 9. For the purpose of incorporating the amendment
473 made by this act to section 489.105, Florida Statutes, in a
474 reference thereto, section 514.075, Florida Statutes, is
475 reenacted to read:
476 514.075 Public pool service technician; certification.—The
477 department may require that a public pool, as defined in s.
478 514.011, be serviced by a person certified as a pool service
479 technician. To be certified, an individual must demonstrate
480 knowledge of public pools which includes, but is not limited to:
481 pool cleaning; general pool maintenance; source of the water
482 supply; bacteriological, chemical, and physical quality of
483 water; and water purification, testing, treatment, and
484 disinfection procedures. The department may, by rule, establish
485 the requirement for the certification course and course
486 approval. The department shall deem certified any individual who
487 is certified by a course of national recognition or any person
488 licensed under s. 489.105(3)(j), (k), or (l). This requirement
489 does not apply to a person, or the direct employee of a person,
490 permitted as a public pool operator under s. 514.031.
491 Section 10. This act shall take effect July 1, 2025.

The Florida Senate

Committee Agenda Request

To: Senator Jennifer Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: March 5, 2025

I respectfully request that **Senate Bill # 570,** relating to Swimming Pools and Spa Contractors, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Joe Gruters
Florida Senate, District 22

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 928

INTRODUCER: Senator Calatayud

SUBJECT: Nonapproved Disposable Nicotine Dispensing Devices

DATE: March 11, 2025 REVISED: ________ ________ ________ ________

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

I. Summary:

SB 928 provides that the act may be cited as the "Florida Age Gate Act." The bill provides restrictions on the sale and advertising and displaying for sale nonapproved disposable nicotine devices, which the bill defines as "disposable or single-use nicotine dispensing devises that have not received a marketing granted order under 21 U.S.C. s. 387j."

21 U.S.C. s. 387j requires tobacco products that were on the market as of August 8, 2016, to submit a premarket application (PMTA) to the U.S. Food and Drug Administration (FDA) by September 9, 2020, in order to be authorized to continue to legally market the product. Nicotine dispensing devices that contain nicotine not made or derived from tobacco, such as synthetic nicotine, must also receive a marketing order from the FDA. This market authorization does not apply to "pre-existing tobacco product," i.e., "grandfathered tobacco products" that were commercially marketed in the United States as of February 15, 2007.

The bill prohibits retail nicotine dispensing device dealers who sell nonapproved disposable devices from advertising, promoting, or displaying for sale nonapproved disposable devices in any location that is visible to persons outside of the dealer's licensed premises. Nonapproved disposable devices also may not be advertised, promoted, or displayed for sale within the dealer's licensed premises in a manner visible to any person under the age of 21, including, but not limited to, placement of the devices in an open display unit located in an area visible to any person under the age of 21. These advertising and display restrictions would not apply to nicotine dispensing devises that have received a marketing order under 21 U.S.C. s. 387j.

The bill provides that an applicant for a retail nicotine products dealer permit or a retail tobacco products dealer permit, by accepting the permit, agrees that the place or premises covered by the permit is subject to inspection and search of the premises without a search warrant by the Department of Law Enforcement in addition to the Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation or its

authorized assistants, and by sheriffs, deputy sheriffs, police officers, currently authorized to determine compliance with this part.

Under the bill, the division must conduct regular inspections of the licensed premises of dealers who sell nonapproved disposable devices to ensure compliance with this part.

The bill authorizes the division to assess the following administrative penalties for each violation involving the unlawful sale of nonapproved disposable devices or the unlawful advertising, promotion, or display for sale of such devices:
- For a first violation, an administrative fine of at least $500, but not more than $1,000, and an order requiring that corrective action be taken within 15 days to preclude a recurrence;
- For a second violation within 12 weeks after the first violation, an administrative fine of $1,000 and up to a 30-day suspension of the dealer's retail nicotine products dealer permit; or
- For a third or subsequent violation within 12 weeks after the first violation, an administrative fine of at least $2,500, but not more than $5,000, and at least a 30-day suspension or revocation of the dealer's nicotine products dealer permit.

Any second or subsequent violation outside the 12-week period after the first violation would be punishable as a first violation.

The bill requires that the division deposit one-half of all fines collected into the Professional Regulation Trust Fund, and the remaining one-half of the fines collected into the Department of Law Enforcement Operating Trust Fund.

The bill also provides that, if a dealer, or a dealer's agent or employee, commits a third or subsequent violation within 12 weeks after the first violation, that person commits a misdemeanor of the second degree.

Under the bill, administrative fines must be used by the division and the Department of Law Enforcement to increase enforcement personnel, fund compliance inspections and investigations, and develop and implement public awareness campaigns to reduce nicotine use by persons under the age of 21.

The bill requires the division to adopt by rule guidelines for compliance audits and enforcement actions pertaining to the sale, advertising, promotion, and display for sale of nonapproved disposable devices. The bill requires that the annual report of the Department of Business and Professional Regulation must list the number of violations for any advertising, promotion, or display of prohibited nonapproved disposable devices.

The bill takes effect July 1, 2025.

II. Present Situation:

Florida Regulation of Tobacco Products and Nicotine Dispensing Devises

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and

enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

Tobacco Products Definitions

Section 210.01(1), F.S., defines the term "cigarette" to mean:

> any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Section 569.002(6), F.S., defines the term "tobacco products" to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing, in the context of the taxation of cigarettes under part I of ch. 210, F.S.

Section 210.25(12), F.S., provides a separate definition for the term "tobacco products" in the context of the taxation of tobacco products other than cigarettes or cigars. It provides for the licensing of tobacco product manufacturers, importers, exporters, distributing agents, or wholesale dealers under part II of ch. 210, F.S. In this context, the term "tobacco products" means:

> loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

The definition of "tobacco products" in s. 569.002(6), F.S., is limited to the regulation of tobacco products by the division under ch. 569, F.S., and does not affect the taxation of such products under ch. 210, F.S.

Nicotine Products

Section 569.31(3), F.S., defines the term "nicotine dispensing device" to mean:

> any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Section 569.31(4), F.S., defines the term "nicotine product" to mean:

> any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested

by any means. The term also includes any nicotine dispensing device. The term does not include a:
(a) Tobacco product, as defined in s. 569.002;
(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or
(c) Product that contains incidental nicotine.

Nicotine products, including nicotine dispensing devises such as electronic cigarettes (also commonly known as "vapes"), may contain nicotine, which comes from tobacco, but they do not contain tobacco. It is a non-tobacco "e-liquid" that is heated and aerosolized for inhalation by the user of the device.[1]

Retail Tobacco Products Dealer Permits

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.[2] The fee for an annual permit is established by the division in rule at an amount to cover the regulatory costs of the program, not to exceed $50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.[3]

Retail Nicotine Products Dealer Permit

A retail nicotine products dealer permit from the division is required for each place of business where nicotine products are sold, including sales made through a vending machine.[4] There is no fee for the permit. A person must be 21 years of age to qualify for a retail nicotine products dealer permit.[5]

Consent to Inspection and Search without Warrant

Applicants for a retail tobacco dealer permit, by accepting the permit when issued, agree that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with ch. 569, F.S. The implied consent also applies to inspections for compliance with regulation of the retail sale nicotine products under part II of ch. 569, F.S., including nicotine products sold by a vending machine to be located on the applicant's premises.[6]

An applicant for a retail nicotine products dealer permit, by accepting the permit when issued, also agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with part II of ch. 569, F.S. Current law does

[1] American Cancer Society, E-cigarettes and Vaping at: https://www.cancer.org/cancer/risk-prevention/tobacco/e-cigarettes-vaping/what-do-we-know-about-e-cigarettes.html (last visited Feb. 5, 2025).
[2] Section 569.003, F.S.
[3] Section 569.003(1)(c), F.S.
[4] Section 569.32, F.S.
[5] Section 569.32(2)(a), F.S.
[6] Section 569.004, F.S.

not state that the purpose of the inspection may be to determine compliance with part I of ch. 569, F.S., relating to tobacco products.[7]

Taxation of Tobacco Products Other than Cigarettes or Cigars

Part II of ch. 210, F.S., imposes a tax and a surcharge tax on tobacco products other than cigarettes or cigars. Cigarettes are taxed under part I of ch. 210, F.S. Cigars are not subject to a tax.

Restrictions on Sales to Minors

The sale, delivery, bartering, furnishing, or giving of tobacco products and nicotine products to persons under the age of 21 is prohibited.[8] A violation of this prohibition is a misdemeanor of the second degree.[9] A second violation within one year of the first violation is a first degree misdemeanor.[10] A third or subsequent violation of the prohibition against selling or giving a nicotine product to a person under 21 years of age is a felony of the third degree.[11]

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 21 years of age or older, a prudent person would believe the buyer or recipient to be 21 years of age or older, and the buyer or recipient presented false identification[12] upon which the person relied in good faith.[13]

Persons under the age of 21 years are prohibited from possessing, directly or indirectly, any tobacco products or nicotine products:[14]

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second or subsequent violation within 12 weeks of the first violation is punishable with a $25 fine.
- Any second or subsequent violation not within the 12-week time period after the first violation is punishable as a first violation.

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[7] Section 569.33, F.S.

[8] Sections 569.101 and 569.41, F.S., providing the prohibitions against the sale of tobacco products and nicotine products to persons under 21 years of age, respectively.

[9] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[10] Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

[11] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

[12] *Supra* n. 8. Identification includes carefully checking "a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older." *See* s. 569.101(3)(c), F.S.

[13] *Supra* n. 8.

[14] Sections 569.11(1) and 569.42(1), F.S., providing the prohibitions against the procession of tobacco products and nicotine products by persons under 21 years of age, respectively.

The term "any person under the age of 21" does not include any person under age 21 who:[15]

- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is acting in his or her scope of lawful employment, including with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

To prevent persons under 21 years of age from purchasing or receiving tobacco products and nicotine devices, the sale or delivery of such products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have: [16]

- An operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lock-out device to allow the dispensing of one tobacco product;
- A mechanism on the lock-out device to prevent the machine from functioning if the power source for the lock-out device fails or if the lock-out device is disabled; and
- A mechanism to ensure that only one tobacco product is dispensed at a time.

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 21 years of age on the premises.[17]

Retail tobacco products dealers and retail nicotine product dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 21 and that proof of age is required for purchase. The division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.[18]

Section 386.212, F.S., in the Florida Clean Indoor Air Act,[19] prohibits any person under the age of 21 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6:00 a.m. and midnight.[20] A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[21]

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[15] Section 569.002(9) and 569.31(12), F.S., defining the term "any person under the age of 21" in the context of the regulation of tobacco products and nicotine products, respectively.

[16] Sections 569.007 and 569.37, F.S., relating to restrictions on the sale or delivery of tobacco products and nicotine products, respectively.

[17] *Id.*

[18] Sections 569.14 and 569.43, F.S., providing requirements for the posting of notices by retail tobacco products dealers and retail nicotine product dealers, respectively.

[19] Part II of ch. 386, F.S.

[20] Section 386.212(1), F.S.

[21] Section 386.212(3), F.S.

Administrative Penalties

A retail tobacco dealer permit-holder can be disciplined under the division's penalty guidelines. For a violation of the prohibition in s. 569.06, F.S., against the sale of tobacco products to persons under 21 years of age, the guidelines provide:

- 1st occurrence -- $500 fine.
- 2nd occurrence -- $1,000 fine.
- 3rd occurrence -- $2,000 fine and a 20-day suspension of the dealer permit.
- 4th occurrence -- revocation of the dealer permit.

These penalties are based on a single violation in which the permit-holder committed or knew about the violation; or a pattern of at least three violations on different dates within a 12-week period by employees, independent contractors, agents, or patrons on the licensed premises or in the scope of employment in which the permit-holder did not participate; or violations which were occurring in an open and notorious manner on the licensed premises.[22]

Section 569.008, F.S., provides a process for a retail tobacco products dealer to mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 21 years of age.[23] The process encourages retail tobacco products dealers to comply with responsible practices. The division may mitigate penalties if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer's employees comply with ch. 569, F.S., such as employee training;
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; and
- If the sale was made through a vending machine, it was equipped with an operational lock-out device.[24]

DBPR Annual Report

The DBPR is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House regarding the enforcement of tobacco products, including:[25]

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 21 and the results of administrative hearings on such violations; and
- The number of people under the age of 21 cited, including sanctions imposed as a result of citation.

The DBPR is required to submit a comparable annual report to the Legislature regarding compliance with the age restriction on the sale of nicotine dispensing devices.[26]

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[22] Fla. Admin. Code R. 61A-2.022(1) (2019).
[23] The Florida Responsible Vendor Act in ss. 561.701 - 561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.
[24] Section 569.008(3), F.S.
[25] Section 569.19, F.S.
[26] Section 569.44, F.S.

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the U.S. Food and Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products to protect the public health. The Tobacco Control Act provides advertising and labeling guidelines, provides standards for tobacco products, and requires face-to-face transactions for tobacco sales with certain exceptions.[27]

On August 8, 2016, the FDA extended the definition of the term "tobacco product" regulated under the Tobacco Control Act to include "electronic nicotine delivery systems" (ENDS). ENDS include nicotine delivery devices such as e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers, and electronic pipes. The definition of tobacco products also includes components and parts such as e-liquids, tanks, cartridges, pods, wicks, and atomizers. On April 14, 2022, the FDA's authority was further expanded to include products containing nicotine from any source, including synthetic nicotine.[28]

Federal law preempts states from providing additional or different requirements for tobacco products in regards to "standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products." However, federal law explicitly preserves the right of states, or any political subdivision of a state, to enact laws, rules, regulations or other measures related to prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of tobacco products which are more stringent than federal requirements.[29]

Registration by Manufacturers

Under federal law, tobacco product manufacturers[30] are required initially and annually thereafter to register with the FDA the name,[31] places of business, and all such establishments of that manufacturer in any state.[32] These manufacturers are required to register any additional places which they own or operate and start to manufacture, prepare, compound, or process a tobacco product or tobacco products.[33]

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[27] Federal Food, Drug, and Cosmetic Act, 21 USC § 351 *et seq*; 15 U.S.C. s. 1333, s. 1335; 21 U.S.C. s. 387g, s. 387f.
[28] "Non-Tobacco Nicotine" (NTN) is the term used to describe nicotine that did not come from a tobacco plant. NTN includes 'synthetic' nicotine." U.S. Food and Drug Administration. *Regulation and Enforcement of Non-Tobacco Nicotine (NTN) Products*, www.fda.gov/tobacco-products/products-ingredients-components/regulation-and-enforcement-non-tobacco-nicotine-ntn-products (last visited Mar. 6, 2025).
[29] 21 U.S.C. § 387p.
[30] The term "manufacture, preparation, compounding, or processing" includes "the repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user." 21 USCA § 387e(a)(1).
[31] The term "name" includes the name of each partner in the case of a partnership and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation." 21 USCA § 387e(a)(2).
[32] 21 USCA § 387e(b)(c).
[33] 21 USCA § 387e(d).

FDA Premarket Review Application Process for Tobacco Products

21 U.S.C. § 387j requires the manufacturer of a new tobacco product[34] to submit a marketing application to the FDA and receive authorization[35] before it can be distributed into interstate commerce. These applications are reviewed by the FDA to determine whether the product meets the proper requirements to receive marketing authorization. Marketing authorization can be achieved through a Premarket Tobacco Product Application (PMTA), Substantial Equivalence (SE) Report, or Exemption from Substantial Equivalence Request (EX REQ).[36]

The FDA may issue a marketing granted order, temporarily suspend a marketing order, withdraw a marketing granted order, or issue a marketing denial order.[37] If exempt, the FDA would issue a "found exempt order."[38]

Preexisting tobacco products, i.e., tobacco products that were commercially marketed in the U.S. as of Feb. 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. before Feb. 15, 2007, could voluntarily apply to the FDA by May 14, 2022,[39] to receive a determination that the product is a pre-existing tobacco product. A tobacco manufacturer may challenge the FDA's determination.[40] Manufactures must hold onto records that show their tobacco products are legally on the market.

September 9, 2020, was the deadline for submitting a PMTA application for other new deemed tobacco products that were on the market as of August 8, 2016.[41]

An applicant may submit a PMTA to demonstrate that a new tobacco product meets the requirements to receive a marketing granted order.[42] The PMTA must contain information[43] for the FDA to ascertain whether there are any applicable grounds for a marketing denial order. To receive a marketing granted order:

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[34] "A 'new tobacco product' is defined as any product not commercially marketed in the United States as of February 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. after February 15, 2007." 21 U.S.C. § 387j(1).

[35] U.S. Food and Drug Administration, *Market and Distribute a Tobacco Product*, www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product (last visited Mar. 6, 2025).

[36] U.S. Food and Drug Administration, *Market and Distribute a Tobacco Product*, https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders Last visited Mar. 6, 2025).

[37] 21 U.S.C. § 387j.

[38] *See* U.S. Food and Drug Administration, *Searchable Tobacco Products Database Additional Information, Database Terminology*, defining EXREQ – Found Exempt Order, https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/searchable-tobacco-products-database-additional-information#rfr (last visited Mar. 6, 2025).

[39] U.S. Food and Drug Administration, *Reminder: Electronic Submission of Premarket Applications for Non-Tobacco Nicotine Products due May 14*, https://www.fda.gov/tobacco-products/ctp-newsroom/reminder-electronic-submission-premarket-applications-non-tobacco-nicotine-products-due-may-14 (last visited Mar. 6, 2025).

[40] *See* U.S. Food and Drug Administration, *Pre-Existing Tobacco Products*, June 15, 2023, at https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/pre-existing-tobacco-products (last visited Mar. 6, 2025).

[41] FDA, Submit Tobacco Product Applications for Deemed Tobacco Products, Sept. 9, 2020, at: https://www.fda.gov/tobacco-products/manufacturing/submit-tobacco-product-applications-deemed-tobacco-products (last visited Mar. 6, 2025).

[42] 21 CFR 1114.5.

[43] The PMTA must include information, such as, full reports of investigations of health risks, effect on the population as a whole, product formulation, statement of compliance and certification, and manufacturing. *See* 21 CFR § 1114.7(a).

> A PMTA must demonstrate the new tobacco product would be appropriate for the protection of the public health and takes into account the increased or decreased likelihood that existing users of tobacco products will stop using such products, as well as the increased or decreased likelihood that those who do not use tobacco products will start using such products.[44]

A SE Report can be submitted by the tobacco manufacturer to seek an FDA substantially equivalent order. The applicant must provide information on the new tobacco product's characteristics and compare its characteristics to another tobacco product.[45] The SE Report must contain information to allow the FDA to determine whether the new tobacco product is substantially equivalent to a tobacco product that was commercially marketed in the United States as of February 15, 2007.[46]

The FDA may exempt, from the requirements relating to the demonstration that a tobacco product is substantially equivalent, tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive if certain conditions are met. A tobacco product may only receive an exemption from the requirement of showing a substantial equivalence (Ex Req) if it is for a minor modification to a tobacco product that can legally be sold as a legally marketed tobacco product.[47]

The FDA has made determinations on more than 26 million PMTA application, including 99.5 percent of the higher-market share e-cigarette products. It has issued marketing denial orders for more than 65,000 non-tobacco flavored e-cigarette product applications.[48]

In 2024, the FDA issued several marketing orders for non-tobacco flavored e-cigarette products.[49]

The FDA provides a searchable database on its website for tobacco products, including e-cigarettes that may be legally marketed.[50] The FDA also maintains a printable, one-page flyer of authorized e-cigarettes indicating that only 17 e-cigarette products from three manufacturers have been authorized for sale.[51]

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[44] *Supra* n. 35.
[45] *See* 21 CFR 1107.16 and 21 CFR 1107.18.
[46] 21 CFR 1107.18.
[47] 21 CFR 1107.1.
[48] U.S. Food and Drug Administration, *A Year in Review: FDA's Progress on Tobacco Product Regulation in 2024*, https://www.fda.gov/tobacco-products/ctp-newsroom/year-review-fdas-progress-tobacco-product-regulation-2024 (last visited Mar. 6, 2025); and U.S. Food and Drug Administration, *Premarket Tobacco Product Marketing Granted Orders,*" updated as of Jan. 9, 2024, www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders (last visited Mar. 6, 2025).
[49] *Id.*
[50] U.S. Food and Drug Administration, *Searchable Tobacco Products Database*, https://www.accessdata.fda.gov/scripts/searchtobacco/ (last visited Mar. 6, 2025).
[51] U.S. Food and Drug Administration, FDA Authorized E-Cigarette Products, https://digitalmedia.hhs.gov/tobacco/print_materials/CTP-250?locale=en (last visited Mar. 6, 2025).

Legal Challenges to the FDA's PMTA Process

However, the FDA tobacco premarket application process has been challenged. In 2022, the Eleventh Circuit Court of Appeals set aside FDA marketing order denials as arbitrary and capricious because the FDA failed to consider relevant factors in evaluating the applications submitted by the six tobacco companies for flavored e-cigarettes.[52] In 2024, the Fifth Circuit Court of Appeals stated, in reference to the tobacco premarketing application process, that over several years, the FDA had "sent manufacturers of flavored e-cigarette products on a wild goose chase."[53] The FDA subsequently appealed the Fifth Circuit decision to the United State Supreme Court, which heard oral arguments on December 2, 2024.[54]

Regarding the PMTA process, the FDA's was also successfully challenged by a group of retailers based in Texas and Mississippi and a North Carolina-based company whose PMTA was denied by the FDA for a menthol-flavored e-cigarette product and the FDA appealed to the Fifth Circuit Court of Appeals, which is based in Louisiana. The Fifth Circuit rejected the FDA motion to move the case to the D.C. Circuit in Washington D.C.[55] The FDA subsequently appealed to the United States Supreme Court, which held oral arguments in January 2025 on the jurisdictional issue of "whether a manufacturer may file a petition for review in a circuit (other than the U.S. Court of Appeals for the District of Columbia Circuit) where it neither resides nor has its principal place of business, if the petition is joined by a seller of the manufacturer's products that is located within that circuit."[56]

Federal Enforcement Efforts

In October 2024, FDA and U.S. Customs and Border Protection (CPT), seized $76 million in unauthorized e-cigarettes, including popular, youth-appealing, foreign-owned brands. In April 2024, the U.S. Marshals Service seized unauthorized e-cigarettes valued at more than $700,000 at a warehouse in California.

In addition, the FDA made compliance and enforcement actions against unauthorized tobacco products in 2024, especially those most appealing to youth, including issuing warning letters to more than 50 manufacturers and distributors and more than 430 retailers for selling unauthorized tobacco products. In 2024, the CTP also filed civil money penalty complaints for unauthorized

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[52] *See*, *Bidi Vapor LLC v. U.S. Food & Drug Admin*., 47 F.4th 1191, 1205 (11th Cir. 2022), in which the FDA issued marketing denial orders that specifically stated that it did not consider the marketing or sales-access-restriction plans in the PMTSs submitted by six tobacco companies which included their proposed marketing and sales-access restrictions in their applications.

[53] *Wages & White Lion Investments, L.L.C. v. Food & Drug Admin*., 90 F.4th 357 (5th Cir. 2024) (the court held that the FDA's denial of marketing orders was arbitrary and capricious because FDA failed to give manufacturers fair notice of the rules, did not explain or admit a change in position regarding application requirements, and disregarded the tobacco manufacturers' good faith reliance on previous FDA guidance).

[54] *Wages & White Lion Investments, L.L.C. v. Food & Drug Admin*., 144 S.Ct. 2714 (2024), *cert. granted.*

[55] *Food and Drug Administration, v. R.J. Reynolds Vapor Co.*, 2024 WL 1945307 (5th Cir. 2024).

[56] *Food and Drug Administration, v. R.J. Reynolds Vapor Co.*, 145 S.Ct. 116 (2024), *cert. granted*; and Petition for Writ of Certiorari in *Food and Drug Administration, v. R.J. Reynolds Vapor Co.*, No. 23-1187, May 5, 2024, WL 1995213.

products consisting of 44 complaints against manufacturers and more than 100 complaints against retailers.[57]

Florida Directory of Nicotine Products that are Attractive to Children

Enacted during the 2024 Regular Session, s. 569.311, F.S.,[58] authorizes the Attorney General to adopt rules to create a directory of nicotine dispensing devices that the Attorney General has determined to be "attractive to minors," thereby removing those products from the market. Under the section, the term "nicotine dispensing devices" includes e-cigarettes, vapes, and other similar products. Each individual stock keeping unit is considered a separate nicotine dispensing device. Open systems in which a consumer fills a vial or other containers with a nicotine solution are exempted from the provisions of the s. 569.311, F.S.

To determine that a product is "attractive to minors," the Attorney General must consider several factors, including:[59]

- Surveys or other data sources indicating that a nicotine dispensing device is being used by minors at a higher rate than other nicotine dispensing devices.
- Complaints, reports, or other information related to the use of a nicotine dispensing device by minors from other minors, from parents, teachers, school employees, school boards, and law enforcement officers, retailers, and other industry officials as compared to other nicotine dispensing devices.
- The extent to which the product is designed and marketed to be attractive to minors (e.g., use of bright colors or cartoon characters, ease of use for minors, resemblance to a food product, and uniquely marketed to minors).
- Use of actual intellectual property that resemble consumer food products that are popular with minors.
- Any reports of physical harm to minors from using the nicotine dispensing device or evidence that the nicotine dispensing device presents unique risks to minors.
- Whether the manufacturer of the nicotine dispensing device submitted a timely filed premarket tobacco product application for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j.
- Decisions by the U.S. Food and Drug Administration (FDA) regarding the product, including the extent to which the FDA's decision was predicated, in whole or part, on the risks to minors outweighing other benefits of the nicotine dispensing device.

The Department of Legal Affairs must also develop and maintain a directory listing all of the nicotine product manufacturers that sell nicotine dispensing devices in Florida, which the Attorney General has deemed attractive to minors. The department must make the directory available January 1, 2025, for public inspection on its website.[60]

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[57] U.S. Food and Drug Administration, *A Year in Review: FDA's Progress on Tobacco Product Regulation in 2024*, https://www.fda.gov/tobacco-products/ctp-newsroom/year-review-fdas-progress-tobacco-product-regulation-2024 (last visited Mar. 6, 2025)
[58] Chapter 2024-127, Laws of Fla.
[59] Section 569.311(3), F.S.
[60] Section 569.311(9), F.S.

The Attorney General's decision to include a product in the directory is subject to review under the Florida Administrative Procedure Act under ch. 120, F.S.[61] After a product is included in the directory, retailers and wholesale dealers have 60 days from the date the directory is made public to sell or otherwise discard the products.[62]

Section 569.312(1), F.S., provides that a nicotine product manufacturer, a retail nicotine products dealer, a wholesaler, or a distributor may not sell, ship, or otherwise distribute a nicotine dispensing device in this state for eventual retail sale to a consumer in this state that is listed on the directory. A person who knowingly sells, ships, or receives for retail sale a prohibited nicotine dispensing device commits a misdemeanor of the first degree.[63] A violation is also deemed to be a deceptive trade practice and may be enforced by the Attorney General. The DBPR may impose a civil penalty of up to $1,000 per prohibited device sold.[64]

Products that are listed in the directory are contraband and are subject to seizure under the Florida Contraband Forfeiture Act.[65] A court having jurisdiction must order contraband nicotine dispensing devices forfeited upon a showing that, by a preponderance of the evidence, the devices were sold, delivered, possessed, or distributed contrary to any provision of ch. 569, F.S., relating to tobacco and nicotine products. Once any administrative proceedings under ch. 120, F.S., related to such devices have been completed, the court must order seized nicotine dispensing devices to be destroyed, except as provided by applicable court orders. The department is required to keep specified records of all nicotine dispensing devices seized under the act.[66]

As of March 6, 2025, the Attorney General's Nicotine Dispensing Devises Directory lists approximately 299 nicotine dispensing devices, which are identified by the product's stock keeping unit (SKU), as attractive to minors.[67]

III. Effect of Proposed Changes:

Section 1 of the bill provides that the act may be cited as the "Florida Age Gate Act."

Definition

The bill amends s. 569.31, F.S., to define the term "nonapproved disposable device" to mean a disposable or single-use nicotine dispensing device which has not received a marketing granted order under 21 U.S.C. s. 387j.

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[61] Section 569.311(5), F.S.
[62] Section 569.311(10), F.S.
[63] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.
[64] Section 569.312, F.S.
[65] *See* ss. 932.701-932.7062, F.S.
[66] Section 569.345, F.S.
[67] *See* Florida Attorney General, *Nicotine Dispensing Devices*, https://www.myfloridalegal.com/NDD (last visited Mar. 6, 2025).

Consent to Inspection and Search without a Warrant

The bill amends s. 569.33, F.S., relating to nicotine dispensing devices, to provide that an applicant for a retail nicotine products dealer permit or a retail tobacco products dealer permit issued under s. 569.003, F.S., by accepting the permit, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the Division of Alcoholic Beverages and Tobacco (division) or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part. Currently, this provision only refers to an application for a retail nicotine products dealer permit, but there is a comparable provision for applicants for a retail tobacco dealer permit.

The bill also provides that an applicant for a retail nicotine products dealer permit also consents to inspection and search without a search warrant of the licensed premises by the Department of Law Enforcement to determine compliance with part II of ch. 569, F.S., relating to the unlawful sale of nonapproved disposable devices or the unlawful advertising, promotion, or display for sale of such devices.

Under the bill, the division must conduct regular inspections of the licensed premises of dealers who sell nonapproved disposable devices to ensure compliance with this part.

Criminal and Administrative Penalties

The bill amends s. 569.35, F.S., to authorize the division to assess administrative penalties for each violation involving the unlawful sale of nonapproved disposable devices or the unlawful advertising, promotion, or display for sale of such devices.

The bill authorizes the division to impose the following penalties:

- For a first violation, an administrative fine of at least $500, but not more than $1,000, and an order requiring that corrective action be taken within 15 days to preclude a recurrence;
- For a second violation within 12 weeks after the first violation, an administrative fine of $1,000 and up to a 30-day suspension of the dealer's retail nicotine products dealer permit; or
- For a third or subsequent violation within 12 weeks after the first violation, an administrative fine of at least $2,500, but not more than $5,000, and at least a 30-day suspension or revocation of the dealer's nicotine products dealer permit.

Under the bill, any second or subsequent violation outside the 12-week period after the first violation is punishable as a first violation. The division must deposit one-half of all fines collected into the Professional Regulation Trust Fund, and the remaining one-half of the fines collected into the Department of Law Enforcement Operating Trust Fund.

The bill also provides that a third or subsequent violation within 12 weeks after the first violation by dealer, or a dealer's agent or employee, is a misdemeanor of the second degree, which is punishable by a term of imprisonment not to exceed 60 days and a fine not to exceed $500.

Under the bill, administrative fines must be used by the division and the Department of Law Enforcement to:

- Increase enforcement personnel.

- Fund compliance inspections and investigations.
- Develop and implement public awareness campaigns to reduce nicotine use by persons under the age of 21.

Advertisement, Promotion, or Display for Sale of Nonapproved Disposable Devices

The bill amends s. 569.37, F.S., to prohibit retail nicotine dispensing device dealers who sell nonapproved disposable devices from advertising, promoting, or displaying for sale nonapproved disposable devices in any location that is visible to persons outside of the dealer's licensed premises.

Nonapproved disposable devices also may not be advertised, promoted, or displayed for sale within the dealer's licensed premises in a manner visible to any person under the age of 21, including, but not limited to, placement of the devices in an open display unit located in an area visible to any person under the age of 21.

The definition for the term "nonapproved disposable device" under s. 567.31, as provided in the bill, does not include nicotine dispensing devices that have received a marketing order from the FDA.

There may be nicotine dispensing devices that are not required to receive a marketing order under 21 U.S.C. s. 387j, such as a pre-existing tobacco product, which is any tobacco product (including those products in test markets) that was commercially marketed in the United States on, or as of, February 15, 2007, or was a modification of a tobacco product that was commercially marketed in the U.S. before Feb. 15, 2007. A manufacturer of such a product may voluntarily apply to the FDA for a marketing order but is not required to apply. Such devices would be subject to the advertising and display restrictions proved in the bill.

The bill reenacts the following provisions to incorporate the amendment made by the bill to s. 569.35, F.S.

- Section 569.381, F.S., relating to responsible retail nicotine products dealers; and
- Section 569.43(3), F.S., relating to the posting of a stating that the sale of nicotine products or nicotine dispensing devices to persons under 21 years of age is unlawful.

Rulemaking

The bill amends s. 569.39, F.S., to require the division to adopt by rule guidelines for compliance audits and enforcement actions pertaining to the sale, advertising, promotion, and display for sale of nonapproved disposable devices.

DBPR Annual Report

The bill amends s. 569.44, F.S., to require that the annual report of the Department of Business and Professional Regulation must list the number of violations for any advertising, promotion, or display of nonapproved disposable devices prohibited by s. 569.37(3), F.S.

Effective Date

The bill takes effect July 1, 2025.

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:

This bill does not affect s. 569.311, F.S., which authorizes the Attorney General to create a directory of nicotine dispensing devices that the Attorney General has determined to be attractive to minors and prohibits the distribution sale of such products within Florida.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 569.31, 569.33, 569.35, 569.37, 569.39, and 569.44.

This bill reenacts the following sections of the Florida Statutes: 569.381 and 569.43.

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.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Regulated Industries (Calatayud) recommended the following:

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 134 - 197

4 and insert:

5 (b) The division may impose the following penalties for
6 each violation involving the unlawful advertising, promotion, or
7 display for sale of nonapproved disposable devices as provided
8 in s. 569.37(3):

9 1. For a first violation, an administrative fine of at
10 least $500, but not more than $1,000, and an order requiring

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11 that corrective action be taken within 15 days to preclude a
12 recurrence;
13 2. For a second violation within 12 weeks after the first
14 violation, an administrative fine of $1,000 and up to a 30-day
15 suspension of the dealer's retail nicotine products dealer
16 permit; or
17 3. For a third or subsequent violation within 12 weeks
18 after the first violation, an administrative fine of at least
19 $2,500, but not more than $5,000, and at least a 30-day
20 suspension or revocation of the dealer's nicotine products
21 dealer permit.
22
23 Any second or subsequent violation beyond the 12-week period
24 after the first violation is punishable as provided for a first
25 violation. The division shall deposit all fines collected under
26 this paragraph into the Professional Regulation Trust Fund.
27 (c) In addition to any administrative penalties authorized
28 under subparagraph (b)3., a dealer, or a dealer's agent or
29 employee, who commits a third or subsequent violation within 12
30 weeks after the first violation commits a misdemeanor of the
31 second degree, punishable as provided in s. 775.082 or s.
32 775.083.
33 (3) An order imposing an administrative fine becomes
34 effective 15 days after the date of the order. The division may
35 suspend the imposition of a penalty against a dealer,
36 conditioned upon the dealer's compliance with terms the division
37 considers appropriate.
38 (4) Administrative fines collected under paragraph (2)(b)
39 shall be used by the division to do all of the following:

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40 (a) Increase enforcement personnel.
41 (b) Fund compliance inspections and investigations.
42 (c) Develop and implement public awareness campaigns to
43 reduce nicotine use by persons under the age of 21.
44 Section 5. Present subsections (3) and (4) of section
45 569.37, Florida Statutes, are redesignated as subsections (4)
46 and (5), respectively, a new subsection (3) and subsection (6)
47 are added to that section, and present subsection (3) of that
48 section is amended, to read:
49 569.37 Sale or delivery of nicotine products;
50 restrictions.—
51 (3) A dealer who sells nonapproved disposable devices may
52 not:
53 (a) Advertise, promote, or display for sale such
54 nonapproved disposable devices in any location that is visible
55 to persons outside of the dealer’s licensed premises.
56 (b) Advertise, promote, or display for sale such
57 nonapproved disposable devices within the dealer’s licensed
58 premises in a manner visible to any person under the age of 21,
59 including, but not limited to, placement of the devices in an
60 open display unit located in an area visible to any person under
61 the age of 21.
62 (4) ~~The provisions of~~ Subsections (1), ~~and~~ (2), and (3) do
63 ~~shall~~ not apply to an establishment that prohibits persons under
64 21 years of age on the licensed premises.
65 (6)(a) A dealer that derives more than 20 percent of its
66 gross monthly retail sales from the sale of nicotine products
67 may not be located within 500 feet of the real property that
68 comprises a public or private elementary school, middle school,

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69 or secondary school. The required distance must be measured on a
70 straight line from the nearest property line of the retail shop
71 to the nearest property line of the school.
72 (b) Each dealer must submit to the division a survey
73 certified under chapter 472, performed at least 30 days before
74 the date of the submission of the application for a permit under
75 s. 569.32, containing a legal description of the boundaries of
76 the place or premises and any existing public or private
77 elementary school, middle school, or secondary school located
78 within 500 feet. The measurement scaled by the division governs
79 any measurement disputes.
80 (c) A dealer located within 500 feet of real property that
81 comprises a public or private elementary school, middle school,
82 or secondary school must maintain records verifying the gross
83 monthly retail sales from the sale of nicotine products during
84 the previous 6 months, as well as the percentage of such sales
85 that represents the retail sales of nicotine dispensing devices.
86 The division may request and have access to such records for the
87 purpose of enforcement. Within 14 days after such request, the
88 dealer must provide a summary sales report verifying its sales
89 for the period of time requested. Failure of the dealer to
90 provide a sales report when requested by the division, or
91 failure of the dealer to adequately demonstrate that the
92 business establishment has sold less than the required
93 percentage of nicotine products and nicotine dispensing devices,
94 is a violation of this section.
95 (d) Within 90 days after the opening of a public or private
96 elementary school, middle school, or secondary school located
97 within 500 feet of an existing place of business or premises

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98 that sells nicotine products or nicotine dispensing devices, as
99 determined under paragraph (a), the dealer must submit an
100 application to the division for conditional use or legally
101 recognized nonconforming use in accordance with the local
102 government's applicable land development regulations. Upon
103 approval of the division for conditional use or a legally
104 recognized nonconforming use, the dealer must relocate the
105 business or premises within 180 days, or upon expiration of the
106 dealer's current lease agreement without any extension thereof,
107 whichever occurs later, to a new location in compliance with
108 this subsection.
109 (e) Within 90 days after July 1, 2025, a dealer that has a
110 place of business or premises located within 500 feet of a
111 public or private elementary school, middle school, or secondary
112 school, as determined under paragraph (a), must submit an
113 application to the division for conditional use or legally
114 recognized nonconforming use in accordance with the local
115 government's land development regulations. Upon approval of the
116 division for conditional use or a legally recognized
117 nonconforming use, the dealer must relocate the business or
118 premises within 180 days, or upon expiration of the dealer's
119 current lease agreement without any extension thereof, whichever
120 occurs later, to a new location in compliance with this
121 subsection.
122
123 ================= T I T L E A M E N D M E N T ================
124 And the title is amended as follows:
125 Delete lines 18 - 22
126 and insert:

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127 the division for specified purposes; amending s.
128 569.37, F.S.; prohibiting a dealer who sells
129 nonapproved disposable devices from advertising,
130 promoting, or displaying for sale such devices in
131 certain locations; revising applicability; providing
132 restrictions on locations for specified dealers of
133 nicotine products; requiring dealers to submit
134 specified information to the division; requiring
135 certain dealers to maintain specified records;
136 authorizing the division to request and have access to
137 such records; providing that failure of provide such
138 records is a violation of this section; requiring
139 dealers to provide specified information within a
140 certain time period following such a request;
141 requiring dealers to submit an application to the
142 division for conditional use or legally recognized
143 nonconforming use in specified circumstances;
144 requiring dealers to relocate following approval of
145 such applications within a specified timeframe;

By Senator Calatayud

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1 A bill to be entitled
2 An act relating to nonapproved disposable nicotine
3 dispensing devices; providing a short title; amending
4 s. 569.31, F.S.; defining the term “nonapproved
5 disposable device”; amending s. 569.33, F.S.; revising
6 which permitholders that the premises covered by the
7 permit are subject to inspection and search by the
8 Division of Alcoholic Beverages and Tobacco; revising
9 the provision that, upon being granted a permit, such
10 permitholder also consents to inspections by the
11 Department of Law Enforcement for specified
12 violations; requiring the division to inspect the
13 licensed premises of dealers who sell nonapproved
14 disposable devices; amending s. 569.35, F.S.; revising
15 penalties for violations involving the unlawful sale
16 of nonapproved disposable devices; requiring that
17 administrative fines for certain violations be used by
18 the division and the department for specified
19 purposes; amending s. 569.37, F.S.; prohibiting a
20 dealer who sells nonapproved disposable devices from
21 advertising, promoting, or displaying for sale such
22 devices in certain locations; revising applicability;
23 amending s. 569.39, F.S.; revising the division’s
24 rulemaking authority; amending s. 569.44, F.S.;
25 revising the information that must be included in the
26 division’s annual report to the Legislature and the
27 Governor; reenacting ss. 569.381(3) and (5) and
28 569.43(3), F.S., relating to responsible retail
29 nicotine products dealers, qualifications, mitigation

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30 of disciplinary penalties, diligent management and
31 supervision, presumption; and posting of a sign
32 stating that the sale of nicotine products or nicotine
33 dispensing devices to persons under 21 years of age is
34 unlawful, enforcement, and penalties, respectively, to
35 incorporate the amendment made to s. 569.35, F.S., in
36 references thereto; providing an effective date.
37
38 Be It Enacted by the Legislature of the State of Florida:
39
40 Section 1. This act may be cited as the “Florida Age Gate
41 Act.”
42 Section 2. Section 569.31, Florida Statutes, is reordered
43 and amended to read:
44 569.31 Definitions.—As used in this part, the term:
45 (2) ~~(1)~~ “Dealer” is synonymous with the term “retail
46 nicotine products dealer.”
47 (3) ~~(2)~~ “Division” means the Division of Alcoholic Beverages
48 and Tobacco of the Department of Business and Professional
49 Regulation.
50 (4) ~~(3)~~ “FDA” means the United States Food and Drug
51 Administration.
52 (5) ~~(4)~~ “Nicotine dispensing device” means any product that
53 employs an electronic, chemical, or mechanical means to produce
54 vapor or aerosol from a nicotine product, including, but not
55 limited to, an electronic cigarette, electronic cigar,
56 electronic cigarillo, electronic pipe, or other similar device
57 or product, any replacement cartridge for such device, and any
58 other container of nicotine in a solution or other form intended

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59 to be used with or within an electronic cigarette, electronic
60 cigar, electronic cigarillo, electronic pipe, or other similar
61 device or product. For purposes of this definition, each
62 individual stock keeping unit is considered a separate nicotine
63 dispensing device.
64 (6) ~~(5)~~ "Nicotine product" means any product that contains
65 nicotine, including liquid nicotine, which is intended for human
66 consumption, whether inhaled, chewed, absorbed, dissolved, or
67 ingested by any means. The term also includes any nicotine
68 dispensing device. The term does not include a:
69 (a) Tobacco product, as defined in s. 569.002;
70 (b) Product regulated as a drug or device by the United
71 States Food and Drug Administration under Chapter V of the
72 Federal Food, Drug, and Cosmetic Act; or
73 (c) Product that contains incidental nicotine.
74 (7) ~~(6)~~ "Nicotine products manufacturer" means any person or
75 entity that manufactures nicotine products.
76 (9) ~~(7)~~ "Permit" is synonymous with the term "retail
77 nicotine products dealer permit."
78 (10) ~~(8)~~ "Retail nicotine products dealer" means the holder
79 of a retail nicotine products dealer permit.
80 (11) ~~(9)~~ "Retail nicotine products dealer permit" means a
81 permit issued by the division under s. 569.32.
82 (12) ~~(10)~~ "Self-service merchandising" means the open
83 display of nicotine products, whether packaged or otherwise, for
84 direct retail customer access and handling before purchase
85 without the intervention or assistance of the dealer or the
86 dealer's owner, employee, or agent. An open display of such
87 products and devices includes the use of an open display unit.

88 (13) ~~(11)~~ "Sell" or "sale" means, in addition to its common
89 usage meaning, any sale, transfer, exchange, barter, gift, or
90 offer for sale and distribution, in any manner or by any means.
91 (1) ~~(12)~~ "Any person under the age of 21" does not include
92 any person under the age of 21 who:
93 (a) Is in the military reserve or on active duty in the
94 Armed Forces of the United States; or
95 (b) Is acting in his or her scope of lawful employment.
96 (8) "Nonapproved disposable device" means a disposable or
97 single-use nicotine dispensing device as defined in this section
98 which has not received a marketing granted order under 21 U.S.C.
99 s. 387j.
100 Section 3. Section 569.33, Florida Statutes, is amended to
101 read:
102 569.33 Consent to inspection and search without warrant.—
103 (1) An applicant for a retail nicotine products dealer
104 permit or a retail tobacco products dealer permit issued under
105 s. 569.003, by accepting the permit when issued, agrees that the
106 place or premises covered by the permit is subject to inspection
107 and search without a search warrant by the division or its
108 authorized assistants, and by sheriffs, deputy sheriffs, or
109 police officers, to determine compliance with this part. An
110 applicant also consents to inspection and search without a
111 search warrant of the licensed premises by the Department of Law
112 Enforcement to determine compliance with this part relating to
113 the unlawful sale of nonapproved disposable devices or the
114 unlawful advertising, promotion, or display for sale of such
115 devices.
116 (2) The division shall conduct regular inspections of the

117 licensed premises of dealers who sell nonapproved disposable
118 devices to ensure compliance with this part.
119 Section 4. Section 569.35, Florida Statutes, is amended to
120 read:
121 569.35 Retail nicotine product dealers; administrative and
122 criminal penalties.—
123 (1) The division may suspend or revoke the permit of a
124 dealer, including the retail tobacco products dealer permit of a
125 retail tobacco products dealer as defined in s. 569.002(4), upon
126 sufficient cause appearing of the violation of any of the
127 provisions of this part, by a dealer, or by a dealer's agent or
128 employee.
129 (2)(a) Except as provided in paragraph (b), the division
130 may also assess and accept an administrative fine of up to
131 $1,000 against a dealer for each violation. The division shall
132 deposit all fines collected under this paragraph into the
133 General Revenue Fund as collected.
134 (b) For each violation involving the unlawful sale of
135 nonapproved disposable devices or the unlawful advertising,
136 promotion, or display for sale of such devices, the division may
137 impose the following penalties:
138 1. For a first violation, an administrative fine of at
139 least $500, but not more than $1,000, and an order requiring
140 that corrective action be taken within 15 days to preclude a
141 recurrence;
142 2. For a second violation within 12 weeks after the first
143 violation, an administrative fine of $1,000 and up to a 30-day
144 suspension of the dealer's retail nicotine products dealer
145 permit; or

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146 3. For a third or subsequent violation within 12 weeks
147 after the first violation, an administrative fine of at least
148 $2,500, but not more than $5,000, and at least a 30-day
149 suspension or revocation of the dealer's nicotine products
150 dealer permit.
151
152 Any second or subsequent violation outside the 12-week period
153 after the first violation is punishable as provided for a first
154 violation. The division shall deposit one-half of all fines
155 collected under this paragraph into the Professional Regulation
156 Trust Fund, and the remaining one-half of the fines collected
157 shall be deposited into the Department of Law Enforcement
158 Operating Trust Fund.
159 (c) In addition to any administrative penalties authorized
160 under subparagraph (b)3., a dealer, or a dealer's agent or
161 employee, who commits a third or subsequent violation within 12
162 weeks after the first violation commits a misdemeanor of the
163 second degree, punishable as provided in s. 775.082 or s.
164 775.083.
165 (3) An order imposing an administrative fine becomes
166 effective 15 days after the date of the order. The division may
167 suspend the imposition of a penalty against a dealer,
168 conditioned upon the dealer's compliance with terms the division
169 considers appropriate.
170 (4) Administrative fines collected under paragraph (2)(b)
171 shall be used by the division and the Department of Law
172 Enforcement to do all of the following:
173 (a) Increase enforcement personnel.
174 (b) Fund compliance inspections and investigations.

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175 (c) Develop and implement public awareness campaigns to
176 reduce nicotine use by persons under the age of 21.
177 Section 5. Present subsections (3) and (4) of section
178 569.37, Florida Statutes, are redesignated as subsections (4)
179 and (5), respectively, a new subsection (3) is added to that
180 section, and present subsection (3) of that section is amended,
181 to read:
182 569.37 Sale or delivery of nicotine products;
183 restrictions.—
184 (3) A dealer who sells nonapproved disposable devices may
185 not:
186 (a) Advertise, promote, or display for sale such
187 nonapproved disposable devices in any location that is visible
188 to persons outside of the dealer's licensed premises.
189 (b) Advertise, promote, or display for sale such
190 nonapproved disposable devices within the dealer's licensed
191 premises in a manner visible to any person under the age of 21,
192 including, but not limited to, placement of the devices in an
193 open display unit located in an area visible to any person under
194 the age of 21.
195 (4) ~~(3)~~ ~~The provisions of~~ Subsections (1), ~~and~~ (2), and (3)
196 do ~~shall~~ not apply to an establishment that prohibits persons
197 under 21 years of age on the licensed premises.
198 Section 6. Section 569.39, Florida Statutes, is amended to
199 read:
200 569.39 Rulemaking authority.—The division shall adopt rules
201 to administer and enforce this part. The rules must include
202 guidelines for compliance audits and enforcement actions
203 pertaining to the sale, advertising, promotion, and display for

204 sale of nonapproved disposable devices.
205 Section 7. Present subsections (3) and (4) of section
206 569.44, Florida Statutes, are redesignated as subsections (4)
207 and (5), respectively, and a new subsection (3) is added to that
208 section, to read:
209 569.44 Annual report.—The division shall report annually
210 with written findings to the Legislature and the Governor by
211 December 31 on the progress of implementing the enforcement
212 provisions of this part. This must include, but is not limited
213 to:
214 (3) The number of violations for any advertising,
215 promotion, or display of nonapproved disposable devices
216 prohibited by s. 569.37(3).
217 Section 8. For the purpose of incorporating the amendment
218 made by this act to section 569.35, Florida Statutes, in
219 references thereto, subsections (3) and (5) of section 569.381,
220 Florida Statutes, are reenacted to read:
221 569.381 Responsible retail nicotine products dealers;
222 qualifications; mitigation of disciplinary penalties; diligent
223 management and supervision; presumption.—
224 (3) In determining penalties under s. 569.35, the division
225 may mitigate penalties imposed against a dealer because of an
226 employee's illegal sale of a nicotine product to a person under
227 21 years of age if the following conditions are met:
228 (a) The dealer is qualified as a responsible dealer under
229 this section.
230 (b) The dealer provided the training program required under
231 subsection (2) to that employee before the illegal sale
232 occurred.

233 (c) The dealer had no knowledge of that employee’s
234 violation at the time of the violation and did not direct,
235 approve, or participate in the violation.
236 (d) If the sale was made through a vending machine, the
237 machine was equipped with an operational lock-out device.
238 (5) Dealers shall exercise diligence in the management and
239 supervision of their premises and in the supervision and
240 training of their employees, agents, or servants. In proceedings
241 to impose penalties under s. 569.35, proof that employees,
242 agents, or servants of the dealer, while in the scope of their
243 employment, committed at least three violations of s. 569.41
244 during a 180-day period shall be prima facie evidence of a lack
245 of due diligence by the dealer in the management and supervision
246 of his or her premises and in the supervision and training of
247 employees, agents, officers, or servants.
248 Section 9. For the purpose of incorporating the amendment
249 made by this act to section 569.35, Florida Statutes, in a
250 reference thereto, subsection (3) of section 569.43, Florida
251 Statutes, is reenacted to read:
252 569.43 Posting of a sign stating that the sale of nicotine
253 products or nicotine dispensing devices to persons under 21
254 years of age is unlawful; enforcement; penalty.—
255 (3) Any dealer that sells nicotine products shall provide
256 at the checkout counter in a location clearly visible to the
257 dealer or the dealer’s agent or employee instructional material
258 in a calendar format or similar format to assist in determining
259 whether a person is of legal age to purchase nicotine products.
260 This point of sale material must contain substantially the
261 following language:

262
263 IF YOU WERE NOT BORN BEFORE THIS DATE
264 ...(insert date and applicable year)...
265 YOU CANNOT BUY TOBACCO PRODUCTS,
266 NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.
267
268 Upon approval by the division, in lieu of a calendar a dealer
269 may use card readers, scanners, or other electronic or automated
270 systems that can verify whether a person is of legal age to
271 purchase nicotine products. Failure to comply with the
272 provisions contained in this subsection shall result in
273 imposition of administrative penalties as provided in s. 569.35.
274 Section 10. This act shall take effect July 1, 2025.

The Florida Senate

Committee Agenda Request

To: Senator Jennifer Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: March 2, 2025

I respectfully request that **Senate Bill #928**, relating to Nicotine Dispensing Devices, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Alexis Calatayud

Senator Alexis Calatayud
Florida Senate, District 38

File signed original with committee office

S-020 (03/2004)

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 652

INTRODUCER: Senator Bradley

SUBJECT: Veterinary Professional Associates

DATE: March 11, 2025 REVISED:

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

I. Summary:

SB 652 creates the title "veterinary professional associate" and allows such individuals who have obtained this title, working under the supervision of a veterinarian, to practice veterinary medicine on a limited basis, as follows:

- Allows the title "veterinary professional associate" to be used only by an individual who has successfully completed an approved program.
- Unless otherwise prohibited by federal or state law, authorizes a veterinary professional associate to practice veterinary medicine while working under the supervision of a Florida licensed veterinarian.
- Prohibits a veterinary professional associate from:
- Prescribing medicinal drugs or controlled substances.
- Performing a surgical procedure, except for sterilizations or dental surgeries.
- Makes supervising veterinarians using a veterinary professional associate liable for any acts or omissions of the veterinary professional associate acting under the veterinarian's supervision.

The bill provides an effective date of July 1, 2025.

II. Present Situation:

Practice of Veterinary Medicine

The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian

practicing in this state meets minimum requirements for safe practices to protect public health and safety.[1]

A “veterinarian” is a health care practitioner licensed by the board to engage in the practice of veterinary medicine in Florida[2] and they are subject to disciplinary action from the board for various violations of the practice act.[3]

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.[4]

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

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

The practice act does not apply to the following categories of persons:

- Veterinary aides, nurses, laboratory technicians, preceptors,[6] or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[7] of a licensed veterinarian;
- Certain non-Florida licensed veterinarians who are consulting upon request of a Florida-licensed veterinarian on the treatment of a specific animal or on the treatment of a specific case of the animals of a single owner.
- Faculty veterinarians when they have assigned teaching duties at accredited[8] institutions;
- Certain graduated intern/resident veterinarians of accredited institutions;
- Certain students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors;

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[1] Section 474.201, F.S.
[2] Section 474.202(11), F.S.
[3] Sections 474.213 & 474.214, F.S.
[4] *See* section 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 or fertility or infertility of animals.
[5] *See* section 474.202(13), F.S. 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.”
[6] 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 also* https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary (last visited March 11, 2025).
[7] 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.
[8] Section 474.203(1)-(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.

- Certain doctors of veterinary medicine employed by a state agency or the United States Government;
- Persons or their employees caring for the persons' own animals, as well as certain part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks; and
- Certain entities or persons[9] that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or methods of treatment 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.[10]

Any permanent or mobile establishment where a licensed veterinarian practices must have a premises permit issued by the DBPR.[11] Each person to whom a veterinary license or premises permit is issued must conspicuously display such document in her or his office, place of business, or place of employment in a permanent or mobile veterinary establishment or clinic.[12]

By virtue of accepting a license to practice veterinary medicine in Florida, a veterinarian consents to:
- render a handwriting sample to an agent of the DBPR and, further, to have waived any objections to its use as evidence against her or him.
- waive the confidentiality and authorize the preparation and release of medical reports pertaining to the mental or physical condition of the licensee when the DBPR has reason to believe that a violation of this chapter has occurred and when the DBPR issues an order, based on the need for additional information, to produce such medical reports for the time period relevant to the complaint.[13]

For Fiscal Year 2022-2023, there were 13,285 actively licensed veterinarians in Florida. The DBPR received 484 complaints, which resulted in 16 disciplinary actions.[14]

Immediate Supervision

The practice act defines "immediate supervision" to mean that a "licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided."[15]

Veterinary tasks requiring immediate supervision include:[16]
- Administering anesthesia and tranquilization by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian.

[9] *See* section 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 ...."
[10] *See* section 474.203, F.S.
[11] Section 474.215(1), F.S.
[12] Section 474.216, F.S.
[13] Section 474.2185, F.S.
[14] Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2022-2023*, http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf (last visited March 11, 2025).
[15] Section 4764.202(5), F.S.
[16] R. 61G18-17.005, F.A.C.

- Administering certain vaccinations by a veterinary aide, nurse, technician, intern, or other employee of a licensed veterinarian which is not specifically prohibited.

The following tasks may be performed without the licensed veterinarian on the premises:[17]
- Administering medication and treatment, excluding vaccinations, as directed by the licensed veterinarian; and
- Obtaining samples and the performance of those diagnostic tests, including radiographs, as directed by the licensed veterinarian.

Veterinarian Shortage

According to a survey conducted by the American Pet Products Association (APPA), 70 percent of U.S. households, or about 90.5 million families, own a pet. This is an increase from 56 percent of U.S. households in 1988, and 67 percent in 2019.[18] As a result, experts say there is a shortage of veterinarians in the U.S., which is expected to result in the need for approximately 15,000 veterinarians by the year 2030.[19] A study from Banfield Pet Hospital reveals an estimated 75 million pets in the U.S. may not have access to the veterinary care they need by 2030, with an important factor being a critical shortage of veterinarians.[20]

The University of Florida's Dean of the College of Veterinary Medicine, Dana Zimmel, has indicated that there is a shortage of veterinarians in Florida, which in addition to pets has "1.7 million beef cattle and dairy cows, more horses than Kentucky and an alarming decline of manatee." The state's only veterinary medical college, the University of Florida, also reports that due to limited capacity, it must turn away 1,500 qualified candidates a year.[21]

According to the American Veterinary Medical Association (AVMA):

Conditions have pushed the idea of a midlevel practitioner to the fore as veterinary practices have struggled to meet service demands. This issue has been compounded by continued inefficiencies in practices as pandemic disruptions persist and client expectations for availability and convenience. Inflation has also increased costs for labor and for products such as medical equipment and medications, creating additional concern around clients' ability to afford needed

[17] *Id.*
[18] Insurance Information Institute, *Facts + Statistics: Pet Ownership and Insurance*, https://www.iii.org/fact-statistic/facts-statistics-pet-ownership-and-insurance#:~:text=Seventy%20percent%20of%20U.S.%20households,and%2067%20percent%20in%202019. (last visited March 11, 2025).
[19] Spectrum News 13, *Mobile 'ElleVet' clinic helps relieve veterinarian shortage*, https://www.mynews13.com/fl/orlando/news/2023/02/03/the-ellevet-project-#:~:text=%E2%80%94%20Experts%20say%20there's%20a%20shortage,States%20may%20not%20get%20care. (last visited March 11, 2025).
[20] Banfield Pet Hospital, *75 million pets may not have access to veterinary care by 2030, New Banfield® study finds*, https://www.banfield.com/en/about-banfield/newsroom/press-releases/2020/75-million-pets-may-not-have-access-to-veterinary (last visited March 11, 2025).
[21] Dana Zimmel, *Florida needs more veterinarians | Column*, Tampa Bay Times (Jan. 3, 2022), https://www.tampabay.com/opinion/2022/01/03/florida-needs-more-veterinarians-column/ (last visited March 11, 2025).

care. Additionally, retention of veterinary practice staff members and attrition from the profession are ongoing and increasing concerns.[22]

The AVMA found that a midlevel practitioner may not be the best option to address these concerns, and that

Time and effort should be spent on resources, tools, and programs designed to retain veterinarians and credentialed veterinary technicians; further develop veterinary technician specialties; help veterinary practices operate at optimum efficiency; and effectively collaborate—within practice teams and across the profession—to meet clients' needs for high-quality veterinary services.[23]

However, according to a study conducted by the National Library of Medicine:

The projected shortage of veterinarians has created a need to explore alternatives designed to meet society's future demands. A veterinary professional health care provider, similar to the human medical profession's physician assistant (PA), is one such alternative. It is suggested that perhaps veterinary professional associates, modeled after PAs, could be employed to handle routine veterinary care and thereby allow veterinarians additional time to focus on the more demanding and challenging aspects of veterinary medicine. Perhaps a team approach, similar to the physician/PA team, could help the field of veterinary medicine to better serve both clients and patients. As veterinary medicine directs its attention toward the new challenges on the horizon, creative solutions will be needed. Perhaps some variation of a veterinary professional associate is worthy of future discussion.[24]

Human Physician Assistants

According to the Mayo Clinic, Physician Assistants (PA) are "licensed medical professionals who hold an advanced degree and are able to provide direct patient care. They work with patients of all ages in virtually all specialty and primary care areas, diagnosing and treating common illnesses and working with minor procedures. With an increasing shortage of health care providers, PAs are a critical part of today's team-based approach to health care. They increase access to quality health care for many populations and communities. The specific duties of a PA are determined by their supervising physician and state law, but they provide many of the same services as a primary care physician. They practice in every state and in a wide variety of clinical settings and specialties."[25]

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[22] American Veterinary Medical Association, AVMA News, *Idea of midlevel practitioner rejected in favor of better support, engagement of credentialed veterinary technicians* (Jan. 10, 2023), https://www.avma.org/news/idea-midlevel-practitioner-rejected-favor-better-support-engagement-credentialed-veterinary (last visited March 11, 2025).

[23] *Id.*

[24] Lori Kogan, Sherry Stewart, *Veterinary professional associates: does the profession's foresight include a mid-tier professional similar to physician assistants?,* National Library of Medicine (2009), https://pubmed.ncbi.nlm.nih.gov/19625672/ (last visited March 11, 2025).

[25] Mayo Clinic College of Medicine and Science, *Physician Assistant*, https://college.mayo.edu/academics/explore-health-care-careers/careers-a-z/physician-assistant/ (last visited March 11, 2025).

In Florida, PAs are licensed medical professionals that are authorized to perform services delegated by a supervising physician.[26] PAs are regulated by the Florida Council on Physician Assistants in conjunction with either the Board of Medicine for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S. During fiscal year 2023-2024, there were 11,890 actively licensed PAs in the state, and 1,339 initial PA licenses were issued by the Florida Department of Health.[27]

Veterinary Professional Associates in Other Jurisdictions

States

In 2024, voters of the state of Colorado approved a ballot measure to create a new, state-regulated veterinary position (Veterinary Professional Associate) that was to address, in part, the shortage of care, especially in rural areas, for pets.[28] Colorado's proposition empowered the state to create a regulatory scheme to license and regulate these Veterinary Professional Associates.

Similarly to what is being proposed in SB 652, Colorado would provide this Veterinary Professional Associate pathway for those who complete a master's degree in veterinary clinical care, or an equivalent degree determined by the state board.[29]

Universities

In 2022, The Lincoln Memorial University-College of Veterinary Medicine, created the first-of-its-kind Master of Veterinary Clinical Care degree. As of the beginning of 2025, this is the only program in the country that offers a Veterinary Clinical Care master's degree.

Colorado State University is in the process of developing a similar program.[30]

III. Effect of Proposed Changes:

SB 652 creates the title "veterinary professional associate" and allows individuals working under the supervision of a veterinarian to practice veterinary medicine on a limited basis.

Accordingly, the bill defines the following terms:

- "Approved program" means a master's program in veterinary clinical care, or the equivalent, from a school of veterinary medicine in the United States or in its territories or possessions.
- "Veterinary professional associate" means a person who has earned a master's degree from an approved program and is authorized to perform veterinary medical services delegated by a supervising veterinarian.

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[26] Sections 458.347(2)(e) and 459.022(2)(e).

[27] Florida Department of Health, Division of Medical Quality Assurance, Annual Report and Long-Range Plan, Fiscal Year 2023-2024, https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/2024.10.28.FY23-24AR-FINAL.pdf (last visited March 11, 2025).

[28] Colorado Department of Regulatory Agencies, *State Board of Veterinary Medicine: Proposition 129*, https://dpo.colorado.gov/Veterinary/Proposition129, (last visited March 11, 2025),

[29] *Id*.

[30] Colorado State University, *About the Master of Science in Veterinary Clinical Care*, https://vetmedbiosci.colostate.edu/vpa/, (last visited March 11, 2025).

The bill also provides that:

- The title “veterinary professional associate” may be used only by an individual who has successfully completed an approved program and passed a national competency examination.
- Unless otherwise prohibited by federal or state law, a veterinary professional associate may perform duties or actions in s. 474.202(9) and (13), F.S., (practice of veterinary medicine) in which he or she is competent and has the necessary training, current knowledge, and experience to perform the assigned duties. The associate may perform only the duties assigned to him or her while under the supervision, as defined in s. 474.202, F.S., of a licensed veterinarian, except when immediate supervision is required under the bill.
- A veterinary professional associate may not do either of the following:
    - Prescribe medicinal drugs or controlled substances (unless authorized by state or federal law).
    - Perform a surgical procedure, except for sterilizations or dental surgeries that do not enter a body cavity.
- Any surgery that is done must be performed under immediate supervision as defined in s. 474.202, F.S., of a licensed veterinarian.

Finally, SB 652 provides that a licensed veterinarian who assigns duties or actions to a veterinary professional associate is **liable** for any act or omission of the veterinary professional associate acting under the licensed veterinarian’s supervision.

The bill provides an effective date of July 1, 2025.

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:

The bill provides a new veterinary professional associate but does not provide a licensure structure.

VIII. Statutes Affected:

This bill creates section 474.2126 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.

164782

LEGISLATIVE ACTION

Senate	.	House
	.	
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The Committee on Regulated Industries (Bradley) recommended the following:

1 **Senate Amendment**

2

3 Delete lines 57 - 59

4 and insert:

5 <u>(b) Perform surgical procedures that enter a body cavity,</u>

6 <u>except for veterinary sterilizations. Surgical procedures must</u>

7 <u>be performed under immediate</u>

By Senator Bradley

6-00499A-25 2025652__

1 A bill to be entitled
2 An act relating to veterinary professional associates;
3 providing a short title; creating s. 474.2126, F.S.;
4 providing legislative findings; defining terms;
5 authorizing certain individuals to use the title
6 “veterinary professional associate”; authorizing
7 veterinary professional associates to perform certain
8 duties only while under the responsible supervision of
9 a licensed veterinarian; prohibiting such associates
10 from prescribing certain drugs or controlled
11 substances or performing certain surgical procedures;
12 providing exceptions; providing that supervising
13 veterinarians are liable for the acts or omissions of
14 veterinary professional associates under their
15 supervision; providing an effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. This act may be cited as the “Veterinary
20 Workforce Innovation Act.”
21 Section 2. Section 474.2126, Florida Statutes, is created
22 to read:
23 474.2126 Veterinary professional associate.—
24 (1) The Legislature finds that the practice of educated,
25 trained, and experienced veterinary professional associates will
26 increase consumers’ access to high-quality veterinary medical
27 services, at a reasonable cost to consumers, while also
28 increasing the efficiency of the practice of veterinary medicine
29 in this state.

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

6-00499A-25 2025652__

30 (2) As used in this section, the term:
31 (a) “Approved program” means a master’s program in
32 veterinary clinical care, or the equivalent, from a school of
33 veterinary medicine in the United States or in its territories
34 or possessions.
35 (b) “Veterinary professional associate” means a person who
36 has earned a master’s degree from an approved program and is
37 authorized to perform veterinary medical services delegated by a
38 supervising veterinarian.
39 (3) The title “veterinary professional associate” may be
40 used only by an individual who has successfully completed an
41 approved program and passed a national competency examination.
42 (4) Unless otherwise prohibited by federal or state law, a
43 veterinary professional associate may perform duties or actions,
44 including duties or actions in s. 474.202(9) and (13), in which
45 he or she possesses the competence, necessary training, current
46 knowledge, and experience to perform the assigned duties. The
47 veterinary professional associate may perform only the duties
48 assigned to him or her while under the responsible supervision,
49 as defined in s. 474.202, of a licensed veterinarian, except
50 when immediate supervision is required as provided in paragraph
51 (5)(b).
52 (5) A veterinary professional associate may not do either
53 of the following:
54 (a) Unless otherwise authorized by state or federal law,
55 prescribe medicinal drugs or drugs as defined in s. 465.003(15)
56 or a controlled substance listed in chapter 893.
57 (b) Perform a surgical procedure, except for veterinary
58 sterilizations or surgical procedures that do not enter a body

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

59 cavity. Surgical procedures must be performed under immediate
60 supervision, as defined in s. 474.202, of a licensed
61 veterinarian.
62 (6) A licensed veterinarian who assigns duties or actions
63 to a veterinary professional associate is liable for any act or
64 omission of the veterinary professional associate acting under
65 the licensed veterinarian's supervision.
66 Section 3. This act shall take effect July 1, 2025.

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

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 354

INTRODUCER: Senator Gaetz

SUBJECT: Public Service Commission

DATE: March 12, 2025 REVISED:

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

I. Summary:

SB 354 makes several revisions to Florida law regarding the Florida Public Service Commission (PSC). The bill:

- Expands the number of PSC commissioners from five to seven and establishes that one commissioner be a certified public accountant and one commissioner be a chartered financial analyst;
- Removes a requirement that public utilities must receive PSC approval before making changes to their rate schedules (i.e. tariffs);
- Requires the PSC to establish a schedule for when public utilities may request changes to their rates;
- Revises the legislative findings and intent for the Florida Energy Efficiency and Conservation Act (FEECA)—the state's demand-side management program administered by the PSC. It provides that as part of the FEECA program, the PSC is to keep the allowable rate of return on equity for utilities[1] as close as possible to the risk-free rate of return and that deviations from such be justified;
- Revises the annual FEECA report to the Legislature and Governor required pursuant to s. 366.82(10), F.S.

The bill has an effective date of July 1, 2025.

[1] Public, municipally-owned, and cooperative electricity or natural gas utility (with exemptions for smaller electricity and natural gas utilities), are subject to FEECA.

II. Present Situation:

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[2] 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 and reliable manner and at fair prices.[3] 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.[4]

Composition of the PSC

The PSC consists of five commissioners who serve staggered four-year terms.[5] Commissioners are appointed by the Governor from a pool of at least three nominees—selected by the Florida Public Service Commission Nominating Council[6]—for each commissioner vacancy. These appointments are subject to confirmation by the Florida Senate during the next regular session after the vacancy occurs. If the Senate refuses to confirm or fails to consider the Governor's appointment, the council must initiate the nominating process within 30 days. Before the council nominates a candidate, it must determine that the person is competent and knowledgeable in one or more fields, including, but not limited to:

- Public affairs;
- Law;
- Economics;
- Accounting;
- Engineering;
- Finance;
- Natural resource conservation;
- Energy; or
- Another field substantially related to the duties and functions of the PSC.[7]

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[2] Section 350.001, F.S.
[3] *See* Florida Public Service Commission, *Florida Public Service Commission Homepage*, http://www.psc.state.fl.us (last visited Feb. 13, 2025).
[4] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Feb. 13, 2025).
[5] Section 350.01, F.S.
[6] The Florida Public Service Commission Nominating Council is a 12-member body with the responsibility to select nominees for PSC commissioners. At least one member of the council must be 60 years of age or older. Six members, including three members of the Florida House of Representatives, one of whom must be a member of the minority party, appointed by, and serve at the pleasure of, the Speaker of the House of Representatives. Six members, including three members of the Florida Senate, one of whom must be a member of the minority party, shall be appointed by and serve at the pleasure of the President of the Senate. Section 350.031(1)(a), F.S.
[7] Section 350.031(5), F.S.

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid[8] and may order the addition or repair of infrastructure as necessary.[9] The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities[10] (called "public utilities" under ch. 366, F.S.).[11] 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, and bulk power supply operations and planning.[12] Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by its governing body elected by the cooperative's membership.

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

A municipal electric or gas utility is an electric or gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of electric and gas utility regulations for Florida. While ch. 366, F.S., does not provide a definition, per se, for a "municipal utility," variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state's electric utility customers.[13] Florida also has 27 municipally-owned gas utilities and four special gas districts.[14]

Rural Electric Cooperatives in Florida

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives.[15] These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million customers.[16] Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.[17]

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[8] Section 366.04(5) and (6), F.S.
[9] Section 366.05(1) and (8), F.S.
[10] Section 366.05, F.S.
[11] Section 366.02(8), F.S.
[12] Florida Public Service Commission, *About the PSC*, *supra* note 4.
[13] Florida Municipal Electric Association, *About Us,* https://www.flpublicpower.com/about-us (last visited Mar. 8, 2025).
[14] Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, pg. 1 & 13, Apr. 2024 (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202024.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."
[15] Florida Electric Cooperative Association, *Members*, https://feca.com/members/ (last visited Mar. 8, 2025).
[16] Florida Electric Cooperative Association, *Our History*, https://feca.com/our-history/ (last visited Mar 8, 2025).
[17] *Id.*

Public Electric and Gas Utilities in Florida

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).[18] 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. The Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.[19]

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.[20] If a utility believes it is earning below a reasonable level, it can petition the PSC for a change in rates.[21]

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.[22]

PSC Setting of Public Utility Rates and Other Charges

Section 366.041, F.S., establishes the considerations the PSC must apply in fixing just, reasonable, and compensatory rates:

> the [PSC] is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities; and energy conservation and the efficient use of alternative energy resources; provided that no public utility shall be denied a reasonable rate of return upon its rate base

Section 366.06, F.S., establishes the PSC's authority to establish and implement procedures for the fixing of and changing public utility rates. Under this section, all applications made by public utilities for changes in rates must be in writing with the PSC under the PSC's established

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[18] Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, *supra* note 15, at 5.
[19] *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.
[20] PSC, *2024 Annual Report*, p. 6, (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2024.pdf) (last visited Mar. 8, 2025).
[21] *Id.*
[22] *Id.*

rules and regulations.[23] Section 366.06(2), F.S., requires the PSC to hold a public hearing whenever it finds, upon request made, or upon its own motion, one or more of the following:

- That the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law;
- That such rates are insufficient to yield reasonable compensation for the services rendered;
- That such rates yield excessive compensation for services rendered; or
- That such service is inadequate or cannot be obtained.

During such a hearing, the PSC must determine just and reasonable rates to be thereafter charged for such service, and promulgate rules and regulations affecting equipment, facilities, and service to be thereafter installed, furnished, and used.

The PSC establishes separate rates and charges for various components of a public utility's cost of providing service to its customers. These are established through various proceedings which include:

- Base rate proceedings (also known as rate cases);
- Cost recovery clauses;
- Infrastructure surcharges;
- Interim charges.[24]

Rate Cases

Rate cases are generally the least frequent of the PSC's rate and charge proceedings for public utilities. These wide-ranging proceedings seek to address, for a public utility:

- A reasonable rate of return on investment;
- Operating and maintenance expenses; and
- Cost of administering the public utility.[25]

According to the PSC, in setting a reasonable rate of return, it is guided by the principles established in *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923) and *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).[26] In *Bluefield,* the United States Supreme Court found that:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment….A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country

[23] Section 366.06(1), F.S.
[24] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, (Feb. 28, 2025).
[25] *Id.*
[26] *Id.*

> on investments in other business undertakings which are attended by corresponding, risks and uncertainties.[27]

Further, the court in *Bluefield* found that such return should be "reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Further, this "rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally."[28] Thus, for a rate of return to be non-confiscatory, it must be adjusted as broader-market circumstances change.

The Supreme Court in *Hope* found that:

> The fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests…. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business…. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[29]

In *Hope*, the Supreme Court also reiterates its previous decision in *Fed. Power Comm'n v. Nat. Gas Pipeline Co. of Am.*, 315 U.S. 575, 586 (1942) that the "[United States] Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas." Rather, it is "not theory but the impact of the rate order which counts."[30] The court cites with approval that the Federal Power Commission, in its rate-making function, uses "pragmatic adjustments" in fixing rates.[31]

In a base rate proceeding, the PSC establishes a public utility's rate of return or cost of capital. It sets this based on:
- Return on equity (ROE);
- Long-term and short-term debt;
- Customer deposits; and
- Deferred taxes.[32]

The PSC, in a rate proceeding, develops a substantial evidentiary record, which includes analysis of ROE using models generally used in the utility industry. The PSC also takes into account financial risk to the public utility when setting ROE. When the PSC approves an ROE

[27] *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 690-92 (1923).
[28] *Id* at 692.
[29] *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).
[30] *Id* at 602.
[31] *Id*.
[32] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354, supra* note 24.

for a public utility, it does so within a 100-basis point rate of return (i.e. plus or minus 1 percent).[33]

The rate of return actually earned by the utility is dependent on both the utility's ability to manage costs and react to other factors that may impact its operations. These factors may include:

- Changes in revenues due to the impact of weather on sales;
- New, modified, or cancelled tariffed rates or charges;
- Costs of materials, supplies, and labor; and
- Interest rates affecting the cost of debt.[34]

Salaries and benefits paid to employees of the public utility, including its executives, are part of the PSC's review in a rate case proceeding and the PSC examines these figures in the aggregate. In determining whether such expenses are reasonable and prudent, the PSC will consider industry norms and the need to attract and retain qualified executive and non-executive utility personnel.[35]

After the conclusion of a rate case, the PSC will monitor the earnings of a public utility through regular surveillance reports. Currently, public electric utilities with 50,000 or more customers must submit such reports monthly; those with less than 50,000 customers must do so quarterly.[36] For public gas utilities, with 25,000 or more customers must submit such reports monthly; those with less than 25,000 customers must do so quarterly.[37] If these reports show a public utility is earning outside of its approved ROE range, the PSC will inquire with the utility and take corrective action if needed.[38]

Establishment of other Bases of Public Utility Customer Charges

Outside of rate cases, the PSC also has other processes for revising, or creating, utility rates and charges. These proceedings include cost recovery clause proceedings and interim charges.

Cost recovery clause proceedings allow public utilities to recover variable, volatile, or legislatively mandated costs.[39] For public electric utilities, the PSC holds annual hearings to allow the utilities to recover expenditures on:

- Fuel and purchased power costs and capacity costs;
- Environmental compliance costs pursuant to s. 366.8255, F.S.;
- Storm protection plan costs pursuant to s. 366.96, F.S.;
- Nuclear costs pursuant to s. 366.93, F.S.;[40] and
- Energy conservation program costs pursuant to s. 366.80 through 366.83, F.S.

[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] Fla. Admin Code R. 25-6.1352.
[37] Fla. Admin Code R. 25-7.1352.
[38] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354, supra* note 24.
[39] *Id.*
[40] The PSC has not conducted a nuclear cost recovery proceeding since 2018 as no public utility has petitioned for recovery under this clause since that year.

For public natural gas utilities, the PSC holds annual hearings to allow the utilities to recover expenditures on:

- Purchased natural gas costs;
- Energy conservation costs pursuant to s. 366.80 through 366.83, F.S.; and
- Natural gas infrastructure relocation costs pursuant to s. 366.99, F.S.[41]

Outside of cost recovery clause proceedings, the PSC also provides a process for establishing interim charges to quickly recover estimated storm-recovery related expenses. These interim charges are time-limited and are subject to a final true-up proceeding once final costs can be determined for a particular storm or series of storms.[42]

The PSC does not establish ROE or overall rates of returns in recovery clause and interim charge proceedings, as these focused rate proceedings are limited in scope. Rather, ROE and overall rates of return are set during rate cases, as those proceedings are substantially broader in scope.[43]

Tariffs

A public utility's tariffs are a series of documents, approved by the PSC, that provide the utility's rates, terms, and conditions for service. These tariffs also include standardized forms for the utility's service offerings and its standard contracts and agreements. Tariffs are generally revised, as necessary, after a PSC-approved change in a utility's rates or charges and are generally part of any proceeding revising rates or charges. Utilities may also request a tariff change if circumstances warrant doing so. However, the PSC does not establish ROE or overall rates of return in reviewing stand alone requests to approve a new, modified, or canceled tariff.[44]

Florida Energy Efficiency and Conservation Act

Sections 366.80 through 366.83, and s. 403.519, F.S., are collectively known as the Florida Energy Efficiency and Conservation Act (FEECA). The purpose of FEECA is to have the PSC require each public, municipally-owned, and cooperative electricity or natural gas utility (with exemptions for smaller electricity and natural gas utilities)[45] to develop plans and implement programs for increasing energy efficiency and conservation and demand-side renewable energy systems within its service area (subject to PSC approval). The goals of this demand-side management (DSM) program are:

- To increase the efficiency of energy consumption and increase the development of demand-side renewable energy systems, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels;
- To reduce and control the growth rates of electric consumption;
- To reduce the growth rates of weather-sensitive peak demand; and

[41] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354, supra* note 24.
[42] *Id.*
[43] *Id.*
[44] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354, supra* note 24.
[45] FEECA does specifically exempt natural gas utilities with an annual sales volume of less than 100 million therms and electric utilities that, as of July 1, 1993, provide less than 2,000 gigawatt hours of electricity annually to end-use customers.

- To encourage the development of demand-side renewable energy resources.[46]

Section 366.82(2), F.S., authorizes the PSC to allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base as part of FEECA DSM programs. Sections 366.82(2) and (6), F.S., require the PSC to establish goals for each utility subject to FEECA and update these goals at least every five years. Public utilities subject to FEECA may seek PSC cost recovery approval for DSM programs approved under FEECA.

According to the PSC, energy conservation and DSM are accomplished through a "multi-pronged approach that includes energy efficiency requirements in building codes for new construction, federal appliance efficiency standards, utility programs, and consumer education."[47] These DSM programs, which are paid for by all customers, "are aimed at increasing efficiency levels above building codes and appliance efficiency standards."

Section 366.82(10), F.S., requires the PSC to demand periodic reports from each utility subject to FEECA. Using these reports, the PSC must file an annual report to the Legislature and Governor of the FEECA goals it has adopted and its progress towards those goals.

PSC Public Records Exemptions

Section 350.121, F.S., protects from public disclosure records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics obtained by the PSC through an inquiry. Much material is confidential and exempt from public disclosure pursuant to s. 119.07(1), F.S.

In addition, ss. 366.093, 367.156, and 368.108, F.S., provide processes for public utilities, water and wastewater utilities, and gas transmission and distribution companies, respectively, to protect proprietary confidential business information from public disclosure, provided pursuant to discovery in a PSC docket or proceeding. Such proprietary confidential business information is confidential and exempt from public disclosure pursuant to s. 119.07(1), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 350.01(1), F.S., to expand the membership of the Florida Public Service Commission (PSC) from five to seven commissioners. It also adds a requirement that one commissioner be a certified public accountant and one commissioner be a chartered financial analyst.[48]

Section 2 of the bill amends s. 366.06, F.S., to remove a requirement that public utilities must receive PSC approval before making changes to their rate schedules (i.e. tariffs). The section also requires the PSC to establish a schedule for when public utilities may request changes to their rates.

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[46] Section 366.82(2), F.S.

[47] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354, supra* note 24.

[48] The bill does not specify whether one commissioner holding both a CFA and CPA would satisfy this requirement.

Section 3 of the bill amends s. 366.81, F.S., to revise the legislative findings and intent for the Florida Energy Efficiency and Conservation Act (FEECA)—the state's demand-side management program. It provides that, as part of the FEECA program, the PSC is to keep the allowable rate of return on equity for utilities[49] as close as possible to the risk-free rate of return. Upward deviations away from the risk-free rate must be specifically justified by the utility seeking a tariff modification.

Section 4 of the bill amends s. 366.82(10), F.S., to revise the annual FEECA report to the Legislature and Governor required pursuant to that subsection. In addition, providing the FEECA goals the PSC has adopted and its progress towards those goals as required currently in statute, the bill requires the report to contain all of the following:

- An investigation of the contemporary economic analysis related to rate changes in Florida.
- An analysis of potential cost impacts to utility customers of Florida if excess returns on equity have occurred, and potential cost savings, if any, to customers if the excess returns to equity have not occurred at a significant rate.
- An analysis of alternative rate-of-return scenarios, including an investigation of the rationale for why such scenarios were not chosen in the past, and an investigation of the applicability of such scenarios for the future.
- An assessment of long-term impacts and economic repercussions of rising rates of regulated returns on equity to utilities and their customers in the future.
- A summary detailing the compensation of the executive officers of all public utilities servicing this state, or the executive officers of their affiliated companies or parent company, including, but not limited to, salaries, benefits, stock options, bonuses, stock buybacks, and other taxable payments, expressed both as dollar amounts and as a percentage of the entity's total revenue.
    - This summary must include the profits and losses of each entity as reported in its financial statements and highlight any compensation exceeding the industry average.
    - The office[50] shall also include in the report any rationale provided by the insurer justifying compensation exceeding the industry average and, for each insurer, an explanation of how specific data gathered during the creation of the report informed the office's decisions on that insurer's rate change requests.
- Benchmarking, comparing public utilities servicing Florida with public utilities servicing other states, including commentary on all findings.

Sections 5 through 7 of the bill reenact ss. 366.8255(4), 366.8260(2)(b), and 366.95(2)(c), F.S., to incorporate the amendments made to s. 366.06, F.S.

Section 8 of the bill reenacts s. 553.975, F.S., to incorporate the amendments made to s. 366.82, F.S.

Section 9 of the bill provides for an effective date of July 1, 2025.

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[49] Public, municipally-owned, and cooperative electricity or natural gas utility (with exemptions for smaller electricity and natural gas utilities), are subject to FEECA. However, the PSC does not fully regulate municipal and cooperative electric and gas utilities and does not have currently have regulatory authority over these types of utility's rates and revenues.

[50] "Office" is not defined for ch. 366.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate's requirements do not apply to laws having an insignificant impact,[51] which is $2.37 million or less for Fiscal Year 2024-2025.[52]

The Revenue Estimating Conference has not reviewed SB 354. Staff estimates an indeterminate impact on municipal utility revenues as the bill may impact the return on equity for at least some municipal and cooperative gas and electric utilities (see Section VII Related Issues below). Therefore, the mandate provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 2 of the bill requires the PSC to establish a schedule for when public utilities may request changes to their rates. If such a schedule required a utility to continue to "underearn" while it waits for its next opportunity to revise its rates, the PSC has stated that this could result in a claim for a regulatory taking.[53]

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[51] FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Mar. 5, 2025).

[52] Based on the Demographic Estimating Conference's estimated population adopted on February 6, 2025. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/index.cfm (last visited Mar. 5, 2025).

[53] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354, supra* note 24.

In addition, the United States Supreme Court decision in *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 678 (1923) states that "rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment."[54] The *Bluefield* decision provides that this compensation must not only be sufficient; but it also suggests that the collection of this compensation be at the time service is rendered to the customer. Thus, requiring a utility to wait for a rate change "window" may violate the court's decision in *Bluefield*.

The United States Supreme Court decision in *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) found that utility revenue must be sufficient "not only for operating expenses but also for the capital costs of the business." Further, the return on equity "should be commensurate with returns on investments in other enterprises having corresponding risks," and "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."[55]

Thus, based on the premises in *Bluefield* and *Hope,* a limitation on a utility to respond in a sufficiently timely manner to an "underearning" situation may negatively impact the financial integrity of that utility and be unconstitutionally confiscatory.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 354 would have an indeterminate impact on gas and electric utility rates, the raising or lowering of which may have a significant financial impact on gas and electric utility ratepayers and utilities in the state.

C. Government Sector Impact:

To implement Section 1 of the bill, expanding the number of PSC commissioners from five to seven members, the PSC has indicated that each new commissioner would require two further full-time equivalent positions (FTEs) as support staff. This would bring the total number of additional FTEs for this provision to six—inclusive of the two new commissioners. The PSC estimates a total annual recurring cost for these FTEs of $762,353.

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[54] The Florida Supreme Court also cites to this finding in *United Tel. Co. of Fla. v. Mayo*, 345 So. 2d 648, 653 (Fla. 1977) and *Keystone Water Co., Inc. v. Bevis*, 313 So. 2d 724, 725 (Fla. 1975).

[55] This provision is also cited by the Florida Supreme Court in *Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905, 907 (Fla. 2023), *United Tel. Co. of Florida v. Mann*, 403 So. 2d 962, 966 (Fla. 1981), and *Tamaron Homeowners Ass'n, Inc. v. Tamaron Utilities, Inc.*, 460 So. 2d 347, 353 (Fla. 1984).

In addition, the PSC has indicated that renovations to their current building (the Gerald Gunter building) would be needed to accommodate these additional commissioners and staff. The PSC's hearing room at the Betty Easley Conference Center would also require renovations to accommodate two new commissioners. The PSC estimates that the total non-recurring expense for these renovations would be between $1-2 million.[56]

VI. Technical Deficiencies:

- Lines 38 and 39 of the bill potentially allow public utilities to revise their rate schedules (i.e. tariffs) without the approval of the PSC. This would be a significant departure from Florida's regulatory scheme over public utilities and would likely require significant, wide-ranging revisions to ch. 366, F.S. However, given the overall context of the bill, this provision may have been included in error.
- Lines 142 through 147 of the bill use the terms "office" and "insurer." This appears to be an error as "office" is not defined for ch. 366, F.S., and the chapter does not involve the regulation of the insurance industry.

VII. Related Issues:

- Section 2 of the bill requires the PSC to establish a schedule for when public utilities may request changes to their rates. It is unclear whether this provision is for any rate change (i.e. rate cases, cost recovery clause proceedings, and interim rates) or if this provision is for rate cases only.
  - Currently, public utilities, depending on their size, will submit monthly or quarterly earnings surveillance reports. If these reports show a public utility is earning outside of its approved ROE range, the PSC will inquire with the utility and take corrective action if needed. This provision may limit the PSC's ability to do so.
  - This provision may also conflict with s. 366.06(2), F.S., which requires the PSC to hold a public hearing whenever it finds, upon request made, or upon its own motion:
    - That the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law;
    - That such rates are insufficient to yield reasonable compensation for the services rendered; or
    - That such rates yield excessive compensation for services rendered.
- Sections 3 and 4 of the bill are currently being placed within the "Florida Energy Efficiency and Conservation Act," which is the demand-side management program for public, municipal, and cooperative electric and gas utilities. This may be the incorrect place to add these provisions as they appear to relate to rate-setting, generally, for public electric and gas utilities. If this is the intent, the current placement could lead to misinterpretations on the applicability of these provisions to overall public utility rate setting. As currently written, section 3 of the bill could also be interpreted as requiring the PSC to regulate the return on equity for at least some municipal and cooperative gas and electric utilities—the PSC currently does not do so and to do so would likely necessitate several additional revisions to ch. 366, F.S.

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[56] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354, supra* note 24.

- Lines 133-147 of the bill require the PSC to provide the Governor and Legislature with a report that, in part, could require the public disclosure of compensation of the executive officers of all public utilities servicing this state, or the executive officers of their affiliated companies or parent company. According to the PSC, much of this information would likely be considered information necessitating confidential treatment by the PSC under Section 366.093, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 350.01, 366.06, 366.81, and 366.82.
This bill reenacts the following sections of the Florida Statutes: 366.8255, 366.8260, 366.95, and 553.975.

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.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Regulated Industries (Gaetz) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (1) of section 350.01, Florida
6 Statutes, is amended to read:
7 350.01 Florida Public Service Commission; terms of
8 commissioners; vacancies; election and duties of chair; quorum;
9 proceedings; public records and public meetings exemptions.—
10 (1) The Florida Public Service Commission shall be composed

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11 ~~consist~~ of seven ~~five~~ commissioners appointed pursuant to s.
12 350.031. One member must be a certified public accountant, and
13 one member must be a chartered financial analyst.
14 Section 2. Section 350.129, Florida Statutes, is created to
15 read:
16 350.129 Orders of the Public Service Commission.—
17 (1) All orders issued by the commission must contain
18 adequate support for the commission’s conclusions, including the
19 specific facts and factors on which the conclusions are based.
20 While the commission may make conclusions based upon the public
21 interest, as provided in chapters 350-368, the commission shall
22 specify in its orders a rationale for its conclusions.
23 (2) For commission orders that affect substantial interests
24 pursuant to s. 120.569, when issuing an order accepting or
25 denying a settlement agreement reached by any of the parties to
26 a proceeding, the commission shall provide a reasoned
27 explanation, citing the specific facts and factors on which it
28 relied. In addition, the commission shall provide in its order a
29 discussion of the major elements of the settlement and a
30 rationale for its conclusions.
31 Section 3. Present subsection (4) of section 366.06,
32 Florida Statutes, is redesignated as subsection (5), and a new
33 subsection (4) is added to that section, to read:
34 366.06 Rates; procedure for fixing and changing.—
35 (4) In order to best meet the needs of Florida households,
36 the commission shall work to keep the allowable return on equity
37 close to the risk-free rate of return and shall require that
38 upward deviations from the risk-free rate be specifically
39 justified by the utility seeking a tariff modification.

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40 Section 4. Section 366.07, Florida Statutes, is amended to
41 read:
42 366.07 Rates; adjustment.—
43 (1) Whenever the commission, after public hearing either
44 upon its own motion or upon complaint, shall find the rates,
45 rentals, charges or classifications, or any of them, proposed,
46 demanded, observed, charged or collected by any public utility
47 for any service, or in connection therewith, or the rules,
48 regulations, measurements, practices or contracts, or any of
49 them, relating thereto, are unjust, unreasonable, insufficient,
50 excessive, or unjustly discriminatory or preferential, or in
51 anywise in violation of law, or any service is inadequate or
52 cannot be obtained, the commission shall determine and by order
53 fix the fair and reasonable rates, rentals, charges or
54 classifications, and reasonable rules, regulations,
55 measurements, practices, contracts or service, to be imposed,
56 observed, furnished or followed in the future.
57 (2) The commission shall establish a schedule by which rate
58 change requests may be submitted to the commission by each
59 public utility company.
60 Section 5. Section 366.077, Florida Statutes, is created to
61 read:
62 366.077 Report on rates.—The commission shall require each
63 public utility to submit an annual report to the Governor and
64 the Legislature by each March 1.
65 (1) The report must include all of the following:
66 (a) An investigation of contemporary economic analysis
67 related to rate changes in this state.
68 (b) An analysis of potential cost impacts to utility

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69 customers in this state if excess returns on equity have
70 occurred, and, if such excess returns have not occurred at a
71 significant rate, any resulting cost savings to such customers.
72 (c) An analysis of alternative rate-of-return scenarios,
73 including an investigation of the rationale as to why such
74 scenarios were not explored in the past and of the advisability
75 of exploring such scenarios in the future.
76 4. An assessment of long-term impacts, including the
77 economic repercussions of rising rates of returns on equity, to
78 utilities and their customers in the future.
79 5. A summary providing detailed information regarding the
80 compensation of the executive officers of each public utility
81 providing service to the residents of this state, or the
82 executive officers of their affiliated companies or parent
83 company. Such information must include but need not be limited
84 to salaries, benefits, stock options, bonuses, stock buybacks,
85 and other taxable payments, expressed both as dollar amounts and
86 as a percentage of the entity's total revenue. The summary must
87 include the profits and losses of each entity as reported in its
88 financial statements and must highlight any compensation that
89 exceeds the industry average. The commission shall also include
90 any rationale provided by a public utility justifying
91 compensation exceeding the industry average and, for each public
92 utility, an explanation as to how specific data gathered during
93 the compiling of information informed the commission's decisions
94 on the public utility's rate change requests.
95 (b) The report must provide benchmarking, comparing public
96 utilities providing service to the residents of this state with
97 public utilities providing service to the residents of other

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98 states, including commentary on all findings.
99 Section 6. Subsections (4) and (11) of section 366.96,
100 Florida Statutes, are amended to read:
101 366.96 Storm protection plan cost recovery.—
102 (4) At a minimum, any improvement included in a
103 transmission and distribution storm protection plan filed
104 pursuant to this section must have a forecasted customer benefit
105 exceeding its forecasted cost. In addition, in its review of
106 each ~~transmission and distribution storm protection~~ plan filed
107 pursuant to this section, the commission shall consider:
108 (a) The extent to which the plan is expected to reduce
109 restoration costs and outage times associated with extreme
110 weather events and enhance reliability, including whether the
111 plan prioritizes areas of lower reliability performance and
112 whether the cost of implementing the plan is reasonable and
113 prudent given the expected benefit.
114 (b) The extent to which storm protection of transmission
115 and distribution infrastructure is feasible, reasonable, or
116 practical in certain areas of the utility's service territory,
117 including, but not limited to, flood zones and rural areas.
118 (c) The estimated costs and benefits to the utility and its
119 customers of making the improvements proposed in the plan.
120 (d) The estimated annual rate impact resulting from
121 implementation of the plan during the first 3 years addressed in
122 the plan.
123 (e) The performance of previously approved plan
124 improvements in reducing outage times and storm restoration
125 costs.
126 (11) The commission shall adopt rules to implement and

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127 administer this section ~~and shall propose a rule for adoption as~~
128 ~~soon as practicable after the effective date of this act, but~~
129 ~~not later than October 31, 2019~~.
130 Section 7. Present subsections (7), (8), (9), and (10)
131 through (13) of section 367.021, Florida Statutes, are
132 redesignated as subsections (8), (9), (10), and (12) through
133 (15), respectively, and new subsections (7) and (11) are added
134 to that section, to read:
135 367.021 Definitions.—As used in this chapter, the following
136 words or terms shall have the meanings indicated:
137 (7) "Governing board" means a board of directors, nonprofit
138 board, board of trustees, or similar body overseeing the
139 operations of an organization.
140 (11) "Qualifying nonprofit organization" means an
141 organization that meets all of the following criteria:
142 (a) The organization is a nonprofit corporation,
143 association, or cooperative providing service solely to members
144 who own and control it.
145 (b) The organization conducts open and fair elections to
146 its governing board at an annual meeting of its members. The
147 term of any one governing board member may not exceed 36 months;
148 however, a candidate may run for reelection without any limit on
149 the number of terms he or she may serve.
150 (c) At least 75 percent of the organization's governing
151 board is made up of the organization's members.
152 (d) The organization provides a mechanism for members of
153 the organization to directly nominate candidates for the
154 governing board. At a minimum, any member or candidate who
155 obtains the signatures of at least 1 percent of the members of

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156 the organization on a petition for nomination for a particular
157 board position or election must, as established by that
158 organization’s bylaws, be allowed to stand for election in the
159 same manner as if that member had been nominated by the existing
160 governing board, a committee on nominations established by the
161 board, or other nomination mechanism or procedure as established
162 by the organization’s governing documents. Such candidate must
163 meet all other requirements established by law or by the
164 organization’s governing documents to serve on the board.
165 (e) The organization is not subject to disqualification
166 pursuant to s. 367.24.
167 Section 8. Subsection (7) of section 367.022, Florida
168 Statutes, is amended to read:
169 367.022 Exemptions.—The following are not subject to
170 regulation by the commission as a utility nor are they subject
171 to the provisions of this chapter, except as expressly provided:
172 (7) Qualifying nonprofit organizations ~~Nonprofit~~
173 ~~corporations, associations, or cooperatives providing service~~
174 ~~solely to members who own and control such nonprofit~~
175 ~~corporations, associations, or cooperatives~~.
176 Section 9. Section 367.24, Florida Statutes, is created to
177 read:
178 367.24 Disqualification from exempt status.—
179 (1) The commission may, upon its own motion or petition by
180 any person, initiate a proceeding to determine whether an
181 organization meets the definition of a qualifying nonprofit
182 organization under s. 367.021.
183 (2) In making its determination as to whether an
184 organization meets the definition of a qualifying nonprofit

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185 organization pursuant to a petition filed under subsection (1),
186 the commission shall consider all of the following:
187 (a) The governing documents of the organization.
188 (b) The conduct of the organization.
189 (c) The conduct of the governing board of the organization.
190 (3) If the commission determines that an organization does
191 not meet the definition of a qualifying nonprofit organization,
192 the commission must provide the organization reasoning for its
193 determination and allow the organization 90 days to address the
194 commission’s determination.
195 (4) If, after the expiration of the 90-day period specified
196 in subsection (3), the commission maintains its determination
197 that the organization does not meet the definition of a
198 qualifying nonprofit organization, the commission must issue an
199 order stating that the organization is not exempt from the
200 jurisdiction of the commission pursuant to s. 367.022 and must
201 be regulated as a utility under this chapter.
202 (5) The commission shall follow the procedures established
203 in s. 367.171(2) for an organization determined not to be exempt
204 from the jurisdiction of the commission under subsection (4).
205 The commission shall follow such procedures as if the
206 organization were an established utility in a county newly
207 entering into the commission’s jurisdiction.
208 (6) After a period of 24 months, an organization that is
209 determined not to be exempt from the jurisdiction of the
210 commission under subsection (4) may petition the commission to
211 regain qualifying nonprofit organization status. In reviewing
212 this petition, the commission shall comply with the procedure
213 established in subsections (2), (3), and (4). If the commission

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214 does not approve the petition, the organization must wait an
215 additional 24 months before filing another petition with the
216 commission for such status.
217 (7) Consistent with its jurisdiction over utility rates and
218 service, the commission shall resolve issues relating to whether
219 an organization is exempt from jurisdiction under this section
220 and the manner in which a utility is brought under its
221 jurisdiction pursuant to this section.
222 (8) The commission shall adopt rules to implement and
223 administer this section and shall submit such proposed rules for
224 adoption as soon as practicable after July 1, 2026.
225 Section 10. The Public Service Commission shall submit a
226 proposed rule for adoption which implements the amendments made
227 by this act to s. 366.96, Florida Statutes, as soon as
228 practicable after the effective date of this act, but not later
229 than October 31, 2025.
230 Section 11. Paragraph (b) of subsection (2) of section
231 288.0655, Florida Statutes, is amended to read:
232 288.0655 Rural Infrastructure Fund.—
233 (2)
234 (b) To facilitate access of rural communities and rural
235 areas of opportunity as defined by the Rural Economic
236 Development Initiative to infrastructure funding programs of the
237 Federal Government, such as those offered by the United States
238 Department of Agriculture and the United States Department of
239 Commerce, and state programs, including those offered by Rural
240 Economic Development Initiative agencies, and to facilitate
241 local government or private infrastructure funding efforts, the
242 department may award grants for up to 75 percent of the total

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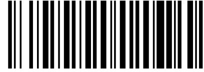
243 infrastructure project cost, or up to 100 percent of the total
244 infrastructure project cost for a project located in a rural
245 community as defined in s. 288.0656(2) which is also located in
246 a fiscally constrained county as defined in s. 218.67(1) or a
247 rural area of opportunity as defined in s. 288.0656(2). Eligible
248 uses of funds may include improving any inadequate
249 infrastructure that has resulted in regulatory action that
250 prohibits economic or community growth and reducing the costs to
251 community users of proposed infrastructure improvements that
252 exceed such costs in comparable communities. Eligible uses of
253 funds include improvements to public infrastructure for
254 industrial or commercial sites and upgrades to or development of
255 public tourism infrastructure. Authorized infrastructure may
256 include the following public or public-private partnership
257 facilities: storm water systems; telecommunications facilities;
258 roads or other remedies to transportation impediments; nature-
259 based tourism facilities; or other physical requirements
260 necessary to facilitate tourism, trade, and economic development
261 activities in the community. Authorized infrastructure may also
262 include publicly or privately owned self-powered nature-based
263 tourism facilities, publicly owned telecommunications
264 facilities, and additions to the distribution facilities of the
265 existing natural gas utility as defined in s. 366.04(3)(c), the
266 existing electric utility as defined in s. 366.02, or the
267 existing water or wastewater utility as defined in s.
268 367.021(14) ~~s. 367.021(12)~~, or any other existing water or
269 wastewater facility, which owns a gas or electric distribution
270 system or a water or wastewater system in this state when:
271 1. A contribution-in-aid of construction is required to

 444212

272 serve public or public-private partnership facilities under the
273 tariffs of any natural gas, electric, water, or wastewater
274 utility as defined herein; and
275 2. Such utilities as defined herein are willing and able to
276 provide such service.
277 Section 12. Paragraph (b) of subsection (5) of section
278 377.814, Florida Statutes, is amended to read:
279 377.814 Municipal Solid Waste-to-Energy Program.—
280 (5) FUNDING.—
281 (b) Funds awarded under the grant programs set forth in
282 this section may not be used to support, subsidize, or enable
283 the sale of electric power generated by a municipal solid waste-
284 to-energy facility to any small electric utility eligible to
285 petition the commission under s. 366.06(5) ~~s. 366.06(4)~~.
286 Section 13. Section 624.105, Florida Statutes, is amended
287 to read:
288 624.105 Waiver of customer liability.—Any regulated company
289 as defined in s. 350.111, any electric utility as defined in s.
290 366.02(4), any utility as defined in s. 367.021(14) ~~s.~~
291 ~~367.021(12)~~ or s. 367.022(2) and (7), and any provider of
292 communications services as defined in s. 202.11(1) may charge
293 for and include an optional waiver of liability provision in
294 their customer contracts under which the entity agrees to waive
295 all or a portion of the customer’s liability for service from
296 the entity for a defined period in the event of the customer’s
297 call to active military service, death, disability, involuntary
298 unemployment, qualification for family leave, or similar
299 qualifying event or condition. Such provisions may not be
300 effective in the customer’s contract with the entity unless

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301 affirmatively elected by the customer. No such provision shall
302 constitute insurance so long as the provision is a contract
303 between the entity and its customer.
304 Section 14. For the purpose of incorporating the amendment
305 made by this act to section 366.82, Florida Statutes, in a
306 reference thereto, section 553.975, Florida Statutes, is
307 reenacted to read:
308 553.975 Report to the Governor and Legislature.—The Public
309 Service Commission shall submit a biennial report to the
310 Governor, the President of the Senate, and the Speaker of the
311 House of Representatives, concurrent with the report required by
312 s. 366.82(10), beginning in 1990. Such report shall include an
313 evaluation of the effectiveness of these standards on energy
314 conservation in this state.
315 Section 15. This act shall take effect July 1, 2025.
316
317 ================= T I T L E A M E N D M E N T ================
318 And the title is amended as follows:
319 Delete everything before the enacting clause
320 and insert:
321 A bill to be entitled
322 An act relating to the Public Service Commission;
323 amending s. 350.01, F.S.; revising the membership of
324 the Public Service Commission; creating s. 350.129,
325 F.S.; requiring that orders issued by the commission
326 contain adequate support for any conclusions made by
327 the commission; requiring the commission to provide an
328 explanation and a discussion of major elements of the
329 settlement when issuing an order accepting or denying

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330 certain settlement agreements; amending s. 366.06,
331 F.S.; requiring the commission to keep the allowable
332 return on equity close to the risk-free rate of return
333 and require that upward deviations away from the risk-
334 free rate be specifically justified by the utility
335 seeking a tariff modification; amending s. 366.07,
336 F.S.; requiring the commission to establish a schedule
337 by which rate change requests may be submitted to the
338 commission by each public utility company; creating s.
339 366.077, F.S.; requiring the commission to require
340 public utilities to provide a report to the Governor
341 and the Legislature by a specified date each year;
342 providing requirements for such report; amending s.
343 366.96, F.S.; requiring that improvements included in
344 certain transmission and distribution storm protection
345 plans have forecasted customer benefits exceeding
346 their forecasted cost; revising the factors that the
347 Public Service Commission must consider in reviewing
348 such plans; deleting obsolete language; amending s.
349 367.021, F.S.; defining terms; amending s. 367.022,
350 F.S.; revising the types of nonprofit organizations
351 which are exempt from commission jurisdiction;
352 creating s. 367.24, F.S.; providing a procedure for
353 use by the commission in determining whether an
354 organization is a qualifying nonprofit organization
355 exempt from commission jurisdiction; providing
356 criteria for making such determinations; authorizing
357 an organization to petition the commission to regain
358 qualifying nonprofit organization status under certain

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359 circumstances; requiring a specified waiting period
360 before certain organizations may petition to regain
361 qualifying nonprofit organization status; requiring
362 the commission to submit a proposed rule by a
363 specified date; amending ss. 288.0655, 377.814, and
364 624.105, F.S.; conforming cross-references; reenacting
365 s. 553.975, F.S., relating to the report to the
366 Governor and Legislature, to incorporate the amendment
367 made to s. 366.82, F.S., in a reference thereto;
368 providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/11/2025	.	
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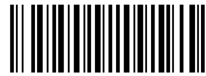
The Committee on Regulated Industries (Gaetz) recommended the following:

1 **Senate Substitute for Amendment (444212) (with title**
2 **amendment)**
3
4 Delete everything after the enacting clause
5 and insert:
6 Section 1. Subsection (1) of section 350.01, Florida
7 Statutes, is amended to read:
8 350.01 Florida Public Service Commission; terms of
9 commissioners; vacancies; election and duties of chair; quorum;
10 proceedings; public records and public meetings exemptions.—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50 regulations, measurements, practices or contracts, or any of
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52 excessive, or unjustly discriminatory or preferential, or in
53 anywise in violation of law, or any service is inadequate or
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56 classifications, and reasonable rules, regulations,
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69 related to rate changes in this state.
70 (b) An analysis of potential cost impacts to utility
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72 occurred, and, if such excess returns have not occurred at a
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74 (c) An analysis of returns on equity models presented by
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78 1. Compare models used by federal agencies and other state
79 utility regulatory bodies with those used by the commission;
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85 (d) An assessment of long-term impacts, including the
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92 parent company. Such information must include, but need not be
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105 (2) The report must provide benchmarking, comparing public
106 utilities providing service to the residents of this state with
107 public utilities providing service to the residents of other
108 states, including commentary on all findings.
109 Section 6. Subsections (4) and (11) of section 366.96,
110 Florida Statutes, are amended to read:
111 366.96 Storm protection plan cost recovery.—
112 (4) At a minimum, any improvement included in a
113 transmission and distribution storm protection plan filed
114 pursuant to this section must have a forecasted customer benefit
115 exceeding its forecasted cost. In addition, in its review of
116 each ~~transmission and distribution storm protection~~ plan filed
117 pursuant to this section, the commission shall consider:
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119 restoration costs and outage times associated with extreme
120 weather events and enhance reliability, including whether the
121 plan prioritizes areas of lower reliability performance and
122 whether the cost of implementing the plan is reasonable and
123 prudent given the expected benefit.
124 (b) The extent to which storm protection of transmission
125 and distribution infrastructure is feasible, reasonable, or
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127 including, but not limited to, flood zones and rural areas.
128 (c) The estimated costs and benefits to the utility and its
129 customers of making the improvements proposed in the plan.
130 (d) The estimated annual rate impact resulting from
131 implementation of the plan during the first 3 years addressed in
132 the plan.
133 (e) The performance of previously approved plan
134 improvements in reducing outage times and storm restoration
135 costs.
136 (11) The commission shall adopt rules to implement and
137 administer this section ~~and shall propose a rule for adoption as~~
138 ~~soon as practicable after the effective date of this act, but~~
139 ~~not later than October 31, 2019~~.
140 Section 7. Present subsections (7), (8), and (9) and (10)
141 through (13) of section 367.021, Florida Statutes, are
142 redesignated as subsections (8), (9), and (10) and (12) through
143 (15), respectively, and new subsections (7) and (11) are added
144 to that section, to read:
145 367.021 Definitions.—As used in this chapter, the following
146 words or terms shall have the meanings indicated:
147 (7) “Governing board” means a board of directors, nonprofit
148 board, board of trustees, corporate governing body as
149 established in the in the bylaws or articles of incorporation of
150 an organization, or similar body overseeing the operations of an
151 organization.
152 (11) “Qualifying nonprofit organization” means an
153 organization that meets all of the following criteria:
154 (a) The organization is a nonprofit corporation,
155 association, or cooperative providing service solely to members

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156 who own and control such nonprofit corporation, association, or
157 cooperative.
158 (b) The organization conducts open and fair elections to
159 its governing board at an annual meeting of its members. The
160 term of any one governing board member may not exceed 36 months;
161 however, a candidate may run for reelection without any limit on
162 the number of terms they may serve.
163 (c) At least 75 percent of the governing board of the
164 organization is made up of the organization's members.
165 (d) The organization provides a mechanism for members of
166 the organization to directly nominate candidates directly for
167 the governing board. At a minimum, any member or candidate who
168 obtains the signatures of at least 1 percent of members of the
169 organization on a petition for nomination for a particular board
170 position or election must, as established by that organization's
171 bylaws, be allowed to stand for election in the same manner as
172 if that member had been nominated by the existing governing
173 board, a committee on nominations established by the board, or
174 other nomination mechanism or procedure as established by the
175 organization's governing documents. Such candidate must meet all
176 other requirements established by law or by the organization's
177 governing documents to serve on the board.
178 (e) The organization is not subject to disqualification
179 pursuant to s. 367.24.
180 Section 8. Subsection (7) of section 367.022, Florida
181 Statutes, is amended to read:
182 367.022 Exemptions.—The following are not subject to
183 regulation by the commission as a utility nor are they subject
184 to the provisions of this chapter, except as expressly provided:

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185 (7) Qualifying nonprofit organizations ~~Nonprofit~~
186 ~~corporations, associations, or cooperatives providing service~~
187 ~~solely to members who own and control such nonprofit~~
188 ~~corporations, associations, or cooperatives~~.
189 Section 9. Section 367.24, Florida Statutes, is created to
190 read:
191 367.24 Disqualification from exempt status.—
192 (1) The commission may, upon its own motion or petition by
193 any person, initiate a proceeding to determine whether an
194 organization meets the definition of a qualifying nonprofit
195 organization under s. 367.021.
196 (a) A person must, before filing such a petition, notify
197 the organization in writing of his or her intention to file such
198 a petition. Such notification must:
199 1. Be delivered by certified mail, return receipt
200 requested, to the name and mailing address provided by the
201 organization for customer service or other external inquiries or
202 be served upon organization's registered agent, if the
203 organization has one; and
204 2. Make specific allegations regarding the manner in which
205 the organization does not meet the definition of a qualifying
206 nonprofit organization under s. 367.021.
207 (b) The organization shall have 90 days after receipt of
208 such notice to respond to such writing, or by e-mail if the
209 person has provided an e-mail address for such response.
210 However, the organization may not respond to the notice if it so
211 chooses;
212 (c) After the expiration of the 90 days provided in
213 paragraph (b), if the person is dissatisfied with the response

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214 of the governing body, such person may file the petition to
215 initiate the commission proceeding provided for in this
216 subsection. In filing such a petition, the person must, at
217 minimum, include the following:
218 1. The initial notification to the organization as provided
219 in paragraph (a);
220 2. The response of the organization as provided in
221 paragraph (b) or, if a response has not been received, a
222 statement attesting to such; and
223 3. Specific allegations regarding the manner in which the
224 organization does not meet the definition of a qualifying
225 nonprofit organization under s. 367.021.
226 (2) In making its determination as to whether an
227 organization meets the definition of a qualifying organization
228 pursuant to a petition filed under subsection (1), the
229 commission shall consider:
230 (a) The governing documents of the organization;
231 (b) The conduct of the organization;
232 (c) The conduct of the governing board of the organization;
233 and
234 (d) Any other relevant information provided by the
235 organization, or other party to the proceeding, demonstrating
236 whether the organization meets such definition.
237 (3) If the commission determines that an organization does
238 not meet the definition of a qualifying nonprofit organization,
239 the commission must provide the organization reasoning for its
240 determination and allow the organization 90 days to address the
241 commission’s determination.
242 (4) If, after the expiration of the 90-day period specified

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243 in subsection (3), the commission maintains its determination
244 that the organization does not meet the definition of a
245 qualifying nonprofit organization, the commission must issue an
246 order stating that the organization is not exempt from the
247 jurisdiction of the commission pursuant to s. 367.022 and must
248 be regulated as a utility under this chapter.
249 (5) The commission shall follow the procedures established
250 in s. 367.171(2) for an organization determined to be not exempt
251 from the jurisdiction of the commission under subsection (4).
252 The commission shall follow such procedures as if the
253 organization were an established utility in a county newly
254 entering into the commission’s jurisdiction.
255 (6) After a period of 24 months, an organization that is
256 determined to be not exempt from the jurisdiction of the
257 commission under subsection (4) may petition the commission to
258 regain qualifying nonprofit organization status. In reviewing
259 this petition, the commission shall use the procedure
260 established in subsections (2), (3), and (4) of this section. If
261 the commission does not approve the petition, the organization
262 must wait an additional 24 months before petitioning the
263 commission again for qualifying nonprofit organization status.
264 (7) Consistent with the commission’s jurisdiction over
265 utility rates and service, issues relating to whether an
266 organization is exempt from its jurisdiction pursuant to this
267 section, and the manner in which a utility is brought under its
268 jurisdiction pursuant to this section, must be resolved by the
269 commission.
270 (8) The commission shall adopt rules to implement and
271 administer this section and shall propose a rule for adoption as

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272 soon as practicable after July 1, 2026.
273 Section 10. The Public Service Commission shall submit a
274 proposed rule for adoption which implements the amendments made
275 by this act to s. 366.96, Florida Statutes, as soon as
276 practicable after the effective date of this act, but not later
277 than October 31, 2025.
278 Section 11. Paragraph (b) of subsection (2) of section
279 288.0655, Florida Statutes, is amended to read:
280 288.0655 Rural Infrastructure Fund.—
281 (2)
282 (b) To facilitate access of rural communities and rural
283 areas of opportunity as defined by the Rural Economic
284 Development Initiative to infrastructure funding programs of the
285 Federal Government, such as those offered by the United States
286 Department of Agriculture and the United States Department of
287 Commerce, and state programs, including those offered by Rural
288 Economic Development Initiative agencies, and to facilitate
289 local government or private infrastructure funding efforts, the
290 department may award grants for up to 75 percent of the total
291 infrastructure project cost, or up to 100 percent of the total
292 infrastructure project cost for a project located in a rural
293 community as defined in s. 288.0656(2) which is also located in
294 a fiscally constrained county as defined in s. 218.67(1) or a
295 rural area of opportunity as defined in s. 288.0656(2). Eligible
296 uses of funds may include improving any inadequate
297 infrastructure that has resulted in regulatory action that
298 prohibits economic or community growth and reducing the costs to
299 community users of proposed infrastructure improvements that
300 exceed such costs in comparable communities. Eligible uses of

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301 funds include improvements to public infrastructure for
302 industrial or commercial sites and upgrades to or development of
303 public tourism infrastructure. Authorized infrastructure may
304 include the following public or public-private partnership
305 facilities: storm water systems; telecommunications facilities;
306 roads or other remedies to transportation impediments; nature-
307 based tourism facilities; or other physical requirements
308 necessary to facilitate tourism, trade, and economic development
309 activities in the community. Authorized infrastructure may also
310 include publicly or privately owned self-powered nature-based
311 tourism facilities, publicly owned telecommunications
312 facilities, and additions to the distribution facilities of the
313 existing natural gas utility as defined in s. 366.04(3)(c), the
314 existing electric utility as defined in s. 366.02, or the
315 existing water or wastewater utility as defined in s.
316 367.021(14) ~~s. 367.021(12)~~, or any other existing water or
317 wastewater facility, which owns a gas or electric distribution
318 system or a water or wastewater system in this state when:
319 1. A contribution-in-aid of construction is required to
320 serve public or public-private partnership facilities under the
321 tariffs of any natural gas, electric, water, or wastewater
322 utility as defined herein; and
323 2. Such utilities as defined herein are willing and able to
324 provide such service.
325 Section 12. Paragraph (b) of subsection (5) of section
326 377.814, Florida Statutes, is amended to read:
327 377.814 Municipal Solid Waste-to-Energy Program.—
328 (5) FUNDING.—
329 (b) Funds awarded under the grant programs set forth in

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this section may not be used to support, subsidize, or enable the sale of electric power generated by a municipal solid waste-to-energy facility to any small electric utility eligible to petition the commission under s. 366.06(5) ~~s. 366.06(4)~~.

Section 13. Section 624.105, Florida Statutes, is amended to read:

624.105 Waiver of customer liability.—Any regulated company as defined in s. 350.111, any electric utility as defined in s. 366.02(4), any utility as defined in s. 367.021(14) ~~s. 367.021(12)~~ or s. 367.022(2) and (7), and any provider of communications services as defined in s. 202.11(1) may charge for and include an optional waiver of liability provision in their customer contracts under which the entity agrees to waive all or a portion of the customer's liability for service from the entity for a defined period in the event of the customer's call to active military service, death, disability, involuntary unemployment, qualification for family leave, or similar qualifying event or condition. Such provisions may not be effective in the customer's contract with the entity unless affirmatively elected by the customer. No such provision shall constitute insurance so long as the provision is a contract between the entity and its customer.

Section 14. For the purpose of incorporating the amendment made by this act to section 366.82, Florida Statutes, in a reference thereto, section 553.975, Florida Statutes, is reenacted to read:

553.975 Report to the Governor and Legislature.—The Public Service Commission shall submit a biennial report to the Governor, the President of the Senate, and the Speaker of the

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359 House of Representatives, concurrent with the report required by
360 s. 366.82(10), beginning in 1990. Such report shall include an
361 evaluation of the effectiveness of these standards on energy
362 conservation in this state.
363 Section 15. This act shall take effect July 1, 2025.
364
365 ================= T I T L E A M E N D M E N T ================
366 And the title is amended as follows:
367 Delete everything before the enacting clause
368 and insert:
369 A bill to be entitled
370 An act relating to the Florida Public Service
371 Commission; amending s. 350.01, F.S.; revising the
372 membership of the Florida Public Service Commission;
373 creating s. 350.129, F.S.; requiring that orders
374 issued by the commission contain adequate support for
375 any conclusions made by the commission; requiring the
376 commission to provide an explanation and a discussion
377 of major elements of the settlement when issuing an
378 order accepting or denying certain settlement
379 agreements; amending s. 366.06, F.S.; requiring the
380 commission to keep the allowable return on equity for
381 public utilities close to the risk-free rate of return
382 and require that upward deviations away from the risk-
383 free rate be specifically justified by the public
384 utility seeking a tariff modification; amending s.
385 366.07, F.S.; requiring the commission to establish a
386 schedule by which rate change requests may be
387 submitted to the commission by each public utility

388 company; creating s. 366.077, F.S.; requiring the
389 commission to require public utilities to provide a
390 report to the Governor and the Legislature by a
391 specified date each year; providing requirements for
392 such report; amending s. 366.96, F.S.; requiring that
393 improvements included in certain transmission and
394 distribution storm protection plans have forecasted
395 customer benefits exceeding their forecasted cost;
396 revising the factors that the Public Service
397 Commission must consider in reviewing such plans;
398 deleting obsolete language; amending s. 367.021, F.S.;
399 defining terms; amending s. 367.022, F.S.; revising
400 the types of nonprofit organizations which are exempt
401 from commission jurisdiction; creating s. 367.24,
402 F.S.; authorizing the commission to initiate a
403 proceeding to determine whether an organization is a
404 qualifying nonprofit organization; requiring a person
405 to notify an organization before filing a petition for
406 such proceeding; providing requirements for such
407 notification; authorizing an organization to respond
408 to such notice in a certain manner and in a specified
409 timeframe after receipt; authorizing a person to file
410 a petition to initiate a proceeding to determine
411 whether an organization is a qualifying nonprofit
412 organization after a specified timeframe under certain
413 circumstances; providing requirements for such
414 petition; requiring the commission to consider certain
415 information in making its determination of whether an
416 organization is a qualifying nonprofit organization;

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417 requiring the commission to provide its reasoning for
418 a determination that an organization is not a
419 qualifying nonprofit organization; requiring the
420 commission to allow such organization a certain period
421 of time in which to address the commission’s
422 determination; requiring the commission, under certain
423 circumstances, to issue an order stating that the
424 organization is not exempt from the jurisdiction of
425 the commission and must be regulated as a utility;
426 requiring the commission to follow specified
427 procedures for an organization not exempt from the
428 commission’s jurisdiction; authorizing an organization
429 to petition the commission to regain qualifying
430 nonprofit organization status under certain
431 circumstances; requiring a specified waiting period
432 before certain organizations may petition to regain
433 qualifying nonprofit organization status; requiring
434 the commission to adopt rules for a certain purpose;
435 requiring the commission to submit a proposed rule by
436 a specified date; amending ss. 288.0655, 377.814, and
437 624.105, F.S.; conforming cross-references; reenacting
438 s. 553.975, F.S., relating to the report to the
439 Governor and Legislature, to incorporate the amendment
440 made to s. 366.82, F.S., in a reference thereto;
441 providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Regulated Industries (Gaetz) recommended the following:

1 **Senate Substitute for Amendment (444212) (with title**
2 **amendment)**
3
4 Delete everything after the enacting clause
5 and insert:
6 Section 1. Subsection (1) of section 350.01, Florida
7 Statutes, is amended to read:
8 350.01 Florida Public Service Commission; terms of
9 commissioners; vacancies; election and duties of chair; quorum;
10 proceedings; public records and public meetings exemptions.—

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51 them, relating thereto, are unjust, unreasonable, insufficient,
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69 related to rate changes in this state.
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71 customers in this state if excess returns on equity have
72 occurred, and, if such excess returns have not occurred at a
73 significant rate, any resulting cost savings to such customers.
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75 public utilities and used by the commission to determine
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78 1. Compare models used by federal agencies and other state
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83 accepted economic theory both inside and outside of the utility
84 industry.
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86 economic repercussions of rising rates of returns on equity, to
87 utilities and their customers in the future.
88 (e) A summary providing detailed information regarding the
89 compensation of the executive officers of each public utility
90 providing service to the residents of this state, or the
91 executive officers of public utility’s affiliated companies or
92 parent company. Such information must include, but need not be
93 limited to, salaries, benefits, stock options, bonuses, stock
94 buybacks, and other taxable payments, expressed both as dollar
95 amounts and as a percentage of the entity’s total revenue. The
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97 reported in its financial statements and must highlight any

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123 prudent given the expected benefit.
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125 and distribution infrastructure is feasible, reasonable, or
126 practical in certain areas of the utility's service territory,

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127 including, but not limited to, flood zones and rural areas.
128 (c) The estimated costs and benefits to the utility and its
129 customers of making the improvements proposed in the plan.
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131 implementation of the plan during the first 3 years addressed in
132 the plan.
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135 costs.
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137 administer this section ~~and shall propose a rule for adoption as~~
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141 through (13) of section 367.021, Florida Statutes, are
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144 to that section, to read:
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153 organization that meets all of the following criteria:
154 (a) The organization is a nonprofit corporation,
155 association, or cooperative providing service solely to members

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156 who own and control such nonprofit corporation, association, or
157 cooperative.
158 (b) The organization conducts open and fair elections to
159 its governing board at an annual meeting of its members. The
160 term of any one governing board member may not exceed 36 months;
161 however, a candidate may run for reelection without any limit on
162 the number of terms they may serve.
163 (c) At least 75 percent of the governing board of the
164 organization is made up of the organization's members.
165 (d) The organization provides a mechanism for members of
166 the organization to directly nominate candidates directly for
167 the governing board. At a minimum, any member or candidate who
168 obtains the signatures of at least 1 percent of members of the
169 organization on a petition for nomination for a particular board
170 position or election must, as established by that organization's
171 bylaws, be allowed to stand for election in the same manner as
172 if that member had been nominated by the existing governing
173 board, a committee on nominations established by the board, or
174 other nomination mechanism or procedure as established by the
175 organization's governing documents. Such candidate must meet all
176 other requirements established by law or by the organization's
177 governing documents to serve on the board.
178 (e) The organization is not subject to disqualification
179 pursuant to s. 367.24.
180 Section 8. Subsection (7) of section 367.022, Florida
181 Statutes, is amended to read:
182 367.022 Exemptions.—The following are not subject to
183 regulation by the commission as a utility nor are they subject
184 to the provisions of this chapter, except as expressly provided:

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185 (7) Qualifying nonprofit organizations ~~Nonprofit~~
186 ~~corporations, associations, or cooperatives providing service~~
187 ~~solely to members who own and control such nonprofit~~
188 ~~corporations, associations, or cooperatives~~.
189 Section 9. Section 367.24, Florida Statutes, is created to
190 read:
191 367.24 Disqualification from exempt status.—
192 (1) The commission may, upon its own motion or petition by
193 any person, initiate a proceeding to determine whether an
194 organization meets the definition of a qualifying nonprofit
195 organization under s. 367.021.
196 (a) A person must, before filing such a petition, notify
197 the organization in writing of his or her intention to file such
198 a petition. Such notification must:
199 1. Be delivered by certified mail, return receipt
200 requested, to the name and mailing address provided by the
201 organization for customer service or other external inquiries or
202 be served upon organization's registered agent, if the
203 organization has one; and
204 2. Make specific allegations regarding the manner in which
205 the organization does not meet the definition of a qualifying
206 nonprofit organization under s. 367.021.
207 (b) The organization shall have 90 days after receipt of
208 such notice to respond to such writing, or by e-mail if the
209 person has provided an e-mail address for such response.
210 However, the organization may not respond to the notice if it so
211 chooses;
212 (c) After the expiration of the 90 days provided in
213 paragraph (b), if the person is dissatisfied with the response

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214 of the governing body, such person may file the petition to
215 initiate the commission proceeding provided for in this
216 subsection. In filing such a petition, the person must, at
217 minimum, include the following:
218 1. The initial notification to the organization as provided
219 in paragraph (a);
220 2. The response of the organization as provided in
221 paragraph (b) or, if a response has not been received, a
222 statement attesting to such; and
223 3. Specific allegations regarding the manner in which the
224 organization does not meet the definition of a qualifying
225 nonprofit organization under s. 367.021.
226 (2) In making its determination as to whether an
227 organization meets the definition of a qualifying organization
228 pursuant to a petition filed under subsection (1), the
229 commission shall consider:
230 (a) The governing documents of the organization;
231 (b) The conduct of the organization;
232 (c) The conduct of the governing board of the organization;
233 and
234 (d) Any other relevant information provided by the
235 organization, or other party to the proceeding, demonstrating
236 whether the organization meets such definition.
237 (3) If the commission determines that an organization does
238 not meet the definition of a qualifying nonprofit organization,
239 the commission must provide the organization reasoning for its
240 determination and allow the organization 90 days to address the
241 commission's determination.
242 (4) If, after the expiration of the 90-day period specified

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243 in subsection (3), the commission maintains its determination
244 that the organization does not meet the definition of a
245 qualifying nonprofit organization, the commission must issue an
246 order stating that the organization is not exempt from the
247 jurisdiction of the commission pursuant to s. 367.022 and must
248 be regulated as a utility under this chapter.
249 (5) The commission shall follow the procedures established
250 in s. 367.171(2) for an organization determined to be not exempt
251 from the jurisdiction of the commission under subsection (4).
252 The commission shall follow such procedures as if the
253 organization were an established utility in a county newly
254 entering into the commission’s jurisdiction.
255 (6) After a period of 24 months, an organization that is
256 determined to be not exempt from the jurisdiction of the
257 commission under subsection (4) may petition the commission to
258 regain qualifying nonprofit organization status. In reviewing
259 this petition, the commission shall use the procedure
260 established in subsections (2), (3), and (4) of this section. If
261 the commission does not approve the petition, the organization
262 must wait an additional 24 months before petitioning the
263 commission again for qualifying nonprofit organization status.
264 (7) Consistent with the commission’s jurisdiction over
265 utility rates and service, issues relating to whether an
266 organization is exempt from its jurisdiction pursuant to this
267 section, and the manner in which a utility is brought under its
268 jurisdiction pursuant to this section, must be resolved by the
269 commission.
270 (8) The commission shall adopt rules to implement and
271 administer this section and shall propose a rule for adoption as

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272 soon as practicable after July 1, 2026.
273 Section 10. The Public Service Commission shall submit a
274 proposed rule for adoption which implements the amendments made
275 by this act to s. 366.96, Florida Statutes, as soon as
276 practicable after the effective date of this act, but not later
277 than October 31, 2025.
278 Section 11. Paragraph (b) of subsection (2) of section
279 288.0655, Florida Statutes, is amended to read:
280 288.0655 Rural Infrastructure Fund.—
281 (2)
282 (b) To facilitate access of rural communities and rural
283 areas of opportunity as defined by the Rural Economic
284 Development Initiative to infrastructure funding programs of the
285 Federal Government, such as those offered by the United States
286 Department of Agriculture and the United States Department of
287 Commerce, and state programs, including those offered by Rural
288 Economic Development Initiative agencies, and to facilitate
289 local government or private infrastructure funding efforts, the
290 department may award grants for up to 75 percent of the total
291 infrastructure project cost, or up to 100 percent of the total
292 infrastructure project cost for a project located in a rural
293 community as defined in s. 288.0656(2) which is also located in
294 a fiscally constrained county as defined in s. 218.67(1) or a
295 rural area of opportunity as defined in s. 288.0656(2). Eligible
296 uses of funds may include improving any inadequate
297 infrastructure that has resulted in regulatory action that
298 prohibits economic or community growth and reducing the costs to
299 community users of proposed infrastructure improvements that
300 exceed such costs in comparable communities. Eligible uses of

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301 funds include improvements to public infrastructure for
302 industrial or commercial sites and upgrades to or development of
303 public tourism infrastructure. Authorized infrastructure may
304 include the following public or public-private partnership
305 facilities: storm water systems; telecommunications facilities;
306 roads or other remedies to transportation impediments; nature-
307 based tourism facilities; or other physical requirements
308 necessary to facilitate tourism, trade, and economic development
309 activities in the community. Authorized infrastructure may also
310 include publicly or privately owned self-powered nature-based
311 tourism facilities, publicly owned telecommunications
312 facilities, and additions to the distribution facilities of the
313 existing natural gas utility as defined in s. 366.04(3)(c), the
314 existing electric utility as defined in s. 366.02, or the
315 existing water or wastewater utility as defined in s.
316 367.021(14) ~~s. 367.021(12)~~, or any other existing water or
317 wastewater facility, which owns a gas or electric distribution
318 system or a water or wastewater system in this state when:
319 1. A contribution-in-aid of construction is required to
320 serve public or public-private partnership facilities under the
321 tariffs of any natural gas, electric, water, or wastewater
322 utility as defined herein; and
323 2. Such utilities as defined herein are willing and able to
324 provide such service.
325 Section 12. Paragraph (b) of subsection (5) of section
326 377.814, Florida Statutes, is amended to read:
327 377.814 Municipal Solid Waste-to-Energy Program.—
328 (5) FUNDING.—
329 (b) Funds awarded under the grant programs set forth in

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330 this section may not be used to support, subsidize, or enable
331 the sale of electric power generated by a municipal solid waste-
332 to-energy facility to any small electric utility eligible to
333 petition the commission under s. 366.06(5) ~~s. 366.06(4)~~.
334 Section 13. Section 624.105, Florida Statutes, is amended
335 to read:
336 624.105 Waiver of customer liability.—Any regulated company
337 as defined in s. 350.111, any electric utility as defined in s.
338 366.02(4), any utility as defined in s. 367.021(14) ~~s.~~
339 ~~367.021(12)~~ or s. 367.022(2) and (7), and any provider of
340 communications services as defined in s. 202.11(1) may charge
341 for and include an optional waiver of liability provision in
342 their customer contracts under which the entity agrees to waive
343 all or a portion of the customer's liability for service from
344 the entity for a defined period in the event of the customer's
345 call to active military service, death, disability, involuntary
346 unemployment, qualification for family leave, or similar
347 qualifying event or condition. Such provisions may not be
348 effective in the customer's contract with the entity unless
349 affirmatively elected by the customer. No such provision shall
350 constitute insurance so long as the provision is a contract
351 between the entity and its customer.
352 Section 14. For the purpose of incorporating the amendment
353 made by this act to section 366.82, Florida Statutes, in a
354 reference thereto, section 553.975, Florida Statutes, is
355 reenacted to read:
356 553.975 Report to the Governor and Legislature.—The Public
357 Service Commission shall submit a biennial report to the
358 Governor, the President of the Senate, and the Speaker of the

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359 House of Representatives, concurrent with the report required by
360 s. 366.82(10), beginning in 1990. Such report shall include an
361 evaluation of the effectiveness of these standards on energy
362 conservation in this state.
363 Section 15. This act shall take effect July 1, 2025.
364
365 ================= T I T L E A M E N D M E N T ================
366 And the title is amended as follows:
367 Delete everything before the enacting clause
368 and insert:
369 A bill to be entitled
370 An act relating to the Florida Public Service
371 Commission; amending s. 350.01, F.S.; revising the
372 membership of the Florida Public Service Commission;
373 creating s. 350.129, F.S.; requiring that orders
374 issued by the commission contain adequate support for
375 any conclusions made by the commission; requiring the
376 commission to provide an explanation and a discussion
377 of major elements of the settlement when issuing an
378 order accepting or denying certain settlement
379 agreements; amending s. 366.06, F.S.; requiring the
380 commission to keep the allowable return on equity for
381 public utilities close to the risk-free rate of return
382 and require that upward deviations away from the risk-
383 free rate be specifically justified by the public
384 utility seeking a tariff modification; amending s.
385 366.07, F.S.; requiring the commission to establish a
386 schedule by which rate change requests may be
387 submitted to the commission by each public utility

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388 company; creating s. 366.077, F.S.; requiring the
389 commission to provide a report to the Governor and the
390 Legislature by a specified date each year; providing
391 requirements for such report; amending s. 366.96,
392 F.S.; requiring that improvements included in certain
393 transmission and distribution storm protection plans
394 have forecasted customer benefits exceeding their
395 forecasted cost; revising the factors that the Public
396 Service Commission must consider in reviewing such
397 plans; deleting obsolete language; amending s.
398 367.021, F.S.; defining terms; amending s. 367.022,
399 F.S.; revising the types of nonprofit organizations
400 which are exempt from commission jurisdiction;
401 creating s. 367.24, F.S.; authorizing the commission
402 to initiate a proceeding to determine whether an
403 organization is a qualifying nonprofit organization;
404 requiring a person to notify an organization before
405 filing a petition for such proceeding; providing
406 requirements for such notification; authorizing an
407 organization to respond to such notice in a certain
408 manner and in a specified timeframe after receipt;
409 authorizing a person to file a petition to initiate a
410 proceeding to determine whether an organization is a
411 qualifying nonprofit organization after a specified
412 timeframe under certain circumstances; providing
413 requirements for such petition; requiring the
414 commission to consider certain information in making
415 its determination of whether an organization is a
416 qualifying nonprofit organization; requiring the

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417 commission to provide its reasoning for a
418 determination that an organization is not a qualifying
419 nonprofit organization; requiring the commission to
420 allow such organization a certain period of time in
421 which to address the commission's determination;
422 requiring the commission, under certain circumstances,
423 to issue an order stating that the organization is not
424 exempt from the jurisdiction of the commission and
425 must be regulated as a utility; requiring the
426 commission to follow specified procedures for an
427 organization not exempt from the commission's
428 jurisdiction; authorizing an organization to petition
429 the commission to regain qualifying nonprofit
430 organization status under certain circumstances;
431 requiring a specified waiting period before certain
432 organizations may petition to regain qualifying
433 nonprofit organization status; requiring the
434 commission to adopt rules for a certain purpose;
435 requiring the commission to submit a proposed rule by
436 a specified date; amending ss. 288.0655, 377.814, and
437 624.105, F.S.; conforming cross-references; reenacting
438 s. 553.975, F.S., relating to the report to the
439 Governor and Legislature, to incorporate the amendment
440 made to s. 366.82, F.S., in a reference thereto;
441 providing an effective date.

By Senator Gaetz

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1 A bill to be entitled
2 An act relating to the Public Service Commission;
3 amending s. 350.01, F.S.; revising the membership of
4 the Public Service Commission; amending s. 366.06,
5 F.S.; requiring the commission to establish a certain
6 schedule; amending s. 366.81, F.S.; revising
7 legislative findings and intent; amending s. 366.82,
8 F.S.; revising the requirements for the annual report
9 provided by the commission to the Governor and the
10 Legislature; reenacting ss. 366.8255(4),
11 366.8260(2)(b), and 366.95(2)(c), F.S., relating to
12 environmental cost recovery, storm-recovery financing,
13 and financing for certain nuclear generating asset
14 retirement or abandonment costs, respectively, to
15 incorporate the amendment made to s. 366.06, F.S., in
16 references thereto; reenacting s. 553.975, F.S.,
17 relating to the report to the Governor and
18 Legislature, to incorporate the amendment made to s.
19 366.82, F.S., in a reference thereto; providing an
20 effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Subsection (1) of section 350.01, Florida
25 Statutes, is amended to read:
26 350.01 Florida Public Service Commission; terms of
27 commissioners; vacancies; election and duties of chair; quorum;
28 proceedings; public records and public meetings exemptions.—
29 (1) The Florida Public Service Commission shall be composed

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30 ~~consist~~ of seven ~~five~~ commissioners appointed pursuant to s.
31 350.031. One member must be a certified public accountant, and
32 one member must be a chartered financial analyst.
33 Section 2. Subsection (1) of section 366.06, Florida
34 Statutes, is amended to read:
35 366.06 Rates; procedure for fixing and changing.—
36 (1) A public utility may ~~shall~~ not, directly or indirectly,
37 charge or receive any rate not on file with the commission for
38 the particular class of service involved~~, and no change shall be~~
39 ~~made in any schedule~~. All applications for changes in rates must
40 ~~shall~~ be made to the commission in writing under rules and
41 regulations prescribed, and the commission has ~~shall have~~ the
42 authority to determine and fix fair, just, and reasonable rates
43 that may be requested, demanded, charged, or collected by any
44 public utility for its service. The commission shall investigate
45 and determine the actual legitimate costs of the property of
46 each utility company, of what is actually used and useful in the
47 public service, and shall keep a current record of the net
48 investment of each public utility company in such property of
49 which value, as determined by the commission, must ~~shall~~ be used
50 for ratemaking purposes and ~~shall~~ be the money honestly and
51 prudently invested by the public utility company in such
52 property used and useful in serving the public, less accrued
53 depreciation, and may ~~shall~~ not include any goodwill or going-
54 concern value or franchise value in excess of payment made
55 therefor. In fixing fair, just, and reasonable rates for each
56 customer class, the commission shall, to the extent practicable,
57 consider the cost of providing service to the class, as well as
58 the rate history, value of service, and experience of the public

59 utility; the consumption and load characteristics of the various
60 classes of customers; and public acceptance of rate structures.
61 <u>The commission shall establish a schedule by which rate change</u>
62 <u>requests may be submitted to the commission by each public</u>
63 <u>utility company.</u>
64 Section 3. Section 366.81, Florida Statutes, is amended to
65 read:
66 366.81 Legislative findings and intent.—The Legislature
67 finds and declares that it is critical to <u>use</u> ~~utilize~~ the most
68 efficient and cost-effective demand-side renewable energy
69 systems and conservation systems in order to protect the health,
70 prosperity, and general welfare of the state and its citizens.
71 Reduction in, and control of, the growth rates of electric
72 consumption and of weather-sensitive peak demand are of
73 particular importance. The Legislature further finds that the
74 Florida Public Service Commission is the appropriate agency to
75 adopt goals and approve plans related to the promotion of
76 demand-side renewable energy systems and the conservation of
77 electric energy and natural gas usage. The Legislature directs
78 the commission to develop and adopt overall goals and authorizes
79 the commission to require each utility to develop plans and
80 implement programs for increasing energy efficiency and
81 conservation and demand-side renewable energy systems within its
82 service area, subject to the approval of the commission. <u>In</u>
83 <u>order to best meet the needs of Florida households, the</u>
84 <u>commission shall work to keep the allowable return on equity</u>
85 <u>close to the risk-free rate of return and shall require that</u>
86 <u>upward deviations away from the risk-free rate be specifically</u>
87 <u>justified by the utility seeking a tariff modification.</u> Since

88 solutions to our energy problems are complex, the Legislature
89 intends that the use of solar energy, renewable energy sources,
90 highly efficient systems, cogeneration, and load-control systems
91 be encouraged. Accordingly, in exercising its jurisdiction, the
92 commission <u>may</u> ~~shall~~ not approve any rate or rate structure
93 which discriminates against any class of customers on account of
94 the use of such facilities, systems, or devices. This expression
95 of legislative intent <u>may</u> ~~shall~~ not be construed to preclude
96 experimental rates, rate structures, or programs. The
97 Legislature further finds and declares that ss. 366.80-366.83
98 and 403.519 are to be liberally construed in order to meet the
99 complex problems of reducing and controlling the growth rates of
100 electric consumption and reducing the growth rates of weather-
101 sensitive peak demand; increasing the overall efficiency and
102 cost-effectiveness of electricity and natural gas production and
103 use; encouraging further development of demand-side renewable
104 energy systems; and conserving expensive resources, particularly
105 petroleum fuels.
106 Section 4. Subsection (10) of section 366.82, Florida
107 Statutes, is amended to read:
108 366.82 Definition; goals; plans; programs; annual reports;
109 energy audits.—
110 (10) The commission shall require periodic reports from
111 each utility and shall provide the <u>Governor and the</u> Legislature
112 ~~and the Governor~~ with an annual report by March 1 of the goals
113 it has adopted and its progress toward meeting those goals. The
114 commission shall also consider the performance of each utility
115 pursuant to ss. 366.80-366.83 and 403.519 when establishing
116 rates for those utilities over which the commission has

117 ratesetting authority.
118 (a) The annual report must include all of the following:
119 1. An investigation of contemporary economic analysis
120 related to rate changes in this state.
121 2. An analysis of potential cost impacts to utility
122 customers of this state if excess returns on equity have
123 occurred, and potential cost savings, if any, to customers if
124 the excess returns to equity have not occurred at a significant
125 rate.
126 3. An analysis of alternative rate-of-return scenarios,
127 including an investigation of the rationale for why such
128 scenarios were not chosen in the past, and an investigation of
129 the applicability of such scenarios for the future.
130 4. An assessment of long-term impacts and economic
131 repercussions of rising rates of regulated returns on equity to
132 utilities and their customers in the future.
133 5. A summary detailing the compensation of the executive
134 officers of all public utilities servicing this state, or the
135 executive officers of their affiliated companies or parent
136 company, including, but not limited to, salaries, benefits,
137 stock options, bonuses, stock buybacks, and other taxable
138 payments, expressed both as dollar amounts and as a percentage
139 of the entity's total revenue. The summary must include the
140 profits and losses of each entity as reported in its financial
141 statements and highlight any compensation exceeding the industry
142 average. The office shall also include in the report any
143 rationale provided by the insurer justifying compensation
144 exceeding the industry average and, for each insurer, an
145 explanation of how specific data gathered during the creation of

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146 the report informed the office's decisions on that insurer's
147 rate change requests.
148 (b) The report must provide benchmarking, comparing public
149 utilities servicing this state with public utilities servicing
150 other states, including commentary on all findings.
151 Section 5. For the purpose of incorporating the amendment
152 made by this act to section 366.06, Florida Statutes, in a
153 reference thereto, subsection (4) of section 366.8255, Florida
154 Statutes, is reenacted to read:
155 366.8255 Environmental cost recovery.—
156 (4) Environmental compliance costs recovered through the
157 environmental cost-recovery factor shall be allocated to the
158 customer classes using the criteria set out in s. 366.06(1),
159 taking into account the manner in which similar types of
160 investment or expense were allocated in the company's last rate
161 case.
162 Section 6. For the purpose of incorporating the amendment
163 made by this act to section 366.06, Florida Statutes, in a
164 reference thereto, paragraph (b) of subsection (2) of section
165 366.8260, Florida Statutes, is reenacted to read:
166 366.8260 Storm-recovery financing.—
167 (2) FINANCING ORDERS.—
168 (b)1. Proceedings on a petition submitted pursuant to
169 paragraph (a) shall begin with a petition by an electric utility
170 and shall be disposed of in accordance with the provisions of
171 chapter 120 and applicable rules, except that the provisions of
172 this section, to the extent applicable, shall control.
173 a. Within 7 days after the filing of a petition, the
174 commission shall publish a case schedule, which schedule shall

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175 place the matter before the commission on an agenda that will
176 permit a commission decision no later than 120 days after the
177 date the petition is filed.
178 b. No later than 135 days after the date the petition is
179 filed, the commission shall issue a financing order or an order
180 rejecting the petition. A party to the commission proceeding may
181 petition the commission for reconsideration of the financing
182 order within 5 days after the date of its issuance. The
183 commission shall issue a financing order authorizing financing
184 of reasonable and prudent storm-recovery costs, the storm-
185 recovery reserve amount determined appropriate by the
186 commission, and financing costs if the commission finds that the
187 issuance of the storm-recovery bonds and the imposition of
188 storm-recovery charges authorized by the order are reasonably
189 expected to result in lower overall costs or would avoid or
190 significantly mitigate rate impacts to customers as compared
191 with alternative methods of financing or recovering storm-
192 recovery costs and storm-recovery reserve. Any determination of
193 whether storm-recovery costs are reasonable and prudent shall be
194 made with reference to the general public interest in, and the
195 scope of effort required to provide, the safe and expeditious
196 restoration of electric service.
197 2. In a financing order issued to an electric utility, the
198 commission shall:
199 a. Except as provided in sub-subparagraph f. and in
200 subparagraph 4., specify the amount of storm-recovery costs and
201 the level of storm-recovery reserves, taking into consideration,
202 to the extent the commission deems appropriate, any other
203 methods used to recover these costs, and describe and estimate

204 the amount of financing costs which may be recovered through
205 storm-recovery charges; and specify the period over which such
206 costs may be recovered.
207 b. Determine that the proposed structuring, expected
208 pricing, and financing costs of the storm-recovery bonds are
209 reasonably expected to result in lower overall costs or would
210 avoid or significantly mitigate rate impacts to customers as
211 compared with alternative methods of financing or recovering
212 storm-recovery costs.
213 c. Provide that, for the period specified pursuant to sub-
214 subparagraph a., the imposition and collection of storm-recovery
215 charges authorized in the financing order shall be paid by all
216 customers receiving transmission or distribution service from
217 the electric utility or its successors or assignees under
218 commission-approved rate schedules or under special contracts,
219 even if the customer elects to purchase electricity from an
220 alternative electric supplier following a fundamental change in
221 regulation of public utilities in the state.
222 d. Determine what portion, if any, of the storm-recovery
223 reserves must be held in a funded reserve and any limitations on
224 how the reserve may be held, accessed, or used.
225 e. Include a formula-based mechanism for making expeditious
226 periodic adjustments in the storm-recovery charges that
227 customers are required to pay under the financing order and for
228 making any adjustments that are necessary to correct for any
229 overcollection or undercollection of the charges or to otherwise
230 ensure the timely payment of storm-recovery bonds and financing
231 costs and other required amounts and charges payable in
232 connection with the storm-recovery bonds.

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233 f. Specify the storm-recovery property that is, or shall
234 be, created in favor of an electric utility or its successors or
235 assignees and that shall be used to pay or secure storm-recovery
236 bonds and financing costs.
237 g. Specify the degree of flexibility to be afforded to the
238 electric utility in establishing the terms and conditions of the
239 storm-recovery bonds, including, but not limited to, repayment
240 schedules, interest rates, and other financing costs.
241 h. Provide that storm-recovery charges be allocated to the
242 customer classes using the criteria set out in s. 366.06(1), in
243 the manner in which these costs or their equivalent were
244 allocated in the cost-of-service study approved in connection
245 with the electric utility's last rate case. If the electric
246 utility's last rate case was resolved by a settlement agreement,
247 the cost-of-service methodology filed by the electric utility in
248 that case shall be used.
249 i. Provide that, after the final terms of an issuance of
250 storm-recovery bonds have been established and prior to the
251 issuance of storm-recovery bonds, the electric utility shall
252 determine the resulting initial storm-recovery charge in
253 accordance with the financing order and such initial storm-
254 recovery charge shall be final and effective upon the issuance
255 of such storm-recovery bonds without further commission action.
256 j. Include any other conditions that the commission
257 considers appropriate and that are not otherwise inconsistent
258 with this section.
259
260 In performing the responsibilities of this subparagraph and
261 subparagraph 5., the commission may engage outside consultants

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262 or counsel. Any expenses associated with such services shall be
263 included as part of financing costs and included in storm-
264 recovery charges.
265 3. A financing order issued to an electric utility may
266 provide that creation of the electric utility's storm-recovery
267 property pursuant to sub-subparagraph 2.f. is conditioned upon,
268 and shall be simultaneous with, the sale or other transfer of
269 the storm-recovery property to an assignee and the pledge of the
270 storm-recovery property to secure storm-recovery bonds.
271 4. If the commission issues a financing order, the electric
272 utility shall file with the commission at least biannually a
273 petition or a letter applying the formula-based mechanism
274 pursuant to sub-subparagraph 2.e. and, based on estimates of
275 consumption for each rate class and other mathematical factors,
276 requesting administrative approval to make the adjustments
277 described in sub-subparagraph 2.e. The review of such a request
278 shall be limited to determining whether there is any
279 mathematical error in the application of the formula-based
280 mechanism relating to the appropriate amount of any
281 overcollection or undercollection of storm-recovery charges and
282 the amount of an adjustment. Such adjustments shall ensure the
283 recovery of revenues sufficient to provide for the payment of
284 principal, interest, acquisition, defeasance, financing costs,
285 or redemption premium and other fees, costs, and charges in
286 respect of storm-recovery bonds approved under the financing
287 order. Within 60 days after receiving an electric utility's
288 request pursuant to this paragraph, the commission shall either
289 approve the request or inform the electric utility of any
290 mathematical errors in its calculation. If the commission

291 informs the utility of mathematical errors in its calculation,
292 the utility may correct its error and refile its request. The
293 timeframes previously described in this paragraph shall apply to
294 a refiled request.
295 5. Within 120 days after the issuance of storm-recovery
296 bonds, the electric utility shall file with the commission
297 information on the actual costs of the storm-recovery bond
298 issuance. The commission shall review such information to
299 determine if such costs incurred in the issuance of the bonds
300 resulted in the lowest overall costs that were reasonably
301 consistent with market conditions at the time of the issuance
302 and the terms of the financing order. The commission may
303 disallow any incremental issuance costs in excess of the lowest
304 overall costs by requiring the utility to make a contribution to
305 the storm reserve in an amount equal to the excess of actual
306 issuance costs incurred, and paid for out of storm-recovery bond
307 proceeds, and the lowest overall issuance costs as determined by
308 the commission. The commission may not make adjustments to the
309 storm-recovery charges for any such excess issuance costs.
310 6. Subsequent to the earlier of the transfer of storm-
311 recovery property to an assignee or the issuance of storm-
312 recovery bonds authorized thereby, a financing order is
313 irrevocable and, except as provided in subparagraph 4. and
314 paragraph (c), the commission may not amend, modify, or
315 terminate the financing order by any subsequent action or
316 reduce, impair, postpone, terminate, or otherwise adjust storm-
317 recovery charges approved in the financing order. After the
318 issuance of a financing order, the electric utility retains sole
319 discretion regarding whether to assign, sell, or otherwise

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320 transfer storm-recovery property or to cause the storm-recovery
321 bonds to be issued, including the right to defer or postpone
322 such assignment, sale, transfer, or issuance.
323 Section 7. For the purpose of incorporating the amendment
324 made by this act to section 366.06, Florida Statutes, in a
325 reference thereto, paragraph (c) of subsection (2) of section
326 366.95, Florida Statutes, is reenacted to read:
327 366.95 Financing for certain nuclear generating asset
328 retirement or abandonment costs.—
329 (2) FINANCING ORDERS.—
330 (c)1. Proceedings on a petition submitted pursuant to
331 paragraph (a) begin with the petition by an electric utility,
332 filed subject to the timeframe specified in paragraph (b), if
333 applicable, and shall be disposed of in accordance with chapter
334 120 and applicable rules, except that this section, to the
335 extent applicable, controls.
336 a. Within 7 days after the filing of a petition, the
337 commission shall publish a case schedule, which must place the
338 matter before the commission on an agenda that permits a
339 commission decision no later than 120 days after the date the
340 petition is filed.
341 b. No later than 135 days after the date the petition is
342 filed, the commission shall issue a financing order or an order
343 rejecting the petition. A party to the commission proceeding may
344 petition the commission for reconsideration of the financing
345 order within 5 days after the date of its issuance. The
346 commission shall issue a financing order authorizing the
347 financing of reasonable and prudent nuclear asset-recovery costs
348 and financing costs if the commission finds that the issuance of

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349 the nuclear asset-recovery bonds and the imposition of nuclear
350 asset-recovery charges authorized by the financing order have a
351 significant likelihood of resulting in lower overall costs or
352 would avoid or significantly mitigate rate impacts to customers
353 as compared with the traditional method of financing and
354 recovering nuclear asset-recovery costs. Any determination of
355 whether nuclear asset-recovery costs are reasonable and prudent
356 shall be made with reference to the general public interest and
357 in accordance with paragraph (b), if applicable.
358 2. In a financing order issued to an electric utility, the
359 commission shall:
360 a. Except as provided in sub-subparagraph d. and
361 subparagraph 4., specify the amount of nuclear asset-recovery
362 costs to be financed using nuclear asset-recovery bonds, taking
363 into consideration, to the extent the commission deems
364 appropriate, any other methods used to recover these costs. The
365 commission shall describe and estimate the amount of financing
366 costs which may be recovered through nuclear asset-recovery
367 charges and specify the period over which such costs may be
368 recovered. Any such determination as to the overall time period
369 for cost recovery must be consistent with a settlement
370 agreement, if any, under paragraph (b);
371 b. Determine if the proposed structuring, expected pricing,
372 and financing costs of the nuclear asset-recovery bonds have a
373 significant likelihood of resulting in lower overall costs or
374 would avoid or significantly mitigate rate impacts to customers
375 as compared with the traditional method of financing and
376 recovering nuclear asset-recovery costs. A financing order must
377 provide detailed findings of fact addressing cost-effectiveness

378 and associated rate impacts upon retail customers and retail
379 customer classes;
380 c. Require, for the period specified pursuant to sub-
381 subparagraph a., that the imposition and collection of nuclear
382 asset-recovery charges authorized under a financing order be
383 nonbypassable and paid by all existing and future customers
384 receiving transmission or distribution service from the electric
385 utility or its successors or assignees under commission-approved
386 rate schedules or under special contracts, even if a customer
387 elects to purchase electricity from an alternative electric
388 supplier following a fundamental change in regulation of public
389 utilities in this state;
390 d. Include a formula-based true-up mechanism for making
391 expeditious periodic adjustments in the nuclear asset-recovery
392 charges that customers are required to pay pursuant to the
393 financing order and for making any adjustments that are
394 necessary to correct for any overcollection or undercollection
395 of the charges or to otherwise ensure the timely payment of
396 nuclear asset-recovery bonds and financing costs and other
397 required amounts and charges payable in connection with the
398 nuclear asset-recovery bonds;
399 e. Specify the nuclear asset-recovery property that is, or
400 shall be, created in favor of an electric utility or its
401 successors or assignees and that shall be used to pay or secure
402 nuclear asset-recovery bonds and all financing costs;
403 f. Specify the degree of flexibility to be afforded to the
404 electric utility in establishing the terms and conditions of the
405 nuclear asset-recovery bonds, including, but not limited to,
406 repayment schedules, expected interest rates, and other

407 financing costs consistent with sub-subparagraphs a.-e.;
408 g. Require nuclear asset-recovery charges to be allocated
409 to the customer classes using the criteria set out in s.
410 366.06(1), in the manner in which these costs or their
411 equivalent was allocated in the cost-of-service study that was
412 approved in connection with the electric utility's last rate
413 case and that is in effect during the nuclear asset-recovery
414 charge annual billing period. If the electric utility's last
415 rate case was resolved by a settlement agreement, the cost-of-
416 service methodology that was adopted in the settlement agreement
417 in that case and that is in effect during the nuclear asset-
418 recovery charge annual billing period shall be used;
419 h. Require, after the final terms of an issuance of nuclear
420 asset-recovery bonds have been established and before the
421 issuance of nuclear asset-recovery bonds, that the electric
422 utility determine the resulting initial nuclear asset-recovery
423 charge in accordance with the financing order and that such
424 initial nuclear asset-recovery charge be final and effective
425 upon the issuance of such nuclear asset-recovery bonds without
426 further commission action so long as the nuclear asset-recovery
427 charge is consistent with the financing order; and
428 i. Include any other conditions that the commission
429 considers appropriate and that are authorized by this section.
430
431 In performing the responsibilities of this subparagraph and
432 subparagraph 5., the commission may engage outside consultants
433 and counsel. All expenses associated with such services shall be
434 included as part of financing costs and included in the nuclear
435 asset-recovery charge.

436 3. A financing order issued to an electric utility may
437 provide that creation of the electric utility's nuclear asset-
438 recovery property pursuant to sub-subparagraph 2.e. is
439 conditioned upon, and simultaneous with, the sale or other
440 transfer of the nuclear asset-recovery property to an assignee
441 and the pledge of the nuclear asset-recovery property to secure
442 nuclear asset-recovery bonds.
443 4. If the commission issues a financing order and nuclear
444 asset-recovery bonds are issued, the electric utility or
445 assignee must file with the commission at least biannually a
446 petition or a letter applying the formula-based true-up
447 mechanism pursuant to sub-subparagraph 2.d. and, based on
448 estimates of consumption for each rate class and other
449 mathematical factors, requesting administrative approval to make
450 the adjustments described in sub-subparagraph 2.d. The review of
451 such a request is limited to determining whether there is any
452 mathematical error in the application of the formula-based
453 mechanism relating to the amount of any overcollection or
454 undercollection of nuclear asset-recovery charges and the amount
455 of any adjustment. Such adjustments shall ensure the recovery of
456 revenues sufficient to provide for the timely payment of
457 principal, interest, acquisition, defeasance, financing costs,
458 or redemption premium and other fees, costs, and charges
459 relating to nuclear asset-recovery bonds approved under the
460 financing order. Within 60 days after receiving an electric
461 utility's request pursuant to this paragraph, the commission
462 must approve the request or inform the electric utility of any
463 mathematical errors in its calculation. If the commission
464 informs the utility of mathematical errors in its calculation,

465 the utility may correct the error and refile the request. The
466 timeframes previously described in this paragraph apply to a
467 refiled request.
468 5. Within 120 days after the issuance of nuclear asset-
469 recovery bonds, the electric utility shall file with the
470 commission information on the actual costs of the nuclear asset-
471 recovery bonds issuance. The commission shall review, on a
472 reasonably comparable basis, such information to determine if
473 such costs incurred in the issuance of the bonds resulted in the
474 lowest overall costs that were reasonably consistent with market
475 conditions at the time of the issuance and the terms of the
476 financing order. The commission may disallow all incremental
477 issuance costs in excess of the lowest overall costs by
478 requiring the electric utility to make a credit to the capacity
479 cost recovery clause in an amount equal to the excess of actual
480 issuance costs incurred, and paid for out of nuclear asset-
481 recovery bonds proceeds, and the lowest overall issuance costs
482 as determined by the commission. The commission may not make
483 adjustments to the nuclear asset-recovery charges for any such
484 excess issuance costs.
485 6. Subsequent to the transfer of nuclear asset-recovery
486 property to an assignee or the issuance of nuclear asset-
487 recovery bonds authorized thereby, whichever is earlier, a
488 financing order is irrevocable and, except as provided in
489 subparagraph 4. and paragraph (d), the commission may not amend,
490 modify, or terminate the financing order by any subsequent
491 action or reduce, impair, postpone, terminate, or otherwise
492 adjust nuclear asset-recovery charges approved in the financing
493 order. After the issuance of a financing order, the electric

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494 utility retains sole discretion regarding whether to assign,
495 sell, or otherwise transfer nuclear asset-recovery property or
496 to cause nuclear asset-recovery bonds to be issued, including
497 the right to defer or postpone such assignment, sale, transfer,
498 or issuance. If the electric utility decides not to cause
499 nuclear asset-recovery bonds to be issued, the electric utility
500 may not recover financing costs, as defined in paragraph (1)(e),
501 from customers.
502 Section 8. For the purpose of incorporating the amendment
503 made by this act to section 366.82, Florida Statutes, in a
504 reference thereto, section 553.975, Florida Statutes, is
505 reenacted to read:
506 553.975 Report to the Governor and Legislature.—The Public
507 Service Commission shall submit a biennial report to the
508 Governor, the President of the Senate, and the Speaker of the
509 House of Representatives, concurrent with the report required by
510 s. 366.82(10), beginning in 1990. Such report shall include an
511 evaluation of the effectiveness of these standards on energy
512 conservation in this state.
513 Section 9. This act shall take effect July 1, 2025.

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The Florida Senate

Committee Agenda Request

To: Senator Jennifer Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 4, 2025

I respectfully request that **Senate Bill #354**, relating to Public Service Commission, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Don Gaetz
Florida Senate, District 1

File signed original with committee office

S-020 (03/2004)

Date: February 28, 2025

Agency Affected: Public Service Commission
Agency Contact: David Frank, Director of Legislative Affairs | (850) 413-6125

RE: SB 354

I. SUMMARY:

SB 354 makes numerous changes to laws related to the Florida Public Service Commission (Commission or FPSC). It amends Section 350.01, Florida Statutes (F.S.), to expand the Commission from five to seven members and to add qualifications for two commissioners. It also amends Section 366.06, F.S., to require the FPSC to establish a schedule by which public utilities may submit rate change requests. It amends Section 366.81, F.S., to give Legislative direction regarding Return on Equity (ROE). Finally, it amends Section 366.82, F.S., to expand the scope of the Commission's annual report on activities under FEECA. The bill takes effect on July 1, 2025.

II. PRESENT SITUATION:

Statutory Background

Section 350.01(1), F.S., establishes that the Commission shall consist of five Commissioners appointed in accordance with the requirements of Section 350.031, F.S. Section 350.01(2), F.S., establishes 4-year staggered terms for Commissioners. At present, the Gerald Gunter building, which houses the Commission, and the hearing room in the Betty Easley building, where the Commission holds most of its public hearings, are designed around a five-member Commission. Currently, each Commissioner is afforded a personal staff of two, including a legal/technical advisor and an executive assistant.

Subsection 350.031(5), F.S., requires the Florida Public Service Commission Nominating Council to nominate to the Governor persons who are competent and knowledgeable in one or more fields, including: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or another field substantially related to the duties and functions of the Commission. Subsection (5) also requires the Commission to fairly represent the above-stated fields. Members of the Commission are not required to be certified or licensed in a particular profession.

Section 366.02, F.S., defines a public utility as an entity selling electricity or natural gas to the public but excludes municipal utilities and rural electric cooperatives, as well as certain sellers of natural gas. As a result, the term "public utilities," as used in Chapter 366, F.S., applies to Florida's four investor-owned electric utilities, as well as seven natural gas local distribution companies.

Section 366.04, F.S., establishes the jurisdiction of the Commission to regulate and supervise each public utility with respect to its rates and service. Section 366.041, F.S., establishes the considerations the Commission is to apply in fixing just, reasonable, and compensatory rates:

> the commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities; and energy conservation and the efficient use of alternative energy resources; provided that no public utility shall be denied a reasonable rate of return upon its rate base

Section 366.06, F.S., establishes the Commission's authority over the procedure for fixing and changing rates. Specifically, Section 366.06(1), F.S., confers authority to the Commission that all applications for changes in rates shall be made to the Commission in writing under rules and regulations prescribed. The Commission has adopted rules to facilitate the orderly filing, review, and consideration of rate proceedings that will meet the 12-month statutory deadline for final agency action under Section 366.04(3), F.S. Also, Section 366.06(2), F.S., requires the Commission to hold a public hearing whenever the Commission finds that rates are either insufficient or excessive, and to determine just and reasonable rates to be thereafter charged.

Base Rate Proceedings (Rate Cases)

The Commission establishes separate rates and charges to recover various components of a public utility's cost of service. Base rate proceedings, filed less frequently, address a utility's costs of infrastructure including a reasonable return on investment, operating and maintenance expenses and the cost of administering the utility. The cost of salaries and benefits, including executive compensation, is reviewed at an aggregate level. Considerations include a relative comparison to industry norms and the need to attract and retain qualified executive and non-executive utility personnel.

In fixing a reasonable rate of return, the Commission is guided by the Supreme Court of the United States' decisions in *Hope* and *Bluefield*, under which a reasonable return is one that is commensurate with the return investors would expect from like investments of comparable risk, is reasonably sufficient to assure investor confidence that the utility is financially sound, and is adequate to attract capital on reasonable terms. A just and reasonable ROE is integral to meeting sound regulatory economics and the standards set forth by the U.S. Supreme Court. The *Bluefield* case set the standard against which just and reasonable rates are measured:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties. . . . The return should be reasonable, sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support

> its credit and enable it to raise money necessary for the proper discharge of its public duties.[1]

The *Hope* case expanded on the guidelines as to a reasonable ROE, reemphasizing the findings in *Bluefield* and establishing that the rate-setting process must produce an end result that allows the utility a reasonable opportunity to cover its capital costs. The U.S. Supreme Court stated:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock . . . . By that standard, the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain credit and attract capital.[2]

In a base rate proceeding, the Commission establishes a utility's authorized rate of return or cost of capital. This is based upon the return on equity, long-term and short-term debt, customer deposits, and deferred taxes. A substantial evidentiary record of information is developed, including analyses of ROE using various industry-accepted models, as well as perspectives on the various risks impacting the utility. The rate of return authorized by the Commission provides an opportunity for the utility to earn a reasonable return. The Commission establishes a mid-point ROE for purposes of setting rates, and an ROE range of 100 basis points (+/- 1%) for purposes of ensuring rates remain reasonable.

The realized return, based upon a utility's earnings, is dependent on the utility's ability to manage its costs and react to exogenous factors, some of which may be outside its control. Such factors include changes in revenues due to the impact of weather on sales; or new, modified, or cancelled tariffed rates or charges. Other factors include the costs of materials, supplies, and labor; and interest rates affecting the cost of debt that could place upward or downward pressure on earnings. The Commission monitors the earnings of each public utility through recurring surveillance reports. The realized ROE filed in a surveillance report is analyzed for whether it falls within the established ROE range. Should earnings fall outside the range, the Commission's staff makes inquiries to gather information in order to recommend potential actions by the Commission.

In a base rate proceeding, the entire financial and operational condition of a utility is reviewed, as well as the grounds for a utility's request to adjust rates. This perspective affords the Commission the opportunity to assess a utility's risk in current and near-term market conditions, while judging the reasonableness of the need for increased revenue.

Cost Recovery Clauses, Infrastructure Surcharges, Interim Charges

Cost recovery clause proceedings are designed to recover variable, volatile, or legislatively mandated costs. For electric public utilities, proceedings are held annually to address fuel and

[1] *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923).
[2] *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

purchased power costs, capacity costs, environmental compliance costs, storm protection plan costs, and energy conservation program costs.[3] For natural gas public utilities, annual proceedings address purchased natural gas and energy conservation program costs. The annual proceedings are governed by orders establishing procedure, including the schedule of key milestones.

Interim charges may be established to recover storm restoration costs. The charge is time-limited and subject to true-up following a subsequent Commission hearing to determine final costs that are eligible for recovery.

Finally, natural gas public utilities have received Commission approval to establish surcharges to recover costs required to comply with natural gas infrastructure safety mandates. The surcharges are reviewed annually and revised to ensure revenues match costs.

These types of proceedings establish rates to recover discrete costs. The Commission does not establish ROE or the overall rate of return in these focused rate setting processes, as that function is part of a broad base rate case.

Tariffs

A utility's tariffs are a series of documents that provide the rates, terms, and conditions for service. Tariffs are approved by the Commission as part of every rate setting proceeding, including those described above. A utility's tariffs also include standard forms for different service offerings and standard contracts and agreements. These can include the legislatively mandated contracts to purchase energy from cogenerators or renewable energy providers. While tariffs are normally revised or new tariffs approved as part of the proceedings described above, utilities can seek approval to modify an existing tariff or for a new tariff as circumstances warrant. The Commission, however, does not establish ROE or the overall rate of return in reviewing stand alone requests to approve new, modified or to cancel a tariff.

Florida Energy Efficiency and Conservation Act (FEECA)

Sections 366.80 through 366.83, and 403.519, F.S., are collectively known as FEECA. FEECA emphasizes four key areas: reducing the growth rates of weather-sensitive peak demand and electricity usage, increasing the efficiency of the production and use of electricity and natural gas, encouraging demand-side renewable energy systems, and conserving expensive resources, particularly petroleum fuels. Sections 366.82(2) and 366.82(6), F.S., require the Commission to establish goals for the FEECA utilities and review the goals every five years, at a minimum. The utilities are required to develop cost-effective demand-side management (DSM) plans and programs that meet their goals and submit them to the Commission for approval. Public utilities subject to FEECA may seek cost recovery for approved DSM programs.

[3] Most utilities purchase fuels to generate electricity and these commodities can include natural gas, coal, uranium and refined crude oil products. Utilities may also purchase, through contracts, all or a portion of the electricity required to serve customers. Purchased power contracts typically have two components: 1) energy charges, and 2) demand or capacity charges, that reserve generating capacity to help meet peak demand. The energy charge component of purchased power is recovered through the fuel and purchased power cost recovery clause. The capacity component of purchased power is recovered through the capacity cost recovery clause.

Energy conservation and DSM in Florida are accomplished through a multi-pronged approach that includes energy efficiency requirements in building codes for new construction, federal appliance efficiency standards, utility programs, and consumer education. Utility programs, which are paid for by all customers, are aimed at increasing efficiency levels above building codes and appliance efficiency standards.

The Commission is required by Section 366.82(10), F.S., to provide an annual report to the Florida Legislature and the Governor by March 1, summarizing the adopted goals and the progress made toward achieving those goals. Similarly, Section 377.703(2)(f), F.S., requires the Commission to file information on electricity and natural gas energy conservation programs with the Department of Agriculture and Consumer Services.

III. EFFECT OF PROPOSED CHANGES:

Section 1 – Section 350.01, F.S.

The bill amends Section 350.01, F.S., to expand the Commission from five to seven members. It also adds a provision that one member must be a certified public accountant, and one member must be a chartered financial analyst. Because of the current composition of the Commission, the new appointments would be limited to these specific qualifications.

Subsection 350.01(2), F.S., outlines the method by which staggered term dates were initially established. As a result, two of the current Commissioners' terms end on January 1, 2026; two on January 1, 2027; and one on January 1, 2029. SB 354 does not provide a start or end date for the two new Commissioners' terms.

Each Commissioner would require two further FTEs as support staff, for a total of six added FTEs. The Gerald Gunter building, which currently houses the Commission, would need renovations to account for added workspace, as would the Commission hearing room in the Betty Easley Conference Center, where structural changes would be needed to accommodate an expanded Commission. The fiscal impact of these additional FTEs, as well as the construction costs, is discussed in section IV below.

Section 2 – Section 366.06, F.S.

The bill amends Section 366.06, F.S., to require the Commission to establish a schedule by which rate change requests may be submitted to the Commission by each public utility company. This section would apply to four investor-owned electric utilities, as well as seven natural gas local distribution companies. This section of the bill also makes various wording changes that do not appear to be substantive.

The bill does not establish the scope of the term "rate change requests." As a result, the impact of this bill is dependent on whether "rate change requests" is interpreted narrowly, and only applies to base rate cases, or broadly, applying to any change in rates or charges in the various rate making proceedings described above, including stand alone changes to tariffed charges.

A narrow interpretation would require the Commission to establish a schedule by which electric and gas IOUs could file a base rate case. While this provision may ensure that the Commission's resources are not overwhelmed by multiple, simultaneous rate cases at any given time, in the event that a utility is over- or under-earning, a restrictive schedule could delay either the utility or its customers from receiving needed rate relief in a timely fashion. This provision appears to conflict with section 366.06(2), F.S., that requires the Commission to hold a public hearing whenever rates are either insufficient or excessive. With regard to the utility being unable to seek rate relief when needed, this could be considered a form of regulatory taking and raise a constitutionality question.

Under a broad interpretation, the bill could implicate many other types of proceedings where rates are impacted, leading to less-than-optimal schedules and inefficient processes for utilities and customers. Also, a broad interpretation introduces increased regulatory risk and instability that could increase risk to the financial integrity of the utility. Such increased risk could negatively impact investor expectations and potentially increase the cost of capital.

Section 3 – Section 366.81, F.S.

Sections 3 and 4 of the bill both make changes to portions of FEECA, though neither section appears to address FEECA, energy efficiency, or energy conservation directly. This analysis assumes that the placement of these sections of the bill within FEECA does not limit the application of those sections of the bill.

The bill amends Section 366.81, F.S., to require the Commission to work to keep the allowable ROE close to the risk-free rate of return and requires a utility seeking a tariff modification to specifically justify any upward deviations from that rate.

In establishing ROE in a base rate proceeding, the Commission considers the risk-free rate of return, which is based upon the average of the forecasted yields on 30-year U.S. Treasury bonds and adjusts upward based on a number of factors, including the various risks faced by the utility and the current returns of similarly situated utilities. Numerous factors go into ROE, and the Commission analyzes multiple models and potential scenarios to create a range of potential ROE figures that incorporate the factors affecting the risk that the utility faces. Factors such as storm damage and a volatile business environment can increase the amount of risk the company faces, while factors such as higher-than-typical equity or a stable business environment can lower that risk. The Commission strives to establish an ROE for a given company that properly reflects the risk that company faces.

Public utilities may seek approval for new tariffs or to modify existing tariffs in the various rate setting proceedings described in section II, and as part of discrete, stand alone requests to the Commission. The bill suggests that a public utility need only seek to modify a tariff in order to initiate a review of its authorized ROE and range. This could occur in the annual cost recovery clause proceedings, annual natural gas infrastructure surcharge proceedings, interim rate setting proceedings, or stand alone tariff modification proceedings. Revising ROE annually introduces increased regulatory risk and instability that could increase risk to the financial integrity of the

utility. Such increased risk could negatively impact investor expectations and potentially increase the cost of capital.

Section 4 – Section 366.82, F.S.

The bill amends Section 366.82, F.S., to significantly expand the Commission's Annual Report on Activities pursuant to FEECA (FEECA Report). At present, the FEECA Report is solely concerned with activities directly related to FEECA, such as the programs utilities have undertaken and their success with those programs. The bill expands the FEECA Report to include numerous subjects outside of FEECA, including:

- An investigation of contemporary economic analysis related to rate changes in Florida;
- An analysis of potential cost impacts to Florida utility customers if excess ROEs have occurred, and potential cost savings, if any, to customers if the excess ROEs have not occurred at a significant rate;
- An analysis of alternative rate-of-return scenarios, including an investigation of the rationale for why such scenarios were not chosen in the past, and an investigation of the applicability of such scenarios for the future;
- An assessment of long-term impacts and economic repercussions of rising rates of regulated ROEs to utilities and their customers in the future;
- A summary detailing the compensation of the executive officers of all public utilities servicing Florida, or the executive officers of their affiliated companies or parent company, including but not limited to, salaries, benefits, stock options, bonuses, stock buybacks, and other taxable payments, expressed both as dollar amounts and as a percentage of the entity's total revenue. The summary must include the profits and losses of each entity as reported in its financial statements and highlight any compensation exceeding the industry average. The office shall also include in the report any rationale provided by the insurer justifying compensation exceeding the industry average and, for each insurer, an explanation of how specific data gathered during the creation of the report informed the office's decisions on that insurer's rate change requests; and
- Benchmarking that compares public utilities servicing Florida with public utilities servicing other states, including commentary on all findings.

It would be helpful to have further clarification on the references to "insurer" in lines 143-146, as well as which "office" is intended in line 146.

As explained earlier, the apparent concept behind the topics outlined above in the annual report is used and considered by the Commission in establishing the authorized ROE and range in a base rate proceeding. For example, the Commission routinely monitors public utility earnings

and has authority to initiate a proceeding to adjust rates whenever earnings are excessive or insufficient. Second, the Commission establishes a substantial record of evidence of alternative rate of return model results based on the assumptions of various expert witnesses in a base rate proceeding. Third, the returns of similarly situated utilities in and out of Florida are considered by the Commission in establishing the authorized ROE and range.

During a base rate proceeding, compensation is reviewed and established at an aggregate level. The additional reporting requirements involving "detailing the compensation of the executive officers of all public utilities servicing Florida, or the executive officers of their affiliated companies or parent company, including but not limited to, salaries, benefits, stock options, bonuses, stock buybacks, and other taxable payments" would require extensive discovery sent to public utilities. Much of this information would likely be considered proprietary business information that necessitates confidential treatment by the Commission under Section 366.093, F.S. It would be helpful to have further clarification on how this confidential information could be disseminated in a public report to the Legislature and remain consistent with current law.

The bill will take effect on July 1, 2025.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

The bill is expected to have a significant fiscal impact on the Commission. Section 1 of the bill requires the Commission to add six FTEs: two Commissioners, two advisors, and two executive assistants, for an annual increase of $762,353. The Commission will also need to conduct renovations in the Gerald Gunter and Betty Easley buildings to accommodate the additional Commissioners, at a non-recurring cost of $1,000,000 - $2,000,000. The actual construction cost will be provided once the legislation passes.

	(FY 25-26) Amount / FTE	(FY 26-27) Amount / FTE	(FY 27-28) 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	$762,353/6 FTE	$762,353/6 FTE	$762,353/6 FTE
2. Non-Recurring	$31,838/0 FTE	$0/0 FTE	$0/0 FTE
3. Non-Recurring (Construction)*	$1-$2M/0 FTE		

* The building renovations will be required to accommodate additional staff. In consultation with Department of Management Services (DMS) the estimated range of construction cost is $1-$2M.

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

The bill is not expected to have any significant effects on local governments.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

The bill is not expected to have any significant effect on the private sector.

VII. LEGAL ISSUES:

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

No conflicts with existing federal laws or regulations have been identified.

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, and impairment of contracts)?

Utilities do not currently file rate requests on a set schedule. Section 366.06(2), F.S., which currently governs the timing of rate requests, provides in full as follows:

> Whenever the commission finds, upon request made or upon its own motion, that the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law; that such rates are insufficient to yield reasonable compensation for the services rendered; that such rates yield excessive compensation for services rendered; or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the public utility, and shall thereafter determine just and reasonable rates to be thereafter charged for such service and promulgate rules and regulations affecting equipment, facilities, and service to be thereafter installed, furnished, and used.

Under this statute, fluctuations in revenues drive rate requests. The underlying events that drive these fluctuations are not predictable. This statute allows the Commission and the utility the ability to coordinate rate requests with revenues as circumstances dictate. The inherent statutory flexibility has operated as intended over time, with utilities maintaining rates that are neither excessive nor inadequate.

Adopting a set schedule directly conflicts with this statute. The dates adopted in the rate request schedule would drive the filings. Whether revenues are sufficient or excessive, the utility would have to wait for its scheduled date.

In addition to creating a statutory conflict, establishing by rule a schedule applicable to all utilities could have significant financial consequences for utilities and ratepayers. For example, under the current situation with no set schedule, a utility with sufficient revenues can delay the expense of a rate request until circumstances change. With a set schedule, that same utility would be forced to file an unnecessary rate request and incur those expenses, which are ultimately passed along to the ratepayers. Also, with no set schedule, a utility has the ability to file a rate

request as soon as a revenue increase or decrease indicates a near-term deficiency or excess. With a set schedule, that utility would have to wait for its scheduled submission date, which could make a bad situation worse.

A utility that is earning revenues below its adopted range is "underearning." Under the proposed bill, a utility that is underearning would have to continue to do so until allowed to seek a rate increase pursuant to the "rate change request" schedule. Forcing a utility to maintain this position may result in a claim for a "regulatory taking."

> The rate of return which public utility companies may be allowed to earn is a question of vital importance to both rate payers and investors. An inadequate return may prevent satisfactory services to the public and concomitantly disappoint investors who will look for alternative sources of investment. The Public Service Commission is given the power to fix the return within certain limits. That return cannot be set so low as to confiscate the property of the utility, nor can it be made so high as to provide greater than a reasonable rate of return, thereby prejudicing the consumer.[4]

The phrase "rate change request" is not defined. The broader the interpretation of this phrase and wider the effect of the schedule, the more likely such a scenario is to occur.

On the other side of this spectrum, a utility that is earning revenues above its adopted range is "overearning." A utility that is subject to the rule and is overearning at a time that does not coincide with its "rate change request" schedule would be prohibited from lowering its rates. Ratepayers would not receive the rate relief to which they are entitled in a timely manner. The utility would be compelled to accept and hold the overearnings, calculate refunds as part of its schedule "rate change request," and deal with the potential of Commission sanctions for overearning.

The existing statutory framework avoids these scenarios. Utilities currently project revenues and seek rate adjustments either in the normal course of business or in reaction to unanticipated or sudden events or opportunities. An established schedule removes this maneuverability.

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

The schedule for utilities to make a "rate change request" must be established by the Commission, presumably by rule adoption. Because the phrase "rate change request" is not defined in the legislation, it may be appropriate to provide a definition in that same rule. This definition and the establishment of the schedule may generate a rule challenge from utilities or affected ratepayers.

The potential for regulatory takings litigation was addressed immediately above in Section B.

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[4] *United Telephone Company v. Mayo,* 345 So. 2d 648, 653 (Fla. 1977)(emphasis added); *see* U.S. Const. amend. V; Fla. Const. art. X, § 6.

D. Other

There are a number of issues raised in Section 3 of the bill:

1. Section 3 amends the intent section of the Florida Energy Efficiency and Conservation Act ("FEECA"), Section 366.81, F.S., to include a new requirement regarding the utility's Return on Equity ("ROE"). Placement of the new provision within Section 366.81, F.S., creates inherent confusion because that section of law is the legislative intent section of the FEECA statutes regarding demand side management ("DSM") plans and programs. Because there are no tariffs adopted to implement legislative intent, the scope, application, and meaning of this provision could benefit from further clarification.

2. Section 3 interjects the placement of the substantive requirements for ROE in the FEECA statute and thus conflicts with the historic practice and application of Chapter 366, F.S. This is because ROE has consistently been litigated as an issue in base rate proceedings only. Return on common equity, once established in a base rate proceeding, is applied uniformly across the utility's rate base until the utility's next base rate proceeding.

3. Section 3 of the bill (notwithstanding that the new requirement is in the intent section of the FEECA statute) could be construed to require a full-blown analysis of ROE in a DSM proceeding, which could lead to a substantial change in the scope, magnitude, and cost of a DSM proceeding, especially since the DSM docket involves all electric IOUs (which could mean a review of the ROE of all utilities simultaneously). Of course, presumably it would apply only to those utilities "seeking a tariff modification" in connection with implementing their proposed DSM plans and programs. But any analysis of ROE is an involved undertaking and potentially costly to customers.

4. Section 3 could also benefit from further clarification as to whether the new language is intended to direct the Commission to establish generally-applicable ROE requirements in a DSM proceeding (i.e. applicable to all utilities).

VIII. COMMENTS:

Section 4 of the bill includes references to "insurer" and "office," which do not have clear meaning or relevance within Chapter 366, F.S.

Prepared by: Benjamin Crawford and Shaw Stiller
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District Office
1380 Sarno Road
Suite C
Melbourne, FL 32935
(321) 409-2025

District Aide
Nancy Bernier
Bernier.Nancy@flsenate.gov

Legislative Aide
Tommy Unger
Unger.Thomas@flsenate.gov

Randy Fine
Florida Senate
Senator, District 19

Tallahassee Office:
302 SOB
404 South Monroe Street
Tallahassee, FL 32399-1300
(850) 487-5019
Fine.Randy@flsenate.gov

Legislative Aide
Anna Budko
Budko.Anna@flsenate.gov

March 7, 2025

The Honorable Jennifer Bradley
Chairman of Committee on Regulated Industries,
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bradley,

I respectfully request an excused absence from the Committee on Regulated Industries meeting on March 12th, 2025.

Thank you in advance for your consideration of this request.

cc:
Staff Director Booter Imhof
Administrative Assistant Susan Datres

Sincerely,

Randy Fine
State Senator, District 19