HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 81 Civil Penalties under the Gas Safety Law of 1967
SPONSOR(S): Commerce Committee, Brackett
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 366

FINAL HOUSE FLOOR ACTION: 113 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

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SUMMARY ANALYSIS

CS/HB 81 passed the House on March 5, 2024, as CS/SB 366.

The Gas Safety Law of 1967 (Gas Safety Law) authorizes the Public Service Commission (PSC) to regulate the safe transmission and distribution of natural gas in Florida. The PSC has the power to perform any and all acts necessary or appropriate to enforce compliance with the Gas Safety Law, which includes imposing maximum civil penalties. The current maximum civil penalties are $25,000 for each violation of the Gas Safety Law and $500,000 for any related series of violations.

The federal counterpart to Florida's Gas Safety Law, the Pipeline Safety Act, authorizes the U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (PHMSA) to implement federal pipeline safety standards for interstate and intrastate gas pipelines. PHMSA's current maximum civil penalty amounts are $266,015 for each pipeline safety violation and $2,660,015 for any related series of violations.

The Pipeline Safety Act allows states to assume authority over intrastate gas pipelines subject to annual certifications with PHMSA. The PSC is currently the state agency certified by PHMSA to exercise this authority. However, the PSC received a letter this year stating that its certification is at risk due to Florida's lower civil penalties compared to those of PHMSA, which may reduce the PSC's enforcement capabilities.

The bill increases the maximum monetary penalties for violations of the Gas Safety Law to mirror those currently used by PHMSA. Until June 30, 2025:

- The maximum daily penalty is increased from $25,000 to $266,015.
- The maximum aggregate penalty cap is increased from $500,000 to $2,660,135 for any related series of violations.

The bill authorizes the PSC to establish maximum civil penalty amounts to become effective July 1, 2025, based upon consideration of the consumer price index, penalties established in federal law for pipeline safety violations, and maintaining certification with PHMSA. The bill requires the PSC to revise these penalties annually based upon these considerations and authorizes the PSC to adopt implementing rules.

The bill does not impose any compliance costs but may increase costs on private sector and local government entities that commit violations.

The bill was approved by the Governor on May 10, 2024, ch. 2024-167, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Federal Law

The U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (PHMSA) implements federal pipeline safety standards for interstate and intrastate gas pipelines, hazardous liquid pipelines, and underground natural gas storage under the Pipeline Safety Act.[1] The Pipeline Safety Act authorizes state assumption of the intrastate regulatory, inspection, and enforcement responsibilities subject to an annual certification with PHMSA.[2] State agencies must adopt standards that comply with the Pipeline Safety Act to qualify for certification.[3]

A state agency that does not satisfy the criteria for certification may enter into an agreement with PHMSA to undertake certain aspects of the natural gas safety programs for intrastate facilities on behalf of PHMSA.[4] The state agency under such an agreement would conduct safety inspections and identify violations, and PHMSA would enforce those violations.[5] PHMSA may enforce these violations by issuing warnings, compliance orders, and civil penalties.[6]

Federal agencies are required to adjust minimum and maximum civil penalty amounts based upon inflationary measures to preserve the penalty's deterrent impact.[7] As a result, for 2024, PHMSA increased the maximum penalty for daily violations of the Pipeline Safety Act to $266,015 and the total maximum penalty for any related series of violations to $2,660,135.[8]

Florida Law

The Gas Safety Law authorizes the Public Service Commission (PSC) to regulate the safe transmission and distribution of natural gas in Florida.[9] The Gas Safety Law grants the PSC exclusive jurisdiction over "all persons, corporations, partnerships, associations, public agencies, municipalities, or other legal entities engaged in the operation of gas transmission or distribution facilities with respect to their compliance with the rules and regulations governing safety standards."[10]

The PSC has rulemaking authority to implement the Gas Safety Law[11] and promulgates rules covering the design, improvement, fabrication, installation, inspection, repair, reporting, testing, and safety standards of gas transmission and gas distribution systems.[12] The PSC is currently the state agency certified by PHMSA to inspect and enforce intrastate gas pipelines.[13]

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[1] *See* 49 U.S.C. §§ 60102-60143.
[2] 49 U.S.C. §§ 60105(e), 60106(d).
[3] 49 U.S.C. § 60105(b).
[4] 49 U.S.C. § 60106(d).
[5] *Id.*
[6] *See* 49 C.F.R §§ 190.201-190.243 (2024).
[7] Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Pub. L. 114-74, 129 Stat. 599, 114th Congress, (Nov. 2, 2015).
[8] 49 C.F.R § 190.223(a) (2024).
[9] S. 368.01-061, F.S.
[10] S. 368.05(1), F.S.; *see also* S. 368.021, F.S. (providing more entities subject to PSC jurisdiction).
[11] S. 368.03, F.S.; S. 368.05(2), F.S.
[12] *See* ch. 25-12, F.A.C.
[13] Florida Public Service Commission, Agency Analysis of 2023 House Bill 81, p. 2 (October 26, 2023).

The PSC has the power to perform any and all acts necessary or appropriate to enforce compliance with the Gas Safety Law and the Pipeline Safety Act,[14] including imposing civil penalties for noncompliance.[15] Any person who violates the Gas Safety Law is subject to a maximum daily penalty of $25,000 for each violation.[16] The total maximum penalty for any related series of violations is $500,000.[17]

PHMSA's Annual Certification of PSC

PHMSA conducts annual "Progress Reports" to determine whether a state complies with the Pipeline Safety Act and qualifies for certification and grant funds.[18] The Progress Report assigns points to different areas of compliance, including civil penalty thresholds.[19] The PSC received a four-point deduction on its 2022 Progress Report due to Florida's lower civil penalty amounts compared to those of PHMSA.[20] The continued loss of points may result in a reduced certification that removes the PSC's enforcement capabilities.[21]

Effect of Bill

The bill increases the maximum monetary penalties for any violation of the Gas Safety Law by mirroring those currently used by PHMSA. The maximum daily penalty is increased from $25,000 to $266,015. The maximum aggregate penalty cap is increased from $500,000 to $2,660,135 for any related series of violations. The bill provides that the new penalties will take effect July 1, 2024, and last until June 30, 2025.

The bill requires the PSC to establish maximum civil penalty amounts to become effective July 1, 2025, for violations of The Gas Safety Law based upon consideration of the consumer price index, penalties established in federal law for pipeline safety violations, and maintaining certification with PHMSA. The bill requires the PSC to revise these penalties at least annually based upon the same three considerations stated above.

The bill authorizes the PSC to adopt implementing rules for these penalties.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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14 S. 368.05(2), F.S. (stating that the PSC may require repairs and improvements

15 S. 368.061(1), F.S.

16 *Id.*

17 *Id.*

18 Email from Zach Barrett of the U.S. Dep't of Transportation to Andrew Giles Fay, Chairman of the Florida PSC (May 23, 2023), at 1.

19 *Id.* at 2; *see also* 49 U.S.C. § 60105(b)(7) (stating that States have discretion to enforce civil penalties substantially the same as those provided by PHMSA).

20 *Id.*

21 *Id.*

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not impose additional compliance costs. However, the bill may impact private sector entities if the PSC assesses penalties on such entities above the current statutory limit.

D. FISCAL COMMENTS:

The bill does not impose additional compliance costs on local governments. However, the bill may increase fiscal impacts on local government-owned entities subject to PSC jurisdiction if the PSC assesses penalties on such entities above the current statutory limit.