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 1574
INTRODUCER:	Senator DiCeglie
SUBJECT:	Energy Infrastructure Investment
DATE:	March 31, 2025
REVISED:	

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

I. Summary:

SB 1574 amends s. 366.075, F.S., relating to Florida's experimental and transitional utility rates. The bill authorizes the Florida Public Service Commission (PSC) to establish an experimental mechanism to facilitate energy infrastructure investment in renewable natural gas (RNG).

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]

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid[4] and may order the addition or repair of infrastructure as necessary.[5] The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities[6] (called "public utilities" under

[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 Mar. 27, 2025).
[3] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Mar. 27, 2025).
[4] Section 366.04(5) and (6), F.S.
[5] Section 366.05(1) and (8), F.S.
[6] Section 366.05, F.S.

ch. 366, F.S.).[7] 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.[8] 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.

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 rules and regulations.[9] 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;

[7] Section 366.02(8), F.S.
[8] Florida Public Service Commission, *About the PSC, supra* note 3.
[9] Section 366.06(1), F.S.

- Interim charges.[10]

Experimental and Transitional Rates

Section 366.075, F.S., authorizes the PSC to approve experimental or transitional rates for the purpose of encouraging energy conservation or efficiency. This provision is used by the PSC to allow electric and natural gas utilities under its rate-regulatory jurisdiction to conduct limited scope pilot programs.

Such rates must be limited in geographic area and be for a limited period of time. The PSC may approve the area used in testing experimental rates and must specify in the order setting those rates the area that will be affected by those rates. The PSC can extend this time period "if it determines that further testing is necessary to fully evaluate the effectiveness of such experimental rates."

Renewable Energy

Section 366.91, F.S., establishes a number of renewable policies for the state. The purpose of these policies, as established in this section, states it is in the public interest to promote the development of renewable energy resources in this state.[11] Further, the statute is intended to encourage fuel diversification to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[12]

The section defines "renewable energy" as:

> [E]electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.[13]

Renewable Natural Gas

Natural gas is a fossil energy source which forms beneath the earth's surface. Natural gas contains many different compounds, the largest of which is methane. Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and

[10] Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, (Feb. 28, 2025).
[11] Section 366.91(1), F.S
[12] *Id.*
[13] Section 366.91(2)(e), F.S.

hydraulic fracturing, commonly referred to as "fracking."[14] RNG refers to biogas that has been upgraded to use in place of fossil fuel natural gas (i.e. conventional natural gas).[15]

Section 366.91, F.S., identifies sources for producing RNG as a potential source of renewable energy.[16] The section specifically defines renewable natural gas as anaerobically generated biogas,[17] landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater. Under the definition, such gas may be used as a transportation fuel or for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production facilities, and organic waste management operations.[18] Raw biogas has a methane content between 45 and 65 percent.[19] Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements. After this process, the nitrogen and oxygen content is reduced and the RNG has a methane content comparable to natural gas and is thus a suitable energy source in applications that require pipeline-quality gas, such as vehicle applications.[20]

RNG that meets certain standards qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.[21] This program was enacted by the United States Congress in order to reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation's renewable fuels sector.[22]

Nationally as of September 2023, there were 580 landfill gas facilities in operation and 530 anaerobic digester systems operating at commercial livestock farms in the United States.[23] Of the more than 16,000 wastewater treatment plants in operation in the United States,

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[14] United States Energy Information Administration, *Natural gas explained*, Oct. 10, 2024, available at https://www.eia.gov/energyexplained/natural-gas/ (last visited Mar. 27, 2025)
[15] Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, available at https://www.epa.gov/lmop/renewable-natural-gas (last visited Mar. 27, 2025).
[16] Section 366.91(2)(e), F.S., defines "renewable energy," in part, as energy produced from biomass. Section 366.91(2)(b), F.S., defines "biomass" in part, as "a power source that is comprised of, but not limited to, combustible residues or gases from…waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas." RNG would be such a combustible gas.
[17] Section 366.91(2)(a) defines "biogas" as a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas.
[18] Environmental Protection Agency, *supra* note 15.
[19] *Id.*
[20] United States Department of Energy, *Renewable Natural Gas Production*, available at https://afdc.energy.gov/fuels/natural_gas_renewable.html (last visited Mar. 27, 2025).
[21] United States Department of Energy, *Renewable Fuel Standard*, available at https://afdc.energy.gov/laws/RFS#:~:text=The%20Renewable%20Fuel%20Standard%20(RFS,Act%20of%202007%20(EISA) (last visited Mar. 27, 2025).
[22] Environmental Protection Agency, *Renewable Fuel Standard Program*, available at https://www.epa.gov/renewable-fuel-standard-program (last visited Mar. 27, 2025).
[23] United States Department of Energy, *supra* note 20, and American Biogas Council, *Biogas Market Snapshot*, https://americanbiogascouncil.org/biogas-market-snapshot/ (last visited Mar. 27, 2025).

approximately 1,200 have anaerobic digesters on site, and 860 of those have the equipment to use their biogas on site.[24]

Florida Power and Light (FPL) Woodford Decision

In *Citizens of State v. Graham*, 191 So. 3d 897 (Fla. 2016), the Florida Supreme Court found the PSC lacked statutory authority to approve cost recovery for FPL investment in a natural gas production facility in the Woodford Shale Gas Region in Oklahoma (Woodford Project). The Woodford Project involved exploration and production of natural gas and not the purchase of actual fuel—something that would generally be within the types of activities an electric utility would engage in. The Supreme Court cited to s. 366.02(2), F.S. (2014), which defines an "electric utility" as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state," and found that the Woodford Project activities did not fall within this definition.[25]

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

> This may be a good idea, but whether advance cost recovery of speculative capital investments in gas exploration and production by an electric utility is in the public interest is a policy determination that must be made by the Legislature. For example, in contrast to natural gas exploration and production, the Legislature has authorized the PSC to approve cost recovery for capital investments in nuclear power plants and energy efficient and renewable energy power sources. See ss. 366.8255; 366.92; 366.93, Fla. Stat. (2014). Without statutory authorization from the Legislature, the recovery of FPL's costs and capital investment in the Woodford Project through the fuel clause is overreach.[26]

Thus, while the Supreme Court determined that the PSC could not approve cost recovery for capital electric utility investments in natural gas production, it indicated that the Legislature has the authority to allow for such if it chose to do so.[27]

Biogas in Florida

According to the American Biogas Council, Florida has 70 operational biogas systems:
- 40 wastewater systems;
- 21 landfills;
- Five food waste systems; and
- Four manure processing locations.[28]

[24] *Id.*
[25] *Citizens of State v. Graham*, 191 So. 3d 897, 901-2 (Fla. 2016).
[26] *Id.* at 902.
[27] Florida Public Service Commission, *Bill Analysis for SB 1162* (Mar. 14, 2023) (on file with the Senate Regulated Industries Committee).
[28] American Biogas Council at https://americanbiogascouncil.org/resources/state-profiles/florida/ (last visited Mar. 27, 2025).

Storm Protection Plans

Section 366.96 (ch. 2019-158, Laws of Fla.), F.S., requires public electric utilities to file with the PSC "a transmission and distribution storm protection plan (SPP) that covers the immediate 10-year planning period. Each plan must explain the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability."[29] Public electric utilities file, for PSC-review and approval, an updated SPP every three years.[30] In its review of SPPs, s. 366.96(4), F.S., requires the PSC to consider:

- The extent to which the SPP is expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability, including whether the SPP prioritizes areas of lower reliability performance;
- The extent to which storm protection of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the utility's service territory, including, but not limited to, flood zones and rural areas;
- The estimated costs and benefits of the SPP to the utility and its customers of making the improvements proposed in the plan; and
- The estimated annual rate impact resulting from implementation of the SPP during the first three years addressed in the plan.

Section 366.96(7), F.S., also includes an annual cost-recovery clause mechanism that allows these utilities to recover transmission and distribution SPP costs through a charge separate and apart from that utility's base rates. This annual recovery is called the SPP cost recovery clause (SPPCRC) docket. Once a utility's SPP has been approved, the utility may proceed with implementing the plan. Once the PSC determines that SPP costs were prudently incurred (and actions taken to implement the approved SPP cannot be taken as evidence of imprudence), SPP implementation costs are not subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility.

A public utility may recover SPP capital expenditures by recovering the annual depreciation on the cost, calculated at the public utility's current approved depreciation rates, and a return on the undepreciated balance of the costs calculated at the public utility's weighted average cost of capital using the last approved return on equity.[31]

Florida Supreme Court Interpretation of s. 366.96, F.S.: *Citizens of the State of Florida v. Andrew Giles Fay*

In 2022, the PSC approved proposals from Florida's four public electric utilities for their SPPs for the 2022-2032 period.[32] Florida's Office of Public Counsel (OPC)[33] challenged the PSC

[29] Section 366.96(3), F.S.
[30] Section 366.96(6), F.S.
[31] Section 366.96(9), F.S.
[32] *Citizens of State v. Fay*, 396 So. 3d 549, 553 (Fla. 2024).
[33] The Public Counsel, appointed by the Florida Senate and House of Representatives Joint Committee on Public Counsel Oversight, represents the general public in proceedings before the PSC and before counties that regulate water and wastewater utilities. Sections 350.61 and 350.611, F.S.

orders at the Florida Supreme Court.[34] The OPC argued that the PSC erred in its interpretation of the statute and impaired the fairness of the proceedings below by granting the utilities' motions to strike portions of expert testimony on whether SPP costs were prudent.[35] The OPC asserted that the PSC erred in its decision by:

- Determining that the PSC was not required to conduct a prudence review of the public utilities' proposed program and project investments in SPPs; and
- Misinterpreting the PSC's SPP Rule and refusing to require FPL and Florida Public Utilities Company (FPUC) to provide an estimate of the reduction in outage times and restoration costs that would result from their proposed SPPs, or a comparison of the estimated costs and benefits of their proposed SPPs, both of which were required by the PSC's SPP Rule.[36]

In its opinion in the case, issued on November 14, 2024, the Florida Supreme Court found that the PSC had correctly reviewed and approved the utilities' SPP proposals after the PSC concluded that the proposed SPPs were in the public interest. Also, that the PSC did not abuse its discretion in striking the expert testimony at issue.[37] In making this finding, the Supreme Court found that approval of SPPs only requires that the PSC find that the project is in the public interest. The PSC does not need to find that the benefits of a proposed SPP outweigh its costs[38] and the PSC's review of a proposed SPP is not based on the prudency of the SPP.[39] However, an estimated cost/benefit analysis is still part of the four factors the PSC is to consider when approving an SPP.[40] A prudency review is only required when a utility seeks to recover for actual expenditures in implementing an SPP (as part of the SPPCRC docket).[41]

This review of prudency with the SPPCRC is distinct from the PSC's normal rate setting procedure. Rather, the Supreme Court found, in interpreting s. 366.96(7), F.S., that if, "any costs ultimately incurred [by the utility] exceed the relevant component of forecasted benefit [as proposed in the SPP and approved by the PSC], that deficiency will not constitute evidence of imprudence by the utility."[42]

III. Effect of Proposed Changes:

Section 1 amends s. 366.075, F.S., to authorize the PSC to establish an experimental mechanism to facilitate energy infrastructure investment in gas using the administrative proceeding structure created for storm protection plans and cost recovery in ss. 366.96, (7) and (8), F.S. As used in the section, "gas" means anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for pipeline distribution.

[34] Actions seeking judicial review of PSC decisions regarding rates or service of utilities providing electric or gas service are brought directly to the Florida Supreme Court under s. 366.10, F.S.
[35] *Citizens*, *supra* note 32, at 560.
[36] *Id* at 554.
[37] *Id* at 560-61.
[38] *Id* at 555.
[39] *Id* at 558.
[40] *Id* at 557-60.
[41] *Id* at 556-57.
[42] *Id* at 556.

In establishing this mechanism, the PSC is to consider the intent provided in s. 366.91(1), F.S., for renewable energy.[43] The gas infrastructure investment may include only such investments that collect, prepare, clean, process, transport, or inject gas as a transportation fuel or for pipeline distribution.

The section provides that the PSC has the discretion to determine whether to use an annual proceeding to conduct such an experimental mechanism. The section also requires the PSC to propose a rule for adoption as soon as practicable, but not later than January 1, 2026.

Section 2 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:

Public utilities will likely expand their use and sale of RNG, the costs of which will be authorized to be passed through to the utilities' customers. In addition, if the production

[43] Section 366.91(1), F.S., provides that the "Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies."

of RNG increases in response to the experimental mechanism authorized in the bill, operators of farming operations that have the potential to generate RNG may see a revenue increase as a result of increased RNG capture and production.

C. Government Sector Impact:

The bill expands the responsibilities of the PSC. Though the PSC has not provided an analysis of this version of the bill, a similar provision is included in CS/SB 1624 from the 2024 Legislative session. In the PSC's analysis of the provision in that bill, the PSC stated that the workload may be handled with its existing level of full-time equivalent positions authorized for fiscal year 2023-2024.[44]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 366.075 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.

[44] Florida Public Service Commission, *Bill Analysis for CS/SB 1624*, pg. 8, Feb. 9. 2024 (on file with the Senate Regulated Industries Committee).