

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 896

INTRODUCER: Senator Brodeur

SUBJECT: Renewable Natural Gas

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon _____	Imhof _____	RI _____	Pre-meeting _____
2.	_____	_____	EN _____	_____
3.	_____	_____	RC _____	_____

I. Summary:

SB 896 amends s. 366.91, F.S., by adding the terms “biogas” and “renewable natural gas,” and expanding the term “renewable energy.”

The term “biogas” means a mixture of gases, largely comprised of carbon dioxide, hydrocarbons, and methane gas, that is produced by the biological decomposition of organic materials.

The term “renewable Natural Gas” (RNG) means anaerobically generated biogas, landfill gas, or wastewater treatment gas, which is refined to a methane content of 90 percent or more, that may be used as transportation fuel, for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

The term “renewable energy,” is expanded to mean electrical energy produced or energy created to displace traditional fuel sources from a method that uses one or more of the following fuels or energy sources. The bill also provides that hydrogen produced or resulting from energy sources other than fossil fuels, such as biomass, solar energy, geothermal energy, wind energy, ocean energy, RNG, and hydroelectric power, also constitute renewable energy.

The bill is effective on July 1, 2021.

II. Present Situation:

Renewable Natural Gas and Biogas

Natural gas is a fossil energy source which forms beneath the earth’s surface.¹

¹ U.S. Energy Information Administration, *Natural gas explained*, <https://www.eia.gov/energyexplained/natural-gas/> (last visited Mar. 6, 2021).

Natural gas contains many different compounds, the largest of which is methane.² Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and hydraulic fracturing, commonly referred to as “fracking.” The term RNG refers to biogas that has been refined to use in place of conventional natural gas.³

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.⁴ Raw biogas has a methane content between 45 and 65 percent.⁵ 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.⁶ The nitrogen and oxygen content is reduced and once upgraded the RNG has a methane content of 90 percent or more.⁷ RNG prepared for injection into a natural gas pipeline typically has a methane content between 96 and 98 percent.⁸

Expansion of RNG offers an opportunity to decarbonize traditional gas end uses such as transportation and heating.⁹ RNG qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.¹⁰ This program was enacted by Congress in order to reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation’s renewable fuels sector.¹¹

Nationwide, there were 157 total confirmed operational RNG projects as of December, 2020.¹² While there were at least two RNG projects reportedly under construction in Florida at the end of 2020, it is not confirmed whether any operational production has been achieved in the state.¹³

Florida Public Service Commission

Chapter 366, F.S., provides for the regulation of electric utilities by the Florida Public Service Commission (PSC). The PSC is an arm of the legislative branch of government and has rate-setting jurisdiction over electric and natural gas public utilities.¹⁴ The role of the PSC is to ensure that Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.¹⁵ In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic

² *Id.*

³ United States Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, <https://www.epa.gov/lmop/renewable-natural-gas> (last visited Mar. 6, 2021).

⁴ *Id.*

⁵ *Id.*

⁶ Florida Dept. of Agriculture and Consumer Services, *Bill Analysis for SB 896* (Feb. 15, 2021) (on file with the Senate Committee on Regulated Industries).

⁷ USEPA, LMOP: Renewable Natural Gas, *supra* at n. 3.

⁸ *Id.*

⁹ FDACS, *Bill Analysis*, *supra* at n. 6.

¹⁰ *Id.*

¹¹ United States Environmental Protection Agency, *Renewable Fuel Standard Program*, <https://www.epa.gov/renewable-fuel-standard-program> (last visited Mar. 6, 2021).

¹² FDACS, *Bill Analysis*, *supra* at n. 6.

¹³ *Id.*

¹⁴ See ss. 350.001, 366.02, and 366.05, F.S.

¹⁵ See Florida Public Service Commission, *The PSC’s Role*, <http://www.psc.state.fl.us> (last visited Mar. 6, 2021).

regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.¹⁶ The PSC monitors the safety and reliability of the electric power grid¹⁷ and may order the addition or repair of infrastructure as necessary.¹⁸ Further, the PSC reviews applications to determine the need for certain new electrical power plants¹⁹ and certain large transmission lines as part of the Department of Environmental Protection’s siting process.²⁰

The PSC has jurisdiction over 27 municipally-owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.²¹

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.²² Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a “public utility” subjecting them to the PSC’s regulatory jurisdiction, under s. 366.02(1), F.S.²³ The PSC’s jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC is to prevail.²⁴

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.²⁵ Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission.²⁶ These utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company’s size. These more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.²⁷

Municipally-Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries

¹⁶ *Id.*

¹⁷ Sections 366.04(5) and (6), F.S.

¹⁸ Sections 366.05(1) and (8), F.S.

¹⁹ Section 403.519, F.S.

²⁰ Section 403.537, F.S.

²¹ Florida Public Service Commission, *2020 FPSC Annual Report*, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 6, 2021).

²² Section 366.02(1), F.S.

²³ *Florida Public Service Com’n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC’s regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that “to the public,” as used in ch. 366, F.S., means “to any member of the public,” rather than “to the general public”).

²⁴ Section 366.04 (1), F.S.

²⁵ *Id.*

²⁶ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 5, 2021).

²⁷ FPSC, *2020 Annual Report*, *supra* at n. 21.

of the municipality.²⁸ Municipally-owned utility rates and revenues are regulated by their city commission.²⁹ As noted above, the PSC has limited jurisdiction over municipally-owned electric utilities.³⁰ There are 34 municipal electric companies in Florida.³¹ Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.³²

Natural Gas Utilities

Florida's natural gas network is comprised of four interstate pipelines and two intrastate pipelines.³³ These pipelines supply natural gas to five investor-owned natural gas utilities, 27 municipal natural gas utilities, and four special gas districts.³⁴ The PSC has regulatory authority over the investor-owned natural gas utilities in all aspects of operations, including safety; authority over municipally-owned natural gas utilities that is limited to safety and territorial boundary disputes; and authority over special gas districts that is limited to safety and territorial boundary disputes.³⁵

Public Utility Regulatory Policies Act

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA).³⁶ The PURPA requires promotion of energy efficiency and use of renewables.³⁷ Primarily, the PURPA was enacted to encourage:

- The conservation of electric energy;
- Increased efficiency in the use of facilities and resources by electric utilities;
- Equitable retail rates for electric consumers;
- Expedient development of hydroelectric potential at existing small dams;
- Conservation of natural gas while ensuring that rates to natural gas consumers are equitable.³⁸

The PURPA requires utilities to interconnect with and purchase power from “qualifying facilities,” which fall into two categories: (1) qualifying small power production facilities and (2) qualifying cogeneration facilities.³⁹ Qualifying small power production facilities must produce less than 80 megawatts and use biomass, waste, renewable resources, geothermal resources, or any combination thereof, of which 75 percent or more of the total energy input must be from these sources.⁴⁰ Qualifying cogeneration facilities are entities that generate electricity as a

²⁸ FDACS, *Electric Utilities*, *supra* at n. 26.

²⁹ *Id.*

³⁰ FPSC, *2020 Annual Report*, *supra* at n. 21.

³¹ FDACS, *Electric Utilities*, *supra* at n. 26.

³² Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 6, 2021).

³³ Florida Department of Agriculture and Consumer Services, *Natural Gas Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Natural-Gas-Utilities> (last visited Mar. 6, 2021).

³⁴ *Id.*

³⁵ Section 366, F.S. *See also*, FPSC, *2020 Annual Report*, *supra* at n. 21.

³⁶ Public Law 95-617 (HR 4018) November 9, 1978.

³⁷ Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, <https://www.ferc.gov/qf> (last visited Mar. 6, 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 18 C.F.R. 292.204.

byproduct of an industrial process, which is not intended fundamentally for sale to an electric utility.⁴¹

The PURPA directed the Federal Energy Regulatory Commission to implement its provisions, which in turn, directed the states to implement these provisions. In response, the Florida Legislature created s. 366.051, F.S., directing utilities to purchase power from cogenerators and small power producers and defining “full avoided costs.” “A utility’s ‘full avoided costs’ are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.”⁴² Traditionally, the Commission has approved electric utilities power purchase contracts that include provisions for payment, capacity, and energy based upon either the utility’s cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the interchange market.⁴³

Renewable Energy

In 2005, the Legislature created s. 366.91, F.S., to address renewable energy. This section requires utilities to continuously offer a purchase contract to renewable energy producers for a minimum of 10 years and contain payment provisions for energy and capacity based upon the utility’s full avoided costs.⁴⁴ It also includes municipal electric utilities and rural electric cooperatives whose annual sales exceed 2,000 gigawatt hours.⁴⁵ The term “renewable energy” means electrical energy produced from:

- Hydrogen produced from sources other than fossil fuels;⁴⁶
- Biomass,
- Solar energy,
- Geothermal energy,
- Wind energy,
- Ocean energy,
- Hydroelectric power, and
- “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.”

⁴¹ 18 C.F.R. 292.205.

⁴² Section 366.051(3) and (4), F.S.

⁴³ Florida Public Service Commission, *States’ Electric Restructuring Activities Update: Wholesale Sales* <http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4> (last visited Mar. 6, 2021); Florida Public Service Commission, *States’ Electric Restructuring Activities Update: Federal Legislation - Public Utilities Regulatory Policy Act* <http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#5> (last visited Mar. 6, 2021).

⁴⁴ Section 366.91(3), F.S.

⁴⁵ Section 366.91(4), F.S.

⁴⁶ Section 366.91(2)(d), F.S. “Traditional fuel sources” is assumed to be limited to fossil fuels and fuels derived from fossil fuels. See U.S. Energy Information Administration, What is energy? Sources of energy: Most of Our Energy is Nonrenewable, <https://www.eia.gov/energyexplained/what-is-energy/sources-of-energy.php> (last visited Mar. 6, 2021) (listing petroleum, hydrocarbon gas liquids, natural gas, coal, and nuclear energy as the most common energy sources, in the U.S. and abroad).

III. Effect of Proposed Changes:

SB 896 amends s. 366.91, F.S., by adding the terms “biogas” and “renewable natural gas,” and expanding the term “renewable energy.”

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The bill amends the references to “renewable energy” included in ss. 366.92, 373.236, and 403.973, F.S., to reflect the revised definition.

The bill includes conforming changes in ss. 366.92, 373.236, 403.973, and 288.9606(7) F.S., to reflect the revised definition of “renewable energy.”

The bill reenacts s. 288.9606(7), F.S., without modification, to incorporate the changes made to s. 366.91, F.S.

The bill is effective on July 1, 2021.

I. 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.

II. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

III. Technical Deficiencies:

None.

IV. Related Issues:

The expansion of the term “renewable energy” in the bill to include “energy created to displace traditional fuel sources,” may have the effect of expanding the definition beyond electricity. This appears to impose the requirement that public utilities continuously offer a purchase contract to producers of biogas and RNG, for a term of at least 10 years, which contains payment provisions for energy and capacity based upon the utility’s full avoided cost pursuant to s. 366.051, F.S.

The PSC has traditionally based a utility’s full avoided cost on either the cost to construct and operate a generating unit or the cost of purchasing capacity and energy from another utility’s generating unit. The basis for pricing under this expanded definition appears unclear.

The bill does not grant the PSC rulemaking authority in order to determine the applicable terms and conditions that would apply to purchase contracts for non-electric renewable energy or set forth parameters for determining a utility’s full avoided cost for RNG.

V. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.91, 366.92, 373.236, 403.973, and 288.9606.

VI. 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.
