

**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.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 1380

INTRODUCER: Senator Martin

SUBJECT: Municipal Electric Utilities

DATE: March 20, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	_____	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

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**I. Summary:**

SB 1380 makes revisions to Florida’s public utility code to establish that if a municipal electric utility operates outside of the municipality’s corporate boundaries, the Florida Public Service Commission (PSC) must regulate that utility as a public utility. This would essentially regulate such a municipal utility as if it was an investor-owned electric utility and give the PSC additional authority over such a municipal utility’s rate setting and customer service complaints.

**II. Present Situation:**

**Florida Public Service Commission**

The PSC is an arm of the legislative branch of government.<sup>1</sup> The role of the PSC is to ensure Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.<sup>2</sup> In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.<sup>3</sup>

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<sup>1</sup> Section 350.001, F.S.

<sup>2</sup> See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Mar 3, 2023).

<sup>3</sup> Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Mar 16, 2023).

## **Jurisdiction of the Florida Public Service Commission for Electric Utilities**

The PSC monitors the safety and reliability of the electric power grid<sup>4</sup> and may order the addition or repair of infrastructure as necessary.<sup>5</sup> The PSC has broad jurisdiction over the rates and service of investor-owned electric utilities<sup>6</sup>—defined under s. 366.02, F.S., as “public utilities.”<sup>7</sup> Excluded from the definition of public utilities, however, are cooperatives organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof.<sup>8</sup> Thus, the PSC does not fully regulate municipal electric utilities or rural electric cooperatives.

However, the PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.<sup>9</sup> Municipally owned utility rates and revenues are regulated by their respective local governments. Rates and revenues for a cooperative utility are regulated by its governing body elected by the cooperative’s membership.

### ***Municipal Electric Utilities in Florida***

A municipal electric utility is an electric 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 electric utility,” 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.<sup>10</sup> The unified interests of municipal electric utilities are represented by the Florida Municipal Electric Association (FMEA).<sup>11</sup>

### ***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. These cooperatives are represented by the Florida Electric Cooperative Association (FECA).<sup>12</sup> These cooperatives operate in 57 of Florida’s 67 counties and have more than 2.7 million customers.<sup>13</sup> 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

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<sup>4</sup> Section 366.04(5) and (6), F.S.

<sup>5</sup> Section 366.05(1) and (8), F.S.

<sup>6</sup> Section 366.05, F.S.

<sup>7</sup> Section 366.02(8), F.S., defines a “public utility,” in part, as “every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public in the state.”

<sup>8</sup> *Id.*

<sup>9</sup> Florida Public Service Commission, *About the PSC*, *supra* note 3.

<sup>10</sup> Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Mar. 17, 2023).

<sup>11</sup> *Id.*

<sup>12</sup> Florida Electric Cooperative Association, *Members*, <https://feca.com/members/> (last visited Mar 17, 2023).

<sup>13</sup> Florida Electric Cooperative Association, *Our History*, <https://feca.com/our-history/> (last visited Mar 17, 2023).

mass. Each cooperative is governed by a board of cooperative members elected by the cooperative’s membership.<sup>14</sup>

***Public Electric Utilities in Florida***

There are four investor-owned electric utility companies (IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

***Regulatory Assessment Fees***

The PSC collects Regulatory Assessment Fees (RAFs) from all of the utilities under its jurisdiction. RAFs, license fees, other fees, and any other charges collected by the PSC are credited to the Florida Public Service Regulatory Trust Fund (Trust Fund).<sup>18</sup> Florida law generally directs the PSC to manage its trust fund in such a manner that each industry funds its own regulation.<sup>19</sup> While the PSC’s budget is set annually by the Legislature, as approved by the Governor, Florida general revenue funds are not used to support the PSC’s regulatory activities.

Rates for RAFs are set by PSC rule, subject to maximum rates established by statute. RAFs are charged as a percentage of gross operating revenues derived from intrastate business, subject to certain exclusions. Chart 1 below provides the current RAFs for Florida utilities, by industry.

**Chart 1: Regulatory Assessment Fees by Florida Utility Industry**

Utility Type	Current RAF	Statutory Maximum
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<sup>14</sup> *Id.*

<sup>15</sup> Florida Public Service Commission, *2022 Facts and Figures of the Florida Utility Industry*, pg. 5 ,Apr. 2022 (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202022.pdf>)

<sup>16</sup> PSC, *2022 Annual Report*, p. 6, (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf>)(last visited: Mar. 16, 2023).

<sup>17</sup> *Id.*

<sup>18</sup> Section 350.113, F.S.

<sup>19</sup> Specifically:

- Section 364.336(2) and (3), F.S., requires the PSC to reduce the RAFs for telecommunications industry after the Regulatory Reform Act of 2011 to reflect the PSC’s reduced regulatory oversight of that industry;
- Section 367.145(3), F.S., requires that RAFs collected pursuant to the water and wastewater RAF collection authorization may only be used to cover the cost of regulating water and wastewater systems. Also, fees collected under the electricity utility industry, gas utility industry, and telecommunications industry RAF collection authorizations may not be used to pay for the cost of water and wastewater regulation.
- Section 368.109, F.S., states that the RAFs set by the PSC for the natural gas transmission (i.e. natural gas pipeline) industry must, to the extent practicable, be related to the cost of regulating that industry.

Investor-owned Gas Utilities	0.5% <sup>20</sup>	0.5% <sup>21</sup>
Municipal Gas Utilities	0.1919% <sup>22</sup>	0.25% <sup>23</sup>
Natural Gas Transmission	0.25% <sup>24</sup>	0.25% <sup>25</sup>
Telecommunications Companies	0.16% <sup>26</sup>	0.25% <sup>27</sup>
Water and Wastewater Utilities	4.5% <sup>28</sup>	4.5% <sup>29</sup>
Investor-owned Electric Utilities	0.072% <sup>30</sup>	0.125% <sup>31</sup>
Municipal Electric Utilities and Rural Electric Cooperatives	0.015625% <sup>32</sup>	0.015625% <sup>33</sup>

**The Florida Senate**

By a significant margin, municipal electric utilities and rural electric cooperatives have the lowest RAF rates of all Florida utilities (the next closest is investor-owned electric utilities, with RAF rates over 4.5 times that of municipal electric utilities and rural electric cooperatives). These rates reflect the comparatively lower regulatory costs the PSC incurs in regulating these types of utilities due, in large part, to the PSC having limited jurisdiction over them.

**Limited Public Service Commission Regulation over Municipal Electric Utilities Nationally**

Often, state public service commission jurisdiction over the activities of municipal electric utilities is limited. The typical reasoning for state public service commissions' limited (or no) jurisdiction and regulatory authority over municipal electric utilities is that they are effectively

<sup>20</sup> Fla. Admin. Code R. 25-7.0131, (2013).  
<sup>21</sup> Section 366.14, F.S.  
<sup>22</sup> Fla. Admin. Code R. 25-7.0131, (2013).  
<sup>23</sup> Section 366.14, F.S.  
<sup>24</sup> Fla. Admin. Code R. 25-7.101, (2013).  
<sup>25</sup> Section 368.109, F.S.  
<sup>26</sup> Fla. Admin. Code R. 25-4.0161, (2011).  
<sup>27</sup> Section 364.336, F.S.  
<sup>28</sup> Fla. Admin. Code R. 25-30.120, (2013).  
<sup>29</sup> Section 367.145, F.S.  
<sup>30</sup> Fla. Admin. Code R. 25-6.0131, (2013).  
<sup>31</sup> Section 366.14, F.S.  
<sup>32</sup> Fla. Admin. Code R. 25-6.0131, (2013).  
<sup>33</sup> Section 366.14, F.S.

regulated by the residents of the municipalities which own and operate them.<sup>34</sup> Thus, customer complaints can be handled by municipal officials who are accountable to the populace they serve through the local democratic process. Revenues from the utility can be reinvested in the system or be used as additional funds—in addition to tax revenue—to be invested in municipal services, like fire and police, and facilities.<sup>35</sup>

However, municipal electric utilities do not always operate solely within their corporate limits. Thus, utility revenue invested in non-utility municipal services may not actually benefit a person living outside the municipality's corporate boundaries. Also, such persons may also not be able to vote on the municipal officials with control over the utility.

For customers who live outside of the corporate limits of the municipality that owns and operates the municipal utility, the opportunity for redress may be limited as the officials of that municipality may not be directly accountable (at least through the electoral process) to a non-resident. Other concerns about local governance or control of municipal utilities include lack of experience or expertise in utility regulation or governance (at least as compared to state public service commissions), lack of investigative powers and viable procedures for handling of complaints or standards violations, ratemaking influence, and pursuit of other social or political goals over operational efficiency.<sup>36</sup>

Given concerns about the nature of local or self-regulation of municipal utilities, many states fully or partially regulate these utilities' activities.<sup>37</sup> This includes several states that regulate municipal electric utility rates in some manner when those utilities operate outside of the

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<sup>34</sup> Paul A. Meyer, *The Municipally Owned Electric Company's Exemption from Utility Commission Regulation: The Consumer's Perspective*, 33 Case W. Rsv. L. Rev. 294, 312-14 (1983) (Available at: <https://scholarlycommons.law.case.edu/caselrev/vol33/iss2/7>).

<sup>35</sup> Florida Municipal Electric Association, *Benefits of Public Power*, <https://www.flpublicpower.com/benefits-of-public-power> (last visited Mar. 15, 2023).

<sup>36</sup> Paul A. Meyer, *supra* note 34.

<sup>37</sup> American Public Power Association, *Authority of State Commissions to Regulate Rates of Public Power Utilities*, June 2014 (available at <https://www.publicpower.org/system/files/documents/Rate%20Regulation%20of%20PPP%20chart%20412.pdf>), and Paul A. Meyer, *supra* note 34.

municipal corporate limits. These states include Colorado,<sup>38</sup> Kansas,<sup>39</sup> Mississippi,<sup>40</sup> New Hampshire,<sup>41</sup> New Jersey,<sup>42</sup> Pennsylvania,<sup>43</sup> South Carolina,<sup>44</sup> and Wyoming.<sup>45</sup>

### **Current Municipal Electric Utilities Serving Customers Outside of Their Corporate Boundaries in Florida**

In August 2018, PSC staff issued a data request to FMEA for information regarding the percentage of customers who are inside and outside of the municipality's city limits or corporate boundaries. Of the 29 counties listed in FMEA's response, FMEA identified 25 municipalities that provided electric services outside of their corporate boundaries.<sup>46</sup>

### **Florida Office of Public Counsel**

The Florida Office of Public Counsel (OPC) is established and regulated pursuant to ss. 350.061 through 350.0614, F.S. The purpose of the OPC is to provide legal representation for the people of the state in utility related matters in proceedings before the PSC, and in proceedings before counties pursuant to s. 367.171(8), F.S. It intervenes in rate proceedings before the PSC and counties involving electric utilities, as well as in proceedings involving gas, water, and wastewater utilities.<sup>47</sup>

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<sup>38</sup> Colo. Rev. Stat. s. 40-3.5-102, provides that "in the event that any rate, charge, tariff, or voluntary plan established within the authorized service area which lies outside the jurisdictional limits of the municipality varies from the rate, charge, tariff, or voluntary plan established for the same class of customers or recipients of any such service within the authorized service area which lies inside the jurisdictional limits of the municipality, such rate, charge, tariff, or voluntary plan shall not become effective until reviewed and approved by the commission."

<sup>39</sup> Kan. Stat. s. 66-104, provides that "the term 'public utility' shall also include that portion of every municipally owned or operated electric or gas utility located in an area outside of and more than three miles from the corporate limits of such municipality."

<sup>40</sup> Miss. Code. ss. 77-3-3 and 77-3-3, provides that the Mississippi Public Service Commission has jurisdiction over the portions of municipal utilities operating more than one mile outside of that municipality's boundaries.

<sup>41</sup> N.H. Rev. Stat. s. 362:4-a, provides that "a municipal corporation furnishing electric utility services shall not be considered a public utility under this title if it serves customers outside of its municipal boundaries and charges such customers a rate no higher than that charged to its customers within the municipality, and provides those customers a quantity and quality of electricity equal to that served customers within the municipality."

<sup>42</sup> N.J. Stat. s. 40:62-24, provides that "every municipality in supplying electricity...beyond its corporate limits is hereby declared to be a public utility. The Board of Public Utilities shall have the same supervision and regulation of, and jurisdiction and control over such municipality in respect to its acts in supplying electricity...beyond its corporate limits, and of and over the property, property rights, equipment, facilities and franchises used in supplying electricity...beyond its corporate limits as over other public utilities."

<sup>43</sup> 66 Pa. Stat. and Cons. Stat. s. 1301, provides that "public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation, beyond its corporate limits, shall be subject to regulation and control by the commission as to rates, with the same force, and in like manner, as if such service were rendered by a public utility."

<sup>44</sup> S.C. Code s. 58-27-10, provides that the "term 'electrical utility' includes municipalities to the extent of their business, property, rates, transactions, and operations without the corporate limits of the municipality."

<sup>45</sup> Wyo. Stat. s 37-1-101, provides that municipal utilities are exempt from public utility regulation by the Wyoming Public Service Commission except "as may extend services outside the corporate limits of a municipality."

<sup>46</sup> Florida Public Service Commission, *Bill Analysis for SB 1380* (Mar. 17, 2023) (on file with the Senate Regulated Industries Committee).

<sup>47</sup> Florida Office of Public Counsel, *About Us*, <https://www.floridaopc.gov/Pages/About.aspx> (last visited: Mar. 17, 2023).

**III. Effect of Proposed Changes:**

**Section 1** amends s. 366.02, F.S., to expand the definition of public utility to include a municipality, or any agency thereof, supplying electricity to any retail electric customer receiving service at a physical address located outside that municipality's corporate boundaries. Based on the 2018 data received by the PSC from the FMEA, this could increase the number of public electric utilities under the PSC's jurisdiction from four under current law, to 29.

**Section 2** amends s. 366.04, F.S., to expand the PSC's jurisdiction to include the municipal entities defined as "public utilities" in Section 1 of the bill. The bill also provides that such utilities qualify as "public utilities" and shall be regulated under ch. 366, F.S., for a minimum of five years. The section also directs the PSC to adopt rules to implement these provisions.

**Section 3** of the bill amends s. 366.11, F.S., to make conforming revisions to changes made by the act.

**Section 4** of the bill provides an effective date of July 1, 2023.

**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:**

As discussed in more detail below, SB 1380 could have an impact on regulatory assessment fees (RAFs) paid by utilities impacted by the bill and may impact the availability of municipal bonds for such utilities. This could have a private sector impact by raising utility rates for the customers of these utilities—at least as a result of these factors. However, this rate impact could be more than offset by the PSC rate setting authority established under the bill and the more stringent rate setting requirements provided in ch. 366, F.S., for public utilities. Thus, how the revised PSC regulation of each of these utilities would impact these utilities’ overall rates is unknown at this time.

**C. Government Sector Impact:**

In its analysis the PSC states that it would anticipate a workload increase as a result of SB 1380 as the number of public electric utilities under its jurisdiction could increase from four to 25. However, such an impact would be based upon newly regulated municipal-owned utilities’ decisions regarding the seeking of cost recovery. However, given that any of these newly regulated public utilities must seek PSC approval for any change in rates, the PSC expects the workload impact to be significant and additional staffing and other resources may be needed (the PSC anticipates that the number of rate cases “would immediately sextuple”). Also, as a result of the bill, any service complaints for these newly regulated public utilities would be handled by the PSC instead of, as is currently, members of the municipal Commission or municipal utility board. Any such complaints filed with the PSC would also require a point of entry to request an administrative hearing by the affected customers and utility. This function will also require additional resources for the PSC.<sup>48</sup>

With an increase in rate cases, the OPC, which represents ratepayers in front of the PSC, may also see a significant increase in potential work load. The OPC would also likely require additional staffing and other resources to respond to the revisions pursuant to this bill.

By a significant margin, municipal electric utilities and rural electric cooperatives have the lowest RAF rates of all Florida utilities (the next closest is investor-owned electric utilities, with RAF rates over 4.5 times that of municipal electric utilities and rural electric cooperatives). These rates reflect the comparatively lower regulatory costs the PSC incurs in regulating these types of utilities due, in large part, to the PSC having limited jurisdiction over them. However, municipal electric utilities that fall under the jurisdiction of the PSC as a public utility, as a result of the bill, would pay a RAF rate about 4.5 times higher than they do currently. This increased fee may be passed-through to the customers of those utilities as part of their rates.

Municipalities with electric utilities that would be classified as public utilities under SB 1380 would likely incur additional regulatory costs under the bill as they will have new regulatory responsibilities to the PSC.

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<sup>48</sup> Public Service Commission, *supra* note 46.

The PSC also states that it would expect, based on its recent history, that the rules it would adopt pursuant to SB 1380 would face an administrative challenge.<sup>49</sup>

Municipal electric utilities currently benefit from being able to utilize low-cost, tax-exempt, municipal bonds to finance utility improvements. It is unclear whether regulating these utilities as public utilities could impact the availability of these bonds. If such access were to negatively impact the availability of these bonds, it could increase rates for these utilities in the future.<sup>50</sup>

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

In the proposed revisions to s. 366.02(8), F.S., the definition of public utility is effectively expanded to include municipal electric utilities that operate outside of their respective municipality's corporate boundaries. The revisions to s. 366.04(10), F.S., in setting the revised jurisdiction of the PSC, provide that such utilities "qualify as a public utility and shall be regulated under this chapter for a minimum of 5 years." Chapter 366, F.S., establishes regulations for public utilities, rural electric cooperatives, natural gas utilities, and municipal electric utilities. Thus, it is unclear under the revisions to s. 366.04(10), F.S., if a municipal-owned utility was to cease serving areas outside of its corporate boundaries whether it would immediately be reverted to being regulated as a municipal electric utility or would continue to be regulated as a public utility for at least five years. If the intent is to have these municipal utilities be regulated as public utilities for these five years, this line could be revised to read, "qualify as a public utility and shall be regulated *as such* under this chapter for a minimum of 5 years."

The provisions of SB 1380 potentially make an over seven-fold increase to the number of public electric utilities under the regulation of the PSC. The effective date of July 1, 2023, may not give the PSC adequate time to adjust organizationally in terms of physical plant, staffing, and processes for such a substantial increase in the number of public electric utilities under its rate setting authority. In addition, municipalities may need time to adjust organizationally as they have not previously been subject to PSC rate setting or service complaint authority.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.02, 366.04, and 366.11.

## IX. Additional Information:

### A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

B. Amendments:

None.

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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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