

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 Fiscal Policy

BILL: CS/SB 366

INTRODUCER: Appropriation Committee on Agriculture, Environment, and General Government; and Senator Yarborough

SUBJECT: Civil Penalties Under the Gas Safety Law of 1967

DATE: February 5, 2024 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u>Schrader</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 366 revises the maximum civil penalties for violations of Florida’s Gas Safety Law (part I of ch. 368, F.S.), and rules adopted pursuant to that law, to be substantially similar to the maximum penalties provided under federal pipeline safety regulations. The bill sets the state maximum penalties, until June 30, 2025, to be \$266,015 (increased from \$25,000) for each violation for each day such violation persists, and \$2,660,135, in aggregate, (up from \$500,000) for any related series of violations. The bill authorizes the Public Service Commission (PSC) to review the penalties established on an annual basis and revise as necessary in order to maintain its certification with the federal Pipeline and Hazardous Materials Safety Administration.

The bill has an indeterminate, positive impact on state revenues and expenditures. See section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2024.

II. Present Situation:

Florida Public Service Commission

The 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, affordable, and reliable manner.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

Gas Utilities

The PSC has broad jurisdiction over the rates and service of gas utilities.⁴ However, the PSC does not fully regulate municipal gas utilities (utilities owned or operated on behalf of a municipality) or gas districts. The PSC does have jurisdiction over these types of utilities with regard to territorial boundaries and safety.⁵ Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards.

Municipal Gas Utilities and Special Gas Districts in Florida

A municipal gas utility is a gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of gas utility regulations for Florida (along with electric utility regulations). 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 27 municipally-owned gas utilities and four special gas districts.⁶

Public Gas Utilities in Florida

There are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, Florida Public Utilities Company (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. Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.⁷

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 Jan 16, 2024).

³ Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Jan 16, 2024).

⁴ Section 366.05, F.S.

⁵ Florida Public Service Commission (PSC), *About the PSC*, *supra* note 3.

⁶ PSC, *2023 Facts and Figures of the Florida Utility Industry*, pg. 13, Apr. 2023 (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.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."

⁷ *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.

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.⁸

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.⁹

Natural Gas Transmission

Natural gas transmission companies are regulated by the PSC under ch. 368, F.S. The term “natural gas transmission company,” as defined in s. 368.103, F.S., “means any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas.” The term does not include “any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof, or a special district created by special act to distribute natural gas.” Section 368.104, F.S., authorizes the PSC to “fix and regulate rates and services of natural gas transmission companies, including, without limitation, rules and regulations for:”

- Determining customers and services classifications;
- Determining rate applicability; and
- “Ensuring that the provision (including access to transmission) or abandonment of service by a natural gas transmission company is not unreasonably preferential, prejudicial, or unduly discriminatory.”

Section 368.105, F.S., provides the procedures for the PSC to set rates and services requirements for natural gas transmission companies in Florida.

Under chapter 368, F.S., the PSC is authorized to inspect intrastate natural gas systems to ensure compliance with rules and regulations regarding safety standards.¹⁰ Currently, Florida has three major pipelines: Florida Gas Transmission Company, Gulfstream Natural Gas System, and Sabal Trail Interstate Pipeline. The state also has two minor pipelines: Gulf South Pipeline Company and Southern Natural Gas.¹¹

Pipeline and Hazardous Materials Safety Administration

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is part of the United States Department of Transportation. The PHMSA’s purpose is to protect the public and the environment by advancing safe transportation of energy and other essential potentially hazardous materials. The PHMSA “establishes national policy, sets and enforces standards, educates, and

⁸ PSC, *2022 Annual Report*, p. 6, available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf> (last visited Jan. 16, 2024).

⁹ *Id.*

¹⁰ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 6, at 13; ss. 368.03 and 368.05, F.S.

¹¹ *Id.*

conducts research to prevent incidents.” The agency is also involved in preparation of the public and first responders to deal with hazardous materials incidents.¹²

The PHMSA’s Office of Pipeline Safety

The PHMSA’s Office of Pipeline Safety “is responsible for carrying out a national program to ensure the safe, reliable, and environmentally-sound operation of the nation’s natural gas and hazardous liquid pipeline transportation system.” As part of this responsibility, the Office of Pipeline Safety:

- Develops, proposes, and implements policy initiatives and regulations regarding operation of pipelines;
- Directs education and outreach efforts to promote adoption and the increased use of pipeline safety programs by state and local governments, pipeline operators, and the public; and
- Administers a national pipeline safety program to support compliance with Federal pipeline safety regulations.¹³

The PHMSA’s State Programs

Although the PHMSA has ultimate authority over all federal pipeline safety standards (for both interstate and intrastate pipelines), federal law allows states to assume safety authority over intrastate gas pipelines, hazardous liquid pipelines, and underground natural gas storage through certifications and agreements with the PHMSA.¹⁴ Currently, the District of Columbia, Puerto Rico, and all states except Alaska and Hawaii participate in PHMSA’s pipeline safety program.¹⁵ Fourteen states participate in the PHMSA’s underground natural gas storage program.¹⁶

To participate in the PHMSA’s state programs, states must adopt the minimum federal pipeline safety regulations—currently under 49 C.F.R. s. 100-199.¹⁷ States are free, however, to adopt more stringent regulations, if they so choose, and still participate in the PHMSA’s state programs.¹⁸

Florida Gas Safety Law

Florida’s Gas Safety Law of 1967 (part I of ch. 368, F.S.),¹⁹ authorizes the PSC to establish “rules and regulations covering the design, fabrication, installation, inspection, testing and safety standards for installation, operation and maintenance of gas transmission and distribution

¹² Pipeline and Hazardous Materials Safety Administration (PHMSA), *About [PHMSA]*, <https://www.phmsa.dot.gov/about-phmsa/phmsas-mission> (last visited Jan. 4, 2024).

¹³ Pipeline and Hazardous Materials Safety Administration, *Office of Pipeline Safety*, <https://www.phmsa.dot.gov/about-phmsa/offices/office-pipeline-safety> (last visited Jan. 16, 2024).

¹⁴ Pipeline and Hazardous Materials Safety Administration, *State Programs Overview*, <https://www.phmsa.dot.gov/working-phmsa/state-programs/state-programs-overview> (last visited Jan. 16, 2024); 49 U.S.C. s. 60105- 60106.

¹⁵ *Id.*

¹⁶ *Id.* Florida is not one of the states participating in the underground natural gas storage program. Pipeline and Hazardous Materials Safety Administration, *Appendix F—State Program Certification/Agreement Status: CY 2023 States Participating in the Federal/State Underground Natural Gas Safety Program*, <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2023-11/2023-Appendix-F-State-UNGS-Certification-Agreement-Status.pdf> (last visited Jan. 16, 2024).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Sections 368.01-368.061, F.S.

systems.”²⁰ Such systems include “gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains, and gas services up to the outlet of the customer’s meter set assembly, gas-storage equipment of the closed-pipe type fabricated or forged from pipe or fabricated from pipe and fittings, and gas-storage lines.”²¹ Section 368.05, F.S., establishes the jurisdiction for the PSC to enforce the Gas Safety Law and authorizes the PSC to adopt rules “covering the design, fabrication, installation, inspection, testing and safety standards for installation, operation and maintenance of gas transmission and distribution systems.”

Section 368.061, F.S., establishes the penalties that may be assessed for violations of the Gas Safety Law or the PSC rules implementing the law. The civil penalties authorized under this section are assessed by the PSC and may not exceed \$25,000 for each day that a violation exists—up to a maximum aggregate penalty of \$500,000 for a related series of violations.²² The last time these penalties were updated was 1993.²³ These maximum state penalties are significantly less than those authorized by federal law for pipeline safety violations. Currently, as of December 28, 2023, the maximum federal administrative penalty for pipeline safety violations is \$266,015 for each day that a violation exists, up to a maximum aggregate penalty of \$2,660,135, for a related series of violations.²⁴

According to the PSC, the difference in penalties proscribed under federal and Florida law “has been consistently raised by the PHMSA as part of its annual evaluation of the pipeline safety program activities carried out by the [PSC].”²⁵ If the PHMSA was to determine Florida was not satisfactorily enforcing safety regulation compliance, the PHMSA could reject the PSC’s certification after notice and an opportunity for a hearing.²⁶ With the loss of such certification, the PSC would only be able to conduct safety inspections and identify violations (if an agreement is reached with the PHMSA), but would no longer have the authority to conduct violation enforcement.²⁷ Instead, the PHMSA would conduct the enforcement of violations.²⁸

III. Effect of Proposed Changes:

Section 1 revises the maximum penalties for violations of Florida’s Gas Safety Law (part I of ch. 368, F.S.), or rules adopted pursuant to that law, to be \$266,015 (increased from \$25,000) for each violation for each day such violation persists and \$2,660,135 in aggregate (up from \$500,000) for any related series of violations until June 30, 2025. This would mirror the maximum fines currently provided under federal law for pipeline safety violations.²⁹

²⁰ Section 368.03, F.S.

²¹ *Id.*

²² Section 368.061(1), F.S.

²³ See ch. 93-035, Laws of Fla.

²⁴ 49 C.F.R. s. 190.223.

²⁵ Florida Public Service Commission, *Bill Analysis for SB 366*, Nov. 9, 2023 (on file with the Senate Regulated Industries Committee).

²⁶ 49 U.S.C. s. 60105(f).

²⁷ 49 U.S.C. s. 60105(f); and 49 U.S.C. s. 60106.

²⁸ Florida Public Service Commission, *Bill Analysis for SB 366*, *supra* note 25 at 2.

²⁹ On December 28, 2023, the maximum federal fines increased to \$266,015 for each day that a violation exists, up to a maximum aggregate penalty of \$2,660,135, for a related series of violations. 88 Fed. Reg. 89,560 (Dec. 28, 2023) (codified at 49 C.F.R. s. 190.223).

On or after July 1, 2025, the PSC shall, by rule, annually consider and revise the penalties established based on the Consumer Price Index, penalties established in federal law for pipeline safety violations and it is the intent of the Legislature for the PSC to maintain its pipeline safety violation enforcement certification with the federal Pipeline and Hazardous Materials Safety Administration.

In addition, this section provides the PSC with rulemaking authority to implement the provisions of the bill.

Section 2 provides an effective date of July 1, 2024.

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:

The bill authorizes the PSC to adopt the maximum penalty for a violation of Florida's Gas Safety law, with consideration for various factors. Article II, section 3 of the State Constitution sets forth the separation of powers doctrine. The Court has held, under this doctrine "[t]he Legislature may not delegate the power to enact a law, or to declare what the law shall be, or to exercise an unrestricted discretion in applying a law; but it may enact a law, complete in itself, designed to accomplish a general public purpose..." The Legislature may authorize an administrative body flexibility in the administration of a program, if some "minimal standards and guidelines" are established. The "specificity of the guidelines will depend on the complexity of the subject."³⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁰ *Avatar Dev. Corp. v. State*, 723 So. 2d 199, 201 (Fla. 1998).

B. Private Sector Impact:

The bill will likely increase the fiscal impact on private sector Gas Safety Law violators in Florida if the PSC raises penalties above the current statutory limit.

C. Government Sector Impact:

The bill has an indeterminate positive impact to state revenues and expenditures.

The bill will likely increase the fiscal impact on local government-owned entities subject to the PSC's jurisdiction if such entities violate Florida's Gas Safety Law and the PSC raises penalties above the current statutory limit.

Per s. 368.061(1), F.S., any penalties assessed may be against real and personal property and are enforceable by the PCS as statutory liens under ch. 85, F.S. Any assessments collected from such penalties are deposited in the General Revenue Fund.

The PSC has indicated only one instance of a violation under s. 368.01-05, F.S., and ch. 25-12, F.A.C.,³¹ in the last eight years.³² The disposition of the one case resulted in a Final Order Approving Joint Settlement Agreement, whereby the parties agreed to a penalty payment of one million dollars.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 368.061 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Appropriations Committee on Agriculture, Environment, and General Government:

The committee substitute:

³¹ Fla. Admin. Code R. ch. 25-12, available at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=25-12> (last visited Jan. 17, 2024).

³² Email from Lance Watson, Legislative Affairs Director, Public Service Commission, to Michelle Sanders, Legislative Analyst, Senate Appropriations Committee on Agriculture, Environment, and General Government (Jan. 17, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).

³³ The PSC, Docket No. 150259-GU, Order No. PSC-16-02025-AS-GU, Issued May 19, 2016, available at <https://www.floridapsc.com/pscfiles/library/filings/2016/03075-2016/03075-2016.pdf>

- Increases the state's maximum penalty set forth to match maximum federal pipeline safety fines until June 30, 2025;
- Authorizes the PSC to establish by rule a new maximum penalty with consideration for certain factors beginning July 1, 2025;
- Establishes legislative intent for the PSC to maintain its certification with the Pipeline and Hazardous Materials Safety Administration; and
- Provides the PSC with rulemaking authority.

B. Amendments:

None.