

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: SB 480

INTRODUCER: Senator DiCeglie

SUBJECT: Renewable Natural Gas

DATE: February 13, 2024

REVISED: _____

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

I. Summary:

SB 480 amends s. 366.91, F.S., relating to Florida’s renewable energy policy. The bill:

- Allows public utilities to recover, through an appropriate cost-recovery mechanism administered by the Florida Public Service Commission (PSC), reasonably incurred costs for certain renewable natural gas (RNG) infrastructure projects; and
- Specifies limitations and approval requirements for cost recovery for renewable natural gas infrastructure projects in Florida.

The bill revises Florida statutes to encourage the use and development of RNG. The bill:

- Amends s. 373.807, F.S., to require the Department of Environmental Protection (DEP) to include identification of water quality improvement projects that can also produce and capture RNG when adopting basin management action plans (BMAPs) for Outstanding Florida Springs,;
- Amends s. 403.067, F.S., to require the DEP, when implementing total maximum daily loads for BMAPs, under certain circumstances where a wastewater treatment plan is necessary, to include in that plan any renewable energy opportunities stemming from the production and capture of RNG;
- Amends s. 403.7055, F.S., to add municipalities and RNG, as defined in s. 366.91(2), F.S., in a provision in current law encouraging counties to form multicounty regional solutions to the capture and reuse or sale of methane gas from landfills and wastewater treatment facilities; and
- Amends s. 570.841, F.S., to revise the farm-to-fuel initiative program, within the Department of Agriculture and Consumer Affairs (DACs), to address the production and capture of RNG.

The bill does not impact state revenues and expenditures. Any expansion of responsibilities effecting the DEP, the DACs or the PSC can be absorbed within existing resources.

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

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, affordable, and reliable manner.² 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.³

The PSC monitors the safety and reliability of the electric power grid⁴ 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 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, bulk power supply operations, and planning.⁷ Municipally owned utility rates and revenues are regulated by their respective local governments. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).⁸ In addition, there are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, 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.⁹

¹ Section 350.001, F.S.

² See Florida Public Service Commission (PSC), *Florida Public Service Commission Homepage*, available at <http://www.psc.state.fl.us> (last visited Jan. 11, 2024).

³ PSC, *About the PSC*, available at <https://www.psc.state.fl.us/about> (last visited Jan. 11, 2024).

⁴ Section 366.04(5) and (6), F.S.

⁵ Section 366.05(1) and (8), F.S.

⁶ Section 366.05, F.S.

⁷ Florida Public Service Commission, *About the PSC*, *supra* note 3.

⁸ 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> (last visited Jan. 11, 2024).

⁹ *Id.* 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.

Electric IOU and 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.¹⁰

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.¹¹

Public Utilities under Chapter 366, Florida Statutes

Pursuant to s. 366.02(8), F.S., “public utility,” as used in ch. 366, F.S., means “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 within this state.” However, all of the following types of utilities are exempted from this definition:

- Rural electric cooperatives.
- Municipal electric and gas utilities.
- Dependent or independent special natural gas districts.
- Any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers.
- Any entity, selling or arranging for sales of natural gas, that neither owns nor operates natural gas transmission or distribution facilities within the state.
- A person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

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.¹² 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.¹³

The section defines “renewable energy” as:

[E]lectrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from

¹⁰ 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. 11, 2024).

¹¹ *Id.*

¹² Section 366.91(1), F.S

¹³ *Id.*

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.¹⁴

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.¹⁵ 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 renewable natural gas (RNG) refers to biogas that has been upgraded to use in place of fossil fuel natural gas (i.e. conventional natural gas).¹⁶

Section 366.91, F.S., identifies sources for producing RNG as a potential source of renewable energy.¹⁷ The section specifically defines renewable natural gas as anaerobically generated biogas,¹⁸ 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.¹⁹ Raw biogas has a methane content between 45 and 65 percent.²⁰ 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.²¹

¹⁴ Section 366.91(2)(e), F.S.

¹⁵ United States Energy Information Administration, *Natural gas explained*, Dec. 27, 2022, available at <https://www.eia.gov/energyexplained/natural-gas/> (last visited Jan. 11, 2024)

¹⁶ Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, available at <https://www.epa.gov/lmop/renewable-natural-gas> (last visited Jan. 11, 2024).

¹⁷ 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.

¹⁸ 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.

¹⁹ Environmental Protection Agency, *supra* note 16.

²⁰ *Id.*

²¹ United States Department of Energy, *Renewable Natural Gas Production*, available at https://afdc.energy.gov/fuels/natural_gas_renewable.html (last visited Jan. 11, 2024).

RNG that meets certain standards qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.²² 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.²³

Nationally, there were 538 landfill gas facilities in operation as of August 2022, and, as of May 2022, 330 anaerobic digester systems operating at commercial livestock farms in the United States.²⁴ Of the more than 16,000 wastewater treatment plants in operation in the United States, approximately 1,200 have anaerobic digesters on site, and 860 of those have the equipment to use their biogas on site.²⁵

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's 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.²⁶

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.²⁷

²² 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\(EIS%20Act\),last%20visited%20Jan%2011%202024](https://afdc.energy.gov/laws/RFS#:~:text=The%20Renewable%20Fuel%20Standard%20(RFS,Act%20of%202007%20(EIS%20Act),last%20visited%20Jan%2011%202024)) (last visited Jan. 11, 2024).

²³ Environmental Protection Agency, *Renewable Fuel Standard Program*, available at <https://www.epa.gov/renewable-fuel-standard-program> (last visited Jan. 11, 2024).

²⁴ United States Department of Energy, *supra* note 21.

²⁵ *Id.*

²⁶ *Citizens of State v. Graham*, 191 So. 3d 897, 901-2 (Fla. 2016).

²⁷ *Id.* at 902.

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.²⁸

Florida Department of Environmental Protection

The Florida Department of Environmental Protection (DEP) is a state agency created by s. 20.255, F.S., and is the state's lead agency for environmental management and stewardship.²⁹ The department has nine statutorily created divisions:

- Division of Administrative Services;
- Division of Air Resource Management;
- Division of Water Resource Management;
- Division of Environmental Assessment and Restoration;
- Division of Waste Management;
- Division of Recreation and Parks;
- Division of State Lands;
- Division of Water Restoration Assistance; and
- Division of Law Enforcement.³⁰

As part of its responsibilities regarding water resources, the DEP protects and monitors water quality, sets restoration goals for surface waters, and oversees restoration activities. As part of these activities, the DEP:

- Implements state laws regarding the protection of drinking water quality, groundwater, rivers, lakes, estuaries and wetlands; reclamation of mined lands; and state beach and dune preservation;
- Assists local governments and other entities by providing funding for drinking water, stormwater, and wastewater projects; and
- Oversees the state water management districts as they implement water supply and water quality protection programs.³¹

Water Quality and Nutrients

Nutrient pollution and the excessive accumulation of nitrogen and phosphorus in water is one of the most widespread, costly, and challenging environmental problems.³² In Florida, 35 percent of waterbodies are impaired for nutrients, and 87 percent of counties have nutrient-impaired waters within their boundaries.³³

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²⁹ Florida Department of Environmental Protection, *Homepage*, <https://floridadep.gov/> (last visited Jan. 11, 2024).

³⁰ Section 20.255(3)(a), F.S.

³¹ Florida Department of Environmental Protection, *Water Topics*, <https://floridadep.gov/water-topics> (last visited Jan. 11, 2024).

³² U.S. Environmental Protection Agency, *Basic Information on Nutrient Pollution*, <https://www.epa.gov/nutrientpollution/problem> (last visited Jan. 11, 2024).

³³ Florida Department of Environmental Protection, *Rulemaking Update: Stormwater / Chapter 62-330, F.A.C., Environmental Resource Permitting*, 2 (2023), (on file with the Senate Committee on Environment and Natural Resources).

The nutrients nitrogen and phosphorus are a natural part of aquatic ecosystems.³⁴ They support the growth of algae and aquatic plants, which provide food and habitat for fish, shellfish, and smaller organisms that live in water. However, the presence of too much nitrogen and phosphorus can cause algae to grow faster than ecosystems can handle. These algal blooms can harm water quality, food resources, and habitats, and decrease the oxygen that fish and other aquatic life need to survive. Algal blooms can also be harmful to humans because they produce elevated toxins and bacterial growth that can make people sick if they come into contact with polluted water, consume tainted fish or shellfish, or drink contaminated water.³⁵ Nutrient pollution in ground water—used by millions of people in the United States as their drinking water source—can be harmful even at low levels.³⁶ Infants are especially vulnerable to a nitrogen-based compound called nitrates in drinking water.³⁷

One of the primary sources of excess nitrogen and phosphorus is stormwater runoff.³⁸ This runoff typically traverses impervious surfaces, such as concrete and asphalt, flowing directly into waterbodies or storm drains without the benefit of natural filtration through soil and vegetation or processing by a water treatment facility.³⁹ Human activities frequently exacerbate the problem by introducing nitrogen and phosphorus pollutants derived from fertilizers, yard and pet waste, and certain soaps and detergents.⁴⁰

Impaired Waters

Under section 303(d) of the federal Clean Water Act, states must establish water quality standards for waters within their borders and develop a list of impaired waters that do not meet the established water quality standards.⁴¹ States must also develop a list of threatened waters that may not meet water quality standards in the following reporting cycle.⁴²

Due to limited funds and the wide variety of surface waters in Florida, the DEP sorted those waters into 29 major watersheds, or basins, and further organized them into five basin groups for assessment purposes.⁴³ If the DEP determines any waters are impaired, the waterbody must be

³⁴ U.S. Environmental Protection Agency, *Nutrient Pollution: The Problem*, *supra* note 32.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ U.S. Environmental Protection Agency, *Nutrient Pollution: Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Jan. 11, 2024). Other sources of excess nitrogen and phosphorus include agriculture, wastewater, fossil fuels, and fertilizers.

³⁹ U.S. Environmental Protection Agency, *Nutrient Pollution: Sources and Solutions: Stormwater*, <https://www.epa.gov/nutrientpollution/sources-and-solutions-stormwater> (last visited Jan. 11, 2024).

⁴⁰ *Id.*

⁴¹ U.S. Environmental Protection Agency, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA*, <https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa> (last visited Jan. 11, 2024); 40 C.F.R. 130.7. Following the development of the list of impaired waters, states must develop a total maximum daily load for every pollutant/waterbody combination on the list. A total maximum daily load is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards. Florida Department of Environmental Protection, *Watershed Evaluation and Total Maximum Daily Loads (TMDL) Section*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Jan. 11, 2024).

⁴² *Id.*

⁴³ Florida Department of Environmental Protection, *Assessment Lists*, <https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists> (last visited Jan. 11, 2024).

placed on the verified list of impaired waters and a total maximum daily load (TMDL) must be calculated.⁴⁴ A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards.⁴⁵ A waterbody may be removed from the verified list at any time during the TMDL process if it attains water quality standards.⁴⁶ If the DEP determines that a waterbody is impaired but further study is needed to determine the causative pollutants or other factors contributing to impairment before the waterbody is placed on the verified list, the waterbody will be placed on a statewide comprehensive study list.⁴⁷

Basin Management Action Plans

Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,⁴⁸ for a watershed. There are currently 34 adopted BMAPs in Florida.⁴⁹

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by implementing appropriate best management practices (BMPs) or conducting water quality monitoring.⁵⁰ A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district for failure to implement these requirements.⁵¹

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.⁵² Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations.⁵³

BMAPs must include five-year milestones for implementation and water quality improvement and an associated water quality monitoring component to evaluate the progress of pollutant load reductions.⁵⁴ Every five years an assessment of progress toward these milestones must be conducted and revisions to the plan made as appropriate.⁵⁵

⁴⁴ *Id.*; Florida Department of Environmental Protection, *Verified List Waterbody Ids (WBIDs)*, <https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about> (last visited Jan. 11, 2024); s. 403.067(4), F.S.

⁴⁵ Section 403.067(6)(a), F.S. *See also* 33 U.S.C. § 1251, s. 303(d) (the Clean Water Act).

⁴⁶ Section 403.067(5), F.S.

⁴⁷ Section 403.067(2), F.S.; Fla. Admin. Code R. 62-303.150.

⁴⁸ “Point source” is defined as any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are sources of pollution that are not point sources. Fla. Admin. Code R. 62-620.200(37).

⁴⁹ Florida Department of Environmental Protection, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Jan. 11, 2024).

⁵⁰ Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

⁵¹ Section 403.067(7)(b)2.h., F.S.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Section 403.067(7)(a)6., F.S.

⁵⁵ *Id.*

Each BMAP must also include:

- The management strategies available through existing water quality protection programs to achieve TMDLs;
- A description of BMPs adopted by rule;
- For the applicable five-year implementation milestones, a list of projects that will achieve the pollutant load reductions needed to meet a TMDL or other established load allocations, including a planning-level cost estimate and an estimated date of completion;
- A list of regional nutrient reduction projects submitted by the Department of Agriculture and Consumer Services which will achieve pollutant load reductions established for agricultural nonpoint sources;⁵⁶
- The source and amount of financial assistance to be made available; and
- A planning-level estimate of each project's expected load reduction, if applicable.⁵⁷

Outstanding Florida Springs

In 2016, the Florida Legislature enacted the Florida Springs and Aquifer Protection Act (the act) and identified 30 Outstanding Florida Springs (OFSs) that require additional protections to ensure their conservation and restoration for future generations.⁵⁸ These springs are a unique part of the state's scenic beauty, provide critical habitat, and have immeasurable natural, recreational, and economic value.⁵⁹ The act requires the DEP to assess the water quality in the OFSs. Based on these assessments, the DEP determined 24 of these springs are impaired.⁶⁰ For these impaired springs, the DEP must adopt (or re-adopt) a BMAP to implement all the protections of the act, including:

- Prioritized lists of restoration projects along with planning level estimates for cost, schedule, and nutrient load reduction;
- Phased milestones (five-year, 10-year, and 15-year) to achieve water quality restoration targets in 20 years;
- Estimated nutrient pollutant loads, allocated to each source or category of sources;
- Completed remediation plans for onsite sewage treatment and disposal systems (OSTDSs) where septic loading accounts for at least 20 percent of the estimated nutrient input;⁶¹ and
- Prohibited certain activities within the BMAP.⁶²

The activities prohibited within a springs BMAP include:

⁵⁶ This is required only where agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges or the DEP determines that additional measures are necessary to achieve a TMDL. Section 403.067(7)(e)1., F.S.

⁵⁷ Section 403.067(7)(a)4., F.S.

⁵⁸ Florida Department of Environmental Protection, *Springs*, <https://floridadep.gov/springs/> (last visited Jan. 11, 2024). OFSs include all historic first magnitude springs and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. Section 373.802(4), F.S.

⁵⁹ Florida Department of Environmental Protection, *Protect and Restore Springs*, <https://floridadep.gov/springs/protect-restore> (last visited Jan. 11, 2024).

⁶⁰ *Id.*

⁶¹ Although OSTDS remediation plans were first only required for springs, in 2020, the requirement was expanded to BMAPs statewide as part of the Clean Waterways Act. *See* ch. 2016-1, s. 27 and 2020-150, s. 13, Laws of Fla. Notably, OSTDS remediation plans for springs are only required within the priority focus areas, whereas the laws governing BMAPs require OSTDS remediation plans more generally within the entire BMAP.

⁶² Florida Department of Environmental Protection, *Protect and Restore Springs*, *supra* note 59; prohibitions within the "priority focus area" for the spring was broadened in 2023 to include the entire BMAP. Ch. 2023-169, Laws of Fla.

- New domestic wastewater disposal facilities with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, on an annual permitted basis, or a more stringent treatment standard if necessary to attain a TMDL;
- New OSTDSs on lots of less than one acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP;
- New facilities for the disposal of hazardous waste;
- The land application of Class A or Class B domestic wastewater biosolids not in accordance with a DEP-approved nutrient management plan; and
- New agriculture operations that do not implement BMPs, measures necessary to achieve pollution reduction levels established by the DEP, or groundwater monitoring plans.⁶³

There have been recent legal challenges to the DEP's development of BMAPs for OFSs. In *Sierra Club v. Department of Environmental Protection*, the First District Court of Appeals, held the DEP failed to comply with ss. 373.801(1)(b) and 403.067(6)(b), F.S., in creating the BMAPs because the BMAPs failed to include an identification of each *specific* point source or category of nonpoint sources and an estimated allocation of the pollutant for each point source or category of nonpoint sources.⁶⁴ Instead, the BMAPs included pie charts that only showed current estimated nitrogen loading in the various springsheds by source and allocations to entire basins, not to any point or nonpoint source.⁶⁵

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACS) is a state agency created by s. 20.14, F.S., and is headed by an elected Commissioner of Agriculture—who is also designated by the Florida Constitution as one of the three members of the Florida cabinet.⁶⁶ The DACS's responsibilities are wide-ranging, however, in general, they are to:

- Support and promote Florida agriculture;
- Protect the environment;
- Safeguard consumers; and
- Ensure the safety and wholesomeness of food.⁶⁷

Florida Farm-to-Fuel Initiative

Section 570.841, F.S., was created in 2006 to enhance the market for and promote the production and distribution of, renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. Additionally, the initiative seeks to enhance the value of agricultural products or expand agribusiness in the state through such production and distribution. The initiative authorizes the DACS to conduct a statewide comprehensive information and education program aimed at educating the general public about the benefits of renewable energy and the use of alternative fuels.

⁶³ Section 373.811, F.S.

⁶⁴ *Sierra Club v. DEP*, 357 So. 3d 737, (Fla. 1st DCA 2023).

⁶⁵ *Id.* at *5.

⁶⁶ FLA. CONST. art. IV, s. 4.

⁶⁷ Florida Department of Agriculture and Consumer Services, *About Us*, <https://www.fdacs.gov/About-Us> (last visited Jan. 11, 2023).

Biogas in Florida

According to the American Biogas Council, Florida has 70 operational biogas systems:

- 40 wastewater systems;
- 21 landfills;
- Five food waste; and
- Four manure processing locations.⁶⁸

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 366.91, F.S., regarding renewable energy policy in Florida.

Specifically, the bill allows public utilities to recover, through an appropriate cost-recovery mechanism administered by the Public Service Commission (PSC), incurred costs for renewable natural gas (RNG) fuel projects located in Florida. Such costs must be reasonable and facilitate the goals of s. 366.091(1), F.S. Under the bill, RNG may include mixtures of natural gas and RNG. Eligible projects include, but are not limited to:

- Capital investment in projects necessary to prepare, clean, or otherwise produce RNG for pipeline distribution and usage;
- Capital investment in facilities, including pipelines that are necessary to inject and deliver RNG throughout this state and RNG storage facilities;
- Operation and maintenance expenses associated with any such RNG infrastructure projects; and
- An appropriate return on investment consistent with that allowed for other utility plants used to provide service to customers.

Once the PSC determines project costs were reasonable and facilitate the goals stated in s. 366.091(1), F.S., the PSC must deem the project and associated costs prudent for purposes of cost recovery and may not further subject the project to disallowance except for fraud, perjury, or intentional withholding of key information by the public utility.

Cost recovery for an RNG project must be approved by the PSC. In making its determination, the PSC must consider whether the projected costs for the project are reasonable and consistent with the provisions of proposed s. 366.091(10), F.S. Such recovery may not begin until the project is placed into service; however, upon approval by the PSC, costs incurred before the facility is placed into service may be deferred on the public utility's books for recovery once the facility is in service. This prohibition does not preclude the application of any other regulatory accounting rules that are otherwise deemed appropriate (such as normal recovery costs for construction work in progress).

Section 2 amends s. 373.807, F.S., to require the Department of Environmental Protection (DEP), in adopting basin management action plans (BMAPs) for Outstanding Florida Springs (OFSs), to include identification of water quality improvement projects that can also produce and capture RNG through the use of anaerobic digestion (or other similar treatment technologies) at

⁶⁸ American Biogas Council at <https://americanbiogascouncil.org/resources/state-profiles/florida/> (last visited Jan. 11, 2024).

wastewater treatment plants, livestock farms, food production facilities, and organic waste management operations.

Section 3 amends s. 403.067, F.S., regarding the implementation of total maximum daily loads (TMDLs) for an impaired waterbody as part of a BMAP. Under current law, if the DEP identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as the contributors of at least 20 percent of point source or nonpoint source nutrient pollution, or if the DEP determines remediation is necessary to achieve the TMDL, a BMAP for a nutrient total maximum daily load must include a wastewater treatment plan developed by each local government which addresses domestic wastewater. This plan must be done in cooperation with the DEP, the water management district for that area, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government. The bill revises requirements for such plans to include any renewable energy opportunities stemming from the production and capture of RNG.

Section 4 amends s. 403.7055, F.S., to add municipalities to the entities encouraged, with the support of the DEP, to develop regional solutions to the processing, capture and reuse or sale of methane gas from landfills and wastewater treatment facilities. The bill expands such development by counties and municipalities to include RNG, as defined in s. 366.91(2), F.S. The bill also makes technical changes to implement these revisions.

Section 5 amends s. 570.841, F.S., to revise the farm-to-fuel initiative program to provide the initiative may address the production and capture of RNG through the use of digesters and other treatment technologies at livestock farms, food production facilities, and other operations that address agricultural waste management. The bill also expands the Department of Agriculture and Consumer Affairs' (DACs) informational and educational program regarding the farm-to-fuel initiative program to allow it to include agricultural producers and the production of alternative fuels.

Sections 6 and 7 reenact ss. 403.0671 and 403.0673, F.S., relating to basin management action plan wastewater reports and the water quality improvement grant program, respectively, to incorporate changes made by the bill.

Section 8 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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public utilities will likely expand their use and sale of renewable natural gas (RNG) the costs of which will be authorized to be passed through to the utilities' customers.

C. Government Sector Impact:

The bill does not impact state expenditures or revenues. While the bill expands the responsibilities of the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Affairs (DACCS), and the Public Service Commission (PSC), any increased workload can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its analysis of the bill, the Public Service Commission (PSC) raised several concerns.

With regard to the cost recovery clause mechanisms, the bill does not grant authority to the PSC to establish rules to administer the cost recovery mechanism contemplated by the bill.⁶⁹ Currently, costs for fuel infrastructure used in the generation of electricity or in the distribution of natural gas are recovered in base rates. An alternative option for cost-recovery would be through a new or existing clause. Cost recovery clauses for gas utilities include the Purchased Gas Adjustment (PGA) and the Natural Gas Conservation Cost Recovery Clause (NGCCR). The PGA is intended to compensate for day-to-day fluctuations in the cost of gas; however, it does not account for costs related to infrastructure. The NGCCR is intended for the recovery of costs associated with conservation programs for natural gas local distribution companies. As such, these two existing clauses may not be compatible with the type of capital cost recovery addressed in the bill. Therefore, the PSC may need to establish a new cost recovery clause or

⁶⁹ Florida Public Service Commission, *Bill Analysis for SB 480*, Dec. 20, 2023 (on file with the Senate Regulated Industries Committee).

other surcharge mechanism to implement the bill,⁷⁰ which would necessitate the need for the rulemaking process.

Under the cost recovery clause for infrastructure projects, renewable natural gas (RNG) may include a mixture of natural gas and RNG. However, the bill does not provide a ratio of RNG to regular natural gas in the fuel mixture in order to determine whether an infrastructure project is eligible for cost recovery. The PSC has indicated clarification may be needed to address whether or not any injection of RNG, no matter how small, would make an infrastructure project eligible for cost recovery under the bill.

Under **Section 1** of the bill, if the PSC determines, through a cost-recovery mechanism, a projected cost is reasonable and meets the objectives of s. 366.091(1), F.S., the PSC is required to determine the project and associated costs prudent. This is a departure from the PSC practice when assessing the prudence⁷¹ of incurred costs. The PSC's analysis states this requirement appears to remove the PSC's "ability to ensure that the costs were prudently incurred by the utility when actually working on the project that was initially considered eligible for cost recovery."⁷² In addition, the PSC states the bill "would not allow substantially affected parties due process, as has been traditionally afforded, in the rate setting process for actual utility costs in a cost recovery clause mechanism."⁷³

Finally, facilities for the production of renewable natural gas are included in the types of costs eligible under the proposed cost recovery mechanism. The Supreme Court of Florida (Supreme Court) has previously decided⁷⁴ the production of natural gas was not part of the generation, transmission, or distribution of electricity, for which an investor-owned utility is allowed cost recovery.⁷⁵ The bill appears to depart from the Supreme Court's decision by allowing an investor-owned electric utility to recover costs related to the production of renewable natural gas.⁷⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.91, 373.807, 403.067, 403.7055, and 570.841.

The bill reenacts the following sections of the Florida Statutes: 403.0671(1)(a) and (3) and 403.0673(2)(e) and (f).

⁷⁰ *Id.*

⁷¹ *Id.* at 5. "Prudence is generally defined as whether a reasonable utility manager would make a similar decision, given the information that was known or should have been known at the time."

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 5. See *supra* note 27, referencing *Citizens of State v. Graham*.

⁷⁵ *Id.*

⁷⁶ *Id.*

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
