

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 354

INTRODUCER: Senator Gaetz

SUBJECT: Public Service Commission

DATE: March 12, 2025

REVISED: _____

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

I. Summary:

SB 354 makes several revisions to Florida law regarding the Florida Public Service Commission (PSC). The bill:

- Expands the number of PSC commissioners from five to seven and establishes that one commissioner be a certified public accountant and one commissioner be a chartered financial analyst;
- Removes a requirement that public utilities must receive PSC approval before making changes to their rate schedules (i.e. tariffs);
- Requires the PSC to establish a schedule for when public utilities may request changes to their rates;
- Revises the legislative findings and intent for the Florida Energy Efficiency and Conservation Act (FEECA)—the state’s demand-side management program administered by the PSC. It provides that as part of the FEECA program, the PSC is to keep the allowable rate of return on equity for utilities¹ as close as possible to the risk-free rate of return and that deviations from such be justified;
- Revises the annual FEECA report to the Legislature and Governor required pursuant to s. 366.82(10), F.S.

The bill has an effective date of July 1, 2025.

¹ Public, municipally-owned, and cooperative electricity or natural gas utility (with exemptions for smaller electricity and natural gas utilities), are subject to FEECA.

II. Present Situation:

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.² The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe and reliable manner and at fair prices.³ 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.⁴

Composition of the PSC

The PSC consists of five commissioners who serve staggered four-year terms.⁵ Commissioners are appointed by the Governor from a pool of at least three nominees—selected by the Florida Public Service Commission Nominating Council⁶—for each commissioner vacancy. These appointments are subject to confirmation by the Florida Senate during the next regular session after the vacancy occurs. If the Senate refuses to confirm or fails to consider the Governor's appointment, the council must initiate the nominating process within 30 days. Before the council nominates a candidate, it must determine that the person is competent and knowledgeable in one or more fields, including, but not limited to:

- Public affairs;
- Law;
- Economics;
- Accounting;
- Engineering;
- Finance;
- Natural resource conservation;
- Energy; or
- Another field substantially related to the duties and functions of the PSC.⁷

² Section 350.001, F.S.

³ See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Feb. 13, 2025).

⁴ Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Feb. 13, 2025).

⁵ Section 350.01, F.S.

⁶ The Florida Public Service Commission Nominating Council is a 12-member body with the responsibility to select nominees for PSC commissioners. At least one member of the council must be 60 years of age or older. Six members, including three members of the Florida House of Representatives, one of whom must be a member of the minority party, appointed by, and serve at the pleasure of, the Speaker of the House of Representatives. Six members, including three members of the Florida Senate, one of whom must be a member of the minority party, shall be appointed by and serve at the pleasure of the President of the Senate. Section 350.031(1)(a), F.S.

⁷ Section 350.031(5), F.S.

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid⁸ and may order the addition or repair of infrastructure as necessary.⁹ The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities¹⁰ (called “public utilities” under ch. 366, F.S.).¹¹ However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, and bulk power supply operations and planning.¹² Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by its governing body elected by the cooperative’s membership.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas 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 utility,” variations of 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.¹³ Florida also has 27 municipally-owned gas utilities and four special gas districts.¹⁴

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.¹⁵ These cooperatives operate in 57 of Florida’s 67 counties and have more than 2.7 million customers.¹⁶ 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 mass. Each cooperative is governed by a board of cooperative members elected by the cooperative’s membership.¹⁷

⁸ Section 366.04(5) and (6), F.S.

⁹ Section 366.05(1) and (8), F.S.

¹⁰ Section 366.05, F.S.

¹¹ Section 366.02(8), F.S.

¹² Florida Public Service Commission, *About the PSC*, *supra* note 4.

¹³ Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Mar. 8, 2025).

¹⁴ Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, pg. 1 & 13, Apr. 2024

(available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202024.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.”

¹⁵ Florida Electric Cooperative Association, *Members*, <https://feca.com/members/> (last visited Mar. 8, 2025).

¹⁶ Florida Electric Cooperative Association, *Our History*, <https://feca.com/our-history/> (last visited Mar 8, 2025).

¹⁷ *Id.*

Public Electric and Gas Utilities in Florida

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).¹⁸ 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. The Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.¹⁹

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.²⁰ If a utility believes it is earning below a reasonable level, it can petition the PSC for a change in rates.²¹

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.²²

PSC Setting of Public Utility Rates and Other Charges

Section 366.041, F.S., establishes the considerations the PSC must apply in fixing just, reasonable, and compensatory rates:

the [PSC] is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities; and energy conservation and the efficient use of alternative energy resources; provided that no public utility shall be denied a reasonable rate of return upon its rate base

Section 366.06, F.S., establishes the PSC's authority to establish and implement procedures for the fixing of and changing public utility rates. Under this section, all applications made by public utilities for changes in rates must be in writing with the PSC under the PSC's established

¹⁸ Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, *supra* note 15, at 5.

¹⁹ *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.

²⁰ PSC, *2024 Annual Report*, p. 6, (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2024.pdf>) (last visited Mar. 8, 2025).

²¹ *Id.*

²² *Id.*

rules and regulations.²³ Section 366.06(2), F.S., requires the PSC to hold a public hearing whenever it finds, upon request made, or upon its own motion, one or more of the following:

- That the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law;
- That such rates are insufficient to yield reasonable compensation for the services rendered;
- That such rates yield excessive compensation for services rendered; or
- That such service is inadequate or cannot be obtained.

During such a hearing, the PSC must determine just and reasonable rates to be thereafter charged for such service, and promulgate rules and regulations affecting equipment, facilities, and service to be thereafter installed, furnished, and used.

The PSC establishes separate rates and charges for various components of a public utility's cost of providing service to its customers. These are established through various proceedings which include:

- Base rate proceedings (also known as rate cases);
- Cost recovery clauses;
- Infrastructure surcharges;
- Interim charges.²⁴

Rate Cases

Rate cases are generally the least frequent of the PSC's rate and charge proceedings for public utilities. These wide-ranging proceedings seek to address, for a public utility:

- A reasonable rate of return on investment;
- Operating and maintenance expenses; and
- Cost of administering the public utility.²⁵

According to the PSC, in setting a reasonable rate of return, it is guided by the principles established in *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923) and *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).²⁶ In *Bluefield*, the United States Supreme Court found that:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment....A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country

²³ Section 366.06(1), F.S.

²⁴ Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, (Feb. 28, 2025).

²⁵ *Id.*

²⁶ *Id.*

on investments in other business undertakings which are attended by corresponding, risks and uncertainties.²⁷

Further, the court in *Bluefield* found that such return should be “reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.” Further, this “rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.”²⁸ Thus, for a rate of return to be non-confiscatory, it must be adjusted as broader-market circumstances change.

The Supreme Court in *Hope* found that:

The fixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests.... From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business.... By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.²⁹

In *Hope*, the Supreme Court also reiterates its previous decision in *Fed. Power Comm'n v. Nat. Gas Pipeline Co. of Am.*, 315 U.S. 575, 586 (1942) that the “[United States] Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas.” Rather, it is “not theory but the impact of the rate order which counts.”³⁰ The court cites with approval that the Federal Power Commission, in its rate-making function, uses “pragmatic adjustments” in fixing rates.³¹

In a base rate proceeding, the PSC establishes a public utility’s rate of return or cost of capital. It sets this based on:

- Return on equity (ROE);
- Long-term and short-term debt;
- Customer deposits; and
- Deferred taxes.³²

The PSC, in a rate proceeding, develops a substantial evidentiary record, which includes analysis of ROE using models generally used in the utility industry. The PSC also takes into account financial risk to the public utility when setting ROE. When the PSC approves an ROE

²⁷ *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 690-92 (1923).

²⁸ *Id.* at 692.

²⁹ *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).

³⁰ *Id.* at 602.

³¹ *Id.*

³² Florida Public Service Commission, 2025 Agency Legislative Bill Analysis for SB 354, *supra* note 24.

for a public utility, it does so within a 100-basis point rate of return (i.e. plus or minus 1 percent).³³

The rate of return actually earned by the utility is dependent on both the utility's ability to manage costs and react to other factors that may impact its operations. These factors may include:

- Changes in revenues due to the impact of weather on sales;
- New, modified, or cancelled tariffed rates or charges;
- Costs of materials, supplies, and labor; and
- Interest rates affecting the cost of debt.³⁴

Salaries and benefits paid to employees of the public utility, including its executives, are part of the PSC's review in a rate case proceeding and the PSC examines these figures in the aggregate. In determining whether such expenses are reasonable and prudent, the PSC will consider industry norms and the need to attract and retain qualified executive and non-executive utility personnel.³⁵

After the conclusion of a rate case, the PSC will monitor the earnings of a public utility through regular surveillance reports. Currently, public electric utilities with 50,000 or more customers must submit such reports monthly; those with less than 50,000 customers must do so quarterly.³⁶ For public gas utilities, with 25,000 or more customers must submit such reports monthly; those with less than 25,000 customers must do so quarterly.³⁷ If these reports show a public utility is earning outside of its approved ROE range, the PSC will inquire with the utility and take corrective action if needed.³⁸

Establishment of other Bases of Public Utility Customer Charges

Outside of rate cases, the PSC also has other processes for revising, or creating, utility rates and charges. These proceedings include cost recovery clause proceedings and interim charges.

Cost recovery clause proceedings allow public utilities to recover variable, volatile, or legislatively mandated costs.³⁹ For public electric utilities, the PSC holds annual hearings to allow the utilities to recover expenditures on:

- Fuel and purchased power costs and capacity costs;
- Environmental compliance costs pursuant to s. 366.8255, F.S.;
- Storm protection plan costs pursuant to s. 366.96, F.S.;
- Nuclear costs pursuant to s. 366.93, F.S.;⁴⁰ and
- Energy conservation program costs pursuant to s. 366.80 through 366.83, F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Fla. Admin Code R. 25-6.1352.

³⁷ Fla. Admin Code R. 25-7.1352.

³⁸ Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 24.

³⁹ *Id.*

⁴⁰ The PSC has not conducted a nuclear cost recovery proceeding since 2018 as no public utility has petitioned for recovery under this clause since that year.

For public natural gas utilities, the PSC holds annual hearings to allow the utilities to recover expenditures on:

- Purchased natural gas costs;
- Energy conservation costs pursuant to s. 366.80 through 366.83, F.S.; and
- Natural gas infrastructure relocation costs pursuant to s. 366.99, F.S.⁴¹

Outside of cost recovery clause proceedings, the PSC also provides a process for establishing interim charges to quickly recover estimated storm-recovery related expenses. These interim charges are time-limited and are subject to a final true-up proceeding once final costs can be determined for a particular storm or series of storms.⁴²

The PSC does not establish ROE or overall rates of returns in recovery clause and interim charge proceedings, as these focused rate proceedings are limited in scope. Rather, ROE and overall rates of return are set during rate cases, as those proceedings are substantially broader in scope.⁴³

Tariffs

A public utility's tariffs are a series of documents, approved by the PSC, that provide the utility's rates, terms, and conditions for service. These tariffs also include standardized forms for the utility's service offerings and its standard contracts and agreements. Tariffs are generally revised, as necessary, after a PSC-approved change in a utility's rates or charges and are generally part of any proceeding revising rates or charges. Utilities may also request a tariff change if circumstances warrant doing so. However, the PSC does not establish ROE or overall rates of return in reviewing stand alone requests to approve a new, modified, or canceled tariff.⁴⁴

Florida Energy Efficiency and Conservation Act

Sections 366.80 through 366.83, and s. 403.519, F.S., are collectively known as the Florida Energy Efficiency and Conservation Act (FEECA). The purpose of FEECA is to have the PSC require each public, municipally-owned, and cooperative electricity or natural gas utility (with exemptions for smaller electricity and natural gas utilities)⁴⁵ to develop plans and implement programs for increasing energy efficiency and conservation and demand-side renewable energy systems within its service area (subject to PSC approval). The goals of this demand-side management (DSM) program are:

- To increase the efficiency of energy consumption and increase the development of demand-side renewable energy systems, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels;
- To reduce and control the growth rates of electric consumption;
- To reduce the growth rates of weather-sensitive peak demand; and

⁴¹ Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 24.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 24.

⁴⁵ FEECA does specifically exempt natural gas utilities with an annual sales volume of less than 100 million therms and electric utilities that, as of July 1, 1993, provide less than 2,000 gigawatt hours of electricity annually to end-use customers.

- To encourage the development of demand-side renewable energy resources.⁴⁶

Section 366.82(2), F.S., authorizes the PSC to allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base as part of FEECA DSM programs. Sections 366.82(2) and (6), F.S., require the PSC to establish goals for each utility subject to FEECA and update these goals at least every five years. Public utilities subject to FEECA may seek PSC cost recovery approval for DSM programs approved under FEECA.

According to the PSC, energy conservation and DSM are accomplished through a “multi-pronged approach that includes energy efficiency requirements in building codes for new construction, federal appliance efficiency standards, utility programs, and consumer education.”⁴⁷ These DSM programs, which are paid for by all customers, “are aimed at increasing efficiency levels above building codes and appliance efficiency standards.”

Section 366.82(10), F.S., requires the PSC to demand periodic reports from each utility subject to FEECA. Using these reports, the PSC must file an annual report to the Legislature and Governor of the FEECA goals it has adopted and its progress towards those goals.

PSC Public Records Exemptions

Section 350.121, F.S., protects from public disclosure records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics obtained by the PSC through an inquiry. Much material is confidential and exempt from public disclosure pursuant to s. 119.07(1), F.S.

In addition, ss. 366.093, 367.156, and 368.108, F.S., provide processes for public utilities, water and wastewater utilities, and gas transmission and distribution companies, respectively, to protect proprietary confidential business information from public disclosure, provided pursuant to discovery in a PSC docket or proceeding. Such proprietary confidential business information is confidential and exempt from public disclosure pursuant to s. 119.07(1), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 350.01(1), F.S., to expand the membership of the Florida Public Service Commission (PSC) from five to seven commissioners. It also adds a requirement that one commissioner be a certified public accountant and one commissioner be a chartered financial analyst.⁴⁸

Section 2 of the bill amends s. 366.06, F.S., to remove a requirement that public utilities must receive PSC approval before making changes to their rate schedules (i.e. tariffs). The section also requires the PSC to establish a schedule for when public utilities may request changes to their rates.

⁴⁶ Section 366.82(2), F.S.

⁴⁷ Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 24.

⁴⁸ The bill does not specify whether one commissioner holding both a CFA and CPA would satisfy this requirement.

Section 3 of the bill amends s. 366.81, F.S., to revise the legislative findings and intent for the Florida Energy Efficiency and Conservation Act (FEECA)—the state’s demand-side management program. It provides that, as part of the FEECA program, the PSC is to keep the allowable rate of return on equity for utilities⁴⁹ as close as possible to the risk-free rate of return. Upward deviations away from the risk-free rate must be specifically justified by the utility seeking a tariff modification.

Section 4 of the bill amends s. 366.82(10), F.S., to revise the annual FEECA report to the Legislature and Governor required pursuant to that subsection. In addition, providing the FEECA goals the PSC has adopted and its progress towards those goals as required currently in statute, the bill requires the report to contain all of the following:

- An investigation of the contemporary economic analysis related to rate changes in Florida.
- An analysis of potential cost impacts to utility customers of Florida if excess returns on equity have occurred, and potential cost savings, if any, to customers if the excess returns to equity have not occurred at a significant rate.
- An analysis of alternative rate-of-return scenarios, including an investigation of the rationale for why such scenarios were not chosen in the past, and an investigation of the applicability of such scenarios for the future.
- An assessment of long-term impacts and economic repercussions of rising rates of regulated returns on equity to utilities and their customers in the future.
- A summary detailing the compensation of the executive officers of all public utilities servicing this state, or the executive officers of their affiliated companies or parent company, including, but not limited to, salaries, benefits, stock options, bonuses, stock buybacks, and other taxable payments, expressed both as dollar amounts and as a percentage of the entity’s total revenue.
 - This summary must include the profits and losses of each entity as reported in its financial statements and highlight any compensation exceeding the industry average.
 - The office⁵⁰ shall also include in the report any rationale provided by the insurer justifying compensation exceeding the industry average and, for each insurer, an explanation of how specific data gathered during the creation of the report informed the office’s decisions on that insurer’s rate change requests.
- Benchmarking, comparing public utilities servicing Florida with public utilities servicing other states, including commentary on all findings.

Sections 5 through 7 of the bill reenact ss. 366.8255(4), 366.8260(2)(b), and 366.95(2)(c), F.S., to incorporate the amendments made to s. 366.06, F.S.

Section 8 of the bill reenacts s. 553.975, F.S., to incorporate the amendments made to s. 366.82, F.S.

Section 9 of the bill provides for an effective date of July 1, 2025.

⁴⁹ Public, municipally-owned, and cooperative electricity or natural gas utility (with exemptions for smaller electricity and natural gas utilities), are subject to FEECA. However, the PSC does not fully regulate municipal and cooperative electric and gas utilities and does not currently have regulatory authority over these types of utility’s rates and revenues.

⁵⁰ “Office” is not defined for ch. 366.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate's requirements do not apply to laws having an insignificant impact,⁵¹ which is \$2.37 million or less for Fiscal Year 2024-2025.⁵²

The Revenue Estimating Conference has not reviewed SB 354. Staff estimates an indeterminate impact on municipal utility revenues as the bill may impact the return on equity for at least some municipal and cooperative gas and electric utilities (see Section VII Related Issues below). Therefore, the mandate provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 2 of the bill requires the PSC to establish a schedule for when public utilities may request changes to their rates. If such a schedule required a utility to continue to “underearn” while it waits for its next opportunity to revise its rates, the PSC has stated that this could result in a claim for a regulatory taking.⁵³

⁵¹ FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 5, 2025).

⁵² Based on the Demographic Estimating Conference's estimated population adopted on February 6, 2025. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/index.cfm> (last visited Mar. 5, 2025).

⁵³ Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 24.

In addition, the United States Supreme Court decision in *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 678 (1923) states that “rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.”⁵⁴ The *Bluefield* decision provides that this compensation must not only be sufficient; but it also suggests that the collection of this compensation be at the time service is rendered to the customer. Thus, requiring a utility to wait for a rate change “window” may violate the court’s decision in *Bluefield*.

The United States Supreme Court decision in *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) found that utility revenue must be sufficient “not only for operating expenses but also for the capital costs of the business.” Further, the return on equity “should be commensurate with returns on investments in other enterprises having corresponding risks,” and “sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.”⁵⁵

Thus, based on the premises in *Bluefield* and *Hope*, a limitation on a utility to respond in a sufficiently timely manner to an “underearning” situation may negatively impact the financial integrity of that utility and be unconstitutionally confiscatory.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 354 would have an indeterminate impact on gas and electric utility rates, the raising or lowering of which may have a significant financial impact on gas and electric utility ratepayers and utilities in the state.

C. Government Sector Impact:

To implement Section 1 of the bill, expanding the number of PSC commissioners from five to seven members, the PSC has indicated that each new commissioner would require two further full-time equivalent positions (FTEs) as support staff. This would bring the total number of additional FTEs for this provision to six—inclusive of the two new commissioners. The PSC estimates a total annual recurring cost for these FTEs of \$762,353.

⁵⁴ The Florida Supreme Court also cites to this finding in *United Tel. Co. of Fla. v. Mayo*, 345 So. 2d 648, 653 (Fla. 1977) and *Keystone Water Co., Inc. v. Bevis*, 313 So. 2d 724, 725 (Fla. 1975).

⁵⁵ This provision is also cited by the Florida Supreme Court in *Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905, 907 (Fla. 2023), *United Tel. Co. of Florida v. Mann*, 403 So. 2d 962, 966 (Fla. 1981), and *Tamaron Homeowners Ass'n, Inc. v. Tamaron Utilities, Inc.*, 460 So. 2d 347, 353 (Fla. 1984).

In addition, the PSC has indicated that renovations to their current building (the Gerald Gunter building) would be needed to accommodate these additional commissioners and staff. The PSC's hearing room at the Betty Easley Conference Center would also require renovations to accommodate two new commissioners. The PSC estimates that the total non-recurring expense for these renovations would be between \$1-2 million.⁵⁶

VI. Technical Deficiencies:

- Lines 38 and 39 of the bill potentially allow public utilities to revise their rate schedules (i.e. tariffs) without the approval of the PSC. This would be a significant departure from Florida's regulatory scheme over public utilities and would likely require significant, wide-ranging revisions to ch. 366, F.S. However, given the overall context of the bill, this provision may have been included in error.
- Lines 142 through 147 of the bill use the terms "office" and "insurer." This appears to be an error as "office" is not defined for ch. 366, F.S., and the chapter does not involve the regulation of the insurance industry.

VII. Related Issues:

- Section 2 of the bill requires the PSC to establish a schedule for when public utilities may request changes to their rates. It is unclear whether this provision is for any rate change (i.e. rate cases, cost recovery clause proceedings, and interim rates) or if this provision is for rate cases only.
 - Currently, public utilities, depending on their size, will submit monthly or quarterly earnings surveillance reports. If these reports show a public utility is earning outside of its approved ROE range, the PSC will inquire with the utility and take corrective action if needed. This provision may limit the PSC's ability to do so.
 - This provision may also conflict with s. 366.06(2), F.S., which requires the PSC to hold a public hearing whenever it finds, upon request made, or upon its own motion:
 - That the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law;
 - That such rates are insufficient to yield reasonable compensation for the services rendered; or
 - That such rates yield excessive compensation for services rendered.
- Sections 3 and 4 of the bill are currently being placed within the "Florida Energy Efficiency and Conservation Act," which is the demand-side management program for public, municipal, and cooperative electric and gas utilities. This may be the incorrect place to add these provisions as they appear to relate to rate-setting, generally, for public electric and gas utilities. If this is the intent, the current placement could lead to misinterpretations on the applicability of these provisions to overall public utility rate setting. As currently written, section 3 of the bill could also be interpreted as requiring the PSC to regulate the return on equity for at least some municipal and cooperative gas and electric utilities—the PSC currently does not do so and to do so would likely necessitate several additional revisions to ch. 366, F.S.

⁵⁶ Florida Public Service Commission, 2025 Agency Legislative Bill Analysis for SB 354, *supra* note 24.

- Lines 133-147 of the bill require the PSC to provide the Governor and Legislature with a report that, in part, could require the public disclosure of compensation of the executive officers of all public utilities servicing this state, or the executive officers of their affiliated companies or parent company. According to the PSC, much of this information would likely be considered information necessitating confidential treatment by the PSC under Section 366.093, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 350.01, 366.06, 366.81, and 366.82.

This bill reenacts the following sections of the Florida Statutes: 366.8255, 366.8260, 366.95, and 553.975.

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.