

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

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BILL: CS/SB 354

INTRODUCER: Regulated Industries Committee and Senator Gaetz

SUBJECT: Public Service Commission

DATE: March 13, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	<b>Fav/CS</b>
2.			AEG	
3.			FP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/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.
- Requires the Public Service Commission (PSC), when issuing orders, to provide adequate support for their conclusions.
- For PSC orders affecting substantial interests, when issuing an order accepting or denying a settlement agreement, the PSC must provide reasoned explanations for its decision, with citations to specific facts and factors it relied upon, and a discussion of major elements of the settlement.
- Requires the PSC is to keep the allowable rate of return on equity for public utilities as close as possible to the risk-free rate of return and that deviations from such be justified.
- Requires the PSC to establish a schedule for when public utilities may request changes to their rates.
- Requires the PSC to submit an annual report on public utility rates which includes benchmarking and analysis on economics, cost impacts, return on equity, and executive compensation.
- Amends the procedure and requirements for the PSC to approve public utility storm protection plans.

- Creates new requirements for nonprofit water and wastewater utilities to be exempt from PSC jurisdiction over rates and service.
  - Creates a process for the PSC to review complaints regarding whether a nonprofit water or wastewater utility meets these requirements.
  - Creates a process for a utility that does not meet these requirements to be brought under PSC jurisdiction for a minimum of 24 months.

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

## II. Present Situation:

### Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.<sup>1</sup> The role of the PSC is to ensure Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe and reliable manner and at fair prices.<sup>2</sup> 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.<sup>3</sup>

### Composition of the PSC

The PSC consists of five commissioners who serve staggered four-year terms.<sup>4</sup> Commissioners are appointed by the Governor from a pool of at least three nominees—selected by the Florida Public Service Commission Nominating Council<sup>5</sup>—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;

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

<sup>2</sup> See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Feb. 13, 2025).

<sup>3</sup> Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Feb. 13, 2025).

<sup>4</sup> Section 350.01, F.S.

<sup>5</sup> 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.

- Energy; or
- Another field substantially related to the duties and functions of the PSC.<sup>6</sup>

### **Electric and Gas Utilities**

The PSC monitors the safety and reliability of the electric power grid<sup>7</sup> and may order the addition or repair of infrastructure as necessary.<sup>8</sup> The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities<sup>9</sup> (called “public utilities” under ch. 366, F.S.).<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Florida also has 27 municipally-owned gas utilities and four special gas districts.<sup>13</sup>

### ***Rural Electric Cooperatives in Florida***

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives.<sup>14</sup> These cooperatives operate in 57 of Florida’s 67 counties and have more than 2.7 million customers.<sup>15</sup> Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida’s total electric utility customers, but their service territory covers 60 percent of Florida’s total land

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<sup>6</sup> Section 350.031(5), F.S.

<sup>7</sup> Section 366.04(5) and (6), F.S.

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

<sup>9</sup> Section 366.05, F.S.

<sup>10</sup> Section 366.02(8), F.S.

<sup>11</sup> Florida Public Service Commission, *About the PSC*, *supra* note 3.

<sup>12</sup> Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Mar. 8, 2025).

<sup>13</sup> 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.”

<sup>14</sup> Florida Electric Cooperative Association, *Members*, <https://feca.com/members/> (last visited Mar. 8, 2025).

<sup>15</sup> Florida Electric Cooperative Association, *Our History*, <https://feca.com/our-history/> (last visited Mar 8, 2025).

mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.<sup>16</sup>

### ***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).<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> If a utility believes it is earning below a reasonable level, it can petition the PSC for a change in rates.<sup>20</sup>

Section 366.041(2), F.S., requires public utilities to provide adequate service to customers. As compensation for fulfilling that obligation, s. 366.06, F.S., requires the PSC to allow the IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.<sup>21</sup>

### ***Water and Wastewater Utilities***

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." In 2023, the PSC had jurisdiction over 146 investor-owned water and/or waste-water utilities in 38 of Florida's 67 counties.<sup>22</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, *supra* note 14, at 5.

<sup>18</sup> *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.

<sup>19</sup> 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).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202024.pdf> (last visited Mar. 5, 2025).

Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided in the chapter). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide “service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation,” and others.<sup>23</sup> The PSC also does not regulate utilities in counties that have exempted themselves from PSC regulation pursuant to s. 367.171, F.S. However, under s. 367.171(7), F.S., the PSC retains exclusive jurisdiction over all utility systems whose service crosses county boundaries, except for utility systems that are subject to interlocal utility agreements.

### ***Municipal Water and Sewer Utilities in Florida***

A municipality<sup>24</sup> may establish a utility by resolution or ordinance under s. 180.03, F.S. A municipality may establish a service area within its municipal boundary or within five miles of its corporate limits of the municipality.<sup>25</sup>

Under s. 180.19, F.S., a municipality may permit another municipality and the owners or association of owners of lands outside of its corporate limits or within another municipality’s corporate limits to connect to its utilities upon such terms and conditions as may be agreed upon between the municipalities.

The PSC does not have jurisdiction over municipal water and sewer utilities, and as such, has no authority over the rates for such utilities. Municipally-owned water and sewer utility rates and revenues are regulated by their respective local governments, sometimes through a utility board or commission.

### **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

<sup>23</sup> Section 367.022, F.S.

<sup>24</sup> Defined by s. 180.01, F.S., “as any city, town, or village duly incorporated under the laws of the state.”

<sup>25</sup> Section 180.02, F.S., *see also* s. 180.06, F.S.

rules and regulations.<sup>26</sup> 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.<sup>27</sup>

### ***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.<sup>28</sup>

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).<sup>29</sup> 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

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<sup>26</sup> Section 366.06(1), F.S.

<sup>27</sup> Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, (Feb. 28, 2025).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

on investments in other business undertakings which are attended by corresponding, risks and uncertainties.<sup>30</sup>

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.”<sup>31</sup> 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.<sup>32</sup>

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.”<sup>33</sup> The court cites with approval that the Federal Power Commission, in its rate-making function, uses “pragmatic adjustments” in fixing rates.<sup>34</sup>

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.<sup>35</sup>

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

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<sup>30</sup> *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 690-92 (1923).

<sup>31</sup> *Id.* at 692.

<sup>32</sup> *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).

<sup>33</sup> *Id.* at 602.

<sup>34</sup> *Id.*

<sup>35</sup> Florida Public Service Commission, 2025 Agency Legislative Bill Analysis for SB 354, *supra* note 27.

for a public utility, it does so within a 100-basis point rate of return (i.e. plus or minus 1 percent).<sup>36</sup>

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.<sup>37</sup>

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.<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

### ***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.<sup>42</sup> 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.;<sup>43</sup> and
- Energy conservation program costs pursuant to s. 366.80 through 366.83, F.S.

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Fla. Admin Code R. 25-6.1352.

<sup>40</sup> Fla. Admin Code R. 25-7.1352.

<sup>41</sup> Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 27.

<sup>42</sup> *Id.*

<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

### ***Storm Protection Plans***

Section 366.96 (ch. 2019-158, Laws of Fla.), F.S., requires public electric utilities to file with the PSC “a transmission and distribution storm protection plan (SPP) that covers the immediate 10-year planning period. Each plan must explain the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability.”<sup>47</sup> Public electric utilities file, for PSC-review and approval, an updated SPP every three years.<sup>48</sup> In its review of SPPs, section 366.96(4), F.S., requires the PSC to consider:

- The extent to which the SPP is expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability, including whether the SPP prioritizes areas of lower reliability performance;
- The extent to which storm protection of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the utility’s service territory, including, but not limited to, flood zones and rural areas;
- The estimated costs and benefits of the SPP to the utility and its customers of making the improvements proposed in the plan; and
- The estimated annual rate impact resulting from implementation of the SPP during the first three years addressed in the plan.

Section 366.96(7), F.S., also includes an annual cost-recovery clause mechanism that allows these utilities to recover transmission and distribution storm protection plan costs through a charge separate and apart from that utility’s base rates. This annual recovery is called the SPP cost recovery clause (SPPCRC) docket. Once a utility’s SPP has been approved, the utility may proceed with implementing the plan. Once the PSC determines that SPP costs were prudently incurred (and actions taken to implement the approved SPP cannot be taken as evidence of

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<sup>44</sup> Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 27.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Section 366.96(3), F.S.

<sup>48</sup> Section 366.96(6), F.S.

imprudence), SPP implementation costs are not subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility.

A public utility may recover SPP capital expenditures by recovering the annual depreciation on the cost, calculated at the public utility's current approved depreciation rates, and a return on the undepreciated balance of the costs calculated at the public utility's weighted average cost of capital using the last approved return on equity.<sup>49</sup>

***Florida Supreme Court Interpretation of s. 366.96, F.S.: Citizens of the State of Florida v. Andrew Giles Fay***

In 2022, the PSC approved proposals from Florida's four public electric utilities for their SPPs for the 2022-2032 period.<sup>50</sup> Florida's Office of Public Counsel (OPC)<sup>51</sup> challenged the PSC orders at the Florida Supreme Court.<sup>52</sup> The OPC argued that the PSC erred in its interpretation of the statute and impaired the fairness of the proceedings below by granting the utilities' motions to strike portions of expert testimony regarding prudence review of SPP costs.<sup>53</sup> The Office of Public Counsel (OPC) asserted that the PSC erred in its decision by:

- Determining that the PSC was not required to conduct a prudence review of the public utilities' proposed program and project investments in SPPs; and
- Misinterpreting the PSC's SPP Rule and refusing to require FPL and FPUC to provide an estimate of the reduction in outage times and restoration costs that would result from their proposed SPPs, or a comparison of the estimated costs and benefits of their proposed SPPs, both of which were required by the PSC's SPP Rule.<sup>54</sup>

In its opinion in the case, issued on November 14, 2024, the Florida Supreme Court found that the PSC had correctly reviewed and approved the utilities' SPP proposals after the PSC concluded that the proposed SPPs were in the public interest. Also, that the PSC did not abuse its discretion in striking the expert testimony at issue.<sup>55</sup> In making this finding, the Supreme Court found that approval of SPPs only requires that the PSC find that the project is in the public interest. The PSC does not need to find that the benefits of a proposed SPP outweigh its costs<sup>56</sup> and the PSC's review of a proposed SPP is not based on the prudence of the SPP.<sup>57</sup> However, an estimated cost/benefit analysis is still part of the four factors the PSC is to consider when approving an SPP.<sup>58</sup> A prudence review is only required when a utility seeks to recover for actual expenditures in implementing an SPP (as part of the SPPCRC docket).<sup>59</sup>

<sup>49</sup> Section 366.96(9), F.S.

<sup>50</sup> *Citizens of State v. Fay*, 396 So. 3d 549, 553 (Fla. 2024).

<sup>51</sup> The Public Counsel, appointed the Florida Senate and House of Representatives joint Committee on Public Counsel Oversight, represents the general public in proceedings before the PSC and before counties that regulate water and wastewater utilities. Sections 350.61 and 350.611, F.S.

<sup>52</sup> Actions seeking judicial review of PSC decisions regarding rates or service of utilities providing electric or gas service are brought directly to the Florida Supreme Court under s. 366.10, F.S.

<sup>53</sup> *Citizens*, *supra* note 50, at 560.

<sup>54</sup> *Id* at 554.

<sup>55</sup> *Id* at 560-61.

<sup>56</sup> *Id* at 555.

<sup>57</sup> *Id* at 558.

<sup>58</sup> *Id* at 557-60.

<sup>59</sup> *Id* at 556-57.

This review of prudence with the SPPCRC is distinct from the PSC’s normal rate setting procedure. Rather, the Supreme Court found, in interpreting s. 366.96(7), F.S., that if, “any costs ultimately incurred [by the utility] exceed the relevant component of forecasted benefit [as proposed in the SPP and approved by the PSC], that deficiency will not constitute evidence of imprudence by the utility.”<sup>60</sup>

### ***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.<sup>61</sup>

### **Decisions of the PSC: *Floridians Against Increased Rates, Inc. v. Clark***

*Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905 (Fla. 2023), involved an appeal of a rate case proceeding for FPL. This rate case, which involved seven intervening parties, was originally resolved via settlement at the PSC in January 2022. The wide-ranging settlement resolved a number of issues including:

- Incremental increases in rates for certain solar projects;
- Equity-to-debt-ratio authorization;
- Establishing an allowed ROE;
- Base rate charges;
- Allowable investment in power generation facilities, transmission and distribution systems, and several pilot programs for electric vehicles (EV) and renewable energy;
- Authorization to expand FPL’s SolarTogether program;<sup>62</sup>
- Depreciation timelines;
- Incremental rate changes for storm impacts;
- Savings from an expanded version of its asset optimization program; and
- Recovery of certain retired assets.<sup>63</sup>

At the PSC hearing on the settlement, Floridians Against Increased Rates, Inc. (FAIR), who were not signatories to the settlement, opposed the settlement based assertions that it was not in the public interest and would result in unreasonably high rates. Signatories to the settlement made a wide-ranging argument to the PSC as to how the settlement was in the public interest.<sup>64</sup> The PSC concluded that the settlement “provides a reasonable resolution of all issues raised,

<sup>60</sup> *Id* at 556.

<sup>61</sup> Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 27.

<sup>62</sup> FPL’ SolarTogether program allocates newly built solar capacity to different customer classes and allows customers to subscribe to a portion of this capacity in exchange for a credit funded by the general body of ratepayers.

<sup>63</sup> *Floridians Against Increased Rates, Inc. v. Clark*, 371 So. 3d 905, 906–08 (Fla. 2023)

<sup>64</sup> *Id* at 908-09.

establishes rates that are fair, just, and reasonable, and is in the public interest,” and approved the settlement. The court noted, in discussing the PSC’s order approving the settlement, that “the PSC’s reasoning about whether all this is in the public interest covers less than two pages of the over 70,000 in the record we have for review.” FAIR appealed the PSC’s decision to the Florida Supreme Court.

In its review of the case, the court noted that PSC’s decisions arrive to the court “with the presumption that they are reasonable and just,” and that it should not “upset the carefully constructed constitutional and statutory process applicable here by ourselves supplying a basis for the [PSC] action that the [PSC], with its expertise, did not offer.” To do so, would, in essence, propel “the court into the domain which [the Legislature] has set aside exclusively for the administrative agency.”<sup>65</sup>

However, the court noted that it must still endeavor to determine whether the PSC has exercised its discretion within the range delegated to it by the Legislature.<sup>66</sup> In order to do so, the court must look to the reasons given by the PSC for its decision.<sup>67</sup> Thus, the PSC must give the court “something to work with: a decision that is reasoned and articulated enough to allow us to assess on what basis it has concluded that the settlement agreement is in the public interest and results in rates that are fair, just, and reasonable”<sup>68</sup>

While the PSC is not required to resolve every issue independently, it must “discuss...the major elements of the settlement agreement and explain...why it [is] in the public interest.”<sup>69</sup> This includes “considering the competing arguments made by the parties below in light of the factors relevant to the [PSC’s] decision, and supplying, given these arguments and factors, an explanation of how the evidence presented led to its decision.” Essentially, it is not enough for the PSC’s decision to be simply reasoned, it must be reasonably explained.<sup>70</sup>

In this case, the court found that the PSC failed to reasonably explain its decision. In remanding the case back to the PSC, the court noted that “after hearing from 60 witnesses and receiving 635 exhibits into evidence, the [PSC] produced an explanation of its public interest determination that spanned little more than a page,” and the order provided nothing more than “conclusory statements about the virtues of the settlement agreement, not the reasoned explanation required for our review.”<sup>71</sup>

### **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

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<sup>65</sup> *Id* at 911.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id* at 912. *Citing to Sierra Club v. Brown*, 243 So. 3d 903, 913 (Fla. 2018).

<sup>70</sup> *Id.*

<sup>71</sup> *Id* at 913.

exemptions for smaller electricity and natural gas utilities)<sup>72</sup> 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
- To encourage the development of demand-side renewable energy resources.<sup>73</sup>

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.”<sup>74</sup> 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.

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<sup>72</sup> 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.

<sup>73</sup> Section 366.82(2), F.S.

<sup>74</sup> Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 27.

### 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.<sup>75</sup>

**Section 2** of the bill creates s. 350.129, F.S., to require that, when the PSC issues an order, it must do so with adequate support for its conclusions—this would include citing to specific facts and factors upon which those conclusions are based. While the bill maintains current law that the PSC may continue to make conclusions in the public interest, it must specify its rationale in doing so. In addition, when the PSC accepts or denies a settlement agreement (in its orders affecting substantial interests under s. 120.569, F.S.), it must provide a reasoned explanation, with citation to specific facts and factors upon which it relied, for doing so. The commission almost must provide in its order regarding such settlements, a discussion of the major elements of the settlement and a rationale for its conclusions.

**Section 3** of the bill amends s. 366.06, F.S., to provide that PSC is to keep the allowable rate of return on equity for public utilities 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 public utility seeking a tariff modification.

**Section 4** of the bill amends s. 366.07, F.S., to requires the PSC to establish a schedule for when public utilities may request changes to their rates.

**Section 5** of the bill creates s. 366.077, F.S., file an annual report on utility rates with the Governor and Legislature. 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 return on equity models presented by public utilities and used by the commission to determine approved returns on equity for public utilities in this state. This analysis must:
  - Compare models used by federal agencies and other state utility regulatory bodies with those used by the commission;
  - Determine whether the models used are generally financially logical; and
  - Determine whether the models used comport with generally accepted economic theory both inside and outside of the utility industry.
- 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

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<sup>75</sup> The bill does not specify whether one commissioner holding both a CFA and CPA would satisfy this requirement.

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 commission must also include any rationale provided by a public utility justifying compensation exceeding the industry average and, for each public utility, an explanation as to how specific data gathered during the compiling of information informed the commission's decisions on the public utility's rate change requests.
- Benchmarking, comparing public utilities servicing Florida with public utilities servicing other states, including commentary on all findings.

**Section 6** of the bill amends s. 366.96, F.S., regarding storm protection plans (SPP) and storm protection plan cost recovery (SPPCRC). The bill requires that, for any improvement included in an SPP, such improvement must have forecasted benefit exceeding its forecasted cost. The bill also adds a new requirement that the PSC, consider, in addition to the existing considerations listed in current law in s. 366.96(4), F.S., the following in reviewing and approving SPPs:

- Whether the cost of implementing the SPP is reasonable and prudent given the expected benefit, and
- The performance of previously approved SPP improvements in reducing outage times and storm restoration costs.

The bill also deletes an obsolete provision in s. 366.96, F.S., requiring the PSC to adopt rules by a certain date.

**Section 10** of the bill requires the PSC to submit a rule for adoption implementing Section 6 of the bill as soon as practicable, but not later than October 31, 2025.

**Section 7** amends s. 367.021, F.S., relating to definitions for the state's water and wastewater system law, by adding definitions for:

- "Governing board" to mean a board of directors, nonprofit board, board of trustees, corporate governing body as established in the in the bylaws or articles of incorporation of an organization, or similar body overseeing the operations of an organization; and
- "Qualifying nonprofit organization" to mean an organization that meets all of the following criteria:
  - It is a nonprofit corporation, association, or cooperative providing service solely to members who own and control it.
  - It conducts open and fair elections to its governing board at an annual meeting of its members. The term of any one governing board member may not exceed 36 months; however, a candidate may run for reelection without any limit on the number of terms they may serve.
  - At least 75 percent of the governing board of the organization is made up of the organization's members.
  - The organization provides a mechanism for members of the organization to directly nominate candidates directly for the governing board. At a minimum, any member or candidate who obtains the signatures of at least 1 percent of members of the organization on a petition for nomination for a particular board position or election must, as

- established by that organization's bylaws, be allowed to stand for election in the same manner as if that member had been nominated by the existing governing board, a committee on nominations established by the board, or other nomination mechanism or procedure as established by the organization's governing documents. Such candidate must meet all other requirements established by law or by the organization's governing documents to serve on the board.
- The organization is not subject to disqualification pursuant to s. 367.24 (described in Section 9 below).

**Section 8** amends s. 367.022, F.S., repeals an exemption from the jurisdiction of the PSC—and the provisions of ch. 367, F.S., except as otherwise provided in the chapter—from nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives. The exemption is replaced by an exemption for qualifying nonprofit organizations as defined in s. 367.021, F.S., above.

**Section 9** creates s. 367.24, F.S., to create a process for challenges as to whether an organization qualifies as a qualifying nonprofit organization under ch. 367. It provides that the PSC, may, upon its own motion or petition by any person, initiate a proceeding to determine whether an organization meets the definition of a qualifying nonprofit organization. Before a person may file such a petition, they must first notify the organization in question of their intention to file such a petition and give the organization 90 days to respond if they so choose.<sup>76</sup> After the expiration of those 90 days, if the person is dissatisfied with the response of the organization's governing body, such person may file a petition to initiate the commission proceeding provided for in this subsection. In filing such a petition, the person must, at minimum, include the notice, the organization's response (if provided), and make specific allegations regarding the manner in which the organization does not meet the definition of a qualifying nonprofit organization.

In making a determining whether an organization meets the definition of a qualifying nonprofit organization, the PSC must consider:

- The governing documents of the organization;
- The conduct of the organization;
- The conduct of the governing board of the organization; and
- Any other relevant information provided by a party to the proceeding.

If the PSC finds that an organization does not meet the definition of a qualifying nonprofit organization, it must provide the organization with the reasoning for its determination and 90 days to address the PSC's determination. If after the expiration of this 90-day period, the PSC maintains its determination, the organization will be no longer exempt from the PSC's jurisdiction and will be regulated as a utility under ch. 367 for a minimum of 24 months until the organization may re-apply for qualifying nonprofit organization status.

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<sup>76</sup> The notification must be 1) in writing, 2) Be delivered by certified mail, return receipt requested, to the name and mailing address provided by the organization for customer service or other external inquiries or be served upon organization's registered agent, if the organization has one; and 3) make specific allegations regarding the manner in which the organization does not meet the definition of a qualifying nonprofit organization.



Upon an organization becoming a regulated utility in this manner, the PSC shall follow the procedures provided in current s. 367.171(2). Such new utility shall be treated by the PSC as if it were an established utility in a county newly entering into the commission's jurisdiction. The bill also requires the PSC to adopt rules to implement and administer this section by July 1, 2026.

**Sections 11 through 13** amend ss. 288.0655, 377.814, and 624.105, F.S., to conform cross-references to amendments made by the bill.

**Section 14** of the bill provides for an effective date of July 1, 2025.

#### 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:

Section 4 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.<sup>77</sup>

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.”<sup>78</sup> 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*.

<sup>77</sup> Florida Public Service Commission, 2025 Agency Legislative Bill Analysis for SB 354, *supra* note 27.

<sup>78</sup> 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).

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.”<sup>79</sup>

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:

CS/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.

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.<sup>80</sup>

## VI. Technical Deficiencies:

None.

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<sup>79</sup> 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).

<sup>80</sup> Florida Public Service Commission, *2025 Agency Legislative Bill Analysis for SB 354*, *supra* note 27.

## VII. Related Issues:

- Section 4 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.
- Section 5 of the bill requires 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, 366.07, 366.96, 367.021, 367.022, 288.0655, 377.814, and 624.105.

This bill creates the following sections of the Florida Statutes: 350.129, 366.077, and 367.024,

## 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 Regulated Industries on March 12, 2025:**

The committee substitute:

- Addresses technical issues in the bill and makes technical changes.
- Requires the Public Service Commission (PSC), when issuing orders, to contain adequate support for their conclusions.
- For PSC orders affecting substantial interests pursuant to s. 120.569, F.S., when issuing an order accepting or denying a settlement agreement, the PSC must provide reasoned explanations for its decision, with citations to specific facts and factors it relied upon, and a discussion of major elements of the settlement.

- Moves section 3 of the bill, regarding limitations on public utility return on equity, out of the state's demand-side energy management law and places it in existing s. 366.06, F.S. (regarding the procedure for fixing and changing public utility rates).
- Moves section 4 of the bill, regarding a report on public utility rates, out of the state's demand-side energy management law and places it in its own section. The substitute amendment also revises a component of the report.
- Amends the procedure and requirements for the PSC to approve public utility storm protection plans under s. 366.96, F.S.
- Creates new requirements for nonprofit water and wastewater utilities to be exempt from PSC jurisdiction over rates and service.
- Creates a process for the PSC to review complaints regarding whether a nonprofit water or wastewater utility meets these requirements.
- Creates a process for a utility that does not meet these requirements to be brought under PSC jurisdiction for a minimum of 24 months.

B. Amendments:

None.