

By Senator Geller

31-1055-04

1                                   A bill to be entitled  
2           An act relating to the Public Counsel;  
3           providing legislative intent; transferring and  
4           amending s. 350.061, F.S.; expanding duties of  
5           the Public Counsel with respect to insurance  
6           matters and representations before the  
7           Department of Financial Services; transferring  
8           and amending s. 350.0611, F.S.; prescribing  
9           powers and duties of the Public Counsel with  
10          respect to insurance rate cases; transferring  
11          and amending s. 350.0612, F.S.; revising  
12          provisions that specify where the Public  
13          Counsel's office is located; transferring and  
14          amending s. 350.0613, F.S.; providing for the  
15          Public Counsel to retain the services of  
16          actuaries and economists; amending s. 624.319,  
17          F.S.; providing access of the Public Counsel to  
18          examination and investigation files of the  
19          Department of Financial Services; amending ss.  
20          112.3145, 408.40, F.S.; conforming  
21          cross-references; providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

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25           Section 1. Legislative intent.--It is the intent of  
26 the Legislature that the Public Counsel be a unit of the  
27 legislative branch of state government as that term is defined  
28 in section 216.011(1)(w), Florida Statutes. The Public Counsel  
29 created in chapter 350, Florida Statutes, is transferred to  
30 chapter 11, Florida Statutes, and the authority of the office  
31 is expanded as provided in this act.

1           Section 2. Section 350.061, Florida Statutes, is  
2 transferred, renumbered as section 11.95, Florida Statutes,  
3 and amended to read:

4           11.95 ~~350.061~~ Public Counsel; appointment; oath;  
5 restrictions on Public Counsel and his or her employees.--

6           (1) The ~~Joint~~ Legislative Auditing Committee shall  
7 appoint a Public Counsel by majority vote of the members of  
8 the committee to represent the general public of Florida  
9 before the Florida Public Service Commission and the  
10 Department of Financial Services. The Public Counsel must  
11 ~~shall~~ be an attorney admitted to The Florida Bar practice  
12 ~~before the Florida Supreme Court~~ and shall serve at the  
13 pleasure of the Joint Legislative Auditing Committee, subject  
14 to annual reconfirmation by the committee. Vacancies in the  
15 office shall be filled in the same manner as the original  
16 appointment.

17           (2) The Public Counsel shall take and subscribe to the  
18 oath of office required of state officers by the State  
19 Constitution.

20           (3) No officer or full-time employee of the Public  
21 Counsel shall actively engage in any other business or  
22 profession; serve as the representative of any political party  
23 or on any executive committee or other governing body thereof;  
24 serve as an executive, officer, or employee of any political  
25 party, committee, organization, or association; receive  
26 remuneration for activities on behalf of any candidate for  
27 public office; or engage on behalf of any candidate for public  
28 office in the solicitation of votes or other activities in  
29 behalf of such candidacy. Neither the Public Counsel nor any  
30 employee of the Public Counsel shall become a candidate for  
31

1 election to public office unless he or she shall first resign  
2 from his or her office or employment.

3 Section 3. Section 350.0611, Florida Statutes, is  
4 transferred, renumbered as section 11.951, Florida Statutes,  
5 and amended to read:

6 11.951 ~~350.0611~~ Public Counsel; duties and powers.--It  
7 ~~is shall be~~ the duty of the Public Counsel to provide legal  
8 representation for the people of the state in proceedings  
9 before the Public Service Commission and the Department of  
10 Financial Services and in proceedings before counties pursuant  
11 to s. 367.171(8). The Public Counsel shall have such powers as  
12 are necessary to carry out the duties of his or her office,  
13 including, but not limited to, the following specific powers:

14 (1) To recommend to the commission or the counties, by  
15 petition, the commencement of any proceeding or action or to  
16 appear, in the name of the state or its citizens, in any  
17 proceeding or action before the commission or the counties.

18 (2) To recommend to the department, by petition, the  
19 commencement of, and to appear in the name of the state or its  
20 citizens in, any proceeding or action before the department  
21 relating to:

22 (a) Rules governing all motor vehicle insurance or  
23 residential property insurance; or

24 (b) Rate filings for all motor vehicle insurance or  
25 residential property insurance which request rate increases of  
26 10 percent or greater or rate decreases of 5 percent or  
27 greater within a 12-month period.

28 (3) To initiate or intervene in any rate proceeding or  
29 action within 30 days after the rate filing is made. To do so,  
30 the Public Counsel must file notice with the Chief Financial  
31 Officer stating that, based upon a preliminary review, the

1 Public Counsel believes that the rates filed are excessive,  
2 inadequate, or unfairly discriminatory. For purposes of this  
3 section, an approval or retraction of objections to a rate  
4 filing by the Department of Financial Services constitutes  
5 final agency action, may be appealed only to the district  
6 court of appeal, and may not be stayed.

7 (4) To ~~and~~ urge in any proceeding or action to which  
8 he or she is a party ~~therein~~ any position which he or she  
9 deems to be in the public interest, whether consistent or  
10 inconsistent with positions previously adopted by the  
11 commission, the department, or the counties, and utilize  
12 therein all forms of discovery available to attorneys in civil  
13 actions generally, subject to protective orders of the  
14 commission, the department, or the counties which shall be  
15 reviewable by summary procedure in the circuit courts of this  
16 state.†

17 (5)~~(2)~~ To have access to and use of all files,  
18 records, and data of the commission, the department, or the  
19 counties available to any other attorney representing parties  
20 in a proceeding before the commission, the department, or the  
21 counties.†

22 (6)~~(3)~~ In any proceeding in which he or she has  
23 participated as a party, to seek review of any determination,  
24 finding, or order of the commission, the department, or the  
25 counties, or of any hearing examiner designated by the  
26 commission, the department, or the counties, in the name of  
27 the state or its citizens.†

28 (7)~~(4)~~ To prepare and issue reports, recommendations,  
29 and proposed orders to the commission, the Governor, and the  
30 Legislature on any matter or subject within the jurisdiction  
31 of the commission, and to make such recommendations as he or

1 she deems appropriate for legislation relative to commission  
2 procedures, rules, jurisdiction, personnel, and functions.†  
3 and

4 (8)~~(5)~~ To appear before other state agencies, federal  
5 agencies, and state and federal courts in connection with  
6 matters under the jurisdiction of the commission, in the name  
7 of the state or its citizens.

8 Section 4. Section 350.0612, Florida Statutes, is  
9 transferred, renumbered as section 11.952, Florida Statutes,  
10 and amended to read:

11 11.952 ~~350.0612~~ Public Counsel; location.--The Public  
12 Counsel shall maintain his or her office in Leon County ~~on the~~  
13 ~~premises of the commission or, if suitable space there cannot~~  
14 ~~be provided,~~at such other place convenient to the offices of  
15 the Public Service Commission or Department of Financial  
16 Services ~~commissioners~~ as will enable him or her to carry out  
17 expeditiously the duties and functions of his or her office.

18 Section 5. Section 350.0613, Florida Statutes, is  
19 transferred, renumbered as section 11.953, Florida Statutes,  
20 and amended to read:

21 11.953 ~~350.0613~~ Public Counsel; employees; receipt of  
22 pleadings.--The Legislative Auditing Committee may authorize  
23 the Public Counsel to employ clerical and technical assistants  
24 whose qualifications, duties, and responsibilities the  
25 committee shall from time to time prescribe. The committee may  
26 from time to time authorize retention of the services of  
27 additional attorneys, actuaries, economists,or experts to the  
28 extent that the best interests of the people of the state will  
29 be better served thereby, including the retention of expert  
30 witnesses and other technical personnel for participation in  
31 contested proceedings before the Public Service Commission or

1 Department of Financial Services. The commission or  
2 department shall furnish the Public Counsel with copies of the  
3 initial pleadings in all proceedings before the commission or  
4 department, and if the Public Counsel intervenes as a party in  
5 any proceeding he or she shall be served with copies of all  
6 subsequent pleadings, exhibits, and prepared testimony, if  
7 used. Pleadings shall include, but are not limited to, all  
8 rate filings for all motor vehicle insurance and residential  
9 property insurance filed under chapter 627. Upon filing notice  
10 of intervention, the Public Counsel shall serve all interested  
11 parties with copies of such notice and all of his or her  
12 subsequent pleadings and exhibits.

13 Section 6. Paragraph (a) of subsection (3) of section  
14 624.319, Florida Statutes, is amended to read:

15 624.319 Examination and investigation reports.--

16 (3)(a) Examination reports, until filed, are  
17 confidential and exempt from the provisions of s. 119.07(1).  
18 Investigation reports are confidential and exempt from the  
19 provisions of s. 119.07(1) until the investigation is  
20 completed or ceases to be active. However, the Public Counsel  
21 shall have access to the examination and investigation files  
22 and reports pertaining to all motor vehicle and residential  
23 property insurance at any time. The Public Counsel shall  
24 withhold from public inspection any information so obtained  
25 while the department's examination or investigation is still  
26 in progress. For purposes of this subsection, an investigation  
27 is active while it is being conducted by the department or  
28 office with a reasonable, good faith belief that it could lead  
29 to the filing of administrative, civil, or criminal  
30 proceedings. An investigation does not cease to be active if  
31 the department or office is proceeding with reasonable

1 dispatch and has a good faith belief that action could be  
2 initiated by the department or office or other administrative  
3 or law enforcement agency. After an investigation is completed  
4 or ceases to be active, portions of the investigation report  
5 relating to the investigation remain confidential and exempt  
6 from the provisions of s. 119.07(1) if disclosure would:

- 7 1. Jeopardize the integrity of another active  
8 investigation;
- 9 2. Impair the safety and financial soundness of the  
10 licensee or affiliated party;
- 11 3. Reveal personal financial information;
- 12 4. Reveal the identity of a confidential source;
- 13 5. Defame or cause unwarranted damage to the good name  
14 or reputation of an individual or jeopardize the safety of an  
15 individual; or
- 16 6. Reveal investigative techniques or procedures.

17 Section 7. Paragraph (b) of subsection (1) of section  
18 112.3145, Florida Statutes, is amended to read:

19 112.3145 Disclosure of financial interests and clients  
20 represented before agencies.--

21 (1) For purposes of this section, unless the context  
22 otherwise requires, the term:

23 (b) "Specified state employee" means:

24 1. Public counsel created by chapter 11 350, an  
25 assistant state attorney, an assistant public defender, a  
26 full-time state employee who serves as counsel or assistant  
27 counsel to any state agency, the Deputy Chief Judge of  
28 Compensation Claims, a judge of compensation claims, an  
29 administrative law judge, or a hearing officer.

30 2. Any person employed in the office of the Governor  
31 or in the office of any member of the Cabinet if that person

1 is exempt from the Career Service System, except persons  
2 employed in clerical, secretarial, or similar positions.

3         3. Each appointed secretary, assistant secretary,  
4 deputy secretary, executive director, assistant executive  
5 director, or deputy executive director of each state  
6 department, commission, board, or council; unless otherwise  
7 provided, the division director, assistant division director,  
8 deputy director, bureau chief, and assistant bureau chief of  
9 any state department or division; or any person having the  
10 power normally conferred upon such persons, by whatever title.

11         4. The superintendent or institute director of a state  
12 mental health institute established for training and research  
13 in the mental health field or the warden or director of any  
14 major state institution or facility established for  
15 corrections, training, treatment, or rehabilitation.

16         5. Business managers, purchasing agents having the  
17 power to make any purchase exceeding the threshold amount  
18 provided for in s. 287.017 for CATEGORY ONE, finance and  
19 accounting directors, personnel officers, or grants  
20 coordinators for any state agency.

21         6. Any person, other than a legislative assistant  
22 exempted by the presiding officer of the house by which the  
23 legislative assistant is employed, who is employed in the  
24 legislative branch of government, except persons employed in  
25 maintenance, clerical, secretarial, or similar positions.

26         7. Each employee of the Commission on Ethics.

27         Section 8. Subsection (1) of section 408.40, Florida  
28 Statutes, is amended to read:

29         408.40 Public Counsel.--

30         (1) Notwithstanding any other provisions of this  
31 chapter, the Public Counsel shall represent the public in any



1 proceeding before the agency or its advisory panels in any  
2 administrative hearing conducted pursuant to chapter 120 or  
3 before any other state and federal agencies and courts in any  
4 issue before the agency, any court, or any agency. With  
5 respect to any such proceeding, the Public Counsel is subject  
6 to the provisions of and may use the powers granted to him or  
7 her by ss. 11.95-11.954 ~~ss. 350.061-350.0614~~.

8 Section 9. This act shall take effect July 1, 2004.

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11 SENATE SUMMARY

12 Transfers the office of the Public Counsel to the  
13 legislative branch and prescribes its duties before the  
14 Department of Financial Services in contesting insurance  
15 rate cases. (See bill for details.)  
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