

Bill No. SB 1322

Barcode 024478

CHAMBER ACTION

Senate

House

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The Committee on Communications and Public Utilities  
(Constantine) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Committee on Public Service Commission  
Oversight; creation; membership; powers and duties.--

(1) There is created a standing joint committee of the  
Legislature, designated the Committee on Public Service  
Commission Oversight, and composed of twelve members appointed  
as follows: six members of the Senate appointed by the  
President of the Senate, two of whom must be members of the  
minority party; and six members of the House of  
Representatives appointed by the Speaker of the House of  
Representatives, two of whom must be members of the minority  
party. The terms of members shall be for 2 years and shall run  
from the organization of one Legislature to the organization  
of the next Legislature. The President shall appoint the chair  
of the committee in even years and the vice chair in odd

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1 years, and the Speaker of the House of Representatives shall  
 2 appoint the chair of the committee in odd years and the vice  
 3 chair in even years, from among the committee membership.  
 4 Vacancies shall be filled in the same manner as the original  
 5 appointment. Members shall serve without additional  
 6 compensation, but shall be reimbursed for expenses.

7       (2) The committee shall be governed by joint rules of  
 8 the Senate and the House of Representatives which shall remain  
 9 in effect until repealed or amended by concurrent resolution.

10       (3) The committee shall:

11           (a) Recommend to the Governor a nominee to fill a  
 12 vacancy on the Public Service Commission, as provided by  
 13 general law; and

14           (b) Appoint a Public Counsel as provided by general  
 15 law.

16       (4) The committee is authorized to file a complaint  
 17 with the Commission on Ethics alleging a violation of this  
 18 chapter by a commissioner, former commissioner, former  
 19 commission employee, or member of the Public Service  
 20 Commission Nominating Council.

21       (5) The committee will not have a permanent staff, but  
 22 the President of the Senate and the Speaker of the House of  
 23 Representatives shall select staff members from among existing  
 24 legislative staff, when and as needed.

25       Section 2. Section 350.001, Florida Statutes, is  
 26 amended to read:

27       350.001 Legislative intent.--The Florida Public  
 28 Service Commission has been and shall continue to be an arm of  
 29 the legislative branch of government. The Public Service  
 30 Commission shall perform its duties independently. The  
 31 Legislature declares and determines that the Public Service

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1 Commission is under the legislative branch of government  
2 within the intent expressed in chapter 216. The Executive  
3 Office of the Governor or its successor is not authorized to  
4 release or withhold funds appropriated to the Public Service  
5 Commission, but the Committee on Public Service Commission  
6 Oversight shall release or withhold funds appropriated to the  
7 Public Service Commission as provided by law and the rules or  
8 decisions of the Committee on Public Service Commission  
9 Oversight. The Executive Office of the Governor, the  
10 Department of Management Services, or any successor may not  
11 determine the number, or fix the compensation, of employees of  
12 the Public Service Commission and may not exercise any manner  
13 of control over the employees of the Public Service  
14 Commission. It is the desire of the Legislature that the  
15 Governor participate in the appointment process of  
16 commissioners to the Public Service Commission. The  
17 Legislature accordingly delegates to the Governor a limited  
18 authority with respect to the Public Service Commission by  
19 authorizing him or her to participate in the selection of  
20 members only ~~from the list provided by the Florida Public~~  
21 ~~Service Commission Nominating Council~~ in the manner prescribed  
22 by s. 350.031.

23 Section 3. Section 350.031, Florida Statutes, is  
24 amended to read:

25 350.031 Florida Public Service Commission Nominating  
26 Council.--

27 (1) There is created a Florida Public Service  
28 Commission Nominating Council consisting of nine members. At  
29 least one member of the council must be 60 years of age or  
30 older. Three members, including one member of the House of  
31 Representatives, shall be appointed by and serve at the

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1 | pleasure of the Speaker of the House of Representatives; three  
2 | members, including one member of the Senate, shall be  
3 | appointed by and serve at the pleasure of the President of the  
4 | Senate; and three members shall be selected and appointed by a  
5 | majority vote of the other six members of the council. All  
6 | terms shall be for 4 years except those members of the House  
7 | and Senate, who shall serve 2-year terms concurrent with the  
8 | 2-year elected terms of House members. Vacancies on the  
9 | council shall be filled for the unexpired portion of the term  
10 | in the same manner as original appointments to the council. A  
11 | member may not be reappointed to the council, except for a  
12 | member of the House of Representatives or the Senate who may  
13 | be appointed to two 2-year terms or a person who is appointed  
14 | to fill the remaining portion of an unexpired term.

15 |           (2)(a) No member or spouse shall be the holder of the  
16 | stocks or bonds of any company, other than through ownership  
17 | of shares in a mutual fund, regulated by the commission, or  
18 | any affiliated company of any company regulated by the  
19 | commission, or be an agent or employee of, or have any  
20 | interest in, any company regulated by the commission or any  
21 | affiliated company of any company regulated by the commission,  
22 | or in any firm which represents in any capacity either  
23 | companies which are regulated by the commission or affiliates  
24 | of companies regulated by the commission. As a condition of  
25 | appointment to the council, each appointee shall affirm to the  
26 | Speaker and the President his or her qualification by the  
27 | following certification: "I hereby certify that I am not a  
28 | stockholder, other than through ownership of shares in a  
29 | mutual fund, in any company regulated by the commission or in  
30 | any affiliate of a company regulated by the commission, nor in  
31 | any way, directly or indirectly, in the employment of, or

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1 engaged in the management of any company regulated by the  
 2 commission or any affiliate of a company regulated by the  
 3 commission, or in any firm which represents in any capacity  
 4 either companies which are regulated by the commission or  
 5 affiliates of companies regulated by the commission."

6  
 7 This certification is made as condition to appointment to the  
 8 Florida Public Service Commission Nominating Council.

9 (b) A member of the council may be removed by the  
 10 Speaker of the House of Representatives and the President of  
 11 the Senate upon a finding by the Speaker and the President  
 12 that the council member has violated any provision of this  
 13 subsection or for other good cause.

14 (c) If a member of the council does not meet the  
 15 requirements of this subsection, the President of the Senate  
 16 or the Speaker of the House of Representatives, as  
 17 appropriate, shall appoint a legislative replacement.

18 (3) A majority of the membership of the council may  
 19 conduct any business before the council. All meetings and  
 20 proceedings of the council shall be staffed by the Office of  
 21 Legislative Services and shall be subject to the provisions of  
 22 ss. 119.07 and 286.011. Members of the council are entitled  
 23 to receive per diem and travel expenses as provided in s.  
 24 112.061, which shall be funded by the Florida Public Service  
 25 Regulatory Trust Fund. Applicants invited for interviews  
 26 before the council may, in the discretion of the council,  
 27 receive per diem and travel expenses as provided in s.  
 28 112.061, which shall be funded by the Florida Public Service  
 29 Regulatory Trust Fund. The council shall establish policies  
 30 and procedures to govern the process by which applicants are  
 31 nominated.

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1           (4) The council may spend a nominal amount, not to  
 2 exceed \$10,000, to advertise a vacancy on the council, which  
 3 shall be funded by the Florida Public Service Regulatory Trust  
 4 Fund.

5           (5)(4) A person may not be nominated to the Committee  
 6 on Public Service Commission Oversight Governor until the  
 7 council has determined that the person is competent and  
 8 knowledgeable in one or more fields, which shall include, but  
 9 not be limited to: public affairs, law, economics,  
 10 accounting, engineering, finance, natural resource  
 11 conservation, energy, or another field substantially related  
 12 to the duties and functions of the commission. The commission  
 13 shall fairly represent the above-stated fields.  
 14 Recommendations of the council shall be nonpartisan.

15           (6)(5) It is the responsibility of the council to  
 16 nominate to the Committee on Public Service Commission  
 17 Oversight Governor not fewer than three persons for each  
 18 vacancy occurring on the Public Service Commission. The  
 19 council shall submit the recommendations to the committee  
 20 Governor by August 1 October 1 of those years in which the  
 21 terms are to begin the following January, or within 60 days  
 22 after a vacancy occurs for any reason other than the  
 23 expiration of the term.

24           (7)(6) The Committee on Public Service Commission  
 25 Oversight Governor shall select from the list of nominees  
 26 provided by the nominating council one nominee for  
 27 recommendation to the Governor for appointment to the  
 28 commission. The recommendation must be provided to the  
 29 Governor within 45 days after receipt of the list of nominees.  
 30 The committee shall make the recommendation fill a vacancy  
 31 occurring on the Public Service Commission by appointment of

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1 ~~one of the applicants nominated by the council only after a~~  
2 ~~background investigation of the recommended nominee such~~  
3 ~~applicant has been conducted by the Florida Department of Law~~  
4 ~~Enforcement. If the committee rejects the recommendation or~~  
5 ~~Governor has not made an appointment within 30 days after the~~  
6 ~~receipt of the recommendation by December 1 to fill a vacancy~~  
7 ~~for a term to begin the following January, then the council~~  
8 ~~shall immediately initiate the nominating process in~~  
9 ~~accordance with this section. The council shall include in the~~  
10 ~~process all new applicants and all previous applicants for~~  
11 ~~this vacancy. The council must, within 30 days after the~~  
12 ~~Governor's rejection of the previous recommendation or failure~~  
13 ~~to timely make an appointment, submit to the committee a list~~  
14 ~~of no fewer than three persons for each vacancy. The committee~~  
15 ~~must, within 30 days after receipt, select one nominee for~~  
16 ~~recommendation to the Governor for appointment to the~~  
17 ~~commission. If the Governor rejects the recommendation or~~  
18 ~~fails to make an appointment within 30 days after receipt of~~  
19 ~~the recommendation, the council shall immediately initiate the~~  
20 ~~nominating process again with the time periods applicable., by~~  
21 ~~majority vote, shall appoint by December 31 one person from~~  
22 ~~the applicants previously nominated to the Governor to fill~~  
23 ~~the vacancy. If the Governor has not made the appointment to~~  
24 ~~fill a vacancy occurring for any reason other than the~~  
25 ~~expiration of the term by the 60th day following receipt of~~  
26 ~~the nominations of the council, the council by majority vote~~  
27 ~~shall appoint within 30 days thereafter one person from the~~  
28 ~~applicants previously nominated to the Governor to fill the~~  
29 ~~vacancy.~~

30 (8)(7) Each appointment to the Public Service  
31 Commission shall be subject to confirmation by the Senate

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1 during the next regular session after the vacancy occurs. If  
 2 the Senate refuses to confirm or rejects the Governor's  
 3 appointment, the council shall initiate, in accordance with  
 4 this section, the nominating process within 30 days.

5 Section 4. Subsection (2) of section 350.041, Florida  
 6 Statutes, is amended to read:

7 350.041 Commissioners; standards of conduct.--

8 (2) STANDARDS OF CONDUCT.--

9 (a) A commissioner may not accept anything from any  
 10 business entity which, either directly or indirectly, owns or  
 11 controls any public utility regulated by the commission, from  
 12 any public utility regulated by the commission, or from any  
 13 business entity which, either directly or indirectly, is an  
 14 affiliate or subsidiary of any public utility regulated by the  
 15 commission. A commissioner may attend conferences and  
 16 associated meals and events that are generally available to  
 17 all conference participants without payment of any fees in  
 18 addition to the conference fee. Additionally, while attending  
 19 a conference, a commissioner may attend meetings, meals, or  
 20 events that are not sponsored, in whole or in part, by any  
 21 representative of any public utility regulated by the  
 22 commission and that are limited to commissioners only,  
 23 committee members, or speakers if the commissioner is a member  
 24 of a committee of the association of regulatory agencies that  
 25 organized the conference or is a speaker at the conference. It  
 26 is not a violation of this paragraph for a commissioner to  
 27 attend a conference for which conference participants who are  
 28 employed by a utility regulated by the commission have paid a  
 29 higher conference registration fee than the commissioner, or  
 30 to attend a meal or event that is generally available to all  
 31 conference participants without payment of any fees in



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1 addition to the conference fee and that is sponsored, in whole  
2 or in part, by a utility regulated by the commission. If,  
3 during the course of an investigation by the Commission on  
4 Ethics into an alleged violation of this paragraph,  
5 allegations are made as to the identity of the person giving  
6 or providing the prohibited gift, that person must be given  
7 notice and an opportunity to participate in the investigation  
8 and relevant proceedings to present a defense. If the  
9 Commission on Ethics determines that the person gave or  
10 provided a prohibited gift, the person may not appear before  
11 the commission or otherwise represent anyone before the  
12 commission for a period of 2 years.

13 (b) A commissioner may not accept any form of  
14 employment with or engage in any business activity with any  
15 business entity which, either directly or indirectly, owns or  
16 controls any public utility regulated by the commission, any  
17 public utility regulated by the commission, or any business  
18 entity which, either directly or indirectly, is an affiliate  
19 or subsidiary of any public utility regulated by the  
20 commission.

21 (c) A commissioner may not have any financial  
22 interest, other than shares in a mutual fund, in any public  
23 utility regulated by the commission, in any business entity  
24 which, either directly or indirectly, owns or controls any  
25 public utility regulated by the commission, or in any business  
26 entity which, either directly or indirectly, is an affiliate  
27 or subsidiary of any public utility regulated by the  
28 commission. If a commissioner acquires any financial interest  
29 prohibited by this section during his or her term of office as  
30 a result of events or actions beyond the commissioner's  
31 control, he or she shall immediately sell such financial

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1 interest or place such financial interest in a blind trust at  
2 a financial institution. A commissioner may not attempt to  
3 influence, or exercise any control over, decisions regarding  
4 the blind trust.

5 (d) A commissioner may not accept anything from a  
6 party in a proceeding currently pending before the commission.  
7 If, during the course of an investigation by the Commission on  
8 Ethics into an alleged violation of this paragraph,  
9 allegations are made as to the identity of the person giving  
10 or providing the prohibited gift, that person must be given  
11 notice and an opportunity to participate in the investigation  
12 and relevant proceedings to present a defense. If the  
13 Commission on Ethics determines that the person gave or  
14 provided a prohibited gift, the person may not appear before  
15 the commission or otherwise represent anyone before the  
16 commission for a period of 2 years.

17 (e) A commissioner may not serve as the representative  
18 of any political party or on any executive committee or other  
19 governing body of a political party; serve as an executive  
20 officer or employee of any political party, committee,  
21 organization, or association; receive remuneration for  
22 activities on behalf of any candidate for public office;  
23 engage on behalf of any candidate for public office in the  
24 solicitation of votes or other activities on behalf of such  
25 candidacy; or become a candidate for election to any public  
26 office without first resigning from office.

27 (f) A commissioner, during his or her term of office,  
28 may not make any public comment regarding the merits of any  
29 proceeding under ss. 120.569 and 120.57 currently pending  
30 before the commission.

31 (g) A commissioner may not conduct himself or herself

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1 in an unprofessional manner at any time during the performance  
2 of his or her official duties.

3 (h) A commissioner must avoid impropriety in all of  
4 his or her activities and must act at all times in a manner  
5 that promotes public confidence in the integrity and  
6 impartiality of the commission.

7 Section 5. Subsection (7) of section 350.042, Florida  
8 Statutes, is amended to read:

9 350.042 Ex parte communications.--

10 (7)(a) It shall be the duty of the Commission on  
11 Ethics to receive and investigate sworn complaints of  
12 violations of this section pursuant to the procedures  
13 contained in ss. 112.322-112.3241.

14 (b) If the Commission on Ethics finds that there has  
15 been a violation of this section by a public service  
16 commissioner, it shall provide the Governor and the Florida  
17 Public Service Commission Nominating Council with a report of  
18 its findings and recommendations. The Governor is authorized  
19 to enforce the findings and recommendations of the Commission  
20 on Ethics, pursuant to part III of chapter 112.

21 (c) If a commissioner fails or refuses to pay the  
22 Commission on Ethics any civil penalties assessed pursuant to  
23 the provisions of this section, the Commission on Ethics may  
24 bring an action in any circuit court to enforce such penalty.

25 (d) If, during the course of an investigation by the  
26 Commission on Ethics into an alleged violation of this  
27 paragraph, allegations are made as to the identity of the  
28 person who participated in the ex parte communication, that  
29 person must be given notice and an opportunity to participate  
30 in the investigation and relevant proceedings to present a  
31 defense. If the Commission on Ethics determines that the

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1 person participated in the ex parte communication, the person  
2 may not appear before the commission or otherwise represent  
3 anyone before the commission for a period of 2 years.

4 Section 6. Subsection (1) of section 350.061, Florida  
5 Statutes, is amended to read:

6 350.061 Public Counsel; appointment; oath;  
7 restrictions on Public Counsel and his or her employees.--

8 (1) The Committee on Public Service Commission  
9 Oversight ~~Joint Legislative Auditing Committee~~ shall appoint a  
10 Public Counsel by majority vote of the members of the  
11 committee to represent the general public of Florida before  
12 the Florida Public Service Commission. The Public Counsel  
13 shall be an attorney admitted to practice before the Florida  
14 Supreme Court and shall serve at the pleasure of the ~~Joint~~  
15 ~~Legislative Auditing~~ Committee on Public Service Commission  
16 Oversight, subject to biennial ~~annual~~ reconfirmation by the  
17 committee. The Public Counsel shall perform his or her duties  
18 independently. Vacancies in the office shall be filled in the  
19 same manner as the original appointment.

20 Section 7. Subsection (2) of section 350.0614, Florida  
21 Statutes, is amended to read:

22 350.0614 Public Counsel; compensation and expenses.--

23 (2) The Legislature ~~hereby~~ declares and determines  
24 that the Public Counsel is under the legislative branch of  
25 government within the intention of the legislation as  
26 expressed in chapter 216, and no power shall be in the  
27 Executive Office of the Governor or its successor to release  
28 or withhold funds appropriated to it, but the same shall be  
29 available for expenditure as provided by law and the rules or  
30 decisions of the ~~Joint Auditing~~ Committee on Public Service  
31 Commission Oversight.

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1           Section 8. This act shall take effect October 1, 2005;  
 2 however, the provisions creating penalties or new standards of  
 3 conduct apply to violations occurring after that date.

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6 ===== T I T L E   A M E N D M E N T =====

7 And the title is amended as follows:

8           Delete everything before the enacting clause

9

10 and insert:

11                           A bill to be entitled  
 12           An act relating to the Public Service  
 13           Commission; creating the Committee on Public  
 14           Service Commission Oversight as a standing  
 15           joint committee of the Legislature; providing  
 16           for its membership, powers, and duties;  
 17           amending s. 350.001, F.S.; requiring that the  
 18           commission perform its duties independently;  
 19           specifying that the Governor has no planning or  
 20           budgetary authority with respect to the  
 21           commission; specifying that the Governor and  
 22           the Department of Management Services have no  
 23           authority over the commission's employees;  
 24           amending s. 350.031, F.S.; authorizing the  
 25           Florida Public Service Commission Nominating  
 26           Council to make expenditures to advertise a  
 27           vacancy on the council or the commission;  
 28           requiring that the Committee on Public Service  
 29           Commission Oversight provide a nominee for  
 30           recommendation to the Governor for appointment  
 31           to the Public Service Commission; providing

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1 procedures; amending s. 350.041, F.S.;

2 clarifying the prohibition against accepting

3 gifts with respect to its application to

4 commissioners attending conferences; requiring

5 that a penalty be imposed against a person who

6 gives a commissioner a prohibited gift;

7 requiring that commissioners avoid impropriety

8 and act in a manner that promotes confidence in

9 the commission; amending s. 350.042, F.S.;

10 requiring that a penalty be imposed against a

11 person involved in a prohibited ex parte

12 communication with a commissioner; amending s.

13 350.061, F.S.; requiring that the Committee on

14 Public Service Commission Oversight rather than

15 the Joint Legislative Auditing Committee

16 appoint the Public Counsel; providing for

17 biennial reconfirmation rather than annual;

18 requiring that the Public Counsel perform his

19 or her duties independently; amending s.

20 350.0614, F.S.; requiring that the Committee on

21 Public Service Commission Oversight rather than

22 the Joint Legislative Auditing Committee

23 oversee expenditures of the Public Counsel;

24 providing an effective date.

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