

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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The Commerce Council offered the following:

Amendment (with title amendment)

Remove 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 12 members appointed as follows: 6 members of the Senate appointed by the President of the Senate, 2 of whom must be members of the minority party; and 6 members of the House of Representatives appointed by the Speaker of the House of Representatives, 2 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

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16 to the organization of the next Legislature. The President shall
17 appoint the chair of the committee in even-numbered years and
18 the vice chair in odd-numbered years, and the Speaker of the
19 House of Representatives shall appoint the chair of the
20 committee in odd-numbered years and the vice chair in even-
21 numbered years, from among the committee membership. Vacancies
22 shall be filled in the same manner as the original appointment.
23 Members shall serve without additional compensation, but shall
24 be reimbursed for expenses.

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27 effect until repealed or amended by concurrent resolution.

28 (3) The committee shall:

29 (a) Recommend to the Governor nominees to fill a vacancy
30 on the Public Service Commission, as provided by general law;
31 and

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

33 (4) The committee is authorized to file a complaint with
34 the Commission on Ethics alleging a violation of chapter 350,
35 Florida Statutes, by a commissioner, former commissioner, former
36 commission employee, or member of the Public Service Commission
37 Nominating Council.

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

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HOUSE AMENDMENT

Bill No. CS/CS/SB 1322

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42 Section 2. Section 350.001, Florida Statutes, is amended
43 to read:

44 350.001 Legislative intent.--The Florida Public Service
45 Commission has been and shall continue to be an arm of the
46 legislative branch of government. It is the desire of the
47 Legislature that the Governor participate in the appointment
48 process of commissioners to the Public Service Commission. The
49 Legislature accordingly delegates to the Governor a limited
50 authority with respect to the Public Service Commission by
51 authorizing him or her to participate in the selection of
52 members only ~~from the list provided by the Florida Public~~
53 ~~Service Commission Nominating Council~~ in the manner prescribed
54 by s. 350.031.

55 Section 3. Section 350.031, Florida Statutes, is amended
56 to read:

57 350.031 Florida Public Service Commission Nominating
58 Council.--

59 (1) There is created a Florida Public Service Commission
60 Nominating Council consisting of nine members. At least one
61 member of the council must be 60 years of age or older. Three
62 members, including one member of the House of Representatives,
63 shall be appointed by and serve at the pleasure of the Speaker
64 of the House of Representatives; three members, including one
65 member of the Senate, shall be appointed by and serve at the
66 pleasure of the President of the Senate; and three members shall
67 be selected and appointed by a majority vote of the other six
68 members of the council. All terms shall be for 4 years except

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69 those members of the House and Senate, who shall serve 2-year
70 terms concurrent with the 2-year elected terms of House members.
71 Vacancies on the council shall be filled for the unexpired
72 portion of the term in the same manner as original appointments
73 to the council. A member may not be reappointed to the council,
74 except for a member of the House of Representatives or the
75 Senate who may be appointed to two 2-year terms or a person who
76 is appointed to fill the remaining portion of an unexpired term.

77 (2)(a) No member or spouse shall be the holder of the
78 stocks or bonds of any company, other than through ownership of
79 shares in a mutual fund, regulated by the commission, or any
80 affiliated company of any company regulated by the commission,
81 or be an agent or employee of, or have any interest in, any
82 company regulated by the commission or any affiliated company of
83 any company regulated by the commission, or in any firm which
84 represents in any capacity either companies which are regulated
85 by the commission or affiliates of companies regulated by the
86 commission. As a condition of appointment to the council, each
87 appointee shall affirm to the Speaker and the President his or
88 her qualification by the following certification: "I hereby
89 certify that I am not a stockholder, other than through
90 ownership of shares in a mutual fund, in any company regulated
91 by the commission or in any affiliate of a company regulated by
92 the commission, nor in any way, directly or indirectly, in the
93 employment of, or engaged in the management of any company
94 regulated by the commission or any affiliate of a company
95 regulated by the commission, or in any firm which represents in

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96 any capacity either companies which are regulated by the
97 commission or affiliates of companies regulated by the
98 commission."

99

100 This certification is made as condition to appointment to the
101 Florida Public Service Commission Nominating Council.

102 (b) A member of the council may be removed by the Speaker
103 of the House of Representatives and the President of the Senate
104 upon a finding by the Speaker and the President that the council
105 member has violated any provision of this subsection or for
106 other good cause.

107 (c) If a member of the council does not meet the
108 requirements of this subsection, the President of the Senate or
109 the Speaker of the House of Representatives, as appropriate,
110 shall appoint a legislative replacement.

111 (3) A majority of the membership of the council may
112 conduct any business before the council. All meetings and
113 proceedings of the council shall be staffed by the Office of
114 Legislative Services and shall be subject to the provisions of
115 ss. 119.07 and 286.011. Members of the council are entitled to
116 receive per diem and travel expenses as provided in s. 112.061,
117 which shall be funded by the Florida Public Service Regulatory
118 Trust Fund. Applicants invited for interviews before the council
119 may, in the discretion of the council, receive per diem and
120 travel expenses as provided in s. 112.061, which shall be funded
121 by the Florida Public Service Regulatory Trust Fund. The council

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122 shall establish policies and procedures to govern the process by
123 which applicants are nominated.

124 (4) The council may spend a nominal amount, not to exceed
125 \$10,000, to advertise a vacancy on the council, which shall be
126 funded by the Florida Public Service Regulatory Trust Fund.

127 (5)(4) A person may not be nominated to the Committee on
128 Public Service Commission Oversight ~~Governor~~ until the council
129 has determined that the person is competent and knowledgeable in
130 one or more fields, which shall include, but not be limited to:
131 public affairs, law, economics, accounting, engineering,
132 finance, natural resource conservation, energy, or another field
133 substantially related to the duties and functions of the
134 commission. The commission shall fairly represent the above-
135 stated fields. Recommendations of the council shall be
136 nonpartisan.

137 (6)(5) It is the responsibility of the council to nominate
138 to the Committee on Public Service Commission Oversight ~~six~~
139 ~~Governor not fewer than three~~ persons for each vacancy occurring
140 on the Public Service Commission. The council shall submit the
141 recommendations to the committee ~~Governor~~ by August 1 ~~October 1~~
142 of those years in which the terms are to begin the following
143 January, or within 60 days after a vacancy occurs for any reason
144 other than the expiration of the term.

145 (7)(6) The Committee on Public Service Commission
146 Oversight ~~Governor~~ shall select from the list of nominees
147 provided by the nominating council three persons for
148 recommendation to the Governor for appointment to the

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149 commission. The recommendations must be provided to the Governor
150 within 45 days after receipt of the list of nominees. The
151 Governor shall fill a vacancy occurring on the Public Service
152 Commission by appointment of one of the applicants nominated by
153 the council only after a background investigation of ~~the such~~
154 applicant has been conducted by the Florida Department of Law
155 Enforcement. If the Governor has not made an appointment within
156 30 days after the receipt of the recommendation ~~by December 1 to~~
157 fill a vacancy for a term to begin the following January, then
158 the council shall immediately initiate the nominating process in
159 accordance with this section. The council shall include in the
160 process all new applicants and all previous applicants for this
161 vacancy. The council must, within 30 days after the Governor's
162 rejection of the previous recommendations or failure to timely
163 make an appointment, submit to the committee a list of six
164 persons for each vacancy. The committee must, within 30 days
165 after receipt, select three nominees for recommendation to the
166 Governor for appointment to the commission. If the Governor
167 rejects the recommendation or fails to make an appointment
168 within 30 days after receipt of the recommendation, the council
169 shall immediately initiate the nominating process again with the
170 time periods applicable. ~~, by majority vote, shall appoint by~~
171 December 31 one person from the applicants previously nominated
172 to the Governor to fill the vacancy. If the Governor has not
173 made the appointment to fill a vacancy occurring for any reason
174 other than the expiration of the term by the 60th day following
175 receipt of the nominations of the council, the council by

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176 ~~majority vote shall appoint within 30 days thereafter one person~~
177 ~~from the applicants previously nominated to the Governor to fill~~
178 ~~the vacancy.~~

179 (8)(7) Each appointment to the Public Service Commission
180 shall be subject to confirmation by the Senate during the next
181 regular session after the vacancy occurs. If the Senate refuses
182 to confirm or rejects the Governor's appointment, the council
183 shall initiate, in accordance with this section, the nominating
184 process within 30 days.

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

187 350.041 Commissioners; standards of conduct.--

188 (2) STANDARDS OF CONDUCT.--

189 (a) A commissioner may not accept anything from any
190 business entity which, either directly or indirectly, owns or
191 controls any public utility regulated by the commission, from
192 any public utility regulated by the commission, or from any
193 business entity which, either directly or indirectly, is an
194 affiliate or subsidiary of any public utility regulated by the
195 commission. A commissioner may attend conferences and associated
196 meals and events that are generally available to all conference
197 participants without payment of any fees in addition to the
198 conference fee. Additionally, while attending a conference, a
199 commissioner may attend meetings, meals, or events that are not
200 sponsored, in whole or in part, by any representative of any
201 public utility regulated by the commission and that are limited
202 to commissioners only, committee members, or speakers if the

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203 commissioner is a member of a committee of the association of
204 regulatory agencies that organized the conference or is a
205 speaker at the conference. It is not a violation of this
206 paragraph for a commissioner to attend a conference for which
207 conference participants who are employed by a utility regulated
208 by the commission have paid a higher conference registration fee
209 than the commissioner, or to attend a meal or event that is
210 generally available to all conference participants without
211 payment of any fees in addition to the conference fee and that
212 is sponsored, in whole or in part, by a utility regulated by the
213 commission. If, during the course of an investigation by the
214 Commission on Ethics into an alleged violation of this
215 paragraph, allegations are made as to the identity of the person
216 giving or providing the prohibited gift, that person must be
217 given notice and an opportunity to participate in the
218 investigation and relevant proceedings to present a defense. If
219 the Commission on Ethics determines that the person gave or
220 provided a prohibited gift, the commission may sanction the
221 person from appearing before the commission or otherwise
222 representing anyone before the commission for a period of up to
223 2 years.

224 (b) A commissioner may not accept any form of employment
225 with or engage in any business activity with any business entity
226 which, either directly or indirectly, owns or controls any
227 public utility regulated by the commission, any public utility
228 regulated by the commission, or any business entity which,

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229 either directly or indirectly, is an affiliate or subsidiary of
230 any public utility regulated by the commission.

231 (c) A commissioner may not have any financial interest,
232 other than shares in a mutual fund, in any public utility
233 regulated by the commission, in any business entity which,
234 either directly or indirectly, owns or controls any public
235 utility regulated by the commission, or in any business entity
236 which, either directly or indirectly, is an affiliate or
237 subsidiary of any public utility regulated by the commission. If
238 a commissioner acquires any financial interest prohibited by
239 this section during his or her term of office as a result of
240 events or actions beyond the commissioner's control, he or she
241 shall immediately sell such financial interest or place such
242 financial interest in a blind trust at a financial institution.
243 A commissioner may not attempt to influence, or exercise any
244 control over, decisions regarding the blind trust.

245 (d) A commissioner may not accept anything from a party in
246 a proceeding currently pending before the commission. If, during
247 the course of an investigation by the Commission on Ethics into
248 an alleged violation of this subsection, allegations are made as
249 to the identity of the person giving or providing the prohibited
250 gift, that person must be given notice and an opportunity to
251 participate in the investigation and relevant proceedings to
252 present a defense. If the Commission on Ethics determines that
253 the person gave or provided a prohibited gift, the commission
254 may sanction the person from appearing before the commission or

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255 otherwise representing anyone before the commission for a period
256 of up to 2 years.

257 (e) A commissioner may not serve as the representative of
258 any political party or on any executive committee or other
259 governing body of a political party; serve as an executive
260 officer or employee of any political party, committee,
261 organization, or association; receive remuneration for
262 activities on behalf of any candidate for public office; engage
263 on behalf of any candidate for public office in the solicitation
264 of votes or other activities on behalf of such candidacy; or
265 become a candidate for election to any public office without
266 first resigning from office.

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

271 (g) A commissioner may not conduct himself or herself in
272 an unprofessional manner at any time during the performance of
273 his or her official duties.

274 (h) A commissioner must avoid impropriety in all of his or
275 her activities and must act at all times in a manner that
276 promotes public confidence in the integrity and impartiality of
277 the commission.

278 (i) A commissioner may not directly or indirectly, through
279 staff or other means, solicit any thing of value from any public
280 utility regulated by the commission, or from any business entity
281 that, whether directly or indirectly, is an affiliate or

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282 subsidiary of any public utility regulated by the commission, or
283 from any party appearing in a proceeding considered by the
284 commission in the last 2 years.

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

287 350.042 Ex parte communications.--

288 (7)(a) It shall be the duty of the Commission on Ethics to
289 receive and investigate sworn complaints of violations of this
290 section pursuant to the procedures contained in ss. 112.322-
291 112.3241.

292 (b) If the Commission on Ethics finds that there has been
293 a violation of this section by a public service commissioner, it
294 shall provide the Governor and the Florida Public Service
295 Commission Nominating Council with a report of its findings and
296 recommendations. The Governor is authorized to enforce the
297 findings and recommendations of the Commission on Ethics,
298 pursuant to part III of chapter 112.

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

303 (d) If, during the course of an investigation by the
304 Commission on Ethics into an alleged violation of this
305 paragraph, allegations are made as to the identity of the person
306 who participated in the ex parte communication, that person must
307 be given notice and an opportunity to participate in the
308 investigation and relevant proceedings to present a defense. If

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309 the Commission on Ethics determines that the person participated
310 in the ex parte communication, the commission may sanction the
311 person from appearing before the commission or otherwise
312 representing anyone before the commission for a period of up to
313 2 years.

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

316 350.061 Public Counsel; appointment; oath; restrictions on
317 Public Counsel and his or her employees.--

318 (1) The Committee on Public Service Commission Oversight
319 ~~Joint Legislative Auditing Committee~~ shall appoint a Public
320 Counsel by majority vote of the members of the committee to
321 represent the general public of Florida before the Florida
322 Public Service Commission. The Public Counsel shall be an
323 attorney admitted to practice before the Florida Supreme Court
324 and shall serve at the pleasure of the ~~Joint Legislative~~
325 ~~Auditing~~ Committee on Public Service Commission Oversight,
326 subject to biennial ~~annual~~ reconfirmation by the committee. The
327 Public Counsel shall perform his or her duties independently.
328 Vacancies in the office shall be filled in the same manner as
329 the original appointment.

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

332 350.0614 Public Counsel; compensation and expenses.--

333 (2) The Legislature ~~hereby~~ declares and determines that
334 the Public Counsel is under the legislative branch of government
335 within the intention of the legislation as expressed in chapter

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336 216, and no power shall be in the Executive Office of the
337 Governor or its successor to release or withhold funds
338 appropriated to it, but the same shall be available for
339 expenditure as provided by law and the rules or decisions of the
340 ~~Joint Auditing~~ Committee on Public Service Commission Oversight.

341 Section 8. Communications services offered by governmental
342 entities.--

343 (1) As used in this section, the term:

344 (a) "Advanced service" means high-speed-Internet-access-
345 service capability in excess of 200 kilobits per second in the
346 upstream or the downstream direction, including any service
347 application provided over the high-speed-access service or any
348 information service as defined in 47 U.S.C. s. 153(20).

349 (b) "Cable service" has the same meaning as in 47 U.S.C.
350 s. 522(6).

351 (c) "Communications services" includes any "advanced
352 service," "cable service," or "telecommunications service" and
353 shall be construed in the broadest sense.

354 (d) "Enterprise fund" means a separate fund to account for
355 the operation of communications services by a local government,
356 established and maintained in accordance with generally accepted
357 accounting principles as prescribed by the Governmental
358 Accounting Standards Board.

359 (e) "Governmental entity" means any political subdivision
360 as defined in section 1.01, Florida Statutes, including any
361 county, municipality, special district, school district, or
362 utility authority or other authority or any instrumentality,

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363 agency, unit, or department thereof. The term does not include
364 an independent special district created before 1970 which has
365 been granted express legislative authority to provide a
366 communications service and which does not sell a communications
367 service outside its district boundaries.

368 (f) "Provide," "providing," "provision," or "provisioning"
369 means offering or supplying a communications service for a fee
370 or other consideration to a person, including any portion of the
371 public or a private provider, but does not include service by a
372 governmental entity to itself or to any other governmental law
373 enforcement or governmental emergency services entity.

374 (g) "Subscriber" means a person who receives a
375 communications service.

376 (h) "Telecommunications services" means the transmission
377 of signs, signals, writing, images, sounds, messages, data, or
378 other information of the user's choosing, by wire, radio, light
379 waves, or other electromagnetic means, without change in the
380 form or content of the information as sent and received by the
381 user and regardless of the facilities used, including, without
382 limitation, wireless facilities.

383 (2)(a) Prior to a proposal to provide any provision of
384 communications services, a governmental entity shall hold no
385 less than two public hearing not less than 30 days apart. At
386 least 30 days before the first of the two public hearings, the
387 governmental entity shall give notice of the hearing in the
388 predominant newspaper of general circulation in the area
389 considered for service. At least 40 days before the first public

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390 hearing, the governmental entity shall electronically provide
391 notice to the Department of Revenue and the Public Service
392 Commission, which shall post the notice on the department's and
393 the commission's website to be available to the public. The
394 Department of Revenue shall also send the notice by United
395 States Postal Service to the known addresses for all dealers of
396 communications services registered with the department under
397 chapter 202, Florida Statutes, or provide an electronic
398 notification, if the means are available, within 10 days after
399 receiving the notice. The notice shall include the time and
400 place of the hearings and shall state that the purpose of the
401 hearings is to consider whether the governmental entity will
402 provide communications services. The notice shall include, at a
403 minimum, the geographic areas proposed to be served by the
404 governmental entity and the services, if any, which the
405 governmental entity believes are not currently being adequately
406 provided. The notice shall also state that any dealer who wishes
407 to do so may appear and be heard at the public hearings.

408 (b) At a public hearing required by this subsection, a
409 governmental entity shall, at a minimum, consider:

410 1. Whether the service that is proposed to be provided is
411 currently being offered in the community and, if so, whether the
412 service is generally available throughout the community.

413 2. Whether a similar service is currently being offered in
414 the community and, if so, whether the service is generally
415 available throughout the community.

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416 3. If the same or a similar service is not currently
417 offered, whether any other service provider proposes to offer
418 the same or a similar service and, if so, what assurances that
419 service provider is willing or able to offer regarding the same
420 or similar service.

421 4. The capital investment required by the governmental
422 entity to provide the communications service, the estimated
423 realistic cost of operation and maintenance, and, using a full
424 cost-accounting method, the estimated realistic revenues and
425 expenses of providing the service and the proposed method of
426 financing.

427 5. The private and public costs and benefits of providing
428 the service by a private entity or a governmental entity,
429 including the effect on existing and future jobs, actual
430 economic development prospects, tax-base growth, education, and
431 public health.

432 (c) At one or more of the public hearings under this
433 subsection, the governmental entity shall make available to the
434 public a written business plan for the proposed communications
435 service venture containing, at a minimum:

436 1. The projected number of customers to be served by the
437 venture.

438 2. The geographic area to be served by the venture.

439 3. The types of communications services to be provided.

440 4. A plan to ensure that revenues exceed operating
441 expenses and payment of principal and interest on debt within 4
442 years.

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443 5. Estimated capital and operational costs and revenues
444 for the first 4 years.

445 6. Projected network modernization and technological
446 upgrade plans, including estimated costs.

447 (d) After making specific findings regarding the factors
448 in paragraphs (2)(b) and (2)(c), the governmental entity may
449 authorize providing a communications service by a majority
450 recorded vote, by resolution, ordinance, or other formal means
451 of adoption.

452 (e) The governing body of a governmental entity may issue
453 one or more bonds to finance the capital costs for facilities to
454 provide a communications service. However:

455 1. A governmental entity may only pledge revenues in
456 support of the issuance of any bond to finance provision of a
457 communications service:

458 a. Within the county in which the governmental entity is
459 located;

460 b. Within an area in which the governmental entity
461 provides electric service outside its home county under an
462 electric service territorial agreement approved by the Public
463 Service Commission before the effective date of this act; or

464 c. If the governmental entity is a municipality or special
465 district, within its corporate limits or in an area in which the
466 municipality or special district provides water, wastewater, or
467 electric or natural gas service, or within an urban service area
468 designated in a comprehensive plan, whichever is larger, unless
469 the municipality or special district obtains the consent, by a

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470 majority recorded vote by resolution, ordinance, or other formal
471 means of adoption, of the governmental entity within the
472 boundaries of which the municipality or special district
473 proposes to provide service.

474

475 Any governmental entity from which consent is sought pursuant to
476 sub-subparagraph c. shall be located within the county in which
477 the governmental entity is located for consent to be effective.

478 2. Revenue bonds issued in order to finance provision of a
479 communications service are not subject to the approval of the
480 electors if the revenue bonds mature within 15 years. Revenue
481 bonds issued to finance provision of a communications service
482 that does not mature within 15 years shall be approved by the
483 electors. The election shall be conducted as specified in
484 chapter 100, Florida Statutes.

485 (f) A governmental entity providing a communications
486 service may not price any service below the cost of providing
487 the service by subsidizing the communications service with
488 moneys from rates paid by customers of a noncommunications
489 services utility or from any other revenues. The cost standard
490 for determining cross-subsidization is whether the total revenue
491 from the service is less than the total long-run incremental
492 cost, including direct costs and indirect costs, as allocated
493 pursuant to the cost-allocation plan described in paragraph (g),
494 of the service. "Total long-run incremental cost" means service-
495 specific volume and nonvolume-sensitive costs.

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496 (g) A governmental entity providing a communications
497 service shall keep separate and accurate books and records,
498 maintained in accordance with generally accepted accounting
499 principles, of a governmental entity's communication service,
500 which books and records shall be made available for any audits
501 of the books and records conducted under applicable law. To
502 facilitate equitable distribution of indirect costs, a local
503 governmental entity shall develop and follow a cost-allocation
504 plan, which is a procedure for allocating direct and indirect
505 costs and which is generally developed in accordance with OMB
506 Circular A-87, Cost Principles for State, Local, and Indian
507 Tribal Government, published by the United States Office of
508 Management and Budget.

509 (h) The governmental entity shall establish an enterprise
510 fund to account for its operation of communications services.

511 (i) The governmental entity shall adopt separate operating
512 and capital budgets for its communications services.

513 (j) A governmental entity may not use its powers of
514 eminent domain under chapter 73, Florida Statutes, solely or
515 primarily for the purpose of providing a communications service.

516 (k) If, after 4 years following the initiation of the
517 provision of communications services by a governmental entity or
518 4 years after the effective date of this act, whichever is
519 later, revenues do not exceed operating expenses and payment of
520 principal and interest on the debt for a governmental entity's
521 provision of communications services, no later than 60 days
522 following the end of the 4-year period a governmental entity

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523 shall hold a public hearing at which the governmental entity
524 shall do at least one of the following:

525 1. Approve a plan to cease providing communications
526 services;

527 2. Approve a plan to dispose of the system the
528 governmental entity is using to provide communications services
529 and, accordingly, to cease providing communications services;

530 3. Approve a plan to create a partnership with a private
531 entity in order to achieve operations in which revenues exceed
532 operating expenses and payment of principal and interest on
533 debt; or

534 4. Approve the continuing provision of communications
535 services.

536 (l) If the governmental entity chooses to continue
537 providing communications services, or approves a plan provided
538 in paragraph (k), but thereafter does not implement the plan,
539 the governmental entity shall either develop a new business plan
540 provided under paragraph (c) or provide notice of the decision
541 to not pursue the provisions under paragraph (k). The new plan
542 shall be submitted to the governing body for approval within 60
543 days after the public hearing and shall be implemented upon
544 approval. If the governing body does not approve the new plan,
545 the governmental entity shall cease providing communications
546 services within 12 months thereafter.

547 (m) The governmental entity shall conduct an annual review
548 at a formal public meeting to consider the progress the
549 governmental entity is making toward reaching its business plan

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550 goals and objectives for providing communication services. At
551 the public meeting, the governmental entity shall review the
552 related revenues, operating expenses, and payment of interest on
553 debt.

554 (n) Within 12 months after the end of each fiscal year, a
555 governmental entity that is providing communications services
556 shall prepare a modified statement of revenues, expenses, and
557 changes in net assets for the enterprise fund used to account
558 for the communications services. Such statement shall present a
559 full and complete accounting of the operations of the covered
560 services for the fiscal year in accordance with generally
561 accepted accounting principles and utilizing full cost
562 accounting. The governmental entity shall provide a copy of the
563 accountant's report and affidavit to the Department of Revenue,
564 in addition to the governmental entity's regular annual
565 financial report and audit, required by s. 218.32, Florida
566 Statutes.

567 (3)(a) A governmental entity that provides a cable service
568 shall comply with the Cable Communications Policy Act of 1984,
569 47 U.S.C. 521, et seq., the regulations issued by the Federal
570 Communications Commission under the Cable Communications Policy
571 Act of 1984, 47 U.S.C. 521, et seq., and all applicable state
572 and federal rules and regulations, including, but not limited
573 to, s. 166.046, Florida Statutes, and those provisions of
574 chapters 202, 212, and 337, Florida Statutes, which apply to a
575 provider of the services.

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576 (b) A governmental entity that provides a
577 telecommunications service or advanced service shall comply, if
578 applicable, with chapter 364, Florida Statutes, and rules
579 adopted by the Public Service Commission; chapter 166, Florida
580 Statutes, and all applicable state and federal rules and
581 regulations, including, but not limited to, those provisions of
582 chapters 202, 212, and 337, Florida Statutes, which apply to a
583 provider of the services.

584 (c) A governmental entity may not exercise its power or
585 authority in any area, including zoning or land use regulation,
586 to require any person, including residents of a particular
587 development, to use or subscribe to any communications service
588 of a governmental entity.

589 (d) A governmental entity shall apply its ordinances,
590 rules, and policies, and exercise any authority under state or
591 federal laws, including, but not limited to, those relating to
592 the following subjects and without discrimination as to itself
593 when providing a communications service or to any private
594 provider of communications services:

595 1. Access to public rights-of-way; and
596 2. Permitting, access to, use of, and payment for use of
597 governmental-entity-owned poles. The governmental entity is
598 subject to the same terms, conditions, and fees, if any, for
599 access to governmental-entity-owned poles which the governmental
600 entity applies to a private provider for access.

601 (4)(a) If a governmental entity was providing, as of April
602 1, 2005, advanced services, cable services, or

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603 telecommunications services, it is not required to comply with
604 paragraph (2)(a), paragraph (2)(b), paragraph (2)(c), paragraph
605 (2)(d), sub-subparagraph (2)(e)1.c., or paragraph (2)(f), in
606 order to continue to provide advanced services, cable services,
607 or telecommunications services, respectively, but it shall
608 comply with and be subject to all other provisions of this
609 section.

610 (b) If a governmental entity, as of April 1, 2005, had
611 issued debt pledging revenues from an advanced service, cable
612 service, or telecommunications service, it is not required to
613 comply with paragraph (2)(a), (b), (c), (d), (e)1.c., or (f) in
614 order to provide advanced services, cable services, or
615 telecommunications services, respectively, but it shall comply
616 with and be subject to all other provisions of this section.

617 (c) A governmental entity that has purchased equipment
618 specifically for the provisioning of advanced service, cable
619 service, or telecommunications service by April 1, 2005, and has
620 received authorization by a recorded majority vote by
621 resolution, ordinance, or other formal means of adoption, for
622 the provision of an advanced service, cable service, or
623 telecommunications service, is not required to comply with
624 paragraph (2)(a), (b), (c), (d), (2)(e)1.c., or (f) in order to
625 provide advanced services, cable services, or telecommunications
626 services, respectively, but shall comply with and be subject to
627 all other provisions of this section.

628 (5) Notwithstanding s. 542.235, Florida Statutes, or any
629 other law, a governmental entity that provides a communications

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630 service is subject to the same prohibitions applicable to
631 private providers under ss. 542.18 and 542.19, Florida Statutes,
632 as it relates to providing a communications service. In
633 addition, this section does not confer state action immunity, or
634 any other antitrust immunity or exemption, on any governmental
635 entity providing communications services.

636 (6) To ensure the safe and secure transportation of
637 passengers and freight through an airport facility, as defined
638 in s. 159.27(17), Florida Statutes, exemption from this section
639 is granted to any airport authority or other governmental entity
640 that provides or is proposing to provide:

641 (a) Communications services only within the boundaries of
642 its airport layout plan, as defined in s. 333.01(6), Florida
643 Statutes, to subscribers which are integral and essential to the
644 safe and secure transportation of passengers and freight through
645 the airport facility.

646 (b) Shared-tenant service under s. 364.339, Florida
647 Statutes, not including dial tone, enabling subscribers to
648 complete calls outside the airport layout plan, to one or more
649 subscribers within its airport layout plan which are not
650 integral and essential to the safe and secure transportation of
651 passengers and freight through the airport facility.

652
653 An airport authority or other governmental entity that provides
654 or is proposing to provide communications services to one or
655 more customers within its airport layout plan which are not
656 integral and essential to the safe and secure transportation of

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657 passengers and freight through the airport facility, or to one
658 or more customers outside its airport layout plan, is not exempt
659 from this section. By way of example and not limitation, the
660 integral, essential subscribers may include airlines and
661 emergency service entities, and the nonintegral, nonessential
662 subscribers may include retail shops, restaurants, hotels, or
663 rental car companies.

664 (7) This section does not alter or affect any provisions
665 in the charter, code, or other governing authorities of a
666 governmental entity that impose additional or different
667 requirements on provision of communications service by a
668 governmental entity. Any such provisions shall apply in addition
669 to the applicable provisions in this section.

670 Section 9. If any provision of this act or its application
671 to any person or circumstance is held invalid, the invalidity
672 does not affect other provisions or applications of the act
673 which can be given effect without the invalid provision or
674 application, and to this end the provisions of this act are
675 severable.

676 Section 10. This act shall take effect October 1, 2005;
677 however, the provisions creating penalties or new standards of
678 conduct apply to violations occurring on or after that date.
679
680

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

682 Remove the entire title and insert:

683 A bill to be entitled

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HOUSE AMENDMENT

Bill No. CS/CS/SB 1322

Amendment No. (for drafter's use only)

684 An act relating to the Public Service Commission; creating
685 the Committee on Public Service Commission Oversight as a
686 standing joint committee of the Legislature; providing for
687 its membership, powers, and duties; amending s. 350.001,
688 F.S.; revising legislative intent; revising provisions for
689 selection of commission members by the Governor; amending
690 s. 350.031, F.S.; authorizing the Florida Public Service
691 Commission Nominating Council to make expenditures to
692 advertise a vacancy on the council; requiring that the
693 Committee on Public Service Commission Oversight provide
694 nominees for recommendation to the Governor for
695 appointment to the Public Service Commission; providing
696 procedures; amending s. 350.041, F.S.; revising standards
697 of conduct for commissioners relating to gifts; providing
698 procedures for investigation of allegations and relevant
699 proceedings by the Commission on Ethics; providing for
700 sanctions for violations; requiring that commissioners
701 avoid impropriety and act in a manner that promotes
702 confidence in the commission; prohibiting a commissioner
703 from soliciting any thing of value from any public
704 utility, its affiliate, or any party; amending s. 350.042,
705 F.S.; revising provisions prohibiting ex parte
706 communication with a commissioner; providing procedures
707 for investigation of allegations and relevant proceedings
708 by the Commission on Ethics; providing for sanctions for
709 violations; amending s. 350.061, F.S.; requiring that the
710 Committee on Public Service Commission Oversight rather

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711 than the Joint Legislative Auditing Committee appoint the
712 Public Counsel; providing for biennial reconfirmation
713 rather than annual; requiring that the Public Counsel
714 perform his or her duties independently; amending s.
715 350.0614, F.S.; requiring that the Committee on Public
716 Service Commission Oversight rather than the Joint
717 Legislative Auditing Committee oversee expenditures of the
718 Public Counsel; providing for communications services
719 offered by certain governmental entities; providing
720 definitions; providing for notice of public hearings to
721 consider whether the local government will provide a
722 communications service; requiring a governmental entity to
723 consider certain factors before a communications service
724 is provided; providing certain restrictions on revenue
725 bonds to finance provisioning of communications services;
726 requiring a local government to make available a written
727 business plan; providing criteria for the business plan;
728 setting pricing standards; providing for accounting and
729 books and records; requiring the governmental entity to
730 establish an enterprise fund; requiring the governmental
731 entity to maintain separate operating and capital budgets;
732 limiting the use of eminent-domain powers; requiring a
733 governmental entity to hold a public hearing to consider
734 certain factors if the business plan goals are not met;
735 requiring compliance with certain federal and state laws;
736 requiring a local government to treat itself the same as
737 it treats other providers of similar communications

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HOUSE AMENDMENT

Bill No. CS/CS/SB 1322

Amendment No. (for drafter's use only)

738 services; exempting certain governmental entities from
739 specified provisions of the act; requiring a local
740 governmental provider of communications services to follow
741 the same prohibitions as other providers of the same
742 services; providing an exemption for airports under
743 certain conditions; recognizing preemption of a charter,
744 code, or other governmental authority; providing for
745 severability; providing for application; providing an
746 effective date.

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