

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/SB 1322 Public Service Commission
SPONSOR(S): Governmental Oversight and Productivity and Communications and Public Utilities and Communications and Public Utilities
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce Council</u>	<u>7 Y, 1 N</u>	<u>Cater</u>	<u>Bohannon</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This analysis is to a strike-all amended that will be traveling with CS/CS/SB 1322. This amendment was adopted by the Commerce Council on May 3, 2005.

This bill is the result of Senate Interim Project 2005-115, Florida Public Service Commission, Review of Chapter 350, F.S. It:

- Creates the joint legislative Committee on Public Service Commission Oversight to receive the list of nominees for commissioner from the nominating council;
- The Committee on Public Service Commission Oversight selects one nominee per vacancy to recommend to the Governor as the appointee, and revises the nominating procedure to reflect this change;
- Provides for the application of the gift prohibition statute to commissioner attendance at conferences and associated meals and events;
- Creates a penalty for a person giving a prohibited gift to a commissioner and for the person involved in an ex parte with a commissioner;
- Requires that commissioners avoid impropriety and act in a manner that promotes public confidence in the integrity and impartiality of the commission
- Codifies the independence of the Public Counsel; and
- Authorizes the Public Service Commission Nominating Council to spend a nominal amount to advertise vacancies on the council.

The bill restricts the ability of a local government to provide specified communications services. If a local government is providing a communications service on the effective date of the bill (which takes effect upon becoming a law), it is permitted to continue, subject to limitations. Additionally, a local government may begin providing such a service if it complies with requirements set out in the bill, including allowing private providers an opportunity to provide the service. The bill also sets out additional requirements the local government entity must meet in providing the service.

There is a fiscal impact of up to \$10,000 to advertise vacancies on the Public Service Commission Nominating Council. There may be some fiscal impact to governmental entities relating to providing communications service.

This act shall take effect on October 1, 2005, with the provisions creating penalties or new standards of conduct apply to violations occurring on or after that date.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 5/3/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

This analysis is to a strike-all amended that will be traveling with CS/CS/SB 1322. This amendment was adopted by the Commerce Council on May 3, 2005.

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill creates another joint committee of the Legislature. The bill also provides guidelines for a governmental entity providing communications service.

Promote Personal Responsibility-The bill creates new standards of conduct and provides penalties for violation of certain provisions.

B. EFFECT OF PROPOSED CHANGES:

Amendment to Chapter 350

Current Situation

Chapter 350 of the Florida Statutes creates three entities, the Florida Public Service Commission (PSC or commission), the Public Counsel (OPC), and the Florida Public Service Commission Nominating Council (nominating council or council). The statutes expressly provide that all three are legislative entities.

The last comprehensive legislative review of chapter 350 and these three entities was in 1990. Many of the issues discussed in that report relating to oversight of the PSC and ethics continue to be of concern today. The purpose of the interim project was to review the responsibilities and the performance of these three entities and to identify any changes that should be made to the chapter to improve the efficiency and effectiveness of their operations.

Public Service Commission

In general, the functions of the PSC include: ratemaking; regulation of service quality; planning; adjudication, including resolving disputes between regulated companies; ensuring public safety; and consumer services. The PSC is composed of five commissioners. Commissioners must meet statutory qualifications and abide by statutory standards of conduct. The Commission on Ethics investigates any alleged violations and reports its findings and recommendations to the Governor for enforcement. The potential penalties are set forth in s. 112.317, F.S., and include a variety of penalties such as public censure and reprimand, removal of office, a civil penalty not to exceed \$10,000, or forfeiture of no more than one-third of the person's salary for no more than 12 months.

The prohibition on commissioners accepting gifts is set forth in s. 350(2)(a) and (d), F.S. Paragraph (a) provides that a commissioner may not accept anything from any business entity which, either directly or indirectly, owns or controls any public utility regulated by the commission, from any public utility regulated by the commission, or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any public utility regulated by the commission. Paragraph (d) provides that a commissioner may not accept anything from a party in a proceeding currently pending before the commission.

The provisions on ex parte communications¹ are set forth in s. 350.042, F.S. This section prohibits a commissioner from initiating or considering ex parte communications relating to a proceeding in front of

¹ An ex parte communication is defined as "on one side only; by or for one party; done for, in behalf of, or on the application of, one party only." Blacks Law Dictionary (Revised Fourth Edition West 1968).

the PSC. If a commissioner does knowingly receive an ex parte communication relating to a proceeding, he or she must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made. No individual is to discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. Any commissioner who knowingly fails to place on the record any such communications within 15 days of the date of the communication is subject to removal and may be assessed a civil penalty not to exceed \$5,000. There is no penalty for the individual involved in the ex parte communication.

Public Counsel

The Public Counsel provides legal representation for the people of the state, primarily in proceedings before the commission. The Public Counsel is appointed by a majority vote of the members of the Florida Legislature's Joint Legislative Auditing Committee, and serves at the pleasure of the committee, subject to annual reappointment. The Public Counsel's budget is exempt from the Governor's budgeting and planning authority and neither the Governor nor the Department of Management Services has any authority over OPC employees.

Florida Public Service Commission Nominating Council

The nominating council reviews applications to fill vacancies on the PSC and selects the most qualified applicants to interview, interviews these applicants, and provides to the Governor a list of no fewer than three nominees per vacancy, from which the Governor appoints a commissioner, subject to confirmation by the Senate.

Effect of Proposed Changes

Public Service Commission

Responsibility for oversight of the PSC

The bill increases the legislative responsibility for oversight of the PSC, a legislative entity according to both statute and case law.² The bill creates a standing joint legislative committee to make appointments to the commission, replacing the current practice of having the Governor make these appointments.³ The bill creates the Committee on Public Service Commission Oversight. The committee is 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 is for two years and runs from the organization of one Legislature to the organization of the next Legislature. The President of the Senate appoints the chair of the committee in even-numbered years and the vice chair in odd-numbered years, and the Speaker of the House of Representatives appoints the chair of the committee in odd-numbered years and the vice chair in even-numbered years, from among the committee membership. Vacancies are filled in the same manner as the original appointment. Members serve without additional compensation, but are to be reimbursed for expenses. The committee is governed by joint rules of the Senate and the House of Representatives. The committee is authorized to recommend to the Governor three nominees to fill a vacancy on the Public Service Commission as provided by general law and to appoint a Public Counsel as provided by general law.

² Sections 350.001 and 350.041, F.S., *Chiles v. Public Service Commission Nominating Council*, 573 So.2d 829 (Fla. 1991), *Commission on Ethics v. Sullivan*, 489 So.2d 10 (Fla.1986), and *Florida Motor Lines, Inc. v. Railroad Commissioners*, 100 Fla. 538, 129 So. 876 (1930).

³ In s. 350.001, F.S., the Legislature delegates to the Governor a limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members only from the list provided by the Florida Public Service Commission Nominating Council in the manner prescribed by general law.

To assist in accomplishing the disciplinary duties, the committee is authorized to file a complaint with the Commission on Ethics alleging a violation of ch. 350, F.S., by a commissioner, former commissioner, former commission employee, or member of the Public Service Commission Nominating Council. The committee will not have a permanent staff, but the President and Speaker select staff members from among existing legislative staff, when and as needed.

The bill amends s. 350.031, F.S., to provide a new nominating procedure. The nominating council is required to submit to the joint committee six persons for each vacancy on the PSC. The list must be submitted by August 1 for a vacancy due to the end of a term and within 60 days after a vacancy occurs for any reason other than expiration of a term. The committee will select from the list three nominees to recommend to the Governor to be appointed to the PSC. The recommendation must be submitted to the Governor within 45 days of receipt of the list of nominees. If the Governor rejects the recommendation or has not made an appointment within 30 days after receipt of the recommendation, the nominating council is to immediately begin the nominating process again, considering all new applicants and all previous applicants for this vacancy. For the second and subsequent nominations, the council submits its list within 30 days of the rejection or failure to appoint. The committee must then make its recommendation to the Governor within 30 days of receipt of the list of nominees. The Governor must act on the recommendation within 30 days of receipt. The appointment is subject to confirmation by the Senate during the next Regular Session after the vacancy occurs.

Gifts

The bill amends the gift prohibition statute, s. 350.041, F.S., the standards of conduct for commissioners. The bill provides that commissioners may attend conferences and associated meals and events that are generally available to all conference participants without payment of any fees in addition to the conference fee. Additionally, while at a conference, a commissioner may attend meals or events that are not sponsored in any part by a regulated utility and that are available only to commissioners, committee members, or speakers at the conference, provided the commissioner is a committee member or speaker. Also, it is not a violation of the gift prohibition for a commissioner to attend a conference for which conference participants who are employed by a utility regulated by the commission have paid a higher conference registration fee than the commissioner, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee and that is sponsored, in whole or in part, by a utility regulated by the commission.

A related change would address the potential problem of ex parte communications or other improper interaction between commissioners and those with interests before the commission while in attendance at conferences, meals, or events. The bill further amends the standards of conduct statute to require commissioners to avoid impropriety in all of the commissioner's actions and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.

The bill also creates a penalty for those giving a prohibited gift, providing that, if, in the course of an investigation by the Commission on Ethics, allegations are made as to who gave the prohibited gift, the person must be given notice and an opportunity to participate in the investigation and relevant hearings to present a defense. If the Commission on Ethics determines that the person gave or provided the prohibited gift, the commission may sanction the person from appearing before the PSC or otherwise representing anyone before the PSC for a period of up to two years.

Ex parte

As discussed above, the bill supplements ex parte prohibitions by requiring that commissioners at all times avoid impropriety and act at all times in a manner that promotes public confidence in the integrity and impartiality of the PSC.

The bill amends s. 350.042, F.S., the ex parte statute, to create a penalty for the person involved in an ex parte with a commissioner. The penalty is the same as that created for giving a prohibited gift. If, in

the course of an investigation by the Commission on Ethics, allegations are made as to who engaged in the ex parte communication, the person must be given notice and an opportunity to participate in the investigation and relevant hearings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication the commission may sanction the person from appearing before the PSC or otherwise representing anyone before the PSC for a period of up to two years.

Public Counsel

The bill amends s. 350.061, F.S., to conform to the appointment of the Public Counsel by the new joint committee and to codify the independence of the Public Counsel.

The bill makes additional conforming changes, to s. 350.0614, F.S., relating to appointment of Public Counsel.

Public Service Commission Nominating Council

The bill amends s. 350.031, F.S., to authorize the Public Service Commission Nominating Council to spend up to \$10,000 to advertise vacancies on the council.

Communications Services Offered by Governmental Entities

Current Situation

In Florida, counties are established under Section 1 and municipalities are established under Section 2, Article VIII of the Florida Constitution. The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁴ Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.⁵ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.⁶ Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law. Several chapters of the Florida Statutes provide for municipalities and counties to own and operate utilities.⁷

Telecommunications

Entities providing telecommunications services are subject to the authority of the Public Service Commission (PSC or Commission).⁸

The Florida Telecommunications Act of 1995⁹ substantially amended ch. 364, F.S., to open local telecommunications service to competition. At that time, 13 companies were certificated by the Commission. Currently, there are 10 companies certificated as incumbent local exchange

⁴ Art. VIII, s. 1(f), Fla. Const.

⁵ Art. VIII, s. 1(g), Fla. Const.

⁶ Art. VIII, s. 2(b), Fla. Const. See Also s. 166.021, F.S.

⁷ See Ch. 125, F.S., County Government; Ch. 153, F.S., Water and Wastewater Systems, Ch. 166, F.S., Municipalities; and Ch. 180, F.S., Municipal Public Works.

⁸ See Ch. 364, F.S.

⁹ Ch. 95-403, L.O.F.

telecommunications companies (ILECs) and 424 certificated as competitive local exchange companies (CLECs), 10 of which are municipalities.¹⁰

On October 1, 1997, Ch. 97-197, L.O.F.; creating ss. 125.421 and 166.047, F.S., took effect. The law provides that a telecommunications company which is a municipality, county, or other entity of a local government may hold a certificate as required by ch. 364, F.S., and that it serves a public purpose only if the local government accounts separately for revenues, expenses, property, and source of investment dollars associated with providing these services, is subject to all requirements applicable to telecommunications companies and pays ad valorem taxes or equivalent fees on its telecommunications facilities. Local governments providing telecommunications internally or providing internal information to the public for a fee would be exempt from these provisions.

Pending before the Florida Supreme Court is a decision by the First District Court of Appeals affirming the order of the Circuit Court for Leon County granting summary judgment in favor of the City of Gainesville and declaring unconstitutional portions of Ch. 97-197, L.O.F., imposing ad valorem taxes on property owned by a city and used to provide telecommunications services.¹¹

Cable

Cable company facilities are broadband facilities capable of providing many advanced services, including voice, data, and video. Cable companies are regulated at the federal level, but states are allowed franchise and taxing authority. Neither state nor federal law prohibits local governments from providing cable services. Federal law does prohibit counties and municipalities from awarding exclusive cable franchises and, if a cable operator provides telecommunications services, that operator cannot be required to obtain a franchise for the provision of telecommunications services.¹²

Advanced Services

Under Chapter 47, United States Code, the Federal Communications Commission (FCC) has jurisdiction over all communications services. According to the FCC, advanced telecommunications capability is the availability of high-speed, switched, broadband telecommunications that enable users to originate and receive high-quality voice, data, graphics, and video using any technology. Advanced services may include digital subscriber line (DSL), cable, optic fiber, wireless, and broadband over power line (BPL) and the necessary switches and software to create the service. The Florida Legislature has specifically exempted from certain regulation by the PSC wireless, broadband, and Voice over Internet Protocol (VoIP) services. Commission jurisdiction remains unaddressed as to certain issues such as interconnection.

Federal Regulations

Section 253 of the Communications Act provides that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”¹³ In 1997, Missouri passed a law which prohibited, with limited exceptions, political subdivisions from obtaining a certificate of service authority to provide telecommunications services or facilities. Various Missouri municipal groups and municipal utilities asked the FCC to preempt the Missouri law. The FCC refused to preempt the enactment of the law since it had previously found that political subdivisions of the state are not “entities” under s.253(a) of the Communications Act.¹⁴ Following a reversal by the United States Court of Appeals for the Eighth Circuit, the United States Supreme Court agreed with the FCC’s

¹⁰ The municipal CLECs certificated by the PSC include the Cities of Daytona Beach, Gainesville, Lakeland, Ocala, Quincy, Tallahassee, Ft. Pierce Utilities Authority d/b/a/ GigaBand Communications, Kissimmee Utility Authority, Utility Commission of New Smyrna Beach d/b/a Spanks Communications, and Utility Board of the City of Key West d/b/a Key Energy Services.

¹¹ 829 So.2d. 595, Department of Revenue v. City of Gainesville

¹² 47 U.S.C. s. 541

¹³ 27 U.S.C. 253(a)

¹⁴ 16 F.C.C.R. 1157

determination that political subdivisions of the state are not “entities” under s. 253(a) of the Communications Act.¹⁵

Proposed Changes

The bill creates a process for a local government to provide communications services. It creates the following definitions for use in applying the restrictions.

- “Advanced service” means high-speed-Internet-access-service capability in excess of 200 kilobits per second in the upstream or downstream direction, including any service application provided over the high-speed-access service or any information service as defined in 47 U.S.C. section 153(20).
- “Cable service” has the same meaning as in 47 U.S.C. s. 522(6).
- “Communications services” includes any “advanced service,” “cable service,” or “telecommunications service” and shall be construed in the broadest sense.
- “Enterprise Fund” means a separate fund to account for the operation of communications services by a local government, established and maintained in accordance with generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board.
- “Governmental entity” means any political subdivision as defined in section 1.01, F. S., including any county, municipality, special district, school district, utility authority or other authority or any instrumentality, agency, unity or department thereof. The term does not include an independent special district created before 1970 which has been granted express legislative authority to provide a communications service and which does not sell a communications service outside its district boundaries.
- “Provide,” “providing,” “provision,” or “provisioning” means offering or supplying a communications service for a fee or other consideration to a person, including any portion of the public or private provider, but does not include service by an entity to itself or to any other governmental entity.
- “Subscriber” means a person who receives a communications service.
- “Telecommunications services” means the transmission of signs, signals, writing, images, sounds, messages, data, or other information of the users choosing, by wire, radio, light waves, or other electromagnetic means, without change in the form or content of the information as sent and received by the user and regardless of the facilities used, including, without limitation, wireless facilities.

The bill requires a governmental entity that proposes to provide a communications service to hold no less than two public hearings. The hearings cannot be held less than 30 days apart. At least 30 days prior to the first hearing, notice must be given in the predominant newspaper of general circulation in the area considered for service. At least 40 days prior to the first hearing, the governmental entity must electronically provide notice to the Department of Revenue and the Public Service Commission, which shall post the notice on their websites to be made available to the public. The Department of Revenue shall also send the notice by U.S. Postal Service to the known addresses for all dealers of communications service registered with the department under chapter 202, F.S., or provide an electronic notification within ten days after receiving the notice. The notice must include the time and place of the hearings, state that the purpose of the meeting is to consider whether the governmental entity will provide communications services, and at minimum state the geographic areas proposed to be served by the governmental entity, the services believed not to be currently provided, and that the dealer may appear and be heard.

At least one of the public hearings required, the governmental entity must consider:

- Whether the proposed service is currently being offered and if it is generally available throughout the community;
- Whether a similar service is currently being offered and if it is generally available throughout the community;

¹⁵ 124 S. Ct. 1555

- If the proposed or similar service is not currently offered, whether any other service provider proposed to offer such service and what assurances the provider will or can offer in providing such services;
- What capital investment, estimated cost of operation and maintenance, estimated revenues and expenses, and method of financing is required by the governmental entity to provide the proposed service;
- The private and public costs and benefits of providing the service by a private or governmental entity, including the affect on existing and future jobs, actual economic development prospects, tax-base growth, education and public health.

The governmental entity must also make available at least at one of the public hearings a written business plan for the proposed communications service venture that contains, at a minimum:

- The projected number of customers and the geographic area to be served;
- The types of communications services to be provided;
- A plan to ensure that revenues exceed operating expenses and payment of principal and interest on debt within 4 years;
- Estimated capital and operational costs and revenue for the first 4 years;
- Projected network modernization and technological upgrade plans, including estimated costs.

The governmental entity may authorize providing a communications service by a majority recorded vote and by resolution, ordinance or other formal means of adoption after making specific findings on the considerations heard at the hearings.

Bonds may be issued to finance the capital costs for facilities to provide a communications service. However:

- Only revenues within the county in which the entity is located or within an area in which it provides electric service outside the county under certain electric service territorial agreements may be pledged in support of the issuance. A municipality or special district must obtain consent of the local governmental entity within the boundaries of which it proposes to provide communications services under certain conditions;
- Revenue bonds issued in order to finance providing a communications service are not subject to approval of the electors if they mature within 15 years. Bonds with a maturity of greater than 15 years must be approved by the electors and conducted as specified by law.

In addition, the governmental entity must not price any communications service below the cost of providing such service by subsidizing with moneys from rates paid by customers of a noncommunications service utility or from any other revenues. A cost standard is provided in the bill. The governmental entity must comply with certain record keeping requirements and keep separate and accurate books and records maintained in accordance with generally accepted accounting principles and make such books and records available for audit. Additional accounting standards are required to facility equitable distribution of indirect costs.

The governmental entity is required to establish an enterprise fund. It is also required to adopt separate operating and capital budgets and may not use its powers of eminent domain solely for the purpose of providing a communications service.

The governmental entity is to annually review at a public meeting the progress made toward reaching the business plan goals and objectives. At the meeting, the governmental entity shall review the related revenues, operating expenses, and payment of interest on debt. If, after four years of operation, revenues do not exceed operating expenses and payment of principal and interest and debt, the governmental entity shall hold a public hearing to consider the disposition of the system. Such disposition may include selling off, partnering with a private provider, or cutting costs and expenses.

Any local government providing cable services must comply with the federal Cable Communications Policy Act of 1984¹⁶ and all applicable state and federal law, including s. 166.046, F.S. (minimum standards for cable television franchises), and chapters 202 (communications service tax), 212 (tax on sales, use, and other transactions), and 337 (contracting, acquisition, disposal, and use of property), F.S., which are applicable to a provider of these services. A local government providing a telecommunications service or advanced service must comply with applicable provisions of Chapter 364, F. S. (Public Service Commission regulation of telecommunications companies), PSC rules, Chapter 166, F.S. (the statutes on municipalities), and all applicable state and federal rules and regulations, including s. 166.046, F.S. (minimum standards for cable television franchises), and chapters 202 (communications service tax), 212 (tax on sales, use, and other transactions), and 337 (contracting, acquisition, disposal, and use of property), F.S., which are applicable to a provider of these services.

In addition, a governmental entity may not exercise its power or authority, including zoning or land use regulation, to require any person, including residents of particular developments, to use or subscribe to a communications service provided by the local government.

The governmental entity shall apply its rules, ordinances, and policies and exercise any authority under state or federal laws without discrimination to itself or any private provider of communications services, including laws on permitting, access to, and use of public rights-of-way and permitting, access to, use of, and payment for use of local government owned or controlled poles. The local government is subject to the same terms, conditions, and fees, if any, for access to government-owned poles which it charges to a private provider for such access.

The bill provides a grandfather clause for a governmental entity that is providing advanced service, cable service, or telecommunications service before April 1, 2005, or that has issued debt pledging revenues from those services before April 1, 2005, or where the governing body has authorized the providing of those services and purchased equipment is not required to comply with certain paragraphs relating to the notice, hearings and public meetings in order to continue to provide such services. Governmental entities must still comply with the restraint of trade or commerce and monopolies provisions in Chapter 542, F.S.

The bill recognizes the need to ensure the safe and secure transportation of passengers and freight through an airport facility and, therefore, provides an exemption for airport authorities or governmental entities with airports under certain conditions. Airports may provide communications service to subscribers that are airlines and emergency service entities that are within its airport layout plan and may provide shared tenant services, but not dial tone enabling subscribers to complete calls outside the airport layout plan, to subscribers within the airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight. Airports are not exempt from the provisions of the bill if it provides communications service to subscribers within the airport layout plan that are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility or to subscribers outside the airport layout plan.

Finally, a governmental entity that provides a communications service is subject to the provisions in Chapter 542, F.S., on restraint of trade or commerce and monopolies that are applicable to private providers.

The bill provides for severability, providing that if any provision of the act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

C. SECTION DIRECTORY:

¹⁶ 47 U.S.C. ss. 521 et seq.

- Section 1. Creates the Committee on Public Service Commission Oversight, provides for membership, powers, and duties.
- Section 2. Amends s. 350.001, F.S., relating to the Public Service Commission.
- Section 3. Amends s. 350.031, F.S., relating to the Florida Public Service Commission Nominating Council.
- Section 4. Amends s. 350.041(4), F.S., relating to the standards of conduct for Public Service Commissioners.
- Section 5. Amends s. 351.042(7), F.S. relating to ex parte communications.
- Section 6. Amends s. 350.061(1), F.S., relating to Public Council appointment.
- Section 7. Amends s. 350.0614(2), F.S., relating to Public Council Compensation and Expenses.
- Section 8. Provides guidelines for governmental entities providing communications service.
- Section 9. Provides a severability clause.
- Section 10. This act shall take effect October 1, 2005, with the provisions creating penalties and new standards of conduct, apply to violations occurring on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The authority for the Public Service Commission Nominating Council to spend up to \$10,000 to advertise vacancies will result in more expenditures from the Public Service Regulatory Trust Fund, the source of the nominating council's expense money.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If a governmental entity decides to provide communications service, the entity may be able to raise additional revenue.

2. Expenditures:

If a governmental entity decides to provide communications service, there will be some costs associated with the notice and public meeting requirements.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill contains provisions concerning if the Commission on Ethics determine who provided the prohibited gift or made the ex parte communication the commission may sanction the person from practicing before the Public Service Commission for two years. It is not clear whether it is the Commission on Ethics or the Public Service Commission that is doing the sanctioning.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On May 3, 2005, the Commerce Council adopted a strike-all amendment that will be traveling with the Senate bill. The strike-all makes the following changes to SB 1322:

1. Removes legislative declaration of PSC being part of Legislative branch and the Governor and DMS do not have control over PSC employees or budget.
2. Changes the Commissioner nominating process to: the PSC Nominating Council submits six names to the Committee on PSC oversight who submit three nominees to the Governor.
3. Gives the Commission on Ethics discretion to sanction persons for certain violations.
4. Removes provision concerning the PSC and water and wastewater certificate revocation proceedings.

An amendment to the strike-all was also adopted. This amendment incorporates the language contained in the second engrossed version of HB 1325, except that the language relating to professional sports franchises was removed.