

By the Committee on Communications and Public Utilities

579-1014B-05

1   A bill to be entitled  
2           An act relating to the Public Service  
3           Commission; creating the Committee on Public  
4           Service Commission Oversight as a standing  
5           joint committee of the Legislature; providing  
6           for its membership, powers, and duties;  
7           amending s. 350.001, F.S.; deleting the  
8           authority of the Governor to appoint members to  
9           the Public Service Commission; requiring that  
10          the commission perform its duties  
11          independently; specifying that the Governor has  
12          no planning or budgetary authority with respect  
13          to the commission; specifying that the Governor  
14          and the Department of Management Services have  
15          no authority over the commission's employees;  
16          amending s. 350.031, F.S.; authorizing the  
17          Florida Public Service Commission Nominating  
18          Council to make expenditures to advertise a  
19          vacancy on the council or the commission;  
20          requiring that the Committee on Public Service  
21          Commission Oversight rather than the Governor  
22          accept nominations and make appointments to the  
23          Public Service Commission; amending s. 350.041,  
24          F.S.; clarifying the prohibition against  
25          accepting gifts with respect to its application  
26          to commissioners attending conferences;  
27          requiring that a penalty be imposed against a  
28          person who gives a commissioner a prohibited  
29          gift; requiring that commissioners comply with  
30          the Florida Code of Judicial Conduct, with  
31          certain exceptions; requiring that the

1 Commission on Ethics report alleged violations  
2 to the Committee on Public Service Commission  
3 Oversight rather than the Governor for purposes  
4 of enforcement; amending s. 350.042, F.S.;  
5 requiring that the Commission on Ethics report  
6 certain alleged violations to the Committee on  
7 Public Service Commission Oversight rather than  
8 the Governor for purposes of enforcement;  
9 requiring that a penalty be imposed against a  
10 person involved in a prohibited ex parte  
11 communication with a commissioner; amending s.  
12 350.043, F.S.; providing for enforcement of  
13 penalties for specified violations by the  
14 Committee on Public Service Commission  
15 Oversight rather than the Governor; amending s.  
16 350.05, F.S.; providing for the Committee on  
17 Public Service Commission Oversight rather than  
18 the Governor to suspend a public service  
19 commissioner who becomes disqualified; amending  
20 s. 350.061, F.S.; requiring that the Committee  
21 on Public Service Commission Oversight rather  
22 than the Joint Legislative Auditing Committee  
23 appoint the Public Counsel; providing for  
24 biennial reconfirmation rather than annual;  
25 requiring that the Public Counsel perform his  
26 or her duties independently; amending s.  
27 350.0614, F.S.; requiring that the Committee on  
28 Public Service Commission Oversight rather than  
29 the Joint Legislative Auditing Committee  
30 oversee expenditures of the Public Counsel;  
31 repealing s. 350.03, F.S., relating to the

1 power of the Governor to remove commissioners  
2 of the Public Service Commission; providing an  
3 effective date.  
4

5 Be It Enacted by the Legislature of the State of Florida:  
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7 Section 1. Committee on Public Service Commission  
8 Oversight; creation; membership; powers and duties.--

9 (1) There is created a standing joint committee of the  
10 Legislature, designated the Committee on Public Service  
11 Commission Oversight, and composed of six members appointed as  
12 follows: three members of the Senate appointed by the  
13 President of the Senate, one of whom must be a member of the  
14 minority party; and three members of the House of  
15 Representatives appointed by the Speaker of the House of  
16 Representatives, one of whom must be a member of the minority  
17 party. The terms of members shall be for 2 years and shall run  
18 from the organization of one Legislature to the organization  
19 of the next Legislature. The President shall appoint the chair  
20 of the committee in even years and the vice chair in odd  
21 years, and the Speaker of the House of Representatives shall  
22 appoint the chair of the committee in odd years and the vice  
23 chair in even years, from among the committee membership.  
24 Vacancies shall be filled in the same manner as the original  
25 appointment. Members shall serve without additional  
26 compensation, but shall be reimbursed for expenses.

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

30 (3) The committee shall:  
31

1           (a) Fill a vacancy occurring on the Public Service  
2 Commission by appointment of an applicant as provided by  
3 general law;

4           (b) Discipline a commissioner, former commissioner, or  
5 former employee of the commission as provided by general law;  
6 and

7           (c) Appoint a Public Counsel as provided by general  
8 law.

9           (4) The committee is authorized to file a complaint  
10 with the Commission on Ethics alleging a violation of this  
11 chapter by a commissioner, former commissioner, former  
12 commission employee, or member of the Public Service  
13 Commission Nominating Council.

14           (5) The committee will not have a permanent staff, but  
15 the chair shall select staff members from among existing  
16 legislative staff, when and as needed.

17           Section 2. Section 350.001, Florida Statutes, is  
18 amended to read:

19           350.001 Legislative intent.--The Florida Public  
20 Service Commission has been and shall continue to be an arm of  
21 the legislative branch of government. The Public Service  
22 Commission shall perform its duties independently. The  
23 Legislature declares and determines that the Public Service  
24 Commission is under the legislative branch of government  
25 within the intent expressed in chapter 216. The Executive  
26 Office of the Governor or its successor is not authorized to  
27 release or withhold funds appropriated to the Public Service  
28 Commission, but the Committee on Public Service Commission  
29 Oversight shall release or withhold funds appropriated to the  
30 Public Service Commission as provided by law and the rules or  
31 decisions of the Committee on Public Service Commission

1 Oversight. The Executive Office of the Governor, the  
2 Department of Management Services, or any successor may not  
3 determine the number, or fix the compensation, of employees of  
4 the Public Service Commission and may not exercise any manner  
5 of control over the employees of the Public Service  
6 Commission. It is the desire of the Legislature that the  
7 Governor participate in the appointment process of  
8 commissioners to the Public Service Commission. The  
9 Legislature accordingly delegates to the Governor a limited  
10 authority with respect to the Public Service Commission by  
11 authorizing him or her to participate in the selection of  
12 members only from the list provided by the Florida Public  
13 Service Commission Nominating Council in the manner prescribed  
14 by s. 350.031.

15 Section 3. Section 350.031, Florida Statutes, is  
16 amended to read:

17 350.031 Florida Public Service Commission Nominating  
18 Council.--

19 (1) There is created a Florida Public Service  
20 Commission Nominating Council consisting of nine members. At  
21 least one member of the council must be 60 years of age or  
22 older. Three members, including one member of the House of  
23 Representatives, shall be appointed by and serve at the  
24 pleasure of the Speaker of the House of Representatives; three  
25 members, including one member of the Senate, shall be  
26 appointed by and serve at the pleasure of the President of the  
27 Senate; and three members shall be selected and appointed by a  
28 majority vote of the other six members of the council. All  
29 terms shall be for 4 years except those members of the House  
30 and Senate, who shall serve 2-year terms concurrent with the  
31 2-year elected terms of House members. Vacancies on the

1 council shall be filled for the unexpired portion of the term  
2 in the same manner as original appointments to the council. A  
3 member may not be reappointed to the council, except for a  
4 member of the House of Representatives or the Senate who may  
5 be appointed to two 2-year terms or a person who is appointed  
6 to fill the remaining portion of an unexpired term.

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

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

1 (b) A member of the council may be removed by the  
2 Speaker of the House of Representatives and the President of  
3 the Senate upon a finding by the Speaker and the President  
4 that the council member has violated any provision of this  
5 subsection or for other good cause.

6 (c) If a member of the council does not meet the  
7 requirements of this subsection, the President of the Senate  
8 or the Speaker of the House of Representatives, as  
9 appropriate, shall appoint a legislative replacement.

10 (3) A majority of the membership of the council may  
11 conduct any business before the council. All meetings and  
12 proceedings of the council shall be staffed by the Office of  
13 Legislative Services and shall be subject to the provisions of  
14 ss. 119.07 and 286.011. Members of the council are entitled  
15 to receive per diem and travel expenses as provided in s.  
16 112.061, which shall be funded by the Florida Public Service  
17 Regulatory Trust Fund. Applicants invited for interviews  
18 before the council may, in the discretion of the council,  
19 receive per diem and travel expenses as provided in s.  
20 112.061, which shall be funded by the Florida Public Service  
21 Regulatory Trust Fund. The council shall establish policies  
22 and procedures to govern the process by which applicants are  
23 nominated.

24 (4) The council may spend a nominal amount, not to  
25 exceed \$10,000, to advertise a vacancy on the council or the  
26 commission, which shall be funded by the Florida Public  
27 Service Regulatory Trust Fund.

28 ~~(5)(4)~~ A person may not be nominated to the Committee  
29 on Public Service Commission Oversight ~~Governor~~ until the  
30 council has determined that the person is competent and  
31 knowledgeable in one or more fields, which shall include, but

1 not be limited to: public affairs, law, economics,  
2 accounting, engineering, finance, natural resource  
3 conservation, energy, or another field substantially related  
4 to the duties and functions of the commission. The commission  
5 shall fairly represent the above-stated fields.

6 Recommendations of the council shall be nonpartisan.

7 ~~(6)(5)~~ It is the responsibility of the council to  
8 nominate to the Committee on Public Service Commission  
9 Oversight ~~Governor~~ not fewer than three persons for each  
10 vacancy occurring on the Public Service Commission. The  
11 council shall submit the recommendations to the committee  
12 ~~Governor~~ by October 1 of those years in which the terms are to  
13 begin the following January, or within 60 days after a vacancy  
14 occurs for any reason other than the expiration of the term.

15 ~~(7)(6)~~ The Committee on Public Service Commission  
16 Oversight ~~Governor~~ shall fill a vacancy occurring on the  
17 Public Service Commission by appointment of one of the  
18 applicants nominated by the council only after a background  
19 investigation of such applicant has been conducted by the  
20 Florida Department of Law Enforcement. If the committee  
21 ~~Governor~~ has not made an appointment by December 1 to fill a  
22 vacancy for a term to begin the following January, then the  
23 council, by majority vote, shall appoint by December 31 one  
24 person from the applicants previously nominated to the  
25 committee ~~Governor~~ to fill the vacancy. If the committee  
26 ~~Governor~~ has not made the appointment to fill a vacancy  
27 occurring for any reason other than the expiration of the term  
28 by the 60th day following receipt of the nominations of the  
29 council, the council by majority vote shall appoint within 30  
30 days thereafter one person from the applicants previously  
31 nominated to the committee ~~Governor~~ to fill the vacancy.



1           ~~(8)(7)~~ Each appointment to the Public Service  
2 Commission shall be subject to confirmation by the Senate. If  
3 the Senate refuses to confirm or rejects the committee's  
4 ~~Governor's~~ appointment, the council shall initiate, in  
5 accordance with this section, the nominating process within 30  
6 days.

7           Section 4. Subsections (2) and (3) of section 350.041,  
8 Florida Statutes, are amended to read:

9           350.041 Commissioners; standards of conduct.--

10           (2) STANDARDS OF CONDUCT.--

11           (a) A commissioner may not accept anything from any  
12 business entity which, either directly or indirectly, owns or  
13 controls any public utility regulated by the commission, from  
14 any public utility regulated by the commission, or from any  
15 business entity which, either directly or indirectly, is an  
16 affiliate or subsidiary of any public utility regulated by the  
17 commission. A commissioner may attend conferences and  
18 associated meals and events that are generally available to  
19 all conference participants without payment of any fees in  
20 addition to the conference fee. It is not a violation of this  
21 paragraph for a commissioner to attend a conference for which  
22 conference participants who are employed by a utility  
23 regulated by the commission have paid a higher conference  
24 registration fee than the commissioner, or to attend a meal or  
25 event that is generally available to all conference  
26 participants without payment of any fees in addition to the  
27 conference fee and that is sponsored, in whole or in part, by  
28 a utility regulated by the commission. If, in the course of  
29 determining that a commissioner has violated this paragraph,  
30 the Commission on Ethics determines the identity of the person  
31 who gave or provided the prohibited item to the commissioner,

1 that person may not appear before the commission or otherwise  
2 represent anyone before the commission for a period of 2  
3 years.

4 (b) A commissioner may not accept any form of  
5 employment with or engage in any business activity with any  
6 business entity which, either directly or indirectly, owns or  
7 controls any public utility regulated by the commission, any  
8 public utility regulated by the commission, or any business  
9 entity which, either directly or indirectly, is an affiliate  
10 or subsidiary of any public utility regulated by the  
11 commission.

12 (c) A commissioner may not have any financial  
13 interest, other than shares in a mutual fund, in any public  
14 utility regulated by the commission, in any business entity  
15 which, either directly or indirectly, owns or controls any  
16 public utility regulated by the commission, or in any business  
17 entity which, either directly or indirectly, is an affiliate  
18 or subsidiary of any public utility regulated by the  
19 commission. If a commissioner acquires any financial interest  
20 prohibited by this section during his or her term of office as  
21 a result of events or actions beyond the commissioner's  
22 control, he or she shall immediately sell such financial  
23 interest or place such financial interest in a blind trust at  
24 a financial institution. A commissioner may not attempt to  
25 influence, or exercise any control over, decisions regarding  
26 the blind trust.

27 (d) A commissioner may not accept anything from a  
28 party in a proceeding currently pending before the commission.  
29 If, in the course of determining that a commissioner has  
30 violated this paragraph, the Commission on Ethics determines  
31 the identity of the person who gave or provided the prohibited

1 item to the commissioner, that person may not appear before  
2 the commission or otherwise represent anyone before the  
3 commission for a period of 2 years.

4 (e) A commissioner may not serve as the representative  
5 of any political party or on any executive committee or other  
6 governing body of a political party; serve as an executive  
7 officer or employee of any political party, committee,  
8 organization, or association; receive remuneration for  
9 activities on behalf of any candidate for public office;  
10 engage on behalf of any candidate for public office in the  
11 solicitation of votes or other activities on behalf of such  
12 candidacy; or become a candidate for election to any public  
13 office without first resigning from office.

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

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

21 (h) A commissioner must comply with the Florida Code  
22 of Judicial Conduct where relevant, where not in conflict with  
23 other applicable law, and where not in conflict with the  
24 lawful duties of a commissioner.

25 (3) The Commission on Ethics shall accept and  
26 investigate any alleged violations of this section pursuant to  
27 the procedures contained in ss. 112.322-112.3241. The  
28 Commission on Ethics shall provide the Committee on Public  
29 Service Commission Oversight ~~Governor~~ and the Florida Public  
30 Service Commission Nominating Council with a report of its  
31 findings and recommendations. The Committee on Public Service

1 ~~Commission Oversight may Governor is authorized to~~ enforce the  
2 findings and recommendations of the Commission on Ethics,  
3 pursuant to s. 350.043 ~~part III of chapter 112~~. A public  
4 service commissioner or a member of the Florida Public Service  
5 Commission Nominating Council may request an advisory opinion  
6 from the Commission on Ethics, pursuant to s. 112.322(3)(a),  
7 regarding the standards of conduct or prohibitions set forth  
8 in ss. 350.031, 350.04, 350.041 and 350.042.

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

11 350.042 Ex parte communications.--

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

16 (b) If the Commission on Ethics finds that there has  
17 been a violation of this section by a public service  
18 commissioner, it shall provide the Committee on Public Service  
19 Commission Oversight ~~Governor~~ and the Florida Public Service  
20 Commission Nominating Council with a report of its findings  
21 and recommendations. The Committee on Public Service  
22 Commission Oversight may Governor is authorized to enforce the  
23 findings and recommendations of the Commission on Ethics,  
24 pursuant to s. 350.043 ~~part III of chapter 112~~.

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

29 (d) If, in the course of determining that a  
30 commissioner has violated this section, the Commission on  
31 Ethics determines the identity of the person who participated

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

4 Section 6. Section 350.043, Florida Statutes, is  
5 amended to read:

6 350.043 Enforcement and interpretation.--Any violation  
7 of s. 350.031, s. 350.04, s. 350.041, s. 350.042, or s.

8 350.0605 by a commissioner, former commissioner, or former

9 commission employee, ~~or Public Service Commission Nominating~~

10 ~~Council member~~ shall be punishable as provided in this section

11 ~~ss. 112.317 and 112.324~~. The Commission on Ethics is ~~hereby~~

12 given the power and authority to investigate complaints of

13 violation of this chapter in the manner provided in part III

14 of chapter 112, as if this section were included in that part.

15 If the Commission on Ethics, upon completing a full and final

16 investigation, finds that there has been a violation, it shall

17 forward a copy of the complaint and its findings, including

18 any recommendation as to what penalty should be imposed, if

19 any, by certified mail to the Committee on Public Service

20 Commission Oversight for investigation and action, which shall

21 be governed by the joint rules of the Senate and the House of

22 Representatives. The committee must report its final action

23 upon the complaint to the Commission on Ethics within 90 days

24 after the date of transmittal to the committee. The committee

25 shall determine what penalty it will impose, if any, which may

26 include any penalty provided in part III of chapter 112. A

27 commissioner may request an advisory opinion from the

28 Commission on Ethics as provided by s. 112.322(3)(a).

29 Section 7. Section 350.05, Florida Statutes, is

30 amended to read:

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1           350.05 Oath of office.--Before entering upon the  
2 duties of his or her office each commissioner shall subscribe  
3 to the following oath: "I do solemnly swear (or affirm) that  
4 I will support, protect and defend the Constitution and  
5 Government of the United States and of the State of Florida;  
6 that I am qualified to hold office under the constitution of  
7 the state, and that I will well and faithfully perform at all  
8 times the duties of Florida Public Service Commissioner, on  
9 which I am now about to enter in a professional, independent,  
10 objective, and nonpartisan manner; that I do not have any  
11 financial, employment, or business interest which is  
12 prohibited by chapter 350, Florida Statutes; and that I will  
13 abide by the standards of conduct required of me by chapters  
14 112 and 350, Florida Statutes, so help me God." In case any  
15 commissioner should in any way become disqualified, he or she  
16 shall at once remove such disqualification or resign, and upon  
17 his or her failure to do so, he or she shall be suspended from  
18 office by the Committee on Public Service Commission Oversight  
19 ~~Governor~~ and dealt with as provided by law.

20           Section 8. Subsection (1) of section 350.061, Florida  
21 Statutes, is amended to read:

22           350.061 Public Counsel; appointment; oath;  
23 restrictions on Public Counsel and his or her employees.--

24           (1) The Committee on Public Service Commission  
25 Oversight ~~Joint Legislative Auditing Committee~~ shall appoint a  
26 Public Counsel by majority vote of the members of the  
27 committee to represent the general public of Florida before  
28 the Florida Public Service Commission. The Public Counsel  
29 shall be an attorney admitted to practice before the Florida  
30 Supreme Court and shall serve at the pleasure of the ~~Joint~~  
31 ~~Legislative Auditing~~ Committee on Public Service Commission

1 Oversight, subject to biennial ~~annual~~ reconfirmation by the  
2 committee. The Public Counsel shall perform his or her duties  
3 independently. Vacancies in the office shall be filled in the  
4 same manner as the original appointment.

5 Section 9. Subsection (2) of section 350.0614, Florida  
6 Statutes, is amended to read:

7 350.0614 Public Counsel; compensation and expenses.--

8 (2) The Legislature ~~hereby~~ declares and determines  
9 that the Public Counsel is under the legislative branch of  
10 government within the intention of the legislation as  
11 expressed in chapter 216, and no power shall be in the  
12 Executive Office of the Governor or its successor to release  
13 or withhold funds appropriated to it, but the same shall be  
14 available for expenditure as provided by law and the rules or  
15 decisions of the ~~Joint Auditing~~ Committee on Public Service  
16 Commission Oversight.

17 Section 10. Section 350.03, Florida Statutes, is  
18 repealed.

19 Section 11. This act shall take effect October 1,  
20 2005.

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SENATE SUMMARY

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3 Creates the Committee on Public Service Commission  
4 Oversight as a standing joint committee of the  
5 Legislature to appoint commissioners to the Public  
6 Service Commission and oversee its functions. Authorizes  
7 the Florida Public Service Commission Nominating Council  
8 to expend up to \$10,000 to advertise a vacancy on the  
9 council or the Public Service Commission. Requires that  
10 public service commissioners be subject to the Florida  
11 Code of Judicial Conduct rather than the code of conduct  
12 contained in ch. 112, F.S. Clarifies the prohibition  
13 against accepting gifts with respect to its application  
14 to commissioners attending conferences. Requires that a  
15 person who gives a commissioner a prohibited gift or who  
16 is involved in a prohibited ex parte communication be  
17 prohibited from appearing before the commission for 2  
18 years. Requires that the Commission on Ethics report  
19 certain alleged violations to the Committee on Public  
20 Service Commission Oversight rather than the Governor for  
21 purposes of enforcement. Provides for the Committee on  
22 Public Service Commission Oversight rather than the  
23 Governor to suspend a public service commissioner who  
24 becomes disqualified. Requires that the Committee on  
25 Public Service Commission Oversight rather than the Joint  
26 Legislative Auditing Committee appoint the Public Counsel  
27 and oversee the expenditures of the Public Counsel. (See  
28 bill for details.)  
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