

By the Committees on Governmental Oversight and Productivity;  
and Communications and Public Utilities

585-1970-05

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.; requiring that the  
8           commission perform its duties independently;  
9           specifying that the Governor has no planning or  
10          budgetary authority with respect to the  
11          commission; specifying that the Governor and  
12          the Department of Management Services have no  
13          authority over the commission's employees;  
14          amending s. 350.031, F.S.; authorizing the  
15          Florida Public Service Commission Nominating  
16          Council to make expenditures to advertise a  
17          vacancy on the council or the commission;  
18          requiring that the Committee on Public Service  
19          Commission Oversight provide a nominee for  
20          recommendation to the Governor for appointment  
21          to the Public Service Commission; providing  
22          procedures; amending s. 350.041, F.S.;  
23          clarifying the prohibition against accepting  
24          gifts with respect to its application to  
25          commissioners attending conferences; requiring  
26          that a penalty be imposed against a person who  
27          gives a commissioner a prohibited gift;  
28          requiring that commissioners avoid impropriety  
29          and act in a manner that promotes confidence in  
30          the commission; amending s. 350.042, F.S.;  
31          requiring that a penalty be imposed against a

1 person involved in a prohibited ex parte  
2 communication with a commissioner; amending s.  
3 350.061, F.S.; requiring that the Committee on  
4 Public Service Commission Oversight rather than  
5 the Joint Legislative Auditing Committee  
6 appoint the Public Counsel; providing for  
7 biennial reconfirmation rather than annual;  
8 requiring that the Public Counsel perform his  
9 or her duties independently; amending s.  
10 350.0614, F.S.; requiring that the Committee on  
11 Public Service Commission Oversight rather than  
12 the Joint Legislative Auditing Committee  
13 oversee expenditures of the Public Counsel;  
14 amending s. 120.80, F.S.; requiring that the  
15 commission refer certain matters affecting the  
16 substantial interest of a utility to the  
17 Division of Administrative Hearings so that an  
18 administrative judge may be assigned to conduct  
19 a hearing and enter a recommended order;  
20 providing an effective date.

21

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

23

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

26 (1) There is created a standing joint committee of the  
27 Legislature, designated the Committee on Public Service  
28 Commission Oversight, and composed of twelve members appointed  
29 as follows: six members of the Senate appointed by the  
30 President of the Senate, two of whom must be members of the  
31 minority party; and six members of the House of

1 Representatives appointed by the Speaker of the House of  
2 Representatives, two of whom must be members of the minority  
3 party. The terms of members shall be for 2 years and shall run  
4 from the organization of one Legislature to the organization  
5 of the next Legislature. The President shall appoint the chair  
6 of the committee in even years and the vice chair in odd  
7 years, and the Speaker of the House of Representatives shall  
8 appoint the chair of the committee in odd years and the vice  
9 chair in even years, from among the committee membership.  
10 Vacancies shall be filled in the same manner as the original  
11 appointment. Members shall serve without additional  
12 compensation, but shall be reimbursed for expenses.

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

16 (3) The committee shall:

17 (a) Recommend to the Governor a nominee to fill a  
18 vacancy on the Public Service Commission, as provided by  
19 general law; and

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

22 (4) The committee is authorized to file a complaint  
23 with the Commission on Ethics alleging a violation of this  
24 chapter by a commissioner, former commissioner, former  
25 commission employee, or member of the Public Service  
26 Commission Nominating Council.

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

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

3           350.001 Legislative intent.--The Florida Public  
4 Service Commission has been and shall continue to be an arm of  
5 the legislative branch of government. The Public Service  
6 Commission shall perform its duties independently. The  
7 Legislature declares and determines that the Public Service  
8 Commission is under the legislative branch of government  
9 within the intent expressed in chapter 216. The Executive  
10 Office of the Governor or its successor is not authorized to  
11 release or withhold funds appropriated to the Public Service  
12 Commission, but the Committee on Public Service Commission  
13 Oversight shall release or withhold funds appropriated to the  
14 Public Service Commission as provided by law and the rules or  
15 decisions of the Committee on Public Service Commission  
16 Oversight. The Executive Office of the Governor, the  
17 Department of Management Services, or any successor may not  
18 determine the number, or fix the compensation, of employees of  
19 the Public Service Commission and may not exercise any manner  
20 of control over the employees of the Public Service  
21 Commission. It is the desire of the Legislature that the  
22 Governor participate in the appointment process of  
23 commissioners to the Public Service Commission. The  
24 Legislature accordingly delegates to the Governor a limited  
25 authority with respect to the Public Service Commission by  
26 authorizing him or her to participate in the selection of  
27 members only ~~from the list provided by the Florida Public~~  
28 ~~Service Commission Nominating Council~~ in the manner prescribed  
29 by s. 350.031.

30           Section 3. Section 350.031, Florida Statutes, is  
31 amended to read:

1           350.031 Florida Public Service Commission Nominating  
2 Council.--

3           (1) There is created a Florida Public Service  
4 Commission Nominating Council consisting of nine members. At  
5 least one member of the council must be 60 years of age or  
6 older. Three members, including one member of the House of  
7 Representatives, shall be appointed by and serve at the  
8 pleasure of the Speaker of the House of Representatives; three  
9 members, including one member of the Senate, shall be  
10 appointed by and serve at the pleasure of the President of the  
11 Senate; and three members shall be selected and appointed by a  
12 majority vote of the other six members of the council. All  
13 terms shall be for 4 years except those members of the House  
14 and Senate, who shall serve 2-year terms concurrent with the  
15 2-year elected terms of House members. Vacancies on the  
16 council shall be filled for the unexpired portion of the term  
17 in the same manner as original appointments to the council. A  
18 member may not be reappointed to the council, except for a  
19 member of the House of Representatives or the Senate who may  
20 be appointed to two 2-year terms or a person who is appointed  
21 to fill the remaining portion of an unexpired term.

22           (2)(a) No member or spouse shall be the holder of the  
23 stocks or bonds of any company, other than through ownership  
24 of shares in a mutual fund, regulated by the commission, or  
25 any affiliated company of any company regulated by the  
26 commission, or be an agent or employee of, or have any  
27 interest in, any company regulated by the commission or any  
28 affiliated company of any company regulated by the commission,  
29 or in any firm which represents in any capacity either  
30 companies which are regulated by the commission or affiliates  
31 of companies regulated by the commission. As a condition of

1 | appointment to the council, each appointee shall affirm to the  
2 | Speaker and the President his or her qualification by the  
3 | following certification: "I hereby certify that I am not a  
4 | stockholder, other than through ownership of shares in a  
5 | mutual fund, in any company regulated by the commission or in  
6 | any affiliate of a company regulated by the commission, nor in  
7 | any way, directly or indirectly, in the employment of, or  
8 | engaged in the management of any company regulated by the  
9 | commission or any affiliate of a company regulated by the  
10 | commission, or in any firm which represents in any capacity  
11 | either companies which are regulated by the commission or  
12 | affiliates of companies regulated by the commission."  
13 |

14 | This certification is made as condition to appointment to the  
15 | Florida Public Service Commission Nominating Council.

16 |         (b) A member of the council may be removed by the  
17 | Speaker of the House of Representatives and the President of  
18 | the Senate upon a finding by the Speaker and the President  
19 | that the council member has violated any provision of this  
20 | subsection or for other good cause.

21 |         (c) If a member of the council does not meet the  
22 | requirements of this subsection, the President of the Senate  
23 | or the Speaker of the House of Representatives, as  
24 | appropriate, shall appoint a legislative replacement.

25 |         (3) A majority of the membership of the council may  
26 | conduct any business before the council. All meetings and  
27 | proceedings of the council shall be staffed by the Office of  
28 | Legislative Services and shall be subject to the provisions of  
29 | ss. 119.07 and 286.011. Members of the council are entitled  
30 | to receive per diem and travel expenses as provided in s.  
31 | 112.061, which shall be funded by the Florida Public Service

1 Regulatory Trust Fund. Applicants invited for interviews  
2 before the council may, in the discretion of the council,  
3 receive per diem and travel expenses as provided in s.  
4 112.061, which shall be funded by the Florida Public Service  
5 Regulatory Trust Fund. The council shall establish policies  
6 and procedures to govern the process by which applicants are  
7 nominated.

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

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

21 Recommendations of the council shall be nonpartisan.

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

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1           ~~(7)(6)~~ The Committee on Public Service Commission  
2 Oversight Governor shall select from the list of nominees  
3 provided by the nominating council one nominee for  
4 recommendation to the Governor for appointment to the  
5 commission. The recommendation must be provided to the  
6 Governor within 45 days after receipt of the list of nominees.  
7 The committee shall make the recommendation fill a vacancy  
8 ~~occurring on the Public Service Commission by appointment of~~  
9 ~~one of the applicants nominated by the council only after a~~  
10 background investigation of the recommended nominee such  
11 ~~applicant~~ has been conducted by the Florida Department of Law  
12 Enforcement. If the Governor rejects the recommendation or has  
13 not made an appointment within 30 days after the receipt of  
14 the recommendation by December 1 to fill a vacancy for a term  
15 ~~to begin the following January~~, then the council shall  
16 immediately initiate the nominating process in accordance with  
17 this section. The council shall include in the process all new  
18 applicants and all previous applicants for this vacancy. The  
19 council must, within 30 days after the Governor's rejection of  
20 the previous recommendation or failure to timely make an  
21 appointment, submit to the committee a list of no fewer than  
22 three persons for each vacancy. The committee must, within 30  
23 days after receipt, select one nominee for recommendation to  
24 the Governor for appointment to the commission. If the  
25 Governor rejects the recommendation or fails to make an  
26 appointment within 30 days after receipt of the  
27 recommendation, the council shall immediately initiate the  
28 nominating process again with the time periods applicable.~~, by~~  
29 ~~majority vote, shall appoint by December 31 one person from~~  
30 ~~the applicants previously nominated to the Governor to fill~~  
31 ~~the vacancy. If the Governor has not made the appointment to~~



1 ~~fill a vacancy occurring for any reason other than the~~  
2 ~~expiration of the term by the 60th day following receipt of~~  
3 ~~the nominations of the council, the council by majority vote~~  
4 ~~shall appoint within 30 days thereafter one person from the~~  
5 ~~applicants previously nominated to the Governor to fill the~~  
6 ~~vacancy.~~

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

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

15       350.041 Commissioners; standards of conduct.--

16       (2) STANDARDS OF CONDUCT.--

17       (a) A commissioner may not accept anything from any  
18 business entity which, either directly or indirectly, owns or  
19 controls any public utility regulated by the commission, from  
20 any public utility regulated by the commission, or from any  
21 business entity which, either directly or indirectly, is an  
22 affiliate or subsidiary of any public utility regulated by the  
23 commission. A commissioner may attend conferences and  
24 associated meals and events that are generally available to  
25 all conference participants without payment of any fees in  
26 addition to the conference fee. Additionally, while attending  
27 a conference, a commissioner may attend meetings, meals, or  
28 events that are not sponsored, in whole or in part, by any  
29 representative of any public utility regulated by the  
30 commission and that are limited to commissioners only,  
31 committee members, or speakers if the commissioner is a member

1 of a committee of the association of regulatory agencies that  
2 organized the conference or is a speaker at the conference. It  
3 is not a violation of this paragraph for a commissioner to  
4 attend a conference for which conference participants who are  
5 employed by a utility regulated by the commission have paid a  
6 higher conference registration fee than the commissioner, or  
7 to attend a meal or event that is generally available to all  
8 conference participants without payment of any fees in  
9 addition to the conference fee and that is sponsored, in whole  
10 or in part, by a utility regulated by the commission. If,  
11 during the course of an investigation by the Commission on  
12 Ethics into an alleged violation of this paragraph,  
13 allegations are made as to the identity of the person giving  
14 or providing the prohibited gift, that person must be given  
15 notice and an opportunity to participate in the investigation  
16 and relevant proceedings to present a defense. If the  
17 Commission on Ethics determines that the person gave or  
18 provided a prohibited gift, the person may not appear before  
19 the commission or otherwise represent anyone before the  
20 commission for a period of 2 years.

21 (b) A commissioner may not accept any form of  
22 employment with or engage in any business activity with any  
23 business entity which, either directly or indirectly, owns or  
24 controls any public utility regulated by the commission, any  
25 public utility regulated by the commission, or any business  
26 entity which, either directly or indirectly, is an affiliate  
27 or subsidiary of any public utility regulated by the  
28 commission.

29 (c) A commissioner may not have any financial  
30 interest, other than shares in a mutual fund, in any public  
31 utility regulated by the commission, in any business entity

1 | which, either directly or indirectly, owns or controls any  
2 | public utility regulated by the commission, or in any business  
3 | entity which, either directly or indirectly, is an affiliate  
4 | or subsidiary of any public utility regulated by the  
5 | commission. If a commissioner acquires any financial interest  
6 | prohibited by this section during his or her term of office as  
7 | a result of events or actions beyond the commissioner's  
8 | control, he or she shall immediately sell such financial  
9 | interest or place such financial interest in a blind trust at  
10 | a financial institution. A commissioner may not attempt to  
11 | influence, or exercise any control over, decisions regarding  
12 | the blind trust.

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

25 |         (e) A commissioner may not serve as the representative  
26 | of any political party or on any executive committee or other  
27 | governing body of a political party; serve as an executive  
28 | officer or employee of any political party, committee,  
29 | organization, or association; receive remuneration for  
30 | activities on behalf of any candidate for public office;  
31 | engage on behalf of any candidate for public office in the

1 solicitation of votes or other activities on behalf of such  
2 candidacy; or become a candidate for election to any public  
3 office without first resigning from office.

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

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

11 (h) A commissioner must avoid impropriety in all of  
12 his or her activities and must act at all times in a manner  
13 that promotes public confidence in the integrity and  
14 impartiality of the commission.

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

17 350.042 Ex parte communications.--

18 (7)(a) It shall be the duty of the Commission on  
19 Ethics to receive and investigate sworn complaints of  
20 violations of this section pursuant to the procedures  
21 contained in ss. 112.322-112.3241.

22 (b) If the Commission on Ethics finds that there has  
23 been a violation of this section by a public service  
24 commissioner, it shall provide the Governor and the Florida  
25 Public Service Commission Nominating Council with a report of  
26 its findings and recommendations. The Governor is authorized  
27 to enforce the findings and recommendations of the Commission  
28 on Ethics, pursuant to part III of chapter 112.

29 (c) If a commissioner fails or refuses to pay the  
30 Commission on Ethics any civil penalties assessed pursuant to  
31

1 the provisions of this section, the Commission on Ethics may  
2 bring an action in any circuit court to enforce such penalty.

3 (d) If, during the course of an investigation by the  
4 Commission on Ethics into an alleged violation of this  
5 paragraph, allegations are made as to the identity of the  
6 person who participated in the ex parte communication, that  
7 person must be given notice and an opportunity to participate  
8 in the investigation and relevant proceedings to present a  
9 defense. If the Commission on Ethics determines that the  
10 person participated in the ex parte communication, the person  
11 may not appear before the commission or otherwise represent  
12 anyone before the commission for a period of 2 years.

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

15 350.061 Public Counsel; appointment; oath;  
16 restrictions on Public Counsel and his or her employees.--

17 (1) The Committee on Public Service Commission  
18 ~~Oversight Joint Legislative Auditing Committee~~ shall appoint a  
19 Public Counsel by majority vote of the members of the  
20 committee to represent the general public of Florida before  
21 the Florida Public Service Commission. The Public Counsel  
22 shall be an attorney admitted to practice before the Florida  
23 Supreme Court and shall serve at the pleasure of the ~~Joint~~  
24 ~~Legislative Auditing~~ Committee on Public Service Commission  
25 Oversight, subject to biennial ~~annual~~ reconfirmation by the  
26 committee. The Public Counsel shall perform his or her duties  
27 independently. Vacancies in the office shall be filled in the  
28 same manner as the original appointment.

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

31 350.0614 Public Counsel; compensation and expenses.--

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

10           Section 8. Paragraph (g) is added to subsection (13)  
11 of section 120.80, Florida Statutes, to read:

12           120.80 Exceptions and special requirements;  
13 agencies.--

14           (13) FLORIDA PUBLIC SERVICE COMMISSION.--

15           (g) When the Public Service Commission initiates an  
16 agency action affecting the substantial interest of a utility  
17 regulated under chapter 367 concerning any matter pertaining  
18 to s. 120.60(5) and a formal administrative hearing is  
19 requested under s. 120.57, the commission shall refer the  
20 matter to the division for the assignment of an administrative  
21 law judge to conduct the hearing and enter a recommended  
22 order.

23           Section 9. This act shall take effect October 1, 2005;  
24 however, the provisions creating penalties or new standards of  
25 conduct apply to violations occurring on or after that date.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
CS/SB 1322

CS/CS/SB 1322 provides that a PSC action affecting the substantial interests of a water or wastewater utility for which a formal hearing is requested shall be referred to an administrative law judge assigned by the Division of Administrative Hearings.