

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; prohibiting a commissioner from
31 soliciting any thing of value, either directly

1 or indirectly, from any public utility, its
2 affiliate, or any party; amending s. 350.042,
3 F.S.; requiring that a penalty be imposed
4 against a person involved in a prohibited ex
5 parte communication with a commissioner;
6 amending s. 350.061, F.S.; requiring that the
7 Committee on Public Service Commission
8 Oversight rather than the Joint Legislative
9 Auditing Committee appoint the Public Counsel;
10 providing for biennial reconfirmation rather
11 than annual; requiring that the Public Counsel
12 perform his or her duties independently;
13 amending s. 350.0614, F.S.; requiring that the
14 Committee on Public Service Commission
15 Oversight rather than the Joint Legislative
16 Auditing Committee oversee expenditures of the
17 Public Counsel; amending s. 120.80, F.S.;
18 requiring that the commission refer certain
19 matters affecting the substantial interest of a
20 utility to the Division of Administrative
21 Hearings so that an administrative judge may be
22 assigned to conduct a hearing and enter a
23 recommended order; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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

29 (1) There is created a standing joint committee of the
30 Legislature, designated the Committee on Public Service
31 Commission Oversight, and composed of twelve members appointed

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

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

19 (3) The committee shall:

20 (a) Recommend to the Governor a nominee to fill a
21 vacancy on the Public Service Commission, as provided by
22 general law; and

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

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

30 (5) The committee will not have a permanent staff, but
31 the President of the Senate and the Speaker of the House of

1 Representatives shall select staff members from among existing
2 legislative staff, when and as needed.

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

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

1 Section 3. Section 350.031, Florida Statutes, is
2 amended to read:

3 350.031 Florida Public Service Commission Nominating
4 Council.--

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

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

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

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

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

27 (3) A majority of the membership of the council may
28 conduct any business before the council. All meetings and
29 proceedings of the council shall be staffed by the Office of
30 Legislative Services and shall be subject to the provisions of
31 ss. 119.07 and 286.011. Members of the council are entitled

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

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

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

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

3 ~~(7)(6)~~ The Committee on Public Service Commission
4 Oversight Governor shall select from the list of nominees
5 provided by the nominating council one nominee for
6 recommendation to the Governor for appointment to the
7 commission. The recommendation must be provided to the
8 Governor within 45 days after receipt of the list of nominees.

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

1 ~~the applicants previously nominated to the Governor to fill~~
2 ~~the vacancy. If the Governor has not made the appointment to~~
3 ~~fill a vacancy occurring for any reason other than the~~
4 ~~expiration of the term by the 60th day following receipt of~~
5 ~~the nominations of the council, the council by majority vote~~
6 ~~shall appoint within 30 days thereafter one person from the~~
7 ~~applicants previously nominated to the Governor to fill the~~
8 ~~vacancy.~~

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

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

17 350.041 Commissioners; standards of conduct.--

18 (2) STANDARDS OF CONDUCT.--

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

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

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

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

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

28 (e) A commissioner may not serve as the representative
29 of any political party or on any executive committee or other
30 governing body of a political party; serve as an executive
31 officer or employee of any political party, committee,

1 organization, or association; receive remuneration for
2 activities on behalf of any candidate for public office;
3 engage on behalf of any candidate for public office in the
4 solicitation of votes or other activities on behalf of such
5 candidacy; or become a candidate for election to any public
6 office without first resigning from office.

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

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

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

18 (i) A commissioner may not directly or indirectly,
19 through staff or other means, solicit any thing of value from
20 any public utility regulated by the commission, or from any
21 business entity that, whether directly or indirectly, is an
22 affiliate or subsidiary of any public utility regulated by the
23 commission, or from any party appearing in a proceeding
24 considered by the commission in the last 2 years.

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

27 350.042 Ex parte communications.--

28 (7)(a) It shall be the duty of the Commission on
29 Ethics to receive and investigate sworn complaints of
30 violations of this section pursuant to the procedures
31 contained in ss. 112.322-112.3241.

1 (b) If the Commission on Ethics finds that there has
2 been a violation of this section by a public service
3 commissioner, it shall provide the Governor and the Florida
4 Public Service Commission Nominating Council with a report of
5 its findings and recommendations. The Governor is authorized
6 to enforce the findings and recommendations of the Commission
7 on Ethics, pursuant to part III of chapter 112.

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

12 (d) If, during the course of an investigation by the
13 Commission on Ethics into an alleged violation of this
14 paragraph, allegations are made as to the identity of the
15 person who participated in the ex parte communication, that
16 person must be given notice and an opportunity to participate
17 in the investigation and relevant proceedings to present a
18 defense. If the Commission on Ethics determines that the
19 person participated in the ex parte communication, the person
20 may not appear before the commission or otherwise represent
21 anyone before the commission for a period of 2 years.

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

24 350.061 Public Counsel; appointment; oath;
25 restrictions on Public Counsel and his or her employees.--

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

1 Supreme Court and shall serve at the pleasure of the ~~Joint~~
2 ~~Legislative Auditing~~ Committee on Public Service Commission
3 Oversight, subject to biennial ~~annual~~ reconfirmation by the
4 committee. The Public Counsel shall perform his or her duties
5 independently. Vacancies in the office shall be filled in the
6 same manner as the original appointment.

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

9 350.0614 Public Counsel; compensation and expenses.--

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

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

21 120.80 Exceptions and special requirements;
22 agencies.--

23 (13) FLORIDA PUBLIC SERVICE COMMISSION.--

24 (g) When the Public Service Commission initiates an
25 agency action affecting the substantial interest of a utility
26 regulated under chapter 367 concerning any matter pertaining
27 to s. 120.60(5) and a formal administrative hearing is
28 requested under s. 120.57, the commission shall refer the
29 matter to the division for the assignment of an administrative
30 law judge to conduct the hearing and enter a recommended
31 order.

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