

Bill No. HB 1649, 1st Eng.

Barcode 042576

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

WD/3R
05/04/2005 05:51 PM

.
. .
. .
. .
. .
. .

Senator Fasano moved the following amendment:

Senate Amendment (with title amendment)

Lines 629 and 630, delete those lines

and insert:

Section 20. Committee on Public Service Commission Oversight; creation; membership; powers and duties.--

(1) There is created a standing joint committee of the Legislature, designated the Committee on Public Service Commission Oversight, and composed of 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 shall be for 2 years and shall run from the organization of one Legislature to the organization of the next Legislature. The President shall appoint the chair of the committee in even years and the vice chair in odd years, and the Speaker of the House of Representatives shall

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 appoint the chair of the committee in odd years and the vice
 2 chair in even years, from among the committee membership.
 3 Vacancies shall be filled in the same manner as the original
 4 appointment. Members shall serve without additional
 5 compensation, but shall be reimbursed for expenses.

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 8 in effect until repealed or amended by concurrent resolution.

9 (3) The committee shall:

10 (a) Recommend to the Governor a nominee to fill a
 11 vacancy on the Public Service Commission, as provided by
 12 general law; and

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

15 (4) The committee is authorized to file a complaint
 16 with the Commission on Ethics alleging a violation of this
 17 chapter by a commissioner, former commissioner, former
 18 commission employee, or member of the Public Service
 19 Commission Nominating Council.

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

24 Section 21. Section 350.001, Florida Statutes, is
 25 amended to read:

26 350.001 Legislative intent.--The Florida Public
 27 Service Commission has been and shall continue to be an arm of
 28 the legislative branch of government. The Public Service
 29 Commission shall perform its duties independently. The
 30 Legislature declares and determines that the Public Service
 31 Commission is under the legislative branch of government

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 within the intent expressed in chapter 216. The Executive
2 Office of the Governor or its successor is not authorized to
3 release or withhold funds appropriated to the Public Service
4 Commission, but the Committee on Public Service Commission
5 Oversight shall release or withhold funds appropriated to the
6 Public Service Commission as provided by law and the rules or
7 decisions of the Committee on Public Service Commission
8 Oversight. The Executive Office of the Governor, the
9 Department of Management Services, or any successor may not
10 determine the number, or fix the compensation, of employees of
11 the Public Service Commission and may not exercise any manner
12 of control over the employees of the Public Service
13 Commission. It is the desire of the Legislature that the
14 Governor participate in the appointment process of
15 commissioners to the Public Service Commission. The
16 Legislature accordingly delegates to the Governor a limited
17 authority with respect to the Public Service Commission by
18 authorizing him or her to participate in the selection of
19 members only ~~from the list provided by the Florida Public~~
20 ~~Service Commission Nominating Council~~ in the manner prescribed
21 by s. 350.031.

22 Section 22. Section 350.031, Florida Statutes, is
23 amended to read:

24 350.031 Florida Public Service Commission Nominating
25 Council.--

26 (1) There is created a Florida Public Service
27 Commission Nominating Council consisting of nine members. At
28 least one member of the council must be 60 years of age or
29 older. Three members, including one member of the House of
30 Representatives, shall be appointed by and serve at the
31 pleasure of the Speaker of the House of Representatives; three

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 members, including one member of the Senate, shall be
 2 appointed by and serve at the pleasure of the President of the
 3 Senate; and three members shall be selected and appointed by a
 4 majority vote of the other six members of the council. All
 5 terms shall be for 4 years except those members of the House
 6 and Senate, who shall serve 2-year terms concurrent with the
 7 2-year elected terms of House members. Vacancies on the
 8 council shall be filled for the unexpired portion of the term
 9 in the same manner as original appointments to the council. A
 10 member may not be reappointed to the council, except for a
 11 member of the House of Representatives or the Senate who may
 12 be appointed to two 2-year terms or a person who is appointed
 13 to fill the remaining portion of an unexpired term.

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

Barcode 042576

1 commission or any affiliate of a company regulated by the
 2 commission, or in any firm which represents in any capacity
 3 either companies which are regulated by the commission or
 4 affiliates of companies regulated by the commission."
 5

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

8 (b) A member of the council may be removed by the
 9 Speaker of the House of Representatives and the President of
 10 the Senate upon a finding by the Speaker and the President
 11 that the council member has violated any provision of this
 12 subsection or for other good cause.

13 (c) If a member of the council does not meet the
 14 requirements of this subsection, the President of the Senate
 15 or the Speaker of the House of Representatives, as
 16 appropriate, shall appoint a legislative replacement.

17 (3) A majority of the membership of the council may
 18 conduct any business before the council. All meetings and
 19 proceedings of the council shall be staffed by the Office of
 20 Legislative Services and shall be subject to the provisions of
 21 ss. 119.07 and 286.011. Members of the council are entitled
 22 to receive per diem and travel expenses as provided in s.
 23 112.061, which shall be funded by the Florida Public Service
 24 Regulatory Trust Fund. Applicants invited for interviews
 25 before the council may, in the discretion of the council,
 26 receive per diem and travel expenses as provided in s.
 27 112.061, which shall be funded by the Florida Public Service
 28 Regulatory Trust Fund. The council shall establish policies
 29 and procedures to govern the process by which applicants are
 30 nominated.

31 (4) The council may spend a nominal amount, not to

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 exceed \$10,000, to advertise a vacancy on the council, which
2 shall be funded by the Florida Public Service Regulatory Trust
3 Fund.

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

13 Recommendations of the council shall be nonpartisan.

14 (6)(5) It is the responsibility of the council to
15 nominate to the Committee on Public Service Commission
16 Oversight Governor not fewer than three persons for each
17 vacancy occurring on the Public Service Commission. The
18 council shall submit the recommendations to the committee
19 Governor by August 1 October 1 of those years in which the
20 terms are to begin the following January, or within 60 days
21 after a vacancy occurs for any reason other than the
22 expiration of the term.

23 (7)(6) The Committee on Public Service Commission
24 Oversight Governor shall select from the list of nominees
25 provided by the nominating council one nominee for
26 recommendation to the Governor for appointment to the
27 commission. The recommendation must be provided to the
28 Governor within 45 days after receipt of the list of nominees.
29 The committee shall make the recommendation fill a vacancy
30 occurring on the Public Service Commission by appointment of
31 one of the applicants nominated by the council only after a

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 background investigation of the recommended nominee such
 2 ~~applicant~~ has been conducted by the Florida Department of Law
 3 Enforcement. If the Governor rejects the recommendation or has
 4 not made an appointment within 30 days after the receipt of
 5 the recommendation by December 1 to fill a vacancy for a term
 6 ~~to begin the following January~~, then the council shall
 7 immediately initiate the nominating process in accordance with
 8 this section. The council shall include in the process all new
 9 applicants and all previous applicants for this vacancy. The
 10 council must, within 30 days after the Governor's rejection of
 11 the previous recommendation or failure to timely make an
 12 appointment, submit to the committee a list of no fewer than
 13 three persons for each vacancy. The committee must, within 30
 14 days after receipt, select one nominee for recommendation to
 15 the Governor for appointment to the commission. If the
 16 Governor rejects the recommendation or fails to make an
 17 appointment within 30 days after receipt of the
 18 recommendation, the council shall immediately initiate the
 19 nominating process again with the time periods applicable., by
 20 ~~majority vote, shall appoint by December 31 one person from~~
 21 ~~the applicants previously nominated to the Governor to fill~~
 22 ~~the vacancy. If the Governor has not made the appointment to~~
 23 ~~fill a vacancy occurring for any reason other than the~~
 24 ~~expiration of the term by the 60th day following receipt of~~
 25 ~~the nominations of the council, the council by majority vote~~
 26 ~~shall appoint within 30 days thereafter one person from the~~
 27 ~~applicants previously nominated to the Governor to fill the~~
 28 ~~vacancy.~~

29 (8)(7) Each appointment to the Public Service
 30 Commission shall be subject to confirmation by the Senate
 31 during the next regular session after the vacancy occurs. If

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 the Senate refuses to confirm or rejects the Governor's
2 appointment, the council shall initiate, in accordance with
3 this section, the nominating process within 30 days.

4 Section 23. Subsection (2) of section 350.041, Florida
5 Statutes, is amended to read:

6 350.041 Commissioners; standards of conduct.--

7 (2) STANDARDS OF CONDUCT.--

8 (a) A commissioner may not accept anything from any
9 business entity which, either directly or indirectly, owns or
10 controls any public utility regulated by the commission, from
11 any public utility regulated by the commission, or from any
12 business entity which, either directly or indirectly, is an
13 affiliate or subsidiary of any public utility regulated by the
14 commission. A commissioner may attend conferences and
15 associated meals and events that are generally available to
16 all conference participants without payment of any fees in
17 addition to the conference fee. Additionally, while attending
18 a conference, a commissioner may attend meetings, meals, or
19 events that are not sponsored, in whole or in part, by any
20 representative of any public utility regulated by the
21 commission and that are limited to commissioners only,
22 committee members, or speakers if the commissioner is a member
23 of a committee of the association of regulatory agencies that
24 organized the conference or is a speaker at the conference. It
25 is not a violation of this paragraph for a commissioner to
26 attend a conference for which conference participants who are
27 employed by a utility regulated by the commission have paid a
28 higher conference registration fee than the commissioner, or
29 to attend a meal or event that is generally available to all
30 conference participants without payment of any fees in
31 addition to the conference fee and that is sponsored, in whole

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 or in part, by a utility regulated by the commission. If,
 2 during the course of an investigation by the Commission on
 3 Ethics into an alleged violation of this paragraph,
 4 allegations are made as to the identity of the person giving
 5 or providing the prohibited gift, that person must be given
 6 notice and an opportunity to participate in the investigation
 7 and relevant proceedings to present a defense. If the
 8 Commission on Ethics determines that the person gave or
 9 provided a prohibited gift, the person may not appear before
 10 the commission or otherwise represent anyone before the
 11 commission for a period of 2 years.

12 (b) A commissioner may not accept any form of
 13 employment with or engage in any business activity with any
 14 business entity which, either directly or indirectly, owns or
 15 controls any public utility regulated by the commission, any
 16 public utility regulated by the commission, or any business
 17 entity which, either directly or indirectly, is an affiliate
 18 or subsidiary of any public utility regulated by the
 19 commission.

20 (c) A commissioner may not have any financial
 21 interest, other than shares in a mutual fund, in any public
 22 utility regulated by the commission, in any business entity
 23 which, either directly or indirectly, owns or controls any
 24 public utility regulated by the commission, or in any business
 25 entity which, either directly or indirectly, is an affiliate
 26 or subsidiary of any public utility regulated by the
 27 commission. If a commissioner acquires any financial interest
 28 prohibited by this section during his or her term of office as
 29 a result of events or actions beyond the commissioner's
 30 control, he or she shall immediately sell such financial
 31 interest or place such financial interest in a blind trust at

Barcode 042576

1 a financial institution. A commissioner may not attempt to
2 influence, or exercise any control over, decisions regarding
3 the blind trust.

4 (d) A commissioner may not accept anything from a
5 party in a proceeding currently pending before the commission.

6 If, during the course of an investigation by the Commission on
7 Ethics into an alleged violation of this paragraph,
8 allegations are made as to the identity of the person giving
9 or providing the prohibited gift, that person must be given
10 notice and an opportunity to participate in the investigation
11 and relevant proceedings to present a defense. If the
12 Commission on Ethics determines that the person gave or
13 provided a prohibited gift, the person may not appear before
14 the commission or otherwise represent anyone before the
15 commission for a period of 2 years.

16 (e) A commissioner may not serve as the representative
17 of any political party or on any executive committee or other
18 governing body of a political party; serve as an executive
19 officer or employee of any political party, committee,
20 organization, or association; receive remuneration for
21 activities on behalf of any candidate for public office;
22 engage on behalf of any candidate for public office in the
23 solicitation of votes or other activities on behalf of such
24 candidacy; or become a candidate for election to any public
25 office without first resigning from office.

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

30 (g) A commissioner may not conduct himself or herself
31 in an unprofessional manner at any time during the performance

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 of his or her official duties.

2 (h) A commissioner must avoid impropriety in all of
3 his or her activities and must act at all times in a manner
4 that promotes public confidence in the integrity and
5 impartiality of the commission.

6 (i) A commissioner may not directly or indirectly,
7 through staff or other means, solicit any thing of value from
8 any public utility regulated by the commission, or from any
9 business entity that, whether directly or indirectly, is an
10 affiliate or subsidiary of any public utility regulated by the
11 commission, or from any party appearing in a proceeding
12 considered by the commission in the last 2 years.

13 Section 24. Subsection (7) of section 350.042, Florida
14 Statutes, is amended to read:

15 350.042 Ex parte communications.--

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

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

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

31 (d) If, during the course of an investigation by the

Bill No. HB 1649, 1st Eng.

Barcode 042576

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

10 Section 25. Subsection (1) of section 350.061, Florida
 11 Statutes, is amended to read:

12 350.061 Public Counsel; appointment; oath;
 13 restrictions on Public Counsel and his or her employees.--

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

26 Section 26. Subsection (2) of section 350.0614,
 27 Florida Statutes, is amended to read:

28 350.0614 Public Counsel; compensation and expenses.--

29 (2) The Legislature ~~hereby~~ declares and determines
 30 that the Public Counsel is under the legislative branch of
 31 government within the intention of the legislation as

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 expressed in chapter 216, and no power shall be in the
 2 Executive Office of the Governor or its successor to release
 3 or withhold funds appropriated to it, but the same shall be
 4 available for expenditure as provided by law and the rules or
 5 decisions of the ~~Joint Auditing~~ Committee on Public Service
 6 Commission Oversight.

7 Section 27. Except for sections 20 through 26, which
 8 shall take effect October 1, 2005, the penalty provisions of
 9 which and the provisions of which that create new standards of
 10 conduct apply to violations occurring on or after that date,
 11 this act shall take effect upon becoming a law.

12
 13

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

15 And the title is amended as follows:

16 Line 2, delete that line

17

18 and insert:

19 An act relating to the Public Service
 20 Commission; creating the Committee on Public
 21 Service Commission Oversight as a standing
 22 joint committee of the Legislature; providing
 23 for its membership, powers, and duties;
 24 amending s. 350.001, F.S.; requiring that the
 25 commission perform its duties independently;
 26 specifying that the Governor has no planning or
 27 budgetary authority with respect to the
 28 commission; specifying that the Governor and
 29 the Department of Management Services have no
 30 authority over the commission's employees;
 31 amending s. 350.031, F.S.; authorizing the

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 Florida Public Service Commission Nominating
2 Council to make expenditures to advertise a
3 vacancy on the council or the commission;
4 requiring that the Committee on Public Service
5 Commission Oversight provide a nominee for
6 recommendation to the Governor for appointment
7 to the Public Service Commission; providing
8 procedures; amending s. 350.041, F.S.;

9 clarifying the prohibition against accepting
10 gifts with respect to its application to
11 commissioners attending conferences; requiring
12 that a penalty be imposed against a person who
13 gives a commissioner a prohibited gift;
14 requiring that commissioners avoid impropriety
15 and act in a manner that promotes confidence in
16 the commission; prohibiting a commissioner from
17 soliciting any thing of value, either directly
18 or indirectly, from any public utility, its
19 affiliate, or any party; amending s. 350.042,
20 F.S.; requiring that a penalty be imposed
21 against a person involved in a prohibited ex
22 parte communication with a commissioner;
23 amending s. 350.061, F.S.; requiring that the
24 Committee on Public Service Commission
25 Oversight rather than the Joint Legislative
26 Auditing Committee appoint the Public Counsel;
27 providing for biennial reconfirmation rather
28 than annual; requiring that the Public Counsel
29 perform his or her duties independently;
30 amending s. 350.0614, F.S.; requiring that the
31 Committee on Public Service Commission

Bill No. HB 1649, 1st Eng.

Barcode 042576

1 Oversight rather than the Joint Legislative
2 Auditing Committee oversee expenditures of the
3 Public Counsel; amending
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31