

Bill No. CS for CS for SB 2232, 1st Eng.

Barcode 354872

CHAMBER ACTION

Senate

House

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Senator Constantine moved the following amendment:

Senate Amendment (with title amendment)

On page 26, line 5, through page 38, line 2, 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-numbered years and the vice chair in

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

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 10 in effect until repealed or amended by concurrent resolution.

11 (3) The committee shall:

12 (a) Recommend to the Governor nominees to fill a
 13 vacancy on the Public Service Commission, as provided by
 14 general law; and

15 (b) Appoint a Public Counsel as provided by general
 16 law.

17 (4) The committee is authorized to file a complaint
 18 with the Commission on Ethics alleging a violation of chapter
 19 350, Florida Statutes, by a commissioner, former commissioner,
 20 former commission employee, or member of the Public Service
 21 Commission Nominating Council.

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

26 Section 21. Section 350.001, Florida Statutes, is
 27 amended to read:

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

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1 | desire of the Legislature that the Governor participate in the
2 | appointment process of commissioners to the Public Service
3 | Commission. The Legislature accordingly delegates to the
4 | Governor a limited authority with respect to the Public
5 | Service Commission by authorizing him or her to participate in
6 | the selection of members only ~~from the list provided by the~~
7 | ~~Florida Public Service Commission Nominating Council~~ in the
8 | manner prescribed by s. 350.031.

9 | Section 22. Section 350.031, Florida Statutes, is
10 | amended to read:

11 | 350.031 Florida Public Service Commission Nominating
12 | Council.--

13 | (1) There is created a Florida Public Service
14 | Commission Nominating Council consisting of nine members. At
15 | least one member of the council must be 60 years of age or
16 | older. Three members, including one member of the House of
17 | Representatives, shall be appointed by and serve at the
18 | pleasure of the Speaker of the House of Representatives; three
19 | members, including one member of the Senate, shall be
20 | appointed by and serve at the pleasure of the President of the
21 | Senate; and three members shall be selected and appointed by a
22 | majority vote of the other six members of the council. All
23 | terms shall be for 4 years except those members of the House
24 | and Senate, who shall serve 2-year terms concurrent with the
25 | 2-year elected terms of House members. Vacancies on the
26 | council shall be filled for the unexpired portion of the term
27 | in the same manner as original appointments to the council. A
28 | member may not be reappointed to the council, except for a
29 | member of the House of Representatives or the Senate who may
30 | be appointed to two 2-year terms or a person who is appointed
31 | to fill the remaining portion of an unexpired term.

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

23
24 This certification is made as condition to appointment to the
25 Florida Public Service Commission Nominating Council.

26 (b) A member of the council may be removed by the
27 Speaker of the House of Representatives and the President of
28 the Senate upon a finding by the Speaker and the President
29 that the council member has violated any provision of this
30 subsection or for other good cause.

31 (c) If a member of the council does not meet the

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1 requirements of this subsection, the President of the Senate
2 or the Speaker of the House of Representatives, as
3 appropriate, shall appoint a legislative replacement.

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

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

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

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

10 ~~(7)~~(6) The Committee on Public Service Commission
11 Oversight ~~Governor~~ shall select from the list of nominees
12 provided by the nominating council three nominees for
13 recommendation to the Governor for appointment to the
14 commission. The recommendations must be provided to the
15 Governor within 45 days after receipt of the list of nominees.
16 The Governor shall fill a vacancy occurring on the Public
17 Service Commission by appointment of one of the applicants
18 nominated by the committee ~~council~~ only after a background
19 investigation of such applicant has been conducted by the
20 Florida Department of Law Enforcement. If the Governor has not
21 made an appointment within 30 days after the receipt of the
22 recommendation ~~by December 1 to fill a vacancy for a term to~~
23 ~~begin the following January, then the~~ committee ~~council~~, by
24 majority vote, shall appoint, within 30 days after the
25 expiration of the Governor's time to make an appointment, ~~by~~
26 ~~December 31~~ one person from the applicants previously
27 nominated to the Governor to fill the vacancy. ~~If the Governor~~
28 ~~has not made the appointment to fill a vacancy occurring for~~
29 ~~any reason other than the expiration of the term by the 60th~~
30 ~~day following receipt of the nominations of the council, the~~
31 ~~council by majority vote shall appoint within 30 days~~

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1 ~~thereafter one person from the applicants previously nominated~~
2 ~~to the Governor to fill the vacancy.~~

3 (8)(7) Each appointment to the Public Service
4 Commission shall be subject to confirmation by the Senate
5 during the next regular session after the vacancy occurs. If
6 the Senate refuses to confirm or rejects the Governor's
7 appointment, the council shall initiate, in accordance with
8 this section, the nominating process within 30 days.

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

11 350.041 Commissioners; standards of conduct.--

12 (2) STANDARDS OF CONDUCT.--

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

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

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

25 (c) A commissioner may not have any financial
26 interest, other than shares in a mutual fund, in any public
27 utility regulated by the commission, in any business entity
28 which, either directly or indirectly, owns or controls any
29 public utility regulated by the commission, or in any business
30 entity which, either directly or indirectly, is an affiliate
31 or subsidiary of any public utility regulated by the

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1 commission. If a commissioner acquires any financial interest
 2 prohibited by this section during his or her term of office as
 3 a result of events or actions beyond the commissioner's
 4 control, he or she shall immediately sell such financial
 5 interest or place such financial interest in a blind trust at
 6 a financial institution. A commissioner may not attempt to
 7 influence, or exercise any control over, decisions regarding
 8 the blind trust.

9 (d) A commissioner may not accept anything from a
 10 party in a proceeding currently pending before the commission.
 11 If, 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 (e) A commissioner may not serve as the representative
 22 of any political party or on any executive committee or other
 23 governing body of a political party; serve as an executive
 24 officer or employee of any political party, committee,
 25 organization, or association; receive remuneration for
 26 activities on behalf of any candidate for public office;
 27 engage on behalf of any candidate for public office in the
 28 solicitation of votes or other activities on behalf of such
 29 candidacy; or become a candidate for election to any public
 30 office without first resigning from office.

31 (f) A commissioner, during his or her term of office,

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1 may not make any public comment regarding the merits of any
2 proceeding under ss. 120.569 and 120.57 currently pending
3 before the commission.

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

7 (h) A commissioner must avoid impropriety in all of
8 his or her activities and must act at all times in a manner
9 that promotes public confidence in the integrity and
10 impartiality of the commission.

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

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

20 350.042 Ex parte communications.--

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

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

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

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

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

17 350.061 Public Counsel; appointment; oath;
18 restrictions on Public Counsel and his or her employees.--

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

31 Section 26. Subsection (2) of section 350.0614,

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1 Florida Statutes, is amended to read:

2 350.0614 Public Counsel; compensation and expenses.--

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

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 On page 1, line 2, through page 2, line 17, delete
17 those lines

18

19 and insert:

20 An act relating to regulation of
21 communications; creating the Committee on
22 Public Service Commission Oversight as a
23 standing joint committee of the Legislature;
24 providing for its membership, powers, and
25 duties; amending s. 350.001, F.S.; requiring
26 that the commission perform its duties
27 independently; amending s. 350.031, F.S. ;
28 authorizing the Florida Public Service
29 Commission Nominating Council to make
30 expenditures to advertise a vacancy on the
31 council or the commission; requiring that the

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1 Committee on Public Service Commission
2 Oversight provide nominees for recommendation
3 to the Governor for appointment to the Public
4 Service Commission; providing procedures;
5 amending s. 350.041, F.S.; clarifying the
6 prohibition against accepting gifts with
7 respect to its application to commissioners
8 attending conferences; requiring that a penalty
9 be imposed against a person who gives a
10 commissioner a prohibited gift; requiring that
11 commissioners avoid impropriety and act in a
12 manner that promotes confidence in the
13 commission; prohibiting a commissioner from
14 soliciting any thing of value, either directly
15 or indirectly, from any public utility, its
16 affiliate, or any party; amending s. 350.042,
17 F.S.; requiring that a penalty be imposed
18 against a person involved in a prohibited ex
19 parte communication with a commissioner;
20 amending s. 350.061, F.S.; requiring that the
21 Committee on Public Service Commission
22 Oversight rather than the Joint Legislative
23 Auditing Committee appoint the Public Counsel;
24 providing for biennial reconfirmation rather
25 than annual; requiring that the Public Counsel
26 perform his or her duties independently;
27 amending s. 350.0614, F.S.; requiring that the
28 Committee on Public Service Commission
29 Oversight rather than the Joint Legislative
30 Auditing Committee oversee expenditures of the
31 Public Counsel; providing definitions;

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1 providing for notice of public hearings to
2 consider whether the local government will
3 provide a communications service; requiring a
4 governmental entity to take certain action
5 before a communications service is provided;
6 providing certain restrictions on revenue bonds
7 to finance provisioning of communications
8 services; requiring a local government to make
9 available a written business plan; providing
10 criteria for the business plan; setting pricing
11 standards; providing for accounting and books
12 and records; requiring the governmental entity
13 to establish an enterprise fund; requiring the
14 governmental entity to maintain separate
15 operating and capital budgets; limiting the use
16 of eminent-domain powers; requiring a
17 governmental entity to hold a public hearing to
18 consider certain factors if the business plan
19 goals are not met; requiring compliance with
20 certain federal and state laws; requiring local
21 government to treat itself the same as it
22 treats other providers of similar
23 communications services; exempting certain
24 governmental entities from specified provisions
25 of the act; requiring a local government
26 provider of communications services to follow
27 the same prohibitions as other providers of the
28 same services; providing an exemption for
29 airports under certain conditions; recognizing
30 preemption of a charter, code, or other
31 governmental authority; providing for

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1 severability; repealing s. 364.502, F.S., which
2 provides for regulation of video programming;
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