

FOR CONSIDERATION By the Committee on Communications and Public Utilities

579-1014A-05

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

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

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

5 Be It Enacted by the Legislature of the State of Florida:
6

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

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

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

30 (3) The committee shall:
31

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

4 (b) Discipline a member of the Public Service
5 Commission as provided by general law; and

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

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

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

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

18 350.001 Legislative intent.--The Florida Public
19 Service Commission has been and shall continue to be an arm of
20 the legislative branch of government. The Public Service
21 Commission shall perform its duties independently. The
22 Legislature declares and determines that the Public Service
23 Commission is under the legislative branch of government
24 within the intent expressed in chapter 216. The Executive
25 Office of the Governor or its successor is not authorized to
26 release or withhold funds appropriated to the Public Service
27 Commission, but the Committee on Public Service Commission
28 Oversight shall release or withhold funds appropriated to the
29 Public Service Commission as provided by law and the rules or
30 decisions of the Committee on Public Service Commission
31 Oversight. The Executive Office of the Governor, the

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

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

16 350.031 Florida Public Service Commission Nominating
17 Council.--

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

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

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

29 This certification is made as condition to appointment to the
30 Florida Public Service Commission Nominating Council.
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1 (b) A member of the council may be removed by the
2 Speaker of the House of Representatives and the President of
3 the Senate upon a finding by the Speaker and the President
4 that the council member has violated any provision of this
5 subsection or for other good cause.

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

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

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

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

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

6 Recommendations of the council shall be nonpartisan.

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

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

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

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

9 350.041 Commissioners; standards of conduct.--

10 (2) STANDARDS OF CONDUCT.--

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

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

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

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

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

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

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

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

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

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

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

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

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

11 350.042 Ex parte communications.--

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

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

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

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

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

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

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

8 350.0605 by a commissioner, former commissioner, or former
9 commission employee, ~~or Public Service Commission Nominating~~
10 ~~Council member~~ shall be punishable as provided in this section
11 ~~ss. 112.317 and 112.324~~. The Commission on Ethics is ~~hereby~~

12 given the power and authority to investigate complaints of
13 violation of this chapter in the manner provided in part III
14 of chapter 112, as if this section were included in that part.

15 If the Commission on Ethics, upon completing a full and final
16 investigation, finds that there has been a violation, it shall

17 forward a copy of the complaint and its findings, including
18 any recommendation as to what penalty should be imposed, if

19 any, by certified mail to the Committee on Public Service
20 Commission Oversight for investigation and action, which shall

21 be governed by the joint rules of the Senate and the House of
22 Representatives. The committee must report its final action

23 upon the complaint to the Commission on Ethics within 90 days
24 after the date of transmittal to the committee. The committee

25 shall determine what penalty it will impose, if any, which may
26 include any penalty provided in part III of chapter 112. A

27 commissioner may request an advisory opinion from the
28 Commission on Ethics as provided by s. 112.322(3)(a).

29 Section 7. Section 350.05, Florida Statutes, is
30 amended to read:

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

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

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

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

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

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

7 350.0614 Public Counsel; compensation and expenses.--

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

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

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

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SENATE SUMMARY

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