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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RE | . | |
| 02/02/2010 | . | |
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The Committee on Communications, Energy, and Public Utilities (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 350.042, Florida Statutes, is amended to read:

350.042 Ex parte communications.-

(1) A commissioner and his or her advisory staff shall afford ~~should accord~~ to every person who is legally interested in a proceeding, or the person's lawyer, the full right to be heard according to law, and, except as authorized in this section ~~by law~~, shall neither initiate, engage in, nor consider



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13 ex parte communications ~~concerning the merits, threat, or offer~~
14 ~~of reward~~ in any proceeding other than an undocketed workshop a
15 proceeding under s. 120.54 or s. 120.565, workshops, or internal
16 affairs meetings. An ~~Ne~~ individual shall not discuss ex parte
17 with a commissioner or his or her advisory staff the merits of
18 any issue that the individual ~~he or she~~ knows will be filed with
19 the commission within 90 days after the date of the discussion.
20 For purposes of this section, the term "advisory staff" means
21 the commissioners' assistants and executive secretaries. The
22 provisions of this subsection shall not apply to other
23 commission staff unless otherwise provided in this section.

24 (2) (a) Any oral or written communication between a
25 commissioner or advisory staff and a representative of a utility
26 regulated by the commission must be made available to the
27 public. Such oral or written communication must be posted on the
28 commission's website within 72 hours after the communication
29 occurs.

30 (b) The commission shall post on its website a copy of any
31 written communication on the same day that the communication is
32 received by the commission.

33 (c) The commission shall prepare a written summary of any
34 communication relating to a documented emergency or a
35 communication relating to a brief, unscheduled follow-up to a
36 previously scheduled meeting or previously scheduled telephone
37 conference call. The commission shall post the summary on the
38 commission's website within 72 hours after such communication
39 occurs.

40 (d) Notice shall be posted on the commission's website at
41 least 72 hours before the occurrence of any meeting, telephone



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42 conference call, or written communication between the
43 commissioner or his or her advisory staff and a representative
44 of a regulated utility. The Office of Public Counsel may
45 participate in the meeting, telephone conference call, or
46 written communication for the purpose of questioning or directly
47 responding to the communication.

48 (e) This subsection does not apply to commission staff or
49 representatives of a regulated utility who are required to
50 initiate or receive brief, unscheduled communications for the
51 purpose of obtaining additional information that may be needed
52 after the completion of an audit.

53 (3)-(2) The provisions of This section does shall not
54 prohibit an individual residential ratepayer from communicating
55 with a commissioner or his or her advisory staff if, provided
56 that the ratepayer is representing only himself or herself,
57 without compensation.

58 (4)-(3) This section does shall not apply to oral
59 communications or discussions in scheduled and noticed open
60 public meetings of educational programs or of a conference or
61 other meeting of an association of regulatory agencies.

62 (5)-(4) If a commissioner or his or her advisory staff
63 knowingly receives an ex parte communication relative to a
64 proceeding other than as set forth in subsection (1), to which
65 the commissioner he or she is assigned, the commissioner or his
66 or her advisory staff he or she must place on the record of the
67 proceeding copies of all written communications received, all
68 written responses to the communications, and a memorandum
69 stating the substance of all oral communications received and
70 all oral responses made. The commissioner or his or her advisory



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71 ~~staff,~~ and shall give written notice to all parties to the
72 communication that such matters have been placed on the record.
73 Any party who desires to respond to an ex parte communication
74 may do so. The response must be received by the commission
75 within 10 days after receiving notice that the ex parte
76 communication has been placed on the record. The commissioner
77 may, if he or she deems it necessary to eliminate the effect of
78 an ex parte communication received by him or her, withdraw from
79 the proceeding, in which case the chair shall substitute another
80 commissioner for the proceeding.

81 ~~(6)(5)~~ Any individual who makes an ex parte communication
82 shall submit to the commission a written statement describing
83 the nature of ~~the such~~ communication, which must ~~to~~ include the
84 name of the person making the communication, the name of each
85 ~~the~~ commissioner or advisory staff member ~~commissioners~~
86 receiving the communication, copies of all written
87 communications made, all written responses to such
88 communications, and a memorandum stating the substance of all
89 oral communications received and all oral responses made. The
90 commission shall place on the record of a proceeding all such
91 communications.

92 ~~(7)(6)~~ Any commissioner or advisory staff member who
93 knowingly fails to place on the record any such communications,
94 in violation of the section, within 15 days after ~~of~~ the date of
95 the such communication is subject to removal or dismissal and
96 may be assessed a civil penalty not to exceed \$5,000.

97 ~~(8)(7)~~(a) It is ~~shall be~~ the duty of the Commission on
98 Ethics to receive and investigate sworn complaints of violations
99 of this section pursuant to the procedures contained in ss.



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100 112.322-112.3241.

101 (b) If the Commission on Ethics finds that there has been a
102 violation of this section by a public service commissioner or
103 his or her advisory staff, it shall provide the Governor and the
104 Florida Public Service Commission Nominating Council with a
105 report of its findings and recommendations. The Governor may ~~is~~
106 ~~authorized to~~ enforce the findings and recommendations of the
107 Commission on Ethics, pursuant to part III of chapter 112.

108 (c) If a commissioner or his or her advisory staff fails or
109 refuses to pay the Commission on Ethics any civil penalties
110 assessed pursuant to the provisions of this section, the
111 Commission on Ethics may bring an action in any circuit court to
112 enforce such penalty.

113 (d) If, during the course of an investigation by the
114 Commission on Ethics into an alleged violation of this section,
115 allegations are made as to the identity of the person who
116 participated in the ex parte communication, that person must be
117 given notice and an opportunity to participate in the
118 investigation and relevant proceedings to present a defense. If
119 the Commission on Ethics determines that the person participated
120 in the ex parte communication, the person may not appear before
121 the commission or otherwise represent anyone before the
122 commission for a period of 2 years.

123 Section 2. Section 350.0605, Florida Statutes, is amended
124 to read:

125 350.0605 Former commissioners and employees; representation
126 of clients or industry before commission; lobbying the
127 legislative or executive branch.-

128 (1) (a) Any former commissioner of the Public Service



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129 Commission is prohibited from appearing before the commission
130 representing any client or any industry regulated by the Public
131 Service Commission for a period of 2 years following his or her
132 termination of service on the commission.

133 (b) Any former commissioner of the Public Service
134 Commission is prohibited from lobbying the legislative or
135 executive branch of state government on behalf of any client or
136 any industry regulated by the commission for a period of 2 years
137 following his or her termination of service on the commission.
138 This subsection applies only to commissioners who are appointed
139 or reappointed on or after July 1, 2010.

140 (2) Any former advisory staff member of the Public Service
141 Commission is prohibited from appearing before the commission
142 representing any client or industry regulated by the Public
143 Service Commission, or from lobbying the legislative or
144 executive branch of state government on behalf of any client or
145 any industry regulated by the commission, for a period of 2
146 years following his or her termination of employment with the
147 commission. This subsection applies only to advisory staff who
148 are hired with the commission on or after July 1, 2010. For
149 purposes of this section, the term "advisory staff" means the
150 commissioners' assistants and executive secretaries. Any former
151 ~~employee of the commission is prohibited from appearing before~~
152 ~~the commission representing any client regulated by the Public~~
153 ~~Service Commission on any matter which was pending at the time~~
154 ~~of termination and in which such former employee had~~
155 ~~participated.~~

156 (3) For a period of 2 years following termination of
157 service on the commission or employment with the commission, a



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158 former commissioner or former advisory staff member may not
159 accept employment by or compensation from a business entity
160 that, directly or indirectly, owns or controls a public utility
161 regulated by the commission, from a public utility regulated by
162 the commission, from a business entity that, directly or
163 indirectly, is an affiliate or subsidiary of a public utility
164 regulated by the commission or is an actual business competitor
165 of a local exchange company or public utility regulated by the
166 commission and is otherwise exempt from regulation by the
167 commission under ss. 364.02(14) and 366.02(1), or from a
168 business entity or trade association that has been a party to a
169 commission proceeding within the 2 years preceding the former
170 commission member's termination of service or former advisory
171 staff member's termination of employment with the commission.
172 This subsection applies only to former commissioners and
173 advisory staff members who are appointed or reappointed to or
174 hired with the commission on or after July 1, 2010.

175 ~~(3) For a period of 2 years following termination of~~
176 ~~service on the commission, a former member may not accept~~
177 ~~employment by or compensation from a business entity which,~~
178 ~~directly or indirectly, owns or controls a public utility~~
179 ~~regulated by the commission, from a public utility regulated by~~
180 ~~the commission, from a business entity which, directly or~~
181 ~~indirectly, is an affiliate or subsidiary of a public utility~~
182 ~~regulated by the commission or is an actual business competitor~~
183 ~~of a local exchange company or public utility regulated by the~~
184 ~~commission and is otherwise exempt from regulation by the~~
185 ~~commission under ss. 364.02(14) and 366.02(1), or from a~~
186 ~~business entity or trade association that has been a party to a~~



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187 ~~commission proceeding within the 2 years preceding the member's~~
188 ~~termination of service on the commission. This subsection~~
189 ~~applies only to members of the Florida Public Service Commission~~
190 ~~who are appointed or reappointed after May 10, 1993.~~

191 Section 3. This act shall take effect July 1, 2010.

192
193 ===== T I T L E A M E N D M E N T =====

194 And the title is amended as follows:

195 Delete everything before the enacting clause
196 and insert:

197 A bill to be entitled
198 An act relating to the Public Service Commission;
199 amending s. 350.042, F.S.; revising provisions
200 relating to ex parte communications; prohibiting a
201 commissioner's advisory staff from discussing ex parte
202 the merits of any issue before the commission;
203 defining the term "advisory staff"; requiring that any
204 communication between a commissioner or his or her
205 advisory staff and a representative of a utility be
206 made available to the public; requiring that any
207 communication be posted on the commission's website
208 within a specified time after the communication
209 occurs; requiring that the commission post on its
210 website a copy of written communications received by
211 the commission; requiring that the commission prepare
212 a written summary of certain communications and post
213 such summary on its website within a specified time
214 after the communication occurs; requiring that notice
215 be posted on the commission's website a minimum number



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216 of hours before the occurrence of any meeting,
217 telephone conference call, or written communication
218 between a commissioner or advisory staff; authorizing
219 the Office of Public Counsel to participate in such
220 communications for limited purposes; providing an
221 exception for certain commission staff or industry
222 representatives; providing penalties for advisory
223 staff who fail to report certain communications;
224 amending s. 350.0605, F.S.; prohibiting former
225 commissioners and advisory staff of the Public Service
226 Commission from lobbying the legislative or executive
227 branch of state government on behalf of any client or
228 industry regulated by the commission for 2 years after
229 termination of service or employment with the
230 commission; defining the term "advisory staff";
231 prohibiting any former advisory staff member of the
232 commission from appearing before the commission
233 representing any client or industry regulated by the
234 commission for 2 years after termination of employment
235 with the commission; providing that such prohibitions
236 apply to commissioners and advisory staff who are
237 appointed or reappointed to or who terminate their
238 employment with the commission on or after a specified
239 date; prohibiting a former commissioner or advisory
240 staff member from accepting employment by or
241 compensation from certain entities regulated by the
242 commission for a period of 2 years after termination
243 of service or employment with the commission;
244 providing that the prohibition applies to former



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245 commissioners and advisory staff members who are
246 appointed or reappointed to or hired with the
247 commission on or after a specified date; providing an
248 effective date.