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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/RM

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04/30/2010 04:14 PM

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Senator Fasano moved the following:

1 **Senate Amendment to House Amendment (884785) (with title**
2 **amendment)**

3
4 Delete lines 58 - 467

5 and insert:

6 has determined that the person is competent and knowledgeable in
7 one or more fields, which shall include, but not be limited to:

8 public affairs, law, economics, accounting, engineering,

9 finance, natural resource conservation, energy, or another field

10 substantially related to the duties and functions of the

11 commission. The commission shall fairly represent the above-

12 stated fields. Recommendations of the council shall be

13 nonpartisan.



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14 Section 3. Section 350.035, Florida Statutes, is created to
15 read:

16 350.035 Prohibited influence on commissioners and
17 commission staff.-

18 (1) (a) Neither the Governor, the President of the Senate,
19 the Speaker of the House of Representatives, nor a member of the
20 Public Service Commission Nominating Council shall attempt to
21 sway the independent judgment of the commission by bringing
22 pressure to bear upon a commissioner or commission employee
23 through that person's role in the nomination, appointment, or
24 confirmation of commissioners.

25 (b) The Commission on Ethics shall receive and investigate
26 sworn complaints of violations of this subsection pursuant to
27 ss. 112.322-112.3241.

28 (2) (a) To ensure that each commissioner, as a member of a
29 collegial body, is afforded the benefit of unbiased and
30 independent analysis and advice from its professional and
31 technical staff, an individual commissioner may not demand or
32 require any member of the commission staff, other than the
33 commissioner's direct staff, to develop, present, or pursue a
34 particular opinion, position, or course of action in relation to
35 any substantive matter pending before the commission or a panel
36 of commissioners. This paragraph does not prohibit the
37 commission, as a collegial body, from directing its staff to
38 pursue a course of action consistent with direction provided by
39 the collegial body. Further, this paragraph is not intended to
40 prohibit an individual commissioner from any otherwise lawful
41 communication with commission staff, including any expression of
42 opinion, position, or concern regarding a matter within the



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43 jurisdiction of the commission. A violation of this subsection
44 is an act of malfeasance for purposes of ss. 112.3187-112.31895.

45 (b) The inspector general of the commission shall receive
46 and investigate complaints of violations of this subsection.

47 Section 4. Section 350.041, Florida Statutes, is amended to
48 read:

49 350.041 Commissioners; standards of conduct.—

50 (1) STATEMENT OF INTENT.—

51 (a) Professional, impartial, and honorable commissioners
52 are indispensable to the effective performance of the
53 commission's duties. A commissioner shall maintain high
54 standards of conduct and shall personally observe those
55 standards so that the integrity and impartiality of the
56 commission may be preserved. The standards of conduct provided
57 in this section should be construed and applied to further that
58 objective.

59 (b) In addition to the provisions of part III of chapter
60 112, which are applicable to public service commissioners by
61 virtue of their being public officers and full-time employees of
62 the legislative branch of government, the conduct of public
63 service commissioners shall be governed by the standards of
64 conduct provided in this section. Nothing shall prohibit the
65 standards of conduct from being more restrictive than part III
66 of chapter 112. Further, this section shall not be construed to
67 contravene the restrictions of part III of chapter 112. In the
68 event of a conflict between this section and part III of chapter
69 112, the more restrictive provision shall apply.

70 (2) STANDARDS OF CONDUCT.—

71 (a) A commissioner may not accept anything from any



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72 business entity which, either directly or indirectly, owns or
73 controls any public utility regulated by the commission, from
74 any public utility regulated by the commission, or from any
75 business entity which, either directly or indirectly, is an
76 affiliate or subsidiary of any public utility regulated by the
77 commission. A commissioner may attend conferences and associated
78 meals and events that are generally available to all conference
79 participants without payment of any fees in addition to the
80 conference fee. Additionally, while attending a conference, a
81 commissioner may attend meetings, meals, or events that are not
82 sponsored, in whole or in part, by any representative of any
83 public utility regulated by the commission and that are limited
84 to commissioners only, committee members, or speakers if the
85 commissioner is a member of a committee of the association of
86 regulatory agencies that organized the conference or is a
87 speaker at the conference. It is not a violation of this
88 paragraph for a commissioner to attend a conference for which
89 conference participants who are employed by a utility regulated
90 by the commission have paid a higher conference registration fee
91 than the commissioner, or to attend a meal or event that is
92 generally available to all conference participants without
93 payment of any fees in addition to the conference fee and that
94 is sponsored, in whole or in part, by a utility regulated by the
95 commission. If, during the course of an investigation by the
96 Commission on Ethics into an alleged violation of this
97 paragraph, allegations are made as to the identity of the person
98 giving or providing the prohibited gift, that person must be
99 given notice and an opportunity to participate in the
100 investigation and relevant proceedings to present a defense. If



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101 the Commission on Ethics determines that the person gave or
102 provided a prohibited gift, the person may not appear before the
103 commission or otherwise represent anyone before the commission
104 for a period of 2 years.

105 (b) A commissioner may not accept any form of employment
106 with or engage in any business activity with any business entity
107 which, either directly or indirectly, owns or controls any
108 public utility regulated by the commission, any public utility
109 regulated by the commission, or any business entity which,
110 either directly or indirectly, is an affiliate or subsidiary of
111 any public utility regulated by the commission.

112 (c) A commissioner may not have any financial interest,
113 other than shares in a mutual fund, in any public utility
114 regulated by the commission, in any business entity which,
115 either directly or indirectly, owns or controls any public
116 utility regulated by the commission, or in any business entity
117 which, either directly or indirectly, is an affiliate or
118 subsidiary of any public utility regulated by the commission. If
119 a commissioner acquires any financial interest prohibited by
120 this section during his or her term of office as a result of
121 events or actions beyond the commissioner's control, he or she
122 shall immediately sell such financial interest or place such
123 financial interest in a blind trust at a financial institution.
124 A commissioner may not attempt to influence, or exercise any
125 control over, decisions regarding the blind trust.

126 (d) A commissioner may not accept anything from a party in
127 a proceeding currently pending before the commission. If, during
128 the course of an investigation by the Commission on Ethics into
129 an alleged violation of this paragraph, allegations are made as



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130 to the identity of the person giving or providing the prohibited
131 gift, that person must be given notice and an opportunity to
132 participate in the investigation and relevant proceedings to
133 present a defense. If the Commission on Ethics determines that
134 the person gave or provided a prohibited gift, the person may
135 not appear before the commission or otherwise represent anyone
136 before the commission for a period of 2 years.

137 (e) A commissioner may not serve as the representative of
138 any political party or on any executive committee or other
139 governing body of a political party; serve as an executive
140 officer or employee of any political party, committee,
141 organization, or association; receive remuneration for
142 activities on behalf of any candidate for public office; engage
143 on behalf of any candidate for public office in the solicitation
144 of votes or other activities on behalf of such candidacy; or
145 become a candidate for election to any public office without
146 first resigning from office.

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

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

154 (h) The chair shall require order and decorum in
155 proceedings before the commission. In the absence of the chair,
156 the commissioner presiding over a commission proceeding shall
157 require order and decorum in the proceeding.

158 (i) A commissioner shall be patient, dignified, and



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159 courteous to litigants, other commissioners, witnesses, lawyers,
160 commission staff, and others with whom the commissioner deals in
161 an official capacity.

162 (j) A commissioner shall perform his or her official duties
163 without bias or prejudice. A commissioner may not, in the
164 performance of his or her official duties, by words or conduct
165 manifest bias or prejudice.

166 (k) A commissioner may not, with respect to parties or
167 classes of parties, cases, controversies, or issues likely to
168 come before the commission, make pledges, promises, or
169 commitments that are inconsistent with the impartial performance
170 of the commissioner's official duties.

171 (l) A commissioner may not be swayed by partisan interests,
172 public clamor, or fear of criticism.

173 (m) ~~(h)~~ A commissioner must avoid impropriety in all of his
174 or her activities and must act at all times in a manner that
175 promotes public confidence in the integrity and impartiality of
176 the commission.

177 (n) ~~(i)~~ A commissioner may not directly or indirectly,
178 through staff or other means, solicit anything of value from any
179 public utility regulated by the commission, or from any business
180 entity that, whether directly or indirectly, is an affiliate or
181 subsidiary of any public utility regulated by the commission, or
182 from any party appearing in a proceeding considered by the
183 commission in the last 2 years.

184 (3) INVESTIGATIONS; REPORTS; ADVISORY OPINIONS.—

185 (a) The Commission on Ethics shall accept and investigate
186 any alleged violations of this section pursuant to the
187 procedures contained in ss. 112.322-112.3241.



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188 (b) The Commission on Ethics shall provide the Governor and
189 the Florida Public Service Commission Nominating Council with a
190 report of its findings and recommendations with respect to
191 alleged violations by a public service commissioner. The
192 Governor is authorized to enforce these ~~the~~ findings and
193 recommendations ~~of the Commission on Ethics,~~ pursuant to part
194 III of chapter 112.

195 (c) A public service commissioner, a commission employee,
196 or a member of the Florida Public Service Commission Nominating
197 Council may request an advisory opinion from the Commission on
198 Ethics, pursuant to s. 112.322(3)(a), regarding the standards of
199 conduct or prohibitions set forth in this section and ss.
200 350.031, 350.04, and 350.042.

201 Section 5. Section 350.042, Florida Statutes, is amended to
202 read:

203 350.042 Prohibited Ex parte communications.-

204 (1) This section shall govern communications made by or
205 directed to commissioners and their direct reporting staff which
206 concern proceedings before the Public Service Commission. The
207 purpose of this section is to ensure the fairness of the
208 commission's proceedings by assuring the public that the
209 decisions by the commission are not influenced by prohibited
210 communications between commissioners and legally interested
211 persons.

212 (a) It is the express intent of the Legislature that the
213 commission shall afford to every person who is legally
214 interested in a proceeding, or the person's attorney or
215 qualified representative, the full right to be heard according
216 to law except as otherwise prohibited in this section.



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217 (b) For purposes of this section, the term:

218 1. "Legally interested person" means any party to a
219 proceeding before the commission, or a representative of a party
220 to a proceeding pending before the commission, and includes
221 corporations, partnerships, limited liability companies, elected
222 or appointed officials of state government, and other public and
223 elected officials.

224 2. "Prohibited communication" means any communication
225 regarding a docketed matter that, if written, is not served on
226 all the parties to a proceeding, and, if oral, is made without
227 adequate notice to the parties and an opportunity for them to be
228 present and heard.

229 3. "Commissioner's direct reporting staff" means a
230 commissioner's chief advisor and executive assistant.

231 (c) A commissioner or the commissioner's direct reporting
232 staff should accord to every person who is legally interested in
233 a proceeding, or the person's lawyer, full right to be heard
234 according to law, and, except as authorized by law, shall
235 neither initiate, engage in, nor consider prohibited ex parte
236 communications concerning the merits, threat, or offer of reward
237 in any proceeding other than an undocketed workshop a proceeding
238 under s. 120.54 or s. 120.565, workshops, or an internal affairs
239 meeting meetings. No individual shall discuss ex parte with a
240 commissioner the merits of any issue that he or she knows will
241 be filed with the commission within 90 days. The provisions of
242 this subsection shall not apply to commission staff unless
243 otherwise provided for in this section.

244 (d) An individual shall not discuss any matter with a
245 commissioner or the commissioner's direct reporting staff which



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246 the individual reasonably foresees will be filed with the
247 commission.

248 (2) (a) Any oral or written communication, not otherwise
249 prohibited under subsection (1), between a commissioner or the
250 commissioner's direct reporting staff and a representative of an
251 entity regulated by the commission must be made available to the
252 public. Such oral or written communication must be posted to the
253 commission website within 72 hours after the communication was
254 made or received.

255 (b) The commission shall post on its website a copy of any
256 written communication by the close of the next business day
257 after the communication is received by the commission.

258 (c) The commission shall prepare a written summary of any
259 communication related to a documented emergency or a
260 communication related to a brief, unscheduled followup to a
261 previously scheduled meeting or previously scheduled telephone
262 conference call. The commission shall post the written summary
263 on its website within 72 hours after the communication was made
264 or received.

265 (d) Notice shall be posted on the commission's website at
266 least 72 hours prior to the occurrence of any meeting, telephone
267 conference call, or written communication between a commissioner
268 or the commissioner's direct reporting staff and a
269 representative of a regulated entity. The Public Counsel may
270 participate in the meeting, telephone conference call, or
271 written communication for the purpose of questioning or directly
272 responding to the communication.

273 (e) This subsection does not apply to commission staff or
274 representatives of a regulated entity who are required to



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275 initiate or receive brief, unscheduled communications for the
276 purpose of obtaining additional information that may be needed
277 after the completion of an audit.

278 (3) The provisions of This section does shall not prohibit
279 an individual residential ratepayer from communicating with a
280 commissioner or the commissioner's direct reporting staff if,
281 provided that the ratepayer is representing only himself or
282 herself, without compensation.

283 (4) The restrictions on prohibited communications as
284 provided in this section shall also apply to communications made
285 by or directed to a commissioner and the commissioner's direct
286 reporting staff to or from the Governor, a member of the
287 Cabinet, or a member of the Legislature. Any written or oral
288 communication from the Governor, a member of the Cabinet, or a
289 member of the Legislature which is only a status inquiry and
290 does not address the merits of a proceeding is not a prohibited
291 communication. A written communication from the Governor, a
292 member of the Cabinet, or a member of the Legislature which
293 attaches or forwards a constituent's correspondence concerning
294 the merits of a docketed proceeding shall be placed in the
295 commission's docket files.

296 (5)(3) This section does shall not apply to oral
297 communications or discussions in scheduled and noticed open
298 public meetings of educational programs or of a conference or
299 other meeting of an association of regulatory agencies. This
300 exemption does not authorize a commissioner or the
301 commissioner's direct reporting staff to discuss matters with
302 any party or legally interested person to a proceeding.

303 (6)(4) If a commissioner or the commissioner's direct



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304 reporting staff knowingly receives a prohibited ~~an ex parte~~
305 communication as provided in subsection (1) which is related
306 ~~relative to a proceeding other than as set forth in subsection~~
307 ~~(1)~~, to which the commissioner ~~he or she~~ is assigned, he or she
308 must place on the record of the proceeding copies of all written
309 communications received, all written responses to the
310 communications, and a memorandum stating the substance of all
311 oral communications received and all oral responses made. The
312 commissioner or the commissioner's direct reporting staff, ~~and~~
313 shall give written notice to all parties to the communication
314 that such matters have been placed on the record. Any party who
315 desires to respond to a prohibited ~~an ex parte~~ communication may
316 do so. The response must be received by the commission within 10
317 days after receiving notice that the prohibited ~~ex parte~~
318 communication has been placed on the record. The commissioner
319 may, if he or she deems it necessary to eliminate the effect of
320 a prohibited ~~an ex parte~~ communication received by him or her,
321 withdraw from the proceeding, in which case the chair shall
322 substitute another commissioner for the proceeding.

323 (7) ~~(5)~~ Any individual who makes a prohibited ~~an ex parte~~
324 communication shall submit to the commission a written statement
325 describing the nature of the ~~such~~ communication, to include the
326 name of the person making the communication, the name of each
327 ~~the~~ commissioner or member of the commissioner's direct
328 reporting staff ~~or commissioners~~ receiving the communication,
329 copies of all written communications made, all written responses
330 to such communications, and a memorandum stating the substance
331 of all oral communications received and all oral responses made.
332 The commission shall place on the record of a proceeding all



333 such communications.

334 (8)~~(6)~~ Any commissioner or member of the commissioner's
335 direct reporting staff who knowingly fails to place on the
336 record any such communications, in violation of the section,
337 within 15 days after ~~of~~ the date of the ~~such~~ communication is
338 subject to removal or dismissal and may be assessed a civil
339 penalty not to exceed \$5,000.

340 (9)~~(7)~~(a) It is ~~shall be~~ the duty of the Commission on
341 Ethics to receive and investigate sworn complaints of violations
342 of this section pursuant to the procedures contained in ss.
343 112.322-112.3241.

344 (b) If the Commission on Ethics finds that there has been a
345 violation of this section by a ~~public service~~ commissioner or
346 the commissioner's direct reporting staff, it shall provide the
347 Governor and the Florida Public Service Commission Nominating
348 Council with a report of its findings and recommendations. The
349 Governor may ~~is authorized to~~ enforce the findings and
350 recommendations of the Commission on Ethics, pursuant to part
351 III of chapter 112.

352 (c) If a commissioner or the commissioner's direct
353 reporting staff fails or refuses to pay the Commission on Ethics
354 any civil penalties assessed pursuant to the provisions of this
355 section, the Commission on Ethics may bring an action in any
356 circuit court to enforce such penalty.

357 (d) If, during the course of an investigation by the
358 Commission on Ethics into an alleged violation of this section,
359 allegations are made as to the identity of the person who
360 participated in the prohibited ~~ex parte~~ communication, that
361 person must be given notice and an opportunity to participate in



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362 the investigation and relevant proceedings to present a defense.
363 If the Commission on Ethics determines that the person
364 participated in the prohibited ~~ex parte~~ communication, the
365 person may not appear before the commission or otherwise
366 represent anyone before the commission for a period of 2 years
367 and may be assessed a civil penalty not to exceed \$5,000. The
368 regulated entity represented by the person, if applicable, may
369 also be assessed a penalty of up to one-tenth of 1 percent of
370 the entity's annual operating revenue for the most recent
371 calendar year.

372 Section 6. Subsections (1), (2), and (3) of section 350.06,
373 Florida Statutes, are amended to read:

374 350.06 Place of meeting; expenditures; employment of
375 personnel; records availability and fees.-

376 (1) The offices of the commission ~~said commissioners~~ shall
377 be in the vicinity of Tallahassee, but the commissioners may
378 hold sessions anywhere in the state at their discretion.

379 (2) All sums of money authorized to be paid on account of
380 the commission ~~said commissioners~~ shall be paid out of the State
381 Treasury only on the order of the Chief Financial Officer.

382 (3)(a) The commission shall ~~commissioners may~~ employ an
383 executive director, a general counsel, and an inspector general
384 ~~clerical, technical, and professional personnel reasonably~~
385 ~~necessary for the performance of their duties and may also~~
386 ~~employ one or more persons capable of stenographic court~~
387 ~~reporting, to be known as the official reporters of the~~
388 ~~commission.~~

389
390 ===== T I T L E A M E N D M E N T =====



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391 And the title is amended as follows:
392 Delete lines 520 - 548
393 and insert:
394 intent; amending s. 350.031, F.S.; revising provisions
395 relating to members of the Public Service Commission
396 Nominating Council; creating s. 350.035, F.S.;
397 prohibiting attempts by certain persons to sway the
398 judgment of commissioners; providing for the
399 Commission on Ethics to receive and investigate
400 complaints of violations pursuant to specified
401 procedures; prohibiting commissioners from requiring
402 or demanding that certain commission staff pursue
403 particular positions or courses of action; requiring
404 the inspector general of the commission to investigate
405 complaints of violations; amending s. 350.041, F.S.;
406 revising legislative intent; revising standards of
407 conduct for commissioners; revising provisions for
408 investigation and reports by the Commission on Ethics
409 of alleged violations; authorizing commission
410 employees to request opinions from the Commission on
411 Ethics; amending s. 350.042, F.S.; deleting references
412 to "ex parte communications" and replacing such
413 references with "prohibited communications"; providing
414 a purpose; providing legislative intent; providing
415 definitions; prohibiting a commissioner or the
416 commissioner's direct reporting staff from initiating,
417 engaging in, or considering prohibited communications
418 in any proceeding other than an undocketed workshop or
419 an internal affairs meeting; prohibiting any



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420 individual from discussing any matter with a
421 commissioner or the commissioner's direct reporting
422 staff which the individual reasonably foresees will be
423 filed with the commission; requiring that any
424 communication between a commissioner or the
425 commissioner's direct reporting staff and a
426 representative of a utility be made available to the
427 public; requiring that any communication be posted on
428 the commission's website within a specified time after
429 the communication is made or received; requiring that
430 the commission post on its website a copy of written
431 communications received by the commission; requiring
432 that the commission prepare a written summary of
433 certain communications and post such summary on its
434 website within a specified time after the
435 communication is made or received; requiring that
436 notice be posted on the commission's website a minimum
437 number of hours before the occurrence of any meeting,
438 telephone conference call, or written communication
439 between a commissioner or the commissioner's direct
440 reporting staff; authorizing the Office of Public
441 Counsel to participate in such communications for
442 limited purposes; providing an exception for certain
443 commission staff or industry representatives;
444 providing that the restrictions on prohibited
445 communications apply to communications made to or from
446 the Governor, a member of the Cabinet, or a member of
447 the Legislature; providing penalties for members of a
448 commissioner's direct report staff who fail to report



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certain communications;