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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2010	.	
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The Committee on Rules (Constantine) recommended the following:

1 **Senate Substitute for Amendment (237068) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Paragraph (j) is added to subsection (2) of
7 section 350.041, Florida Statutes, to read:

8 350.041 Commissioners; standards of conduct.—

9 (2) STANDARDS OF CONDUCT.—

10 (j) In docketed proceedings before the Public Service
11 Commission, each commissioner shall observe and abide by the
12 Code of Judicial Conduct as adopted by the Supreme Court. If any
13 canon of the Code of Judicial Conduct is in direct conflict with



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14 a statutory provision that applies to the commissioners or the
15 commission, the statutory provision shall control. Any material
16 violation of the Code of Judicial Conduct, excluding any canon
17 preempted by a conflicting statutory provision, shall be grounds
18 for suspension or removal of a commissioner by the Governor.

19 Section 2. Section 350.042, Florida Statutes, is amended to
20 read:

21 350.042 Prohibited ~~Ex parte~~ communications.-

22 (1) This section shall govern communications made by or
23 directed to commissioners and their direct reporting staff which
24 concern proceedings before the Public Service Commission. The
25 purpose of this section is to ensure the fairness of the
26 commission's proceedings by assuring the public that the
27 decisions by the commission are not influenced by prohibited
28 communications between commissioners and legally interested
29 persons.

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

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

36 1. "Legally interested person" means any party to a
37 proceeding before the commission, or a representative of a party
38 to a proceeding pending before the commission, and includes
39 corporations, partnerships, limited liability companies, elected
40 or appointed officials of state government, and other public and
41 elected officials.

42 2. "Prohibited communication" means any communication



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43 regarding a docketed matter that, if written, is not served on
44 all the parties to a proceeding, and, if oral, is made without
45 adequate notice to the parties and an opportunity for them to be
46 present and heard.

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

49 (c) A commissioner or the commissioner's direct reporting
50 staff should accord to every person who is legally interested in
51 a proceeding, or the person's lawyer, full right to be heard
52 according to law, and, except as authorized by law, shall
53 neither initiate, engage in, nor consider prohibited ex parte
54 communications concerning the merits, threat, or offer of reward
55 in any proceeding other than an undocketed workshop a proceeding
56 under s. 120.54 or s. 120.565, workshops, or an internal affairs
57 meeting meetings. No individual shall discuss ex parte with a
58 commissioner the merits of any issue that he or she knows will
59 be filed with the commission within 90 days. The provisions of
60 this subsection shall not apply to commission staff unless
61 otherwise provided for in this section.

62 (d) An individual shall not discuss any matter with a
63 commissioner or the commissioner's direct reporting staff which
64 the individual reasonably foresees will be filed with the
65 commission.

66 (2) (a) Any oral or written communication, not otherwise
67 prohibited under subsection (1), between a commissioner or the
68 commissioner's direct reporting staff and a representative of an
69 entity regulated by the commission must be made available to the
70 public. Such oral or written communication must be posted to the
71 commission website within 72 hours after the communication was



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72 made or received.

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

76 (c) The commission shall prepare a written summary of any
77 communication related to a documented emergency or a
78 communication related to a brief, unscheduled followup to a
79 previously scheduled meeting or previously scheduled telephone
80 conference call. The commission shall post the written summary
81 on its website within 72 hours after the communication was made
82 or received.

83 (d) Notice shall be posted on the commission's website at
84 least 72 hours prior to the occurrence of any meeting, telephone
85 conference call, or written communication between a commissioner
86 or the commissioner's direct reporting staff and a
87 representative of a regulated entity. The Public Counsel may
88 participate in the meeting, telephone conference call, or
89 written communication for the purpose of questioning or directly
90 responding to the communication.

91 (e) This subsection does not apply to commission staff or
92 representatives of a regulated entity who are required to
93 initiate or receive brief, unscheduled communications for the
94 purpose of obtaining additional information that may be needed
95 after the completion of an audit.

96 (3) ~~The provisions of~~ This section does shall not prohibit
97 an individual ~~residential~~ ratepayer from communicating with a
98 commissioner or the commissioner's direct reporting staff if,
99 ~~provided that~~ the ratepayer is representing only himself or
100 herself, without compensation.



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101 (4) The restrictions on prohibited communications as
102 provided in this section shall also apply to communications made
103 by or directed to a commissioner and the commissioner's direct
104 reporting staff to or from the Governor, a member of the
105 Cabinet, or a member of the Legislature. Any written or oral
106 communication from the Governor, a member of the Cabinet, or a
107 member of the Legislature which is only a status inquiry and
108 does not address the merits of a proceeding is not a prohibited
109 communication. A written communication from the Governor, a
110 member of the Cabinet, or a member of the Legislature which
111 attaches or forwards a constituent's correspondence concerning
112 the merits of a docketed proceeding shall be placed in the
113 commission's docket files.

114 (5)-(3) This section does shall not apply to oral
115 communications or discussions in scheduled and noticed open
116 public meetings of educational programs or of a conference or
117 other meeting of an association of regulatory agencies. This
118 exemption does not authorize a commissioner or the
119 commissioner's direct reporting staff to discuss matters with
120 any party or legally interested person to a proceeding.

121 (6)-(4) If a commissioner or the commissioner's direct
122 reporting staff knowingly receives a prohibited an ex parte
123 communication as provided in subsection (1) which is related
124 relative to a proceeding other than as set forth in subsection
125 (1), to which the commissioner he or she is assigned, he or she
126 must place on the record of the proceeding copies of all written
127 communications received, all written responses to the
128 communications, and a memorandum stating the substance of all
129 oral communications received and all oral responses made. The



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130 commissioner or the commissioner's direct reporting staff, ~~and~~
131 shall give written notice to all parties to the communication
132 that such matters have been placed on the record. Any party who
133 desires to respond to a prohibited ~~an ex parte~~ communication may
134 do so. The response must be received by the commission within 10
135 days after receiving notice that the prohibited ~~ex parte~~
136 communication has been placed on the record. The commissioner
137 may, if he or she deems it necessary to eliminate the effect of
138 a prohibited ~~an ex parte~~ communication received by him or her,
139 withdraw from the proceeding, in which case the chair shall
140 substitute another commissioner for the proceeding.

141 ~~(7)(5)~~ Any individual who makes a prohibited ~~an ex parte~~
142 communication shall submit to the commission a written statement
143 describing the nature of the such communication, to include the
144 name of the person making the communication, the name of each
145 ~~the~~ commissioner or member of the commissioner's direct
146 reporting staff ~~or commissioners~~ receiving the communication,
147 copies of all written communications made, all written responses
148 to such communications, and a memorandum stating the substance
149 of all oral communications received and all oral responses made.
150 The commission shall place on the record of a proceeding all
151 such communications.

152 ~~(8)(6)~~ Any commissioner or member of the commissioner's
153 direct reporting staff who knowingly fails to place on the
154 record any such communications, in violation of the section,
155 within 15 days after ~~of~~ the date of the such communication is
156 subject to removal or dismissal and may be assessed a civil
157 penalty not to exceed \$5,000.

158 ~~(9)(7)~~(a) It is ~~shall be~~ the duty of the Commission on



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159 Ethics to receive and investigate sworn complaints of violations
160 of this section pursuant to the procedures contained in ss.
161 112.322-112.3241.

162 (b) If the Commission on Ethics finds that there has been a
163 violation of this section by a ~~public-service~~ commissioner or
164 the commissioner's direct reporting staff, it shall provide the
165 Governor and the Florida Public Service Commission Nominating
166 Council with a report of its findings and recommendations. The
167 Governor may ~~is authorized to~~ enforce the findings and
168 recommendations of the Commission on Ethics, pursuant to part
169 III of chapter 112.

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

175 (d) If, during the course of an investigation by the
176 Commission on Ethics into an alleged violation of this section,
177 allegations are made as to the identity of the person who
178 participated in the prohibited ~~ex parte~~ communication, that
179 person must be given notice and an opportunity to participate in
180 the investigation and relevant proceedings to present a defense.
181 If the Commission on Ethics determines that the person
182 participated in the prohibited ~~ex parte~~ communication, the
183 person may not appear before the commission or otherwise
184 represent anyone before the commission for a period of 2 years
185 and may be assessed a civil penalty not to exceed \$5,000. The
186 regulated entity represented by the person, if applicable, may
187 also be assessed a penalty of up to one-tenth of 1 percent of



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188 the entity's annual operating revenue for the most recent
189 calendar year.

190 Section 3. Section 350.0605, Florida Statutes, is amended
191 to read:

192 350.0605 Former commissioners and employees; representation
193 of clients or industry before commission; lobbying the
194 legislative or executive branch.-

195 (1) (a) Any former commissioner of the Public Service
196 Commission is prohibited from appearing before the commission
197 representing any client or any industry regulated by the Public
198 Service Commission for a period of 4 ~~2~~ years following his or
199 her termination of service on the commission.

200 (b) Any former commissioner of the Public Service
201 Commission is prohibited from lobbying the legislative or
202 executive branch of state government on behalf of any client or
203 any industry regulated by the commission for a period of 4 years
204 following his or her termination of service on the commission.
205 This subsection applies only to commissioners who are appointed
206 or reappointed on or after July 1, 2010.

207 (2) Any former member of the commissioner's direct
208 reporting staff is prohibited from appearing before the
209 commission representing any client or industry regulated by the
210 Public Service Commission, or from lobbying the legislative or
211 executive branch of state government on behalf of any client or
212 any industry regulated by the commission, for a period of 4
213 years following his or her termination of employment with the
214 commission. This subsection applies only to a member of the
215 commissioner's direct reporting staff who is hired with the
216 commission on or after July 1, 2010. For purposes of this



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217 section, the term "commissioner's direct reporting staff" means
218 a commissioner's chief advisor and executive assistant. ~~Any~~
219 ~~former employee of the commission is prohibited from appearing~~
220 ~~before the commission representing any client regulated by the~~
221 ~~Public Service Commission on any matter which was pending at the~~
222 ~~time of termination and in which such former employee had~~
223 ~~participated.~~

224 (3) For a period of 4 years following termination of
225 service on the commission or employment with the commission, a
226 former commissioner or former member of the commissioner's
227 direct reporting staff may not accept employment by or
228 compensation from a business entity that, directly or
229 indirectly, owns or controls a public utility regulated by the
230 commission, from a public utility regulated by the commission,
231 from a business entity that, directly or indirectly, is an
232 affiliate or subsidiary of a public utility regulated by the
233 commission or is an actual business competitor of a local
234 exchange company or public utility regulated by the commission
235 and is otherwise exempt from regulation by the commission under
236 ss. 364.02(14) and 366.02(1), or from a business entity or trade
237 association that has been a party to a commission proceeding
238 within the 4 years preceding the former commissioner's
239 termination of service or the former commissioner's direct
240 reporting staff member's termination of employment with the
241 commission. This subsection applies only to former commissioners
242 and members of the commissioner's direct reporting staff who are
243 appointed or reappointed to or hired with the commission on or
244 after July 1, 2010.

245 ~~(3) For a period of 2 years following termination of~~



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246 ~~service on the commission, a former member may not accept~~
247 ~~employment by or compensation from a business entity which,~~
248 ~~directly or indirectly, owns or controls a public utility~~
249 ~~regulated by the commission, from a public utility regulated by~~
250 ~~the commission, from a business entity which, directly or~~
251 ~~indirectly, is an affiliate or subsidiary of a public utility~~
252 ~~regulated by the commission or is an actual business competitor~~
253 ~~of a local exchange company or public utility regulated by the~~
254 ~~commission and is otherwise exempt from regulation by the~~
255 ~~commission under ss. 364.02(14) and 366.02(1), or from a~~
256 ~~business entity or trade association that has been a party to a~~
257 ~~commission proceeding within the 2 years preceding the member's~~
258 ~~termination of service on the commission. This subsection~~
259 ~~applies only to members of the Florida Public Service Commission~~
260 ~~who are appointed or reappointed after May 10, 1993.~~

261 Section 4. This act shall take effect July 1, 2010.

262
263
264 ===== T I T L E A M E N D M E N T =====

265 And the title is amended as follows:

266 Delete everything before the enacting clause
267 and insert:

268 A bill to be entitled

269 An act relating to the Public Service Commission; amending
270 s. 350.041, F.S.; revising the standards of conduct for
271 commissioners of the Public Service Commission; requiring that
272 commissioners observe and abide by the Code of Judicial Conduct
273 while conducting docketed proceedings; providing for statutory
274 preemption; providing for penalties; amending s. 350.042, F.S.;



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275 deleting references to "ex parte communications" and replacing
276 such references with "prohibited communications"; providing a
277 purpose; providing legislative intent; providing definitions;
278 prohibiting a commissioner or the commissioner's direct
279 reporting staff from initiating, engaging in, or considering
280 prohibited communications in any proceeding other than an
281 undocketed workshop or an internal affairs meeting; prohibiting
282 any individual from discussing any matter with a commissioner or
283 the commissioner's direct reporting staff which the individual
284 reasonably foresees will be filed with the commission; requiring
285 that any communication between a commissioner or the
286 commissioner's direct reporting staff and a representative of a
287 utility be made available to the public; requiring that any
288 communication be posted on the commission's website within a
289 specified time after the communication is made or received;
290 requiring that the commission post on its website a copy of
291 written communications received by the commission; requiring
292 that the commission prepare a written summary of certain
293 communications and post such summary on its website within a
294 specified time after the communication is made or received;
295 requiring that notice be posted on the commission's website a
296 minimum number of hours before the occurrence of any meeting,
297 telephone conference call, or written communication between a
298 commissioner or the commissioner's direct reporting staff;
299 authorizing the Office of Public Counsel to participate in such
300 communications for limited purposes; providing an exception for
301 certain commission staff or industry representatives; providing
302 that the restrictions on prohibited communications apply to
303 communications made to or from the Governor, a member of the



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304 Cabinet, or a member of the Legislature; providing penalties for
305 members of a commissioner's direct report staff who fail to
306 report certain communications; amending s. 350.0605, F.S.;

307 prohibiting former commissioners and members of a commissioner's
308 direct reporting staff from lobbying the legislative or
309 executive branch of state government on behalf of any client or
310 industry regulated by the commission for 4 years after
311 termination of service or employment with the commission;

312 defining the term "commissioner's direct reporting staff";
313 prohibiting any former commissioner's direct reporting staff
314 from appearing before the commission representing any client or
315 industry regulated by the commission for 4 years after
316 termination of employment with the commission; providing that
317 such prohibitions apply to commissioners and their direct
318 reporting staff who are appointed or reappointed to or who
319 terminate their employment with the commission on or after a
320 specified date; prohibiting a former commissioner or member of a
321 commissioner's direct reporting staff from accepting employment
322 by or compensation from certain entities regulated by the
323 commission for a period of 4 years after termination of service
324 or employment with the commission; providing that the
325 prohibition applies to former commissioners and members of a
326 commissioner's direct reporting staff who are appointed or
327 reappointed to or hired with the commission on or after a
328 specified date; providing an effective date.

329