

By Senator Fasano

11-00389D-10

20101034

1 A bill to be entitled
2 An act relating to the Public Service Commission;
3 amending s. 350.042, F.S.; revising provisions
4 relating to ex parte communications; eliminating an
5 exemption from certain prohibitions provided for
6 commission staff; requiring that communications
7 between a commissioner or commission staff and a
8 representative of a utility be made available to the
9 public and advance notice be provided to the Public
10 Counsel; providing penalties for commission staff who
11 fail to report certain communications; amending s.
12 350.0605, F.S.; prohibiting former commissioners and
13 employees of the Public Service Commission from
14 lobbying the legislative or executive branch of state
15 government for 2 years after termination of service or
16 employment with the commission; prohibiting any former
17 employee of the commission from appearing before the
18 commission representing any client or industry
19 regulated by the commission for 2 years after
20 termination of employment with the commission;
21 providing that such prohibitions apply to
22 commissioners and employees who are appointed or
23 reappointed or terminate their employment with the
24 commission on or after a specified date; prohibiting a
25 former commissioner or commission staff member from
26 accepting employment by or compensation from certain
27 entities regulated by the commission for a period of 2
28 years after termination of employment with the
29 commission; providing that the prohibition apply to

11-00389D-10

20101034

30 former commissioners and commission staff members who
31 terminate their employment with the commission on or
32 after a specified date; amending ss. 364.183, 366.093,
33 367.156, and 368.108, F.S., relating to provisions
34 governing access to telecommunications company and
35 public utility records by the commission; providing
36 for the Public Counsel to have access to such records;
37 providing an effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Section 350.042, Florida Statutes, is amended to
42 read:

43 350.042 Ex parte communications.-

44 (1) A commissioner and commission staff shall afford ~~should~~
45 ~~accord~~ to every person who is legally interested in a
46 proceeding, or the person's lawyer, the full right to be heard
47 according to law, and, except as authorized in this section ~~by~~
48 ~~law~~, shall neither initiate, engage in, nor consider ex parte
49 communications ~~concerning the merits, threat, or offer of reward~~
50 in any proceeding other than a proceeding under s. 120.54 or s.
51 120.565, workshops, or internal affairs meetings. An ~~No~~
52 individual shall not discuss ex parte with a commissioner or
53 commission staff the merits of any issue that he or she knows
54 will be filed with the commission within 90 days after the date
55 of the discussion. ~~The provisions of this subsection shall not~~
56 ~~apply to commission staff.~~

57 (2) (a) Any oral or written communication between a
58 commissioner or commission staff and a representative of a

11-00389D-10

20101034

59 utility regulated by the commission must be made available to
60 the public. Such oral or written communication requires advanced
61 notification to the Public Counsel.

62 (b) The commission shall send a copy of any written
63 communication to the Public Counsel on the same day that the
64 communication is received by the commission.

65 (c) The commission shall prepare a written summary of any
66 communication related to a documented emergency or a
67 communication related to a brief, unscheduled follow-up to a
68 previously scheduled meeting or previously scheduled telephone
69 conference call. The commission shall provide such summary to
70 the Public Counsel no later than 10 working days after the
71 communication occurred.

72 (d) A commissioner or commission staff shall notify the
73 Public Counsel in writing at least 5 working days before any
74 meeting, telephone conference call, or written communication
75 between the commissioner or commission staff and a
76 representative of a regulated utility. The Public Counsel may
77 participate in the meeting, telephone conference call, or
78 written communication for the purpose of questioning or directly
79 responding to the communication.

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

85 (3)-(2) The provisions of This section shall not prohibit an
86 individual ~~residential~~ ratepayer from communicating with a
87 commissioner or commission staff if, ~~provided that~~ the ratepayer

11-00389D-10

20101034

88 is representing only himself or herself, without compensation.

89 (4)~~(3)~~ This section shall not apply to oral communications
90 or discussions in scheduled and noticed open public meetings of
91 educational programs or of a conference or other meeting of an
92 association of regulatory agencies.

93 (5)~~(4)~~ If a commissioner or commission staff member
94 knowingly receives an ex parte communication relative to a
95 proceeding other than as set forth in subsection (1), to which
96 he or she is assigned, he or she must place on the record of the
97 proceeding copies of all written communications received, all
98 written responses to the communications, and a memorandum
99 stating the substance of all oral communications received and
100 all oral responses made. The commissioner or commission staff
101 member,~~and~~ shall give written notice to all parties to the
102 communication that such matters have been placed on the record.
103 Any party who desires to respond to an ex parte communication
104 may do so. The response must be received by the commission
105 within 10 days after receiving notice that the ex parte
106 communication has been placed on the record. The commissioner
107 may, if he or she deems it necessary to eliminate the effect of
108 an ex parte communication received by him or her, withdraw from
109 the proceeding, in which case the chair shall substitute another
110 commissioner for the proceeding.

111 (6)~~(5)~~ Any individual who makes an ex parte communication
112 shall submit to the commission a written statement describing
113 the nature of the ~~such~~ communication, to include the name of the
114 person making the communication, the name of each ~~the~~
115 commissioner or commission staff member ~~commissioners~~ receiving
116 the communication, copies of all written communications made,

11-00389D-10

20101034

117 all written responses to such communications, and a memorandum
118 stating the substance of all oral communications received and
119 all oral responses made. The commission shall place on the
120 record of a proceeding all such communications.

121 (7)~~(6)~~ Any commissioner or commission staff member who
122 knowingly fails to place on the record any such communications,
123 in violation of the section, within 15 days after ~~of~~ the date of
124 the such communication is subject to removal or dismissal and
125 may be assessed a civil penalty not to exceed \$5,000.

126 (8)~~(7)~~(a) It is ~~shall be~~ the duty of the Commission on
127 Ethics to receive and investigate sworn complaints of violations
128 of this section pursuant to the procedures contained in ss.
129 112.322-112.3241.

130 (b) If the Commission on Ethics finds that there has been a
131 violation of this section by a public service commissioner or
132 commission staff, it shall provide the Governor and the Florida
133 Public Service Commission Nominating Council with a report of
134 its findings and recommendations. The Governor may ~~is authorized~~
135 ~~to~~ enforce the findings and recommendations of the Commission on
136 Ethics, pursuant to part III of chapter 112.

137 (c) If a commissioner or commission staff fails or refuses
138 to pay the Commission on Ethics any civil penalties assessed
139 pursuant to the provisions of this section, the Commission on
140 Ethics may bring an action in any circuit court to enforce such
141 penalty.

142 (d) If, during the course of an investigation by the
143 Commission on Ethics into an alleged violation of this section,
144 allegations are made as to the identity of the person who
145 participated in the ex parte communication, that person must be

11-00389D-10

20101034

146 given notice and an opportunity to participate in the
147 investigation and relevant proceedings to present a defense. If
148 the Commission on Ethics determines that the person participated
149 in the ex parte communication, the person may not appear before
150 the commission or otherwise represent anyone before the
151 commission for a period of 2 years.

152 Section 2. Section 350.0605, Florida Statutes, is amended
153 to read:

154 350.0605 Former commissioners and employees; representation
155 of clients or industry before commission; lobbying the
156 legislative or executive branch.—

157 (1) (a) Any former commissioner of the Public Service
158 Commission is prohibited from appearing before the commission
159 representing any client or any industry regulated by the Public
160 Service Commission for a period of 2 years following his or her
161 termination of service on the commission.

162 (b) Any former commissioner of the Public Service
163 Commission is prohibited from lobbying the legislative or
164 executive branch of state government for a period of 2 years
165 following his or her termination of service on the commission.
166 This subsection applies only to commissioners who are appointed
167 or reappointed on or after July 1, 2010.

168 (2) Any former employee of the Public Service Commission is
169 prohibited from appearing before the commission representing any
170 client or industry regulated by the Public Service Commission,
171 or from lobbying the legislative or executive branch of state
172 government, for a period of 2 years following his or her
173 termination of employment with the commission. This subsection
174 applies only to employees of the commission who terminate their

11-00389D-10

20101034

175 employment with the commission on or after July 1, 2010. ~~Any~~
176 ~~former employee of the commission is prohibited from appearing~~
177 ~~before the commission representing any client regulated by the~~
178 ~~Public Service Commission on any matter which was pending at the~~
179 ~~time of termination and in which such former employee had~~
180 ~~participated.~~

181 (3) For a period of 2 years following termination of
182 employment with the commission, a former commissioner or
183 commission staff member may not accept employment by or
184 compensation from a business entity that, directly or
185 indirectly, owns or controls a public utility regulated by the
186 commission, from a public utility regulated by the commission,
187 from a business entity that, directly or indirectly, is an
188 affiliate or subsidiary of a public utility regulated by the
189 commission or is an actual business competitor of a local
190 exchange company or public utility regulated by the commission
191 and is otherwise exempt from regulation by the commission under
192 ss. 364.02(14) and 366.02(1), or from a business entity or trade
193 association that has been a party to a commission proceeding
194 within the 2 years preceding the former commissioner or
195 commission staff member's termination of employment with the
196 commission. This subsection applies only to former commissioners
197 or commission staff members who terminate their employment with
198 the commission on or after July 1, 2010.

199 ~~(3) For a period of 2 years following termination of~~
200 ~~service on the commission, a former member may not accept~~
201 ~~employment by or compensation from a business entity which,~~
202 ~~directly or indirectly, owns or controls a public utility~~
203 ~~regulated by the commission, from a public utility regulated by~~

11-00389D-10

20101034

204 ~~the commission, from a business entity which, directly or~~
205 ~~indirectly, is an affiliate or subsidiary of a public utility~~
206 ~~regulated by the commission or is an actual business competitor~~
207 ~~of a local exchange company or public utility regulated by the~~
208 ~~commission and is otherwise exempt from regulation by the~~
209 ~~commission under ss. 364.02(14) and 366.02(1), or from a~~
210 ~~business entity or trade association that has been a party to a~~
211 ~~commission proceeding within the 2 years preceding the member's~~
212 ~~termination of service on the commission. This subsection~~
213 ~~applies only to members of the Florida Public Service Commission~~
214 ~~who are appointed or reappointed after May 10, 1993.~~

215 Section 3. Subsection (1) of section 364.183, Florida
216 Statutes, is amended to read:

217 364.183 Access to company records.—

218 (1) The commission and Public Counsel shall have access to
219 all records of a telecommunications company which ~~that~~ are
220 reasonably necessary for the disposition of matters within the
221 commission's jurisdiction. The commission and Public Counsel
222 shall also have access to those records of a local exchange
223 telecommunications company's affiliated companies, including its
224 parent company, which ~~that~~ are reasonably necessary for the
225 disposition of any matter concerning an affiliated transaction
226 or a claim of anticompetitive behavior, including claims of
227 cross-subsidization and predatory pricing. The commission or
228 Public Counsel may require a telecommunications company to file
229 records, reports, or other data directly related to matters
230 within the commission's jurisdiction in the form specified by
231 the commission or Public Counsel and may require such company to
232 retain such information for a designated period of time. Upon

11-00389D-10

20101034

233 request of the company or other person, any records received by
234 the commission or Public Counsel which are claimed by the
235 company or other person to be proprietary confidential business
236 information shall be kept confidential and shall be exempt from
237 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

238 Section 4. Subsection (1) of section 366.093, Florida
239 Statutes, is amended to read:

240 366.093 Public utility records; confidentiality.—

241 (1) The commission and Public Counsel shall continue to
242 have reasonable access to all public utility records and records
243 of the utility's affiliated companies, including its parent
244 company, regarding transactions or cost allocations among the
245 utility and such affiliated companies, and such records
246 necessary to ensure that a utility's ratepayers do not subsidize
247 nonutility activities. Upon request of the public utility or
248 other person, any records received by the commission or Public
249 Counsel which are shown and found by the commission or Public
250 Counsel to be proprietary confidential business information
251 shall be kept confidential and shall be exempt from s.
252 119.07(1).

253 Section 5. Subsection (1) of section 367.156, Florida
254 Statutes, is amended to read:

255 367.156 Public utility records; confidentiality.—

256 (1) The commission and Public Counsel shall continue to
257 have reasonable access to all utility records and records of
258 affiliated companies, including its parent company, regarding
259 transactions or cost allocations among the utility and such
260 affiliated companies, and such records necessary to ensure that
261 a utility's ratepayers do not subsidize nonutility activities.

11-00389D-10

20101034__

262 Upon request of the utility or any other person, any records
263 received by the commission or Public Counsel which are shown and
264 found by the commission or Public Counsel to be proprietary
265 confidential business information shall be kept confidential and
266 shall be exempt from s. 119.07(1).

267 Section 6. Subsection (1) of section 368.108, Florida
268 Statutes, is amended to read:

269 368.108 Confidentiality; discovery.—

270 (1) The commission and Public Counsel shall continue to
271 have reasonable access to all natural gas transmission company
272 records and records of the natural gas transmission company's
273 affiliated companies, including its parent company, regarding
274 transactions or cost allocations among the natural gas
275 transmission company and such affiliated companies, and such
276 records necessary to ensure that a natural gas transmission
277 company's ratepayers do not subsidize unregulated activities.
278 Upon request of the natural gas transmission company or other
279 person, any records received by the commission or Public Counsel
280 which are shown and found by the commission or Public Counsel to
281 be proprietary confidential business information shall be
282 confidential and exempt from s. 119.07(1).

283 Section 7. This act shall take effect July 1, 2010.