

By the Committee on Rules; and Senators Fasano, Gaetz, and Crist

595-02165-10

20101034c1

1                                   A bill to be entitled  
2           An act relating to the Public Service Commission;  
3           amending s. 350.041, F.S.; revising the standards of  
4           conduct for commissioners of the Public Service  
5           Commission; requiring that commissioners observe and  
6           abide by the Code of Judicial Conduct while conducting  
7           docketed proceedings; providing for statutory  
8           preemption; providing for penalties; amending s.  
9           350.042, F.S.; deleting references to "ex parte  
10          communications" and replacing such references with  
11          "prohibited communications"; providing a purpose;  
12          providing legislative intent; providing definitions;  
13          prohibiting a commissioner or the commissioner's  
14          direct reporting staff from initiating, engaging in,  
15          or considering prohibited communications in any  
16          proceeding other than an undocketed workshop or an  
17          internal affairs meeting; prohibiting any individual  
18          from discussing any matter with a commissioner or the  
19          commissioner's direct reporting staff which the  
20          individual reasonably foresees will be filed with the  
21          commission; requiring that any communication between a  
22          commissioner or the commissioner's direct reporting  
23          staff and a representative of a utility be made  
24          available to the public; requiring that any  
25          communication be posted on the commission's website  
26          within a specified time after the communication is  
27          made or received; requiring that the commission post  
28          on its website a copy of written communications  
29          received by the commission; requiring that the

595-02165-10

20101034c1

30 commission prepare a written summary of certain  
31 communications and post such summary on its website  
32 within a specified time after the communication is  
33 made or received; requiring that notice be posted on  
34 the commission's website a minimum number of hours  
35 before the occurrence of any meeting, telephone  
36 conference call, or written communication between a  
37 commissioner or the commissioner's direct reporting  
38 staff; authorizing the Office of Public Counsel to  
39 participate in such communications for limited  
40 purposes; providing an exception for certain  
41 commission staff or industry representatives;  
42 providing that the restrictions on prohibited  
43 communications apply to communications made to or from  
44 the Governor, a member of the Cabinet, or a member of  
45 the Legislature; providing penalties for members of a  
46 commissioner's direct report staff who fail to report  
47 certain communications; amending s. 350.0605, F.S.;  
48 prohibiting former commissioners and members of a  
49 commissioner's direct reporting staff from lobbying  
50 the legislative or executive branch of state  
51 government on behalf of any client or industry  
52 regulated by the commission for 4 years after  
53 termination of service or employment with the  
54 commission; defining the term "commissioner's direct  
55 reporting staff"; prohibiting any former  
56 commissioner's direct reporting staff from appearing  
57 before the commission representing any client or  
58 industry regulated by the commission for 4 years after

595-02165-10

20101034c1

59 termination of employment with the commission;  
60 providing that such prohibitions apply to  
61 commissioners and their direct reporting staff who are  
62 appointed or reappointed to or who terminate their  
63 employment with the commission on or after a specified  
64 date; prohibiting a former commissioner or member of a  
65 commissioner's direct reporting staff from accepting  
66 employment by or compensation from certain entities  
67 regulated by the commission for a period of 4 years  
68 after termination of service or employment with the  
69 commission; providing that the prohibition applies to  
70 former commissioners and members of a commissioner's  
71 direct reporting staff who are appointed or  
72 reappointed to or hired with the commission on or  
73 after a specified date; amending s. 350.061, F.S.;  
74 extending reconfirmation intervals for the Public  
75 Counsel to 4 years from biennially; providing an  
76 effective date.

77  
78 Be It Enacted by the Legislature of the State of Florida:

79  
80 Section 1. Paragraph (j) is added to subsection (2) of  
81 section 350.041, Florida Statutes, to read:

82 350.041 Commissioners; standards of conduct.—

83 (2) STANDARDS OF CONDUCT.—

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

595-02165-10

20101034c1

88 a statutory provision that applies to the commissioners or the  
89 commission, the statutory provision shall control. Any material  
90 violation of the Code of Judicial Conduct, excluding any canon  
91 preempted by a conflicting statutory provision, shall be grounds  
92 for suspension or removal of a commissioner by the Governor.

93 Section 2. Section 350.042, Florida Statutes, is amended to  
94 read:

95 350.042 Prohibited ~~Ex parte~~ communications.-

96 (1) This section shall govern communications made by or  
97 directed to commissioners and their direct reporting staff which  
98 concern proceedings before the Public Service Commission. The  
99 purpose of this section is to ensure the fairness of the  
100 commission's proceedings by assuring the public that the  
101 decisions by the commission are not influenced by prohibited  
102 communications between commissioners and legally interested  
103 persons.

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

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

110 1. "Legally interested person" means any party to a  
111 proceeding before the commission, or a representative of a party  
112 to a proceeding pending before the commission, and includes  
113 corporations, partnerships, limited liability companies, elected  
114 or appointed officials of state government, and other public and  
115 elected officials.

116 2. "Prohibited communication" means any communication

595-02165-10

20101034c1

117 regarding a docketed matter that, if written, is not served on  
118 all the parties to a proceeding, and, if oral, is made without  
119 adequate notice to the parties and an opportunity for them to be  
120 present and heard.

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

123 (c) A commissioner or the commissioner's direct reporting  
124 staff should accord to every person who is legally interested in  
125 a proceeding, or the person's lawyer, full right to be heard  
126 according to law, and, except as authorized by law, shall  
127 neither initiate, engage in, nor consider prohibited ex parte  
128 communications concerning the merits, threat, or offer of reward  
129 in any proceeding other than an undocketed workshop a proceeding  
130 under s. 120.54 or s. 120.565, workshops, or an internal affairs  
131 meeting meetings. No individual shall discuss ex parte with a  
132 commissioner the merits of any issue that he or she knows will  
133 be filed with the commission within 90 days. The provisions of  
134 this subsection shall not apply to commission staff unless  
135 otherwise provided for in this section.

136 (d) An individual shall not discuss any matter with a  
137 commissioner or the commissioner's direct reporting staff which  
138 the individual reasonably foresees will be filed with the  
139 commission.

140 (2)(a) Any oral or written communication, not otherwise  
141 prohibited under subsection (1), between a commissioner or the  
142 commissioner's direct reporting staff and a representative of an  
143 entity regulated by the commission must be made available to the  
144 public. Such oral or written communication must be posted to the  
145 commission website within 72 hours after the communication was

595-02165-10

20101034c1

146 made or received.

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

150 (c) The commission shall prepare a written summary of any  
151 communication related to a documented emergency or a  
152 communication related to a brief, unscheduled followup to a  
153 previously scheduled meeting or previously scheduled telephone  
154 conference call. The commission shall post the written summary  
155 on its website within 72 hours after the communication was made  
156 or received.

157 (d) Notice shall be posted on the commission's website at  
158 least 72 hours prior to the occurrence of any meeting, telephone  
159 conference call, or written communication between a commissioner  
160 or the commissioner's direct reporting staff and a  
161 representative of a regulated entity. The Public Counsel may  
162 participate in the meeting, telephone conference call, or  
163 written communication for the purpose of questioning or directly  
164 responding to the communication.

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

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

595-02165-10

20101034c1

175       (4) The restrictions on prohibited communications as  
176 provided in this section shall also apply to communications made  
177 by or directed to a commissioner and the commissioner's direct  
178 reporting staff to or from the Governor, a member of the  
179 Cabinet, or a member of the Legislature. Any written or oral  
180 communication from the Governor, a member of the Cabinet, or a  
181 member of the Legislature which is only a status inquiry and  
182 does not address the merits of a proceeding is not a prohibited  
183 communication. A written communication from the Governor, a  
184 member of the Cabinet, or a member of the Legislature which  
185 attaches or forwards a constituent's correspondence concerning  
186 the merits of a docketed proceeding shall be placed in the  
187 commission's docket files.

188       (5)-(3) This section does shall not apply to oral  
189 communications or discussions in scheduled and noticed open  
190 public meetings of educational programs or of a conference or  
191 other meeting of an association of regulatory agencies. This  
192 exemption does not authorize a commissioner or the  
193 commissioner's direct reporting staff to discuss matters with  
194 any party or legally interested person to a proceeding.

195       (6)-(4) If a commissioner or the commissioner's direct  
196 reporting staff knowingly receives a prohibited an ex parte  
197 communication as provided in subsection (1) which is related  
198 relative to a proceeding other than as set forth in subsection  
199 (1), to which the commissioner he or she is assigned, he or she  
200 must place on the record of the proceeding copies of all written  
201 communications received, all written responses to the  
202 communications, and a memorandum stating the substance of all  
203 oral communications received and all oral responses made. The

595-02165-10

20101034c1

204 commissioner or the commissioner's direct reporting staff, and  
205 shall give written notice to all parties to the communication  
206 that such matters have been placed on the record. Any party who  
207 desires to respond to a prohibited ~~an ex parte~~ communication may  
208 do so. The response must be received by the commission within 10  
209 days after receiving notice that the prohibited ~~ex parte~~  
210 communication has been placed on the record. The commissioner  
211 may, if he or she deems it necessary to eliminate the effect of  
212 a prohibited ~~an ex parte~~ communication received by him or her,  
213 withdraw from the proceeding, in which case the chair shall  
214 substitute another commissioner for the proceeding.

215 (7) ~~(5)~~ Any individual who makes a prohibited ~~an ex parte~~  
216 communication shall submit to the commission a written statement  
217 describing the nature of the ~~such~~ communication, to include the  
218 name of the person making the communication, the name of each  
219 ~~the~~ commissioner or member of the commissioner's direct  
220 reporting staff ~~or commissioners~~ receiving the communication,  
221 copies of all written communications made, all written responses  
222 to such communications, and a memorandum stating the substance  
223 of all oral communications received and all oral responses made.  
224 The commission shall place on the record of a proceeding all  
225 such communications.

226 (8) ~~(6)~~ Any commissioner or member of the commissioner's  
227 direct reporting staff who knowingly fails to place on the  
228 record any such communications, in violation of the section,  
229 within 15 days after ~~of~~ the date of the ~~such~~ communication is  
230 subject to removal or dismissal and may be assessed a civil  
231 penalty not to exceed \$5,000.

232 (9) ~~(7)~~ (a) It is ~~shall be~~ the duty of the Commission on



595-02165-10

20101034c1

233 Ethics to receive and investigate sworn complaints of violations  
234 of this section pursuant to the procedures contained in ss.  
235 112.322-112.3241.

236 (b) If the Commission on Ethics finds that there has been a  
237 violation of this section by a ~~public service~~ commissioner or  
238 the commissioner's direct reporting staff, it shall provide the  
239 Governor and the Florida Public Service Commission Nominating  
240 Council with a report of its findings and recommendations. The  
241 Governor may ~~is authorized to~~ enforce the findings and  
242 recommendations of the Commission on Ethics, pursuant to part  
243 III of chapter 112.

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

249 (d) If, during the course of an investigation by the  
250 Commission on Ethics into an alleged violation of this section,  
251 allegations are made as to the identity of the person who  
252 participated in the prohibited ~~ex parte~~ communication, that  
253 person must be given notice and an opportunity to participate in  
254 the investigation and relevant proceedings to present a defense.  
255 If the Commission on Ethics determines that the person  
256 participated in the prohibited ~~ex parte~~ communication, the  
257 person may not appear before the commission or otherwise  
258 represent anyone before the commission for a period of 2 years  
259 and may be assessed a civil penalty not to exceed \$5,000. The  
260 regulated entity represented by the person, if applicable, may  
261 also be assessed a penalty of up to one-tenth of 1 percent of

595-02165-10

20101034c1

262 the entity's annual operating revenue for the most recent  
263 calendar year.

264 Section 3. Section 350.0605, Florida Statutes, is amended  
265 to read:

266 350.0605 Former commissioners and employees; representation  
267 of clients or industry before commission; lobbying the  
268 legislative or executive branch.—

269 (1) (a) Any former commissioner of the Public Service  
270 Commission is prohibited from appearing before the commission  
271 representing any client or any industry regulated by the Public  
272 Service Commission for a period of 4 ~~2~~ years following his or  
273 her termination of service on the commission.

274 (b) Any former commissioner of the Public Service  
275 Commission is prohibited from lobbying the legislative or  
276 executive branch of state government on behalf of any client or  
277 any industry regulated by the commission for a period of 4 years  
278 following his or her termination of service on the commission.  
279 This subsection applies only to commissioners who are appointed  
280 or reappointed on or after July 1, 2010.

281 (2) Any former member of the commissioner's direct  
282 reporting staff is prohibited from appearing before the  
283 commission representing any client or industry regulated by the  
284 Public Service Commission, or from lobbying the legislative or  
285 executive branch of state government on behalf of any client or  
286 any industry regulated by the commission, for a period of 4  
287 years following his or her termination of employment with the  
288 commission. This subsection applies only to a member of the  
289 commissioner's direct reporting staff who is hired with the  
290 commission on or after July 1, 2010. For purposes of this

595-02165-10

20101034c1

291 section, the term "commissioner's direct reporting staff" means  
292 a commissioner's chief advisor and executive assistant. Any  
293 ~~former employee of the commission is prohibited from appearing~~  
294 ~~before the commission representing any client regulated by the~~  
295 ~~Public Service Commission on any matter which was pending at the~~  
296 ~~time of termination and in which such former employee had~~  
297 ~~participated.~~

298 (3) For a period of 4 years following termination of  
299 service on the commission or employment with the commission, a  
300 former commissioner or former member of the commissioner's  
301 direct reporting staff may not accept employment by or  
302 compensation from a business entity that, directly or  
303 indirectly, owns or controls a public utility regulated by the  
304 commission, from a public utility regulated by the commission,  
305 from a business entity that, directly or indirectly, is an  
306 affiliate or subsidiary of a public utility regulated by the  
307 commission or is an actual business competitor of a local  
308 exchange company or public utility regulated by the commission  
309 and is otherwise exempt from regulation by the commission under  
310 ss. 364.02(14) and 366.02(1), or from a business entity or trade  
311 association that has been a party to a commission proceeding  
312 within the 4 years preceding the former commissioner's  
313 termination of service or the former commissioner's direct  
314 reporting staff member's termination of employment with the  
315 commission. This subsection applies only to former commissioners  
316 and members of the commissioner's direct reporting staff who are  
317 appointed or reappointed to or hired with the commission on or  
318 after July 1, 2010.

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

595-02165-10

20101034c1

320 ~~service on the commission, a former member may not accept~~  
321 ~~employment by or compensation from a business entity which,~~  
322 ~~directly or indirectly, owns or controls a public utility~~  
323 ~~regulated by the commission, from a public utility regulated by~~  
324 ~~the commission, from a business entity which, directly or~~  
325 ~~indirectly, is an affiliate or subsidiary of a public utility~~  
326 ~~regulated by the commission or is an actual business competitor~~  
327 ~~of a local exchange company or public utility regulated by the~~  
328 ~~commission and is otherwise exempt from regulation by the~~  
329 ~~commission under ss. 364.02(14) and 366.02(1), or from a~~  
330 ~~business entity or trade association that has been a party to a~~  
331 ~~commission proceeding within the 2 years preceding the member's~~  
332 ~~termination of service on the commission. This subsection~~  
333 ~~applies only to members of the Florida Public Service Commission~~  
334 ~~who are appointed or reappointed after May 10, 1993.~~

335 Section 4. Subsection (1) of section 350.061, Florida  
336 Statutes, is amended to read:

337 350.061 Public Counsel; appointment; oath; restrictions on  
338 Public Counsel and his or her employees.—

339 (1) The Committee on Public Counsel Oversight shall appoint  
340 a Public Counsel by majority vote of the members of the  
341 committee to represent the general public of Florida before the  
342 Florida Public Service Commission. The Public Counsel shall be  
343 an attorney admitted to practice before the Florida Supreme  
344 Court and shall serve at the pleasure of the Committee on Public  
345 Counsel Oversight, subject to ~~biennial~~ reconfirmation every 4  
346 years by the committee. The Public Counsel shall perform his or  
347 her duties independently. Vacancies in the office shall be  
348 filled in the same manner as the original appointment.

595-02165-10

20101034c1

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Section 5. This act shall take effect July 1, 2010.