

20101034e1

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

20101034e1

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

20101034e1

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:

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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

20101034e1

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

20101034e1

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

20101034e1

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.

20101034e1

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

20101034e1

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

20101034e1

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

20101034e1

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

20101034e1

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~~

20101034e1

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.

20101034e1

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