

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

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

35  
 36 Be It Enacted by the Legislature of the State of Florida:

37  
 38 Section 1. Section 350.042, Florida Statutes, is amended  
 39 to read:

40 350.042 Ex parte communications.—

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

54 (2) (a) Any oral or written communication between a  
 55 commissioner or commission staff and a representative of a  
 56 utility regulated by the commission must be made available to

57 the public. Such oral or written communication requires advanced  
58 notification to the Public Counsel.

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

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

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

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

82 (3)-(2) The provisions of This section shall not prohibit  
83 an individual residential ratepayer from communicating with a  
84 commissioner or commission staff if, provided that the ratepayer

85 is representing only himself or herself, without compensation.

86 (4)~~(3)~~ This section shall not apply to oral communications  
 87 or discussions in scheduled and noticed open public meetings of  
 88 educational programs or of a conference or other meeting of an  
 89 association of regulatory agencies.

90 (5)~~(4)~~ If a commissioner or commission staff member  
 91 knowingly receives an ex parte communication relative to a  
 92 proceeding other than as set forth in subsection (1), to which  
 93 he or she is assigned, he or she must place on the record of the  
 94 proceeding copies of all written communications received, all  
 95 written responses to the communications, and a memorandum  
 96 stating the substance of all oral communications received and  
 97 all oral responses made. The commissioner or commission staff  
 98 member,~~and~~ shall give written notice to all parties to the  
 99 communication that such matters have been placed on the record.  
 100 Any party who desires to respond to an ex parte communication  
 101 may do so. The response must be received by the commission  
 102 within 10 days after receiving notice that the ex parte  
 103 communication has been placed on the record. The commissioner  
 104 may, if he or she deems it necessary to eliminate the effect of  
 105 an ex parte communication received by him or her, withdraw from  
 106 the proceeding, in which case the chair shall substitute another  
 107 commissioner for the proceeding.

108 (6)~~(5)~~ Any individual who makes an ex parte communication  
 109 shall submit to the commission a written statement describing  
 110 the nature of the ~~such~~ communication, to include the name of the  
 111 person making the communication, the name of each ~~the~~  
 112 commissioner or commission staff member ~~commissioners~~ receiving

113 the communication, copies of all written communications made,  
 114 all written responses to such communications, and a memorandum  
 115 stating the substance of all oral communications received and  
 116 all oral responses made. The commission shall place on the  
 117 record of a proceeding all such communications.

118 (7)-(6) Any commissioner or commission staff member who  
 119 knowingly fails to place on the record any such communications,  
 120 in violation of the section, within 15 days after ~~of~~ the date of  
 121 the such communication is subject to removal or dismissal and  
 122 may be assessed a civil penalty not to exceed \$5,000.

123 (8)-(7)(a) It is ~~shall be~~ the duty of the Commission on  
 124 Ethics to receive and investigate sworn complaints of violations  
 125 of this section pursuant to the procedures contained in ss.  
 126 112.322-112.3241.

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

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

139 (d) If, during the course of an investigation by the  
 140 Commission on Ethics into an alleged violation of this section,

141 | allegations are made as to the identity of the person who  
 142 | participated in the ex parte communication, that person must be  
 143 | given notice and an opportunity to participate in the  
 144 | investigation and relevant proceedings to present a defense. If  
 145 | the Commission on Ethics determines that the person participated  
 146 | in the ex parte communication, the person may not appear before  
 147 | the commission or otherwise represent anyone before the  
 148 | commission for a period of 2 years.

149 |       Section 2. Section 350.0605, Florida Statutes, is amended  
 150 | to read:

151 |       350.0605 Former commissioners and employees;  
 152 | representation of clients or industry before commission;  
 153 | lobbying the legislative or executive branch.—

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

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

165 |       (2) Any former employee of the Public Service Commission  
 166 | is prohibited from appearing before the commission representing  
 167 | any client or industry regulated by the Public Service  
 168 | Commission, or from lobbying the legislative or executive branch

HB 565

2010

169 of state government, for a period of 2 years following his or  
170 her termination of employment with the commission. This  
171 subsection applies only to employees of the commission who  
172 terminate their employment with the commission on or after July  
173 1, 2010. Any former employee of the commission is prohibited  
174 from appearing before the commission representing any client  
175 regulated by the Public Service Commission on any matter which  
176 was pending at the time of termination and in which such former  
177 employee had participated.

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

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

197 ~~service on the commission, a former member may not accept~~  
 198 ~~employment by or compensation from a business entity which,~~  
 199 ~~directly or indirectly, owns or controls a public utility~~  
 200 ~~regulated by the commission, from a public utility regulated by~~  
 201 ~~the commission, from a business entity which, directly or~~  
 202 ~~indirectly, is an affiliate or subsidiary of a public utility~~  
 203 ~~regulated by the commission or is an actual business competitor~~  
 204 ~~of a local exchange company or public utility regulated by the~~  
 205 ~~commission and is otherwise exempt from regulation by the~~  
 206 ~~commission under ss. 364.02(14) and 366.02(1), or from a~~  
 207 ~~business entity or trade association that has been a party to a~~  
 208 ~~commission proceeding within the 2 years preceding the member's~~  
 209 ~~termination of service on the commission. This subsection~~  
 210 ~~applies only to members of the Florida Public Service Commission~~  
 211 ~~who are appointed or reappointed after May 10, 1993.~~

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

214 364.183 Access to company records.—

215 (1) The commission and Public Counsel shall have access to  
 216 all records of a telecommunications company which ~~that~~ are  
 217 reasonably necessary for the disposition of matters within the  
 218 commission's jurisdiction. The commission and Public Counsel  
 219 shall also have access to those records of a local exchange  
 220 telecommunications company's affiliated companies, including its  
 221 parent company, which ~~that~~ are reasonably necessary for the  
 222 disposition of any matter concerning an affiliated transaction  
 223 or a claim of anticompetitive behavior, including claims of  
 224 cross-subsidization and predatory pricing. The commission or



225 Public Counsel may require a telecommunications company to file  
 226 records, reports, or other data directly related to matters  
 227 within the commission's jurisdiction in the form specified by  
 228 the commission or Public Counsel and may require such company to  
 229 retain such information for a designated period of time. Upon  
 230 request of the company or other person, any records received by  
 231 the commission or Public Counsel which are claimed by the  
 232 company or other person to be proprietary confidential business  
 233 information shall be kept confidential and shall be exempt from  
 234 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

237 366.093 Public utility records; confidentiality.—

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

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

252 367.156 Public utility records; confidentiality.—

HB 565

2010

253           (1) The commission and Public Counsel shall continue to  
254 have reasonable access to all utility records and records of  
255 affiliated companies, including its parent company, regarding  
256 transactions or cost allocations among the utility and such  
257 affiliated companies, and such records necessary to ensure that  
258 a utility's ratepayers do not subsidize nonutility activities.  
259 Upon request of the utility or any other person, any records  
260 received by the commission or Public Counsel which are shown and  
261 found by the commission or Public Counsel to be proprietary  
262 confidential business information shall be kept confidential and  
263 shall be exempt from s. 119.07(1).

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

266           368.108 Confidentiality; discovery.—

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

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