

1                   A bill to be entitled  
2           An act relating to reorganization of the Public Service  
3           Commission; amending s. 20.121, F.S.; establishing the  
4           Office of Regulatory Staff within the Financial Services  
5           Commission; requiring the executive director of the Office  
6           of Regulatory Staff to meet specified requirements;  
7           providing that the executive director's appointment is  
8           subject to Senate confirmation; amending s. 112.324, F.S.;  
9           revising provisions for disposition of ethics complaints  
10          against the Public Counsel and employees of the Public  
11          Counsel; amending s. 186.801, F.S.; directing the  
12          commission to request assistance from the Office of  
13          Regulatory Staff to make a preliminary study of certain  
14          site plans submitted to the commission by electric  
15          utilities; amending s. 350.001, F.S.; revising legislative  
16          intent; amending s. 350.011, F.S.; prohibiting certain  
17          acts by commissioners and commission staff; repealing s.  
18          350.012, F.S., relating to the creation and organization  
19          of the Committee on Public Counsel Oversight; amending s.  
20          350.031, F.S.; revising requirements for nomination by the  
21          Public Service Commission Nominating Council for  
22          appointment to the commission; requiring at least one  
23          commissioner to be a certified accountant practicing in  
24          the state; creating s. 350.035, F.S.; prohibiting attempts  
25          by certain persons to sway the judgment of commissioners;  
26          providing for the Commission on Ethics to investigate  
27          complaints of violations pursuant to specified procedures;  
28          amending s. 350.04, F.S.; providing requirements for

29 nomination by the Public Service Commission Nominating  
30 Council for appointment to the commission; requiring  
31 commissioners to complete a course of study developed by  
32 the executive director and general counsel of the Office  
33 of Regulatory Staff; requiring commissioners to complete  
34 continuing education; providing training requirements for  
35 commissioners and commission employees; requiring  
36 certifications of compliance to be provided to the  
37 Legislature; amending s. 350.041, F.S.; revising  
38 legislative intent; revising standards of conduct for  
39 commissioners; revising provisions for investigation and  
40 reports by the Commission on Ethics of alleged violations;  
41 authorizing commission employees and the executive  
42 director of the Office of Regulatory Staff to request  
43 opinions from the Commission on Ethics; amending s.  
44 350.042, F.S.; revising provisions for communications  
45 concerning agency action proceedings and proceedings under  
46 specified provisions; providing for application of such  
47 provisions to commission employees; revising restrictions  
48 on such communications by commissioners and commission  
49 employees; defining the term "ex parte communication";  
50 providing a civil penalty; amending s. 350.06, F.S.;  
51 revising provisions for the offices of the commission,  
52 payment of moneys, and employment of personnel; amending  
53 s. 350.0605, F.S.; restricting employment of a former  
54 executive director or former employee of the Office of  
55 Regulatory Staff; amending s. 350.061, F.S.; providing for  
56 appointment of the Public Counsel by, and service of the

57 Public Counsel at the pleasure of, the Attorney General;  
58 amending ss. 350.0613 and 350.0614, F.S.; providing powers  
59 and duties of the Attorney General regarding the Public  
60 Counsel and his or her employees to conform provisions to  
61 the transfer of the Public Counsel; transferring the  
62 Office of Public Counsel from the legislative branch to  
63 the Office of the Attorney General; creating s. 350.071,  
64 F.S.; creating the Office of Regulatory Staff within the  
65 Financial Services Commission; providing for the office to  
66 be considered a party of record in all proceedings before  
67 the Public Service Commission; requiring the commission to  
68 notify the office of certain proceedings; providing  
69 purpose of the office; defining the term "public  
70 interest"; providing that the office is subject to certain  
71 provisions governing ex parte communications; creating s.  
72 350.072, F.S.; providing for an executive director and  
73 employees of the office; providing duties and  
74 responsibilities of the executive director; providing for  
75 submission of a budget to the Financial Services  
76 Commission; providing for the location, internal  
77 administration, and operation of the office; creating s.  
78 350.073, F.S.; providing for appointment, term,  
79 qualifications, and salary of the executive director of  
80 the office; providing for application of specified  
81 provisions for standards of conduct; creating s. 350.074,  
82 F.S.; providing duties of the office; authorizing the  
83 office to intervene in certain proceedings; requiring the  
84 office to provide an annual report to the Legislature;

85 directing the commission and the office to establish  
86 procedures by which the office may elect not to  
87 participate as a party in certain matters; transferring  
88 from the commission all powers, duties, functions,  
89 records, offices, personnel, property, pending issues, and  
90 existing contracts, administrative authority,  
91 administrative rules, and unexpended balances of funds not  
92 related to the duties and responsibilities of the  
93 commission to the office; creating s. 350.075, F.S.;  
94 authorizing the office to access certain books and  
95 records; amending s. 350.113, F.S.; revising authorized  
96 uses of the Florida Public Service Regulatory Trust Fund;  
97 amending s. 350.117, F.S.; authorizing the office to  
98 require reports; requiring a copy of any report provided  
99 to the commission to be provided to the office;  
100 authorizing the commission to request that the office  
101 perform management and operation audits of any regulated  
102 company; repealing s. 350.121, F.S., relating to  
103 commission inquiries and the confidentiality of business  
104 material; creating s. 350.122, F.S.; requiring persons  
105 testifying before the Public Service Commission to  
106 disclose certain financial and fiduciary relationships;  
107 providing that a determination by the commission that a  
108 violation occurred constitutes agency action for which a  
109 hearing may be sought; amending s. 364.016, F.S.;  
110 authorizing the office to assess a telecommunications  
111 company for certain travel costs; amending s. 364.02,  
112 F.S.; defining the term "office" as used in provisions

113 relating to telecommunications companies; amending s.  
114 364.15, F.S.; revising provisions authorizing the  
115 commission to compel changes to a telecommunications  
116 facility; amending s. 364.183, F.S.; providing that the  
117 office shall have access to certain records of a  
118 telecommunications company and may require a  
119 telecommunications company to file records, reports, or  
120 other data; specifying limitations on the authority of the  
121 commission to access records; providing for the office to  
122 maintain confidentiality; amending s. 364.185, F.S.;  
123 providing powers of the office to investigate and inspect  
124 telecommunications companies; removing such powers from  
125 the commission; amending s. 364.335, F.S.; revising the  
126 authority of the commission to institute a proceeding to  
127 determine whether the grant of a certificate of need  
128 concerning construction, operation, or control of a  
129 telecommunications facility is in the public interest;  
130 amending s. 364.3376, F.S.; providing for the office to  
131 conduct certain investigations; amending s. 364.3381,  
132 F.S.; revising the authority of the commission to  
133 investigate allegations of certain anticompetitive  
134 practices; amending s. 364.37, F.S.; revising the  
135 authority of the commission to make such order and  
136 prescribe such terms and conditions with respect to  
137 controversies concerning territory to be served by a  
138 telecommunications facility; amending s. 366.02, F.S.;  
139 defining the term "office" as used in provisions relating  
140 to public utilities; amending s. 366.05, F.S.; authorizing

141 the office to make certain purchases for examinations and  
142 testing; providing that the office shall have access to  
143 certain records and may require records, reports, or other  
144 data; specifying limitations on the authority of the  
145 commission to access records; authorizing the office to  
146 assess a public utility for certain travel costs; amending  
147 ss. 366.06, 366.07, 366.071, and 366.076, F.S.; removing  
148 authority of the commission to initiate certain  
149 proceedings or take certain actions upon its own motion;  
150 amending s. 366.08, F.S.; providing powers of the office  
151 to investigate public utilities; removing such powers from  
152 the commission; amending s. 366.093, F.S.; providing  
153 powers of the office to have access to records; specifying  
154 limitations on the authority of the commission to access  
155 records; providing for the office to maintain  
156 confidentiality; amending s. 366.82, F.S.; revising the  
157 authority of the commission to require modifications or  
158 additions to a utility's plans and programs; amending s.  
159 367.021, F.S.; defining the term "office" as used in  
160 provisions relating to water and wastewater utilities;  
161 amending s. 367.045, F.S.; requiring a water or wastewater  
162 utility to provide notice to the office when it applies  
163 for an initial or amended certificate of authorization;  
164 providing for an objection and a request for a public  
165 hearing by the office; requiring the commission to give  
166 notice of certain actions upon petition of the office;  
167 amending s. 367.081, F.S.; revising the authority of the  
168 commission to fix rates of water and wastewater utilities

169 or implement changes of such rates; amending s. 367.0814,  
170 F.S.; providing for a water or wastewater utility to  
171 request and obtain assistance from the office for the  
172 purpose of changing its rates and charges; revising the  
173 authority of the commission to authorize interim rates;  
174 directing the commission to request from the office any  
175 information necessary to complete a status report;  
176 amending ss. 367.0817, 367.082, 367.0822, and 367.083,  
177 F.S.; revising authority of the commission to initiate  
178 certain proceedings or take certain actions upon its own  
179 motion; amending s. 367.101, F.S.; providing that the  
180 commission shall, upon request, direct the office to  
181 investigate agreements or proposals for charges and  
182 conditions for service availability and report the  
183 results; amending s. 367.121, F.S.; revising powers of the  
184 commission; providing powers of the office; amending s.  
185 367.122, F.S.; providing for the office to test meters;  
186 amending s. 367.145, F.S.; revising provisions for use of  
187 certain regulatory fees; amending s. 367.156, F.S.;  
188 providing powers of the office to have access to records;  
189 specifying limitations on the authority of the commission  
190 to access records; providing for the office to maintain  
191 confidentiality; amending s. 367.171, F.S.; revising  
192 provisions for jurisdiction of certain cases involving a  
193 utility that becomes subject to county regulation;  
194 amending s. 368.05, F.S., relating to gas transmission and  
195 distribution facilities; prohibiting the commission from  
196 initiating proceedings under specified provisions on its

197 own motion; specifying limitations on the authority of the  
198 commission to access records; amending s. 368.061, F.S.;  
199 revising provisions for compromise of a civil penalty;  
200 revising the authority of the commission to initiate  
201 injunction proceedings; amending s. 368.103, F.S.;  
202 defining the term "office" as used in the "Natural Gas  
203 Transmission Pipeline Intrastate Regulatory Act";  
204 amending ss. 368.106 and 368.107, F.S.; revising the  
205 authority of the commission to initiate certain  
206 proceedings or take certain actions concerning rates;  
207 amending s. 368.108, F.S.; providing powers of the office  
208 to have access to records; specifying limitations on the  
209 authority of the commission to access records; providing  
210 for the office to maintain confidentiality; amending s.  
211 368.1085, F.S.; authorizing the office to assess a natural  
212 gas transmission company for certain travel costs;  
213 removing the authority of the commission to assess such  
214 costs; amending s. 368.109, F.S.; revising provisions for  
215 use of certain regulatory fees; amending ss. 403.519,  
216 403.537, and 403.9422, F.S., relating to siting of  
217 electrical transmission lines; revising authority of the  
218 commission to initiate certain proceedings or take certain  
219 actions upon its own motion; amending ss. 196.012,  
220 199.183, 212.08, 288.0655, 290.007, 364.602, 489.103, and  
221 624.105, F.S.; conforming cross-references; providing an  
222 effective date.

223

224 Be It Enacted by the Legislature of the State of Florida:



225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252

Section 1. Subsection (3) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(3) FINANCIAL SERVICES COMMISSION.—Effective January 7, 2003, there is created within the Department of Financial Services the Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which shall for purposes of this section be referred to as the commission. Commission members shall serve as agency head of the Financial Services Commission. The commission shall be a separate budget entity and shall be exempt from the provisions of s. 20.052. Commission action shall be by majority vote consisting of at least three affirmative votes. The commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

(a) Structure.—The major structural unit of the commission is the office. Each office shall be headed by a director. The following offices are established:

1. The Office of Insurance Regulation, which shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and

253 administrative supervision, as provided under the insurance code  
254 or chapter 636. The head of the Office of Insurance Regulation  
255 is the Director of the Office of Insurance Regulation, who may  
256 also be known as the Commissioner of Insurance Regulation.

257 2. The Office of Financial Regulation, which shall be  
258 responsible for all activities of the Financial Services  
259 Commission relating to the regulation of banks, credit unions,  
260 other financial institutions, finance companies, and the  
261 securities industry. The head of the office is the Director of  
262 the Office of Financial Regulation, who may also be known as the  
263 Commissioner of Financial Regulation. The Office of Financial  
264 Regulation shall include a Bureau of Financial Investigations,  
265 which shall function as a criminal justice agency for purposes  
266 of ss. 943.045-943.08 and shall have a separate budget. The  
267 bureau may conduct investigations within or outside this state  
268 as the bureau deems necessary to aid in the enforcement of this  
269 section. If, during an investigation, the office has reason to  
270 believe that any criminal law of this state has or may have been  
271 violated, the office shall refer any records tending to show  
272 such violation to state or federal law enforcement or  
273 prosecutorial agencies and shall provide investigative  
274 assistance to those agencies as required.

275 3. The Office of Regulatory Staff, which shall represent  
276 the public interest with respect to matters within the  
277 jurisdiction of the Public Service Commission. The Office of  
278 Regulatory Staff shall be headed by an executive director and  
279 shall be organized and function independently under the  
280 provisions of chapter 350.

281 (b) Organization.—The commission shall establish by rule  
282 any additional organizational structure of the offices. It is  
283 the intent of the Legislature to provide the commission with the  
284 flexibility to organize the offices in any manner they determine  
285 appropriate to promote both efficiency and accountability.

286 (c) Powers.—Commission members shall serve as the agency  
287 head for purposes of rulemaking under ss. 120.536–120.565 by the  
288 commission and all subunits of the commission. Each director is  
289 agency head for purposes of final agency action under chapter  
290 120 for all areas within the regulatory authority delegated to  
291 the director's office.

292 (d) Appointment and qualifications of directors.—The  
293 commission shall appoint or remove each director by a majority  
294 vote consisting of at least three affirmative votes, with both  
295 the Governor and the Chief Financial Officer on the prevailing  
296 side. The minimum qualifications of the directors are as  
297 follows:

298 1. Prior to appointment as director, the director of the  
299 Office of Insurance Regulation must have had, within the  
300 previous 10 years, at least 5 years of responsible private  
301 sector experience working full time in areas within the scope of  
302 the subject matter jurisdiction of the Office of Insurance  
303 Regulation or at least 5 years of experience as a senior  
304 examiner or other senior employee of a state or federal agency  
305 having regulatory responsibility over insurers or insurance  
306 agencies.

307 2. Prior to appointment as director, the director of the  
308 Office of Financial Regulation must have had, within the

309 previous 10 years, at least 5 years of responsible private  
310 sector experience working full time in areas within the subject  
311 matter jurisdiction of the Office of Financial Regulation or at  
312 least 5 years of experience as a senior examiner or other senior  
313 employee of a state or federal agency having regulatory  
314 responsibility over financial institutions, finance companies,  
315 or securities companies.

316 3. The executive director of the Office of Regulatory  
317 Staff must meet the qualification requirements under s. 350.073.  
318 Appointment of the executive director is subject to confirmation  
319 by the Senate.

320 (e) Administrative support.—The offices shall have a  
321 sufficient number of attorneys, examiners, investigators, other  
322 professional personnel to carry out their responsibilities and  
323 administrative personnel as determined annually in the  
324 appropriations process. The Department of Financial Services  
325 shall provide administrative and information systems support to  
326 the offices.

327 (f) Records retention schedules.—The commission and the  
328 offices may destroy general correspondence files and also any  
329 other records that they deem no longer necessary to preserve in  
330 accordance with retention schedules and destruction notices  
331 established under rules of the Division of Library and  
332 Information Services, records and information management  
333 program, of the Department of State. Such schedules and notices  
334 relating to financial records of the commission and offices  
335 shall be subject to the approval of the Auditor General.

336 (g) Records storage.—The commission and offices may

337 | photograph, microphotograph, or reproduce on film such documents  
338 | and records as they may select, in such manner that each page  
339 | will be exposed in exact conformity with the original. After  
340 | reproduction and filing, original documents and records may be  
341 | destroyed in accordance with the provisions of paragraph (f).

342 |       Section 2. Paragraphs (a) and (c) of subsection (8) of  
343 | section 112.324, Florida Statutes, are amended to read:

344 |       112.324 Procedures on complaints of violations; public  
345 | records and meeting exemptions.—

346 |       (8) If, in cases pertaining to complaints other than  
347 | complaints against impeachable officers or members of the  
348 | Legislature, upon completion of a full and final investigation  
349 | by the commission, the commission finds that there has been a  
350 | violation of this part or of s. 8, Art. II of the State  
351 | Constitution, it shall be the duty of the commission to report  
352 | its findings and recommend appropriate action to the proper  
353 | disciplinary official or body as follows, and such official or  
354 | body shall have the power to invoke the penalty provisions of  
355 | this part, including the power to order the appropriate  
356 | elections official to remove a candidate from the ballot for a  
357 | violation of s. 112.3145 or s. 8(a) and (i), Art. II of the  
358 | State Constitution:

359 |       (a) The President of the Senate and the Speaker of the  
360 | House of Representatives, jointly, in any case concerning ~~the~~  
361 | ~~Public Counsel~~, members of the Public Service Commission,  
362 | members of the Public Service Commission Nominating Council, the  
363 | Auditor General, the director of the Office of Program Policy  
364 | Analysis and Government Accountability, or members of the

365 Legislative Committee on Intergovernmental Relations.

366 (c) The President of the Senate, in any case concerning an  
 367 employee of the Senate; the Speaker of the House of  
 368 Representatives, in any case concerning an employee of the House  
 369 of Representatives; or the President and the Speaker, jointly,  
 370 in any case concerning an employee of a committee of the  
 371 Legislature whose members are appointed solely by the President  
 372 and the Speaker or in any case concerning an employee of the  
 373 ~~Public Counsel~~, Public Service Commission, Auditor General,  
 374 Office of Program Policy Analysis and Government Accountability,  
 375 or Legislative Committee on Intergovernmental Relations.

376 Section 3. Subsection (2) of section 186.801, Florida  
 377 Statutes, is amended to read:

378 186.801 Ten-year site plans.—

379 (2) Within 9 months after the receipt of the proposed  
 380 plan, the commission shall request assistance from the Office of  
 381 Regulatory Staff to make a preliminary study of such plan and  
 382 shall classify the plan ~~it~~ as "suitable" or "unsuitable." The  
 383 commission may suggest alternatives to the plan. All findings of  
 384 the commission shall be made available to the Department of  
 385 Environmental Protection for its consideration at any subsequent  
 386 electrical power plant site certification proceedings. It is  
 387 recognized that 10-year site plans submitted by an electric  
 388 utility are tentative information for planning purposes only and  
 389 may be amended at any time at the discretion of the utility upon  
 390 written notification to the commission. A complete application  
 391 for certification of an electrical power plant site under  
 392 chapter 403, when such site is not designated in the current 10-

393 year site plan of the applicant, shall constitute an amendment  
 394 to the 10-year site plan. In its preliminary study of each 10-  
 395 year site plan, the commission shall consider such plan as a  
 396 planning document and shall review:

397 (a) The need, including the need as determined by the  
 398 commission, for electrical power in the area to be served.

399 (b) The effect on fuel diversity within the state.

400 (c) The anticipated environmental impact of each proposed  
 401 electrical power plant site.

402 (d) Possible alternatives to the proposed plan.

403 (e) The views of appropriate local, state, and federal  
 404 agencies, including the views of the appropriate water  
 405 management district as to the availability of water and its  
 406 recommendation as to the use by the proposed plant of salt water  
 407 or fresh water for cooling purposes.

408 (f) The extent to which the plan is consistent with the  
 409 state comprehensive plan.

410 (g) The plan with respect to the information of the state  
 411 on energy availability and consumption.

412 Section 4. Section 350.001, Florida Statutes, is amended  
 413 to read:

414 350.001 Legislative intent.—

415 (1) The Florida Public Service Commission has been and  
 416 shall continue to be an arm of the legislative branch of  
 417 government. In the exercise of its jurisdiction, the commission  
 418 shall neither establish nor implement any regulatory policy that  
 419 is contrary to, or is an expansion of, the authority granted to  
 420 it by the Legislature.

421           (2) The Public Service Commission and its staff shall  
 422 perform their ~~its~~ duties independently, impartially,  
 423 professionally, honorably, and without undue influence from any  
 424 person.

425           (3) It is the desire of the Legislature that the Governor  
 426 participate in the appointment process of commissioners to the  
 427 Public Service Commission. The Legislature accordingly delegates  
 428 to the Governor a limited authority with respect to the Public  
 429 Service Commission by authorizing him or her to participate in  
 430 the selection of members only in the manner prescribed by s.  
 431 350.031.

432           Section 5. Section 350.011, Florida Statutes, is amended  
 433 to read:

434           350.011 Florida Public Service Commission; jurisdiction;  
 435 powers and duties.—

436           (1) The state regulatory agency heretofore known as the  
 437 Florida Railroad and Public Utilities Commission or Florida  
 438 Public Utilities Commission shall be known and hereafter called  
 439 Florida Public Service Commission, and all rights, powers,  
 440 duties, responsibilities, jurisdiction, and judicial powers now  
 441 vested in said Railroad and Public Utilities Commission or said  
 442 Florida Public Utilities Commission and the commissioners  
 443 thereof are vested in the Florida Public Service Commission and  
 444 the commissioners thereof.

445           (2) The commissioners of the Florida Public Service  
 446 Commission shall not supervise, direct, or control any person  
 447 whose services are employed by the Office of Regulatory Staff  
 448 created under ss. 20.121 and 350.071.



CS/CS/HB 7209

2010

449       (3) Notwithstanding any other provision of law, the  
450 commission shall not inspect, audit, or examine any entity  
451 subject to the jurisdiction of the commission pursuant to any  
452 provision of law, as these functions are the sole responsibility  
453 of the Office of Regulatory Staff.

454       (4) The commission staff shall not appear as a party in  
455 commission proceedings or offer testimony on issues before the  
456 commission. The commission staff shall not conduct discovery,  
457 either informally or pursuant to the Florida Rules of Civil  
458 Procedure, in any proposed agency action proceeding or any  
459 proceeding under s. 120.569 or s. 120.57 in which the  
460 substantial interests of a party are determined by the  
461 commission.

462       Section 6. Section 350.012, Florida Statutes, is repealed.

463       Section 7. Paragraphs (b) and (d) of subsection (1) and  
464 subsection (5) of section 350.031, Florida Statutes, are amended  
465 to read:

466       350.031 Florida Public Service Commission Nominating  
467 Council.—

468       (1)

469       (b) All terms shall be for 4 years except those members of  
470 the House and Senate, who shall serve 2-year terms concurrent  
471 with the 2-year elected terms of House members. ~~All terms of the~~  
472 ~~members of the Public Service Commission Nominating Council~~  
473 ~~existing on June 30, 2008, shall terminate upon the effective~~  
474 ~~date of this act; however, such members may serve an additional~~  
475 ~~term if reappointed by the Speaker of the House of~~  
476 ~~Representatives or the President of the Senate. To establish~~

CS/CS/HB 7209

2010

477 staggered terms, appointments of members shall be made for  
478 initial terms to begin on July 1, 2008, with each appointing  
479 officer to appoint three legislator members, one of whom shall  
480 be a member of the minority party, to terms through the  
481 remainder of the 2-year elected terms of House members; one  
482 nonlegislator member to a 6-month term; one nonlegislator member  
483 to an 18-month term; and one nonlegislator member to a 42-month  
484 term. Thereafter, the terms of the nonlegislator members of the  
485 Public Service Commission Nominating Council shall begin on  
486 January 2 of the year the term commences and end 4 years later  
487 on January 1.

488 (d) Vacancies on the council shall be filled for the  
489 unexpired portion of the term in the same manner as original  
490 appointments to the council. A member may not be reappointed to  
491 the council, except for a member of the House of Representatives  
492 or the Senate who may be appointed to two 2-year terms, ~~members~~  
493 ~~who are reappointed pursuant to paragraph (b)~~, or a person who  
494 is appointed to fill the remaining portion of an unexpired term.

495 (5) A person may not be nominated ~~to the Governor~~ for  
496 appointment to the Public Service Commission until the council  
497 has determined that the person satisfies the qualifications set  
498 forth in s. 350.04(2) ~~is competent and knowledgeable in one or~~  
499 ~~more fields, which shall include, but not be limited to: public~~  
500 ~~affairs, law, economics, accounting, engineering, finance,~~  
501 ~~natural resource conservation, energy, or another field~~  
502 ~~substantially related to the duties and functions of the~~  
503 ~~commission.~~ The commission shall fairly represent the ~~above-~~  
504 ~~stated~~ fields identified in s. 350.04(2); however, at least one

CS/CS/HB 7209

2010

505 commissioner shall be an accountant certified under the Public  
 506 Accountancy Law in this state and practicing in this state.  
 507 Recommendations of the council shall be nonpartisan.

508 Section 8. Section 350.035, Florida Statutes, is created  
 509 to read:

510 350.035 Prohibited influence on commissioners.—Neither the  
 511 Governor, the President of the Senate, the Speaker of the House  
 512 of Representatives, nor a member of the Public Service  
 513 Commission Nominating Council shall attempt to sway the  
 514 independent judgment of the commission by bringing pressure to  
 515 bear upon a commissioner or commission employee through that  
 516 person's role in the nomination, appointment, or confirmation of  
 517 commissioners. It is the duty of the Commission on Ethics to  
 518 receive and investigate sworn complaints of violations of this  
 519 section pursuant to ss. 112.322-112.3241.

520 Section 9. Section 350.04, Florida Statutes, is amended to  
 521 read:

522 350.04 Qualifications of commissioners; training and  
 523 continuing education.—

524 (1) A commissioner may not, at the time of appointment or  
 525 during his or her term of office:

526 (a)~~(1)~~ Have any financial interest, other than ownership  
 527 of shares in a mutual fund, in any business entity which, either  
 528 directly or indirectly, owns or controls any public utility  
 529 regulated by the commission, in any public utility regulated by  
 530 the commission, or in any business entity which, either directly  
 531 or indirectly, is an affiliate or subsidiary of any public  
 532 utility regulated by the commission.

533        ~~(b)(2)~~ Be employed by or engaged in any business activity  
534 with any business entity which, either directly or indirectly,  
535 owns or controls any public utility regulated by the commission,  
536 by any public utility regulated by the commission, or by any  
537 business entity which, either directly or indirectly, is an  
538 affiliate or subsidiary of any public utility regulated by the  
539 commission.

540        (2) Each person recommended for appointment to the Public  
541 Service Commission by the Public Service Commission Nominating  
542 Council must:

543        (a) Have earned at least a baccalaureate degree from an  
544 institution of higher learning accredited by a regional or  
545 national accrediting body; and

546        (b) Possess a minimum of 10 years of professional  
547 experience, or a minimum of 6 years of professional experience  
548 if the person has earned an advanced degree, in one or more of  
549 the following:

550            1. Energy or electric industry issues.

551            2. Telecommunications issues.

552            3. Water and sewer industry issues.

553            4. Finance.

554            5. Economics.

555            6. Accounting.

556            7. Engineering.

557            8. Law.

558        (3) Before voting on any matter before the Public Service  
559 Commission, each person appointed to the commission after July  
560 1, 2010, shall complete a comprehensive course of study,

CS/CS/HB 7209

2010

561 developed by the executive director and general counsel of the  
562 Office of Regulatory Staff in coordination with the National  
563 Association of Regulatory Utility Commissioners Subcommittee on  
564 Education and Research, that addresses the substantive matters  
565 within the jurisdiction of the commission, administrative law  
566 applicable to commission proceedings, and standards of conduct  
567 applicable to commissioners. Thereafter, each commissioner must  
568 annually complete no less than 10 hours of continuing  
569 professional education directly related to substantive matters  
570 within the jurisdiction of the commission.

571 (4) No less than once every 12 months, each commissioner  
572 and commission employee shall receive training, in a form  
573 developed by the executive director and general counsel of the  
574 Office of Regulatory Staff, that addresses the ethical standards  
575 of conduct applicable to commissioners and their staff.

576 (5) The chair of the Public Service Commission shall  
577 certify the commission's compliance with these requirements, and  
578 each commissioner shall certify his or her individual compliance  
579 with the continuing professional education requirements provided  
580 in subsection (3). Each certification of compliance shall be  
581 provided to the President of the Senate and the Speaker of the  
582 House of Representatives.

583 Section 10. Section 350.041, Florida Statutes, is amended  
584 to read:

585 350.041 Commissioners; standards of conduct.—

586 (1) STATEMENT OF INTENT.—

587 (a) Professional, impartial, and honorable commissioners  
588 are indispensable to the effective performance of the

589 commission's duties. A commissioner shall maintain high  
590 standards of conduct and shall personally observe those  
591 standards so that the integrity and impartiality of the  
592 commission may be preserved. The standards of conduct provided  
593 in this section should be construed and applied to further that  
594 objective.

595       **(b)** In addition to the provisions of part III of chapter  
596 112, which are applicable to public service commissioners by  
597 virtue of their being public officers and full-time employees of  
598 the legislative branch of government, the conduct of public  
599 service commissioners shall be governed by the standards of  
600 conduct provided in this section. Nothing shall prohibit the  
601 standards of conduct from being more restrictive than part III  
602 of chapter 112. Further, this section shall not be construed to  
603 contravene the restrictions of part III of chapter 112. In the  
604 event of a conflict between this section and part III of chapter  
605 112, the more restrictive provision shall apply.

606       **(2) STANDARDS OF CONDUCT.—**

607       **(a)** A commissioner may not accept anything from any  
608 business entity which, either directly or indirectly, owns or  
609 controls any public utility regulated by the commission, from  
610 any public utility regulated by the commission, or from any  
611 business entity which, either directly or indirectly, is an  
612 affiliate or subsidiary of any public utility regulated by the  
613 commission. A commissioner may attend conferences and associated  
614 meals and events that are generally available to all conference  
615 participants without payment of any fees in addition to the  
616 conference fee. Additionally, while attending a conference, a

CS/CS/HB 7209

2010

617 commissioner may attend meetings, meals, or events that are not  
618 sponsored, in whole or in part, by any representative of any  
619 public utility regulated by the commission and that are limited  
620 to commissioners only, committee members, or speakers if the  
621 commissioner is a member of a committee of the association of  
622 regulatory agencies that organized the conference or is a  
623 speaker at the conference. It is not a violation of this  
624 paragraph for a commissioner to attend a conference for which  
625 conference participants who are employed by a utility regulated  
626 by the commission have paid a higher conference registration fee  
627 than the commissioner, or to attend a meal or event that is  
628 generally available to all conference participants without  
629 payment of any fees in addition to the conference fee and that  
630 is sponsored, in whole or in part, by a utility regulated by the  
631 commission. If, during the course of an investigation by the  
632 Commission on Ethics into an alleged violation of this  
633 paragraph, allegations are made as to the identity of the person  
634 giving or providing the prohibited gift, that person must be  
635 given notice and an opportunity to participate in the  
636 investigation and relevant proceedings to present a defense. If  
637 the Commission on Ethics determines that the person gave or  
638 provided a prohibited gift, the person may not appear before the  
639 commission or otherwise represent anyone before the commission  
640 for a period of 2 years.

641 (b) A commissioner may not accept any form of employment  
642 with or engage in any business activity with any business entity  
643 which, either directly or indirectly, owns or controls any  
644 public utility regulated by the commission, any public utility

CS/CS/HB 7209

2010

645 regulated by the commission, or any business entity which,  
646 either directly or indirectly, is an affiliate or subsidiary of  
647 any public utility regulated by the commission.

648 (c) A commissioner may not have any financial interest,  
649 other than shares in a mutual fund, in any public utility  
650 regulated by the commission, in any business entity which,  
651 either directly or indirectly, owns or controls any public  
652 utility regulated by the commission, or in any business entity  
653 which, either directly or indirectly, is an affiliate or  
654 subsidiary of any public utility regulated by the commission. If  
655 a commissioner acquires any financial interest prohibited by  
656 this section during his or her term of office as a result of  
657 events or actions beyond the commissioner's control, he or she  
658 shall immediately sell such financial interest or place such  
659 financial interest in a blind trust at a financial institution.  
660 A commissioner may not attempt to influence, or exercise any  
661 control over, decisions regarding the blind trust.

662 (d) A commissioner may not accept anything from a party in  
663 a proceeding currently pending before the commission. If, during  
664 the course of an investigation by the Commission on Ethics into  
665 an alleged violation of this paragraph, allegations are made as  
666 to the identity of the person giving or providing the prohibited  
667 gift, that person must be given notice and an opportunity to  
668 participate in the investigation and relevant proceedings to  
669 present a defense. If the Commission on Ethics determines that  
670 the person gave or provided a prohibited gift, the person may  
671 not appear before the commission or otherwise represent anyone  
672 before the commission for a period of 2 years.



673 (e) A commissioner may not serve as the representative of  
674 any political party or on any executive committee or other  
675 governing body of a political party; serve as an executive  
676 officer or employee of any political party, committee,  
677 organization, or association; receive remuneration for  
678 activities on behalf of any candidate for public office; engage  
679 on behalf of any candidate for public office in the solicitation  
680 of votes or other activities on behalf of such candidacy; or  
681 become a candidate for election to any public office without  
682 first resigning from office.

683 (f) A commissioner, during his or her term of office, may  
684 not make any public comment regarding the merits of any  
685 proceeding under ss. 120.569 and 120.57 currently pending before  
686 the commission.

687 (g) A commissioner may not conduct himself or herself in  
688 an unprofessional manner at any time during the performance of  
689 his or her official duties.

690 (h) The chair shall require order and decorum in  
691 proceedings before the commission. In the absence of the chair,  
692 the commissioner presiding over a commission proceeding shall  
693 require order and decorum in the proceeding.

694 (i) A commissioner shall be patient, dignified, and  
695 courteous to litigants, other commissioners, witnesses, lawyers,  
696 commission staff, staff of the Office of Regulatory Staff, and  
697 others with whom the commissioner deals in an official capacity.

698 (j) A commissioner shall perform his or her official  
699 duties without bias or prejudice. A commissioner may not, in the  
700 performance of his or her official duties, by words or conduct

701 manifest bias or prejudice.

702 (k) A commissioner may not, with respect to parties or  
 703 classes of parties, cases, controversies, or issues likely to  
 704 come before the commission, make pledges, promises, or  
 705 commitments that are inconsistent with the impartial performance  
 706 of the commissioner's official duties.

707 (l) A commissioner may not be swayed by partisan  
 708 interests, public clamor, or fear of criticism.

709 (m)~~(h)~~ A commissioner must avoid impropriety in all of his  
 710 or her activities and must act at all times in a manner that  
 711 promotes public confidence in the integrity and impartiality of  
 712 the commission.

713 (n)~~(i)~~ A commissioner may not directly or indirectly,  
 714 through staff or other means, solicit anything of value from any  
 715 public utility regulated by the commission, or from any business  
 716 entity that, whether directly or indirectly, is an affiliate or  
 717 subsidiary of any public utility regulated by the commission, or  
 718 from any party appearing in a proceeding considered by the  
 719 commission in the last 2 years.

720 (3) INVESTIGATIONS; REPORTS; ADVISORY OPINIONS.-

721 (a) The Commission on Ethics shall accept and investigate  
 722 any alleged violations of this section pursuant to the  
 723 procedures contained in ss. 112.322-112.3241.

724 (b) The Commission on Ethics shall provide the Governor  
 725 and the Florida Public Service Commission Nominating Council  
 726 with a report of its findings and recommendations with respect  
 727 to alleged violations by a public service commissioner. The  
 728 Governor is authorized to enforce these ~~the~~ findings and

729 recommendations ~~of the Commission on Ethics,~~ pursuant to part  
 730 III of chapter 112.

731 (c) The Commission on Ethics shall provide the  
 732 disciplinary officials or bodies specified in part III of  
 733 chapter 112 with a report of its findings and recommendations  
 734 with respect to alleged violations of the specific provisions of  
 735 this section that, pursuant to s. 350.073, are applicable to the  
 736 executive director of the Office of Regulatory Staff.

737 (d) A public service commissioner, a commission employee,  
 738 the executive director of the Office of Regulatory Staff, or a  
 739 member of the Florida Public Service Commission Nominating  
 740 Council may request an advisory opinion from the Commission on  
 741 Ethics, pursuant to s. 112.322(3)(a), regarding the standards of  
 742 conduct or prohibitions set forth in this section and ss.  
 743 350.031, 350.04, and 350.042.

744 Section 11. Section 350.042, Florida Statutes, is amended  
 745 to read:

746 350.042 Ex parte communications.—

747 (1) Each A commissioner and employee of the commission  
 748 shall ~~should~~ accord to every person who is a party to or is  
 749 registered with the commission as an interested person in a  
 750 proposed agency action proceeding, or who is a party to a  
 751 proceeding under s. 120.565, s. 120.569, or s. 120.57 ~~legally~~  
 752 ~~interested in a proceeding,~~ or the person's lawyer, full right  
 753 to be heard according to law, and, except as authorized by law,  
 754 shall not ~~neither~~ initiate, solicit, or ~~not~~ consider ex parte  
 755 communications concerning a pending proposed agency action ~~the~~  
 756 merits, threat, or offer of reward in any proceeding or a

CS/CS/HB 7209

2010

757 proceeding under s. 120.565, s. 120.569, or s. 120.57 ~~other than~~  
758 ~~a proceeding under s. 120.54 or s. 120.565, workshops, or~~  
759 ~~internal affairs meetings.~~ No individual shall discuss ex parte  
760 with a commissioner the merits of any issue that he or she knows  
761 will be filed with the commission within 180 ~~90~~ days. The  
762 ~~provisions of this subsection shall not apply to commission~~  
763 ~~staff.~~

764 (a) As used in this section, the term "ex parte  
765 communication" means any communication that:

766 1. If it is a written or printed communication or a  
767 communication in electronic form, is not served on all parties  
768 to a proceeding; or

769 2. If it is an oral communication, is made without  
770 adequate notice to the parties and without an opportunity for  
771 the parties to be present and heard.

772 (b) Where circumstances require, ex parte communications  
773 concerning scheduling, administrative purposes, or emergencies  
774 that do not deal with substantive matters or issues on the  
775 merits are authorized, if:

776 1. The commissioner or commission employee reasonably  
777 believes that no party will gain a procedural or tactical  
778 advantage as a result of the ex parte communication; and

779 2. The commissioner or commission employee makes provision  
780 promptly to notify all parties of the substance of the ex parte  
781 communication and, where possible, allows an opportunity to  
782 respond.

783 (2) The provisions of this section shall not prohibit an  
784 individual residential ratepayer from communicating with a

CS/CS/HB 7209

2010

785 commissioner or commission employee, provided that the ratepayer  
786 is representing only himself or herself, without compensation.

787 (3) This section shall not apply to oral communications or  
788 discussions in scheduled and noticed open public meetings of  
789 educational programs or of a conference or other meeting of an  
790 association of regulatory agencies.

791 (4) If a commissioner or commission employee knowingly  
792 receives an ex parte communication prohibited by this section  
793 ~~relative to a proceeding other than as set forth in subsection~~  
794 ~~(1)~~, to which he or she is assigned, he or she must place on the  
795 record of the proceeding copies of all written communications  
796 received, all written responses to the communications, and a  
797 memorandum stating the substance of all oral communications  
798 received and all oral responses made, and shall give written  
799 notice to all parties to the communication that such matters  
800 have been placed on the record. Any party to the proceeding who  
801 desires to respond to the ~~an ex parte~~ communication may do so.  
802 The response must be received by the commission within 10 days  
803 after receiving notice that the ~~ex parte~~ communication has been  
804 placed on the record. The commissioner may, if he or she deems  
805 it necessary to eliminate the effect of an ex parte  
806 communication received by him or her, withdraw from the  
807 proceeding, in which case the chair shall substitute another  
808 commissioner for the proceeding.

809 (5) Any individual who makes an ex parte communication  
810 prohibited by this section shall submit to the commission a  
811 written statement describing the nature of such communication,  
812 to include the name of the person making the communication, the

CS/CS/HB 7209

2010

813 name of each ~~the~~ commissioner or commission employee  
814 ~~commissioners~~ receiving the communication, copies of all written  
815 communications made, all written responses to such  
816 communications, and a memorandum stating the substance of all  
817 oral communications received and all oral responses made. The  
818 commission shall place on the record of a proceeding all such  
819 communications.

820 (6) Any commissioner or commission employee who knowingly  
821 fails to place on the record any ex parte communication  
822 prohibited by this section ~~such communications~~, in violation of  
823 this ~~the~~ section, within 15 days after ~~of~~ the date of the ~~such~~  
824 communication is subject to removal or dismissal and may be  
825 assessed a civil penalty not to exceed \$5,000. Any individual  
826 who knowingly fails to comply with subsection (5) may be  
827 assessed a civil penalty not to exceed \$5,000.

828 (7) (a) It is ~~shall be~~ the duty of the Commission on Ethics  
829 to receive and investigate sworn complaints of violations of  
830 this section pursuant to the procedures contained in ss.  
831 112.322-112.3241.

832 (b) If the Commission on Ethics finds that there has been  
833 a violation of this section by a public service commissioner or  
834 commission employee, it shall provide the Governor and the  
835 Florida Public Service Commission Nominating Council with a  
836 report of its findings and recommendations. The Governor is  
837 authorized to enforce the findings and recommendations of the  
838 Commission on Ethics, pursuant to part III of chapter 112.

839 (c) If a commissioner, commission employee, or other  
840 individual fails or refuses to pay the Commission on Ethics any

CS/CS/HB 7209

2010

841 civil penalties assessed pursuant to ~~the provisions of~~ this  
842 section, the Commission on Ethics may bring an action in any  
843 circuit court to enforce the ~~such~~ penalty.

844 (d) If, during the course of an investigation by the  
845 Commission on Ethics into an alleged violation of this section,  
846 allegations are made as to the identity of the person who  
847 participated in the ex parte communication, that person must be  
848 given notice and an opportunity to participate in the  
849 investigation and relevant proceedings to present a defense. If  
850 the Commission on Ethics determines that the person participated  
851 in the ex parte communication, the person may not appear before  
852 the commission or otherwise represent anyone before the  
853 commission for a period of 2 years.

854 Section 12. Subsections (1), (2), and (3) of section  
855 350.06, Florida Statutes, are amended to read:

856 350.06 Place of meeting; expenditures; employment of  
857 personnel; records availability and fees.—

858 (1) The offices of the commission ~~said commissioners~~ shall  
859 be in the vicinity of Tallahassee, but the commissioners may  
860 hold sessions anywhere in the state at their discretion.

861 (2) All sums of money authorized to be paid on account of  
862 the commission ~~said commissioners~~ shall be paid out of the State  
863 Treasury only on the order of the Chief Financial Officer.

864 (3) The commission ~~commissioners~~ may employ clerical,  
865 technical, and professional personnel reasonably necessary for  
866 the performance of its ~~their~~ duties, except for those  
867 responsibilities and functions reserved to the Office of  
868 Regulatory Staff, and may also employ one or more persons

CS/CS/HB 7209

2010

869 capable of stenographic court reporting, to be known as the  
870 official reporters of the commission.

871 Section 13. Section 350.0605, Florida Statutes, is amended  
872 to read:

873 350.0605 Former commissioners; executive directors; and  
874 employees of the commission or Office of Regulatory Staff;  
875 representation of clients before commission.—

876 (1) Any former commissioner of the Public Service  
877 Commission or former executive director of the Office of  
878 Regulatory Staff is prohibited from appearing before the  
879 commission representing any client or any industry regulated by  
880 the Public Service Commission for a period of 2 years following  
881 termination of service as a commissioner or executive director  
882 ~~on the commission~~.

883 (2) Any former employee of the commission or the Office of  
884 Regulatory Staff is prohibited from appearing before the  
885 commission representing any client regulated by the Public  
886 Service Commission on any matter which was pending at the time  
887 of termination and in which such former employee had  
888 participated.

889 (3) For a period of 2 years following termination of  
890 service as a commissioner or executive director ~~on the~~  
891 ~~commission~~, a former commissioner of the Public Service  
892 Commission or former executive director of the Office of  
893 Regulatory Staff ~~member~~ may not accept employment by or  
894 compensation from a business entity which, directly or  
895 indirectly, owns or controls a public utility regulated by the  
896 commission, from a public utility regulated by the commission,



897 | from a business entity which, directly or indirectly, is an  
 898 | affiliate or subsidiary of a public utility regulated by the  
 899 | commission or is an actual business competitor of a local  
 900 | exchange company or public utility regulated by the commission  
 901 | and is otherwise exempt from regulation by the commission under  
 902 | ss. 364.02(15)~~(14)~~ and 366.02(1), or from a business entity or  
 903 | trade association that has been a party to a commission  
 904 | proceeding within the 2 years preceding the member's termination  
 905 | of service on the commission. This subsection applies only to  
 906 | members of the Florida Public Service Commission who are  
 907 | appointed or reappointed after May 10, 1993.

908 |       Section 14. Subsection (1) of section 350.061, Florida  
 909 | Statutes, is amended to read:

910 |       350.061 Public Counsel; appointment; oath; restrictions on  
 911 | Public Counsel and his or her employees.—

912 |       (1) The Attorney General ~~Committee on Public Counsel~~  
 913 | ~~Oversight~~ shall appoint a Public Counsel ~~by majority vote of the~~  
 914 | ~~members of the committee~~ to represent the general public of  
 915 | Florida before the Florida Public Service Commission. The Public  
 916 | Counsel shall be an attorney admitted to practice before the  
 917 | Florida Supreme Court and shall serve at the pleasure of the  
 918 | Attorney General ~~Committee on Public Counsel Oversight~~, subject  
 919 | ~~to biennial reconfirmation by the committee~~. The Public Counsel  
 920 | shall perform his or her duties independently. Vacancies in the  
 921 | office shall be filled in the same manner as the original  
 922 | appointment.

923 |       Section 15. Section 350.0613, Florida Statutes, is amended  
 924 | to read:

CS/CS/HB 7209

2010

925           350.0613 Public Counsel; employees; receipt of pleadings.—  
 926 The Attorney General ~~committee~~ may authorize the Public Counsel  
 927 to employ clerical and technical assistants whose  
 928 qualifications, duties, and responsibilities the Attorney  
 929 General ~~committee~~ shall from time to time prescribe. The  
 930 Attorney General ~~committee~~ may from time to time authorize  
 931 retention of the services of additional attorneys or experts to  
 932 the extent that the best interests of the people of the state  
 933 will be better served thereby, including the retention of expert  
 934 witnesses and other technical personnel for participation in  
 935 contested proceedings before the commission. The commission  
 936 shall furnish the Public Counsel with copies of the initial  
 937 pleadings in all proceedings before the commission, and if the  
 938 Public Counsel intervenes as a party in any proceeding he or she  
 939 shall be served with copies of all subsequent pleadings,  
 940 exhibits, and prepared testimony, if used. Upon filing notice of  
 941 intervention, the Public Counsel shall serve all interested  
 942 parties with copies of such notice and all of his or her  
 943 subsequent pleadings and exhibits.

944           Section 16. Section 350.0614, Florida Statutes, is amended  
 945 to read:

946           350.0614 Public Counsel; compensation and expenses.—

947           ~~(1)~~ The salaries and expenses of the Public Counsel and  
 948 his or her employees shall be allocated by the Attorney General  
 949 ~~committee~~ only from moneys appropriated to the Public Counsel by  
 950 the Legislature.

951           ~~(2) The Legislature declares and determines that the~~  
 952 ~~Public Counsel is under the legislative branch of government~~

953 ~~within the intention of the legislation as expressed in chapter~~  
 954 ~~216, and no power shall be in the Executive Office of the~~  
 955 ~~Governor or its successor to release or withhold funds~~  
 956 ~~appropriated to it, but the same shall be available for~~  
 957 ~~expenditure as provided by law and the rules or decisions of the~~  
 958 ~~Committee on Public Counsel Oversight.~~

959 ~~(3) Neither the Executive Office of the Governor nor the~~  
 960 ~~Department of Management Services or its successor shall have~~  
 961 ~~power to determine the number, or fix the compensation, of the~~  
 962 ~~employees of the Public Counsel or to exercise any manner of~~  
 963 ~~control over them.~~

964 Section 17. (1) All powers, duties, functions, records,  
 965 offices, personnel, property, pending issues, and existing  
 966 contracts, administrative authority, administrative rules, and  
 967 unexpended balances of appropriations, allocations, and other  
 968 funds relating to the Office of Public Counsel pursuant to s.  
 969 350.061, Florida Statutes, are transferred by a type two  
 970 transfer, as defined in s. 20.06(2), Florida Statutes, from the  
 971 Legislature to the Office of the Attorney General. The Office of  
 972 Public Counsel shall be funded from the General Revenue Fund.

973 (2) Notwithstanding ss. 216.292 and 216.351, Florida  
 974 Statutes, upon approval by the Legislative Budget Commission,  
 975 the Executive Office of the Governor shall transfer funds and  
 976 positions between the Legislature and the Office of the Attorney  
 977 General to implement this act.

978 Section 18. Section 350.071, Florida Statutes, is created  
 979 to read:

980 350.071 Office of Regulatory Staff; creation; status;

981 purpose.—

982 (1) The Office of Regulatory Staff is created as an office  
983 within the Financial Services Commission. The office shall  
984 perform its duties independently.

985 (2) The office shall be considered a party of record in  
986 all proceedings before the Public Service Commission. All  
987 tariffs, initial pleadings, complaints, and notices of appeal  
988 filed with the commission shall be served upon the office. The  
989 commission shall notify the office of the initiation of any  
990 rulemaking proceeding, workshop, or other proceeding that the  
991 commission is authorized by law to initiate.

992 (3) The office shall represent the public interest of this  
993 state. As used in ss. 350.071-350.075, the term "public  
994 interest" means a balancing of the following:

995 (a) Concerns of the using and consuming public, regardless  
996 of customer class, with respect to services provided by any  
997 company subject to the jurisdiction of the commission pursuant  
998 to any provision of law.

999 (b) Preservation of the financial integrity of the state's  
1000 regulated public utilities and continued investment in and  
1001 maintenance of facilities in order to provide reliable utility  
1002 services at fair, just, and reasonable rates.

1003 (c) Promotion of fair competition in telecommunications  
1004 markets.

1005 (4) The Office of Regulatory Staff shall be subject to the  
1006 same provisions governing ex parte communications that apply to  
1007 any other party to a commission proceeding. Any recommendation  
1008 of the Office of Regulatory Staff shall be provided to the

1009 commission in a form, forum, and manner as may lawfully be  
 1010 provided by any other party.

1011 Section 19. Section 350.072, Florida Statutes, is created  
 1012 to read:

1013 350.072 Office of Regulatory Staff; organization,  
 1014 administration, and operations.-

1015 (1) The Office of Regulatory Staff shall consist of the  
 1016 executive director and any clerical, technical, and professional  
 1017 personnel that the executive director deems to be reasonably  
 1018 necessary for the performance of the duties of the office. The  
 1019 executive director is authorized to employ expert witnesses and  
 1020 other professional expertise that the executive director deems  
 1021 to be reasonably necessary to assist the office in the  
 1022 performance of its duties.

1023 (2) The executive director shall employ and set the  
 1024 compensation for all personnel of the Office of Regulatory Staff  
 1025 and shall be responsible for the supervision and direction of  
 1026 all such personnel.

1027 (3) The executive director and employees of the Office of  
 1028 Regulatory Staff are not subject to the supervision, direction,  
 1029 or control of the commission, the chair of the commission, or  
 1030 any member or employee of the commission.

1031 (4) The executive director is responsible for preparing  
 1032 the budget for the Office of Regulatory Staff and shall submit  
 1033 the budget to the Financial Services Commission.

1034 (5) The Office of Regulatory Staff shall maintain offices  
 1035 in Leon County at a place convenient to the offices of the  
 1036 commission that will enable the Office of Regulatory Staff to

1037 efficiently perform its functions and duties.

1038 (6) The Office of Regulatory Staff shall establish  
 1039 procedures governing its internal administration and operations.

1040 Section 20. Section 350.073, Florida Statutes, is created  
 1041 to read:

1042 350.073 Office of Regulatory Staff; executive director.-

1043 (1) The Financial Services Commission shall appoint or  
 1044 remove the executive director of the Office of Regulatory Staff  
 1045 in the manner set forth in s. 20.121(3)(d). Appointment of the  
 1046 executive director shall be subject to confirmation by the  
 1047 Senate. Until such time as the Senate confirms the appointment  
 1048 of the executive director, the appointee shall perform the  
 1049 functions of the office as provided by law.

1050 (2)(a) The term of the executive director shall be 4  
 1051 years, and the initial term of office shall begin January 2,  
 1052 2011. The Financial Services Commission shall appoint the  
 1053 executive director no less than 60 days prior to the first day  
 1054 of the term to which he or she is appointed.

1055 (b) In case of a vacancy in the office of executive  
 1056 director for any reason before expiration of the term of office,  
 1057 the Financial Services Commission shall appoint a new executive  
 1058 director in the same manner as the original appointment. The  
 1059 Financial Services Commission may appoint an interim executive  
 1060 director to serve until such time as a new executive director is  
 1061 appointed.

1062 (3) A person may not be appointed as executive director  
 1063 until the Financial Services Commission determines that the  
 1064 person satisfies the criteria set forth in s. 350.04(1) and

CS/CS/HB 7209

2010

1065 (2) (a) and possesses a minimum of 12 years of professional  
 1066 experience in one or more of the fields identified in s.  
 1067 350.04 (2) (b) .

1068 (4) The salary of the executive director shall be set by  
 1069 the Financial Services Commission.

1070 (5) The executive director shall take and subscribe to the  
 1071 oath of office required of state officers by the State  
 1072 Constitution.

1073 (6) In addition to the provisions of part III of chapter  
 1074 112, applicable to the executive director by virtue of being a  
 1075 public officer, the executive director shall be subject to the  
 1076 standards of conduct applicable to commissioners pursuant to s.  
 1077 350.041 (2) (a), (b), (c), (d), (e), (g), (l), and (n). In the  
 1078 event of a conflict between this section and part III of chapter  
 1079 112, the more restrictive provision shall apply.

1080 Section 21. Section 350.074, Florida Statutes, is created  
 1081 to read:

1082 350.074 Office of Regulatory Staff; duties.-

1083 (1) The Office of Regulatory Staff shall represent the  
 1084 public interest with respect to matters within the jurisdiction  
 1085 of the commission and, when considered necessary and in the  
 1086 public interest by the executive director, shall petition the  
 1087 commission to initiate proceedings on matters within its  
 1088 jurisdiction. The office shall have authority to:

1089 (a) Review and investigate the rates charged or proposed  
 1090 to be charged, and the service furnished or proposed to be  
 1091 furnished, by any public utility or regulated company.

1092 (b) Inspect, audit, and examine public utilities and

1093 regulated companies regarding matters within the jurisdiction of  
 1094 the commission.

1095 (c) Represent the public interest in commission  
 1096 proceedings, hearings, rulemakings, and other regulatory  
 1097 matters.

1098 (d) Investigate complaints made in connection with matters  
 1099 under the jurisdiction of the commission, including those  
 1100 complaints that are directed to the commission or commissioners.

1101 (e) Assist customers in the informal resolution of  
 1102 complaints regarding the rates or service of public utilities  
 1103 and regulated companies or regarding any other matter within the  
 1104 jurisdiction of the commission.

1105 (f) Make studies to the commission with respect to  
 1106 standards, regulations, practices, or service of any public  
 1107 utility or regulated company.

1108 (g) Provide legal representation of the public interest  
 1109 before other state agencies, federal agencies, and state and  
 1110 federal courts in connection with matters under the jurisdiction  
 1111 of the commission, including proceedings that could affect the  
 1112 rates or service of any public utility or regulated company.

1113 (h) Educate the public on matters within the jurisdiction  
 1114 of the commission which are of special interest to consumers.

1115 (2) The commission may not require the Office of  
 1116 Regulatory Staff to sponsor witnesses or provide testimony in  
 1117 any proceeding, but it may request in writing or at any duly  
 1118 noticed public meeting that the office:

1119 (a) Provide information and reports on any matter subject  
 1120 to the commission's jurisdiction and matters incidental to the



1121 jurisdiction of the commission;

1122 (b) Assist in the preparation of any report that the  
 1123 commission is required by law to produce; or

1124 (c) Conduct inspections, audits, or examinations of public  
 1125 utilities and regulated companies regarding matters within the  
 1126 jurisdiction of the commission.

1127 (3) Decisions relating to whether, when, or how to  
 1128 petition to initiate proceedings before the commission or to  
 1129 participate or intervene in proceedings before other state  
 1130 agencies, federal agencies, or state or federal courts are in  
 1131 the sole discretion of the executive director, except for those  
 1132 matters that are specified by order of a court of competent  
 1133 jurisdiction.

1134 (4) The Office of Regulatory Staff is considered to have  
 1135 an interest sufficient to maintain actions for judicial review  
 1136 of commission orders or decisions and may, as of right and in a  
 1137 manner prescribed by law, intervene or otherwise participate in  
 1138 any civil proceeding which involves the review or enforcement of  
 1139 commission action that the executive director determines may  
 1140 substantially affect the public interest.

1141 (5) The Office of Regulatory Staff shall provide to the  
 1142 Legislature an annual report of its activities.

1143 (6) The commission and the office shall establish mutually  
 1144 acceptable procedures by which the office may elect not to  
 1145 participate as a party in noncontroversial matters.

1146 Section 22. (1) The Public Service Commission may employ  
 1147 clerical, technical, and professional personnel reasonably  
 1148 necessary for the performance of its duties and

CS/CS/HB 7209

2010

1149 responsibilities. The commission may also employ one or more  
1150 persons capable of stenographic court reporting to be known as  
1151 the official reporters of the commission.

1152 (2) All powers, duties, functions, records, offices,  
1153 personnel, property, pending issues, and existing contracts,  
1154 administrative authority, administrative rules, and unexpended  
1155 balances of appropriations, allocations, and other funds not  
1156 related to the duties and responsibilities of the Public Service  
1157 Commission shall be transferred by a type two transfer, as  
1158 defined in s. 20.06(2), Florida Statutes, from the commission to  
1159 the Office of Regulatory Staff, as created pursuant to s.  
1160 350.071, Florida Statutes, to fulfill its duties and  
1161 responsibilities in accordance with ss. 350.072, 350.073,  
1162 350.074, and 350.075, Florida Statutes, and in accordance with  
1163 any other provision of law.

1164 (3) The Regulatory Trust Fund, FLAIR number 61-2-573, is  
1165 transferred from the Public Service Commission to the Office of  
1166 Regulatory Staff within the Financial Services Commission.

1167 (4) Notwithstanding ss. 216.292 and 216.351, Florida  
1168 Statutes, upon approval by the Legislative Budget Commission,  
1169 the Executive Office of the Governor shall transfer funds and  
1170 positions between the Public Service Commission and the Office  
1171 of Regulatory Staff to implement this act.

1172 Section 23. Section 350.075, Florida Statutes, is created  
1173 to read:

1174 350.075 Office of Regulatory Staff; access to records.—The  
1175 Office of Regulatory Staff may access or require the production  
1176 of books, records, and information pursuant to ss. 364.183,

CS/CS/HB 7209

2010

1177 366.093, 367.156, and 368.108 and may access or require the  
 1178 production of any other records as provided by law.

1179 Section 24. Subsections (1), (2), and (6) of section  
 1180 350.113, Florida Statutes, are amended to read:

1181 350.113 Florida Public Service Regulatory Trust Fund;  
 1182 moneys to be deposited therein.-

1183 (1) There is hereby created in the State Treasury a  
 1184 special fund to be designated as the "Florida Public Service  
 1185 Regulatory Trust Fund" which shall be used in the operation of  
 1186 the commission and the Office of Regulatory Staff in the  
 1187 performance of the various functions and duties required of them  
 1188 ~~it~~ by law.

1189 (2) All fees, licenses, and other charges collected by the  
 1190 commission shall be deposited in the State Treasury to the  
 1191 credit of the Florida Public Service Regulatory Trust Fund to be  
 1192 used in the operation of the commission and the Office of  
 1193 Regulatory Staff as authorized by the Legislature; however,  
 1194 penalties and interest assessed and collected by the commission  
 1195 shall not be deposited in the trust fund but shall be deposited  
 1196 in the General Revenue Fund. The Florida Public Service  
 1197 Regulatory Trust Fund shall be subject to the service charge  
 1198 imposed pursuant to chapter 215.

1199 (6) All moneys in the Florida Public Service Regulatory  
 1200 Trust Fund shall be for the use of the commission and the Office  
 1201 of Regulatory Staff in the performance of their ~~its~~ functions  
 1202 and duties as provided by law, subject to the fiscal and  
 1203 budgetary provisions of general law.

1204 Section 25. Subsections (1) and (2) of section 350.117,  
 1205 Florida Statutes, are amended to read:

1206 350.117 Reports; audits.—

1207 (1) The commission and the Office of Regulatory Staff may  
 1208 require such regular or emergency reports, including, but not  
 1209 limited to, financial reports, as the commission or the office  
 1210 deems necessary to fulfill its obligations under the law. A copy  
 1211 of any report provided to the commission must be provided to the  
 1212 Office of Regulatory Staff.

1213 (2) The commission may request that the Office of  
 1214 Regulatory Staff perform management and operation audits of any  
 1215 regulated company. The commission may consider the results of  
 1216 such audits in establishing rates; however, the company shall  
 1217 not be denied due process as a result of the use of any such  
 1218 management or operation audit.

1219 Section 26. Section 350.121, Florida Statutes, is  
 1220 repealed.

1221 Section 27. Section 350.122, Florida Statutes, is created  
 1222 to read:

1223 350.122 Testimony; public disclosure of affiliation.—

1224 (1) Each person offering testimony at a meeting, workshop,  
 1225 hearing, or other scheduled event of the commission shall  
 1226 disclose any financial or fiduciary relationship with any party  
 1227 to the proceedings at the time the testimony is provided to the  
 1228 commission.

1229 (2) The determination by the commission that a person has  
 1230 knowingly violated this section constitutes agency action for  
 1231 which a hearing may be sought under chapter 120.

CS/CS/HB 7209

2010

1232 Section 28. Section 364.016, Florida Statutes, is amended  
 1233 to read:

1234 364.016 Travel costs.—The office ~~commission~~ has the  
 1235 authority to assess a telecommunications company for reasonable  
 1236 travel costs associated with reviewing the records of the  
 1237 telecommunications company and its affiliates when such records  
 1238 are kept out of state. The telecommunications company may bring  
 1239 the records back into the state for review.

1240 Section 29. Subsections (11) through (16) of section  
 1241 364.02, Florida Statutes, are renumbered as subsections (12)  
 1242 through (17), respectively, and a new subsection (11) is added  
 1243 to that section to read:

1244 364.02 Definitions.—As used in this chapter, the term:  
 1245 (11) "Office" means the Office of Regulatory Staff.

1246 Section 30. Section 364.15, Florida Statutes, is amended  
 1247 to read:

1248 364.15 Compelling repairs, improvements, changes,  
 1249 additions, or extensions.—Whenever the commission finds, ~~on its~~  
 1250 ~~own motion or~~ upon petition or complaint, that repairs or  
 1251 improvements to, or changes in, any telecommunications facility  
 1252 ought reasonably to be made, or that any additions or extensions  
 1253 should reasonably be made to any telecommunications facility, in  
 1254 order to promote the security or convenience of the public or  
 1255 employees or in order to secure adequate service or facilities  
 1256 for basic local telecommunications services consistent with the  
 1257 requirements set forth in this chapter, the commission shall  
 1258 make and serve an order directing that such repairs,  
 1259 improvements, changes, additions, or extensions be made in the

CS/CS/HB 7209

2010

1260 manner to be specified in the order. This section authorizes the  
1261 commission to impose only those requirements that it is  
1262 otherwise authorized to impose under this chapter.

1263 Section 31. Subsections (1) and (2) of section 364.183,  
1264 Florida Statutes, are amended to read:

1265 364.183 Access to company records.—

1266 (1) The commission and the office shall have access to all  
1267 records of a telecommunications company that are reasonably  
1268 necessary for the disposition of matters within the commission's  
1269 jurisdiction. The commission and the office shall also have  
1270 access to those records of a local exchange telecommunications  
1271 company's affiliated companies, including its parent company,  
1272 that are reasonably necessary for the disposition of any matter  
1273 concerning an affiliated transaction or a claim of  
1274 anticompetitive behavior including claims of cross-subsidization  
1275 and predatory pricing. Both the commission and the office may  
1276 require a telecommunications company to file records, reports or  
1277 other data directly related to matters within the commission's  
1278 jurisdiction in the form specified in the request ~~by the~~  
1279 ~~commission~~ and may require such company to retain such  
1280 information for a designated period of time. Upon request of the  
1281 company or other person, any records received by the commission  
1282 or the office which are claimed by the company or other person  
1283 to be proprietary confidential business information shall be  
1284 kept confidential and shall be exempt from s. 119.07(1) and s.  
1285 24(a), Art. I of the State Constitution. The authority of the  
1286 commission to access records under this section is granted  
1287 subject to the limitations set forth in s. 350.011(3) and (4).

CS/CS/HB 7209

2010

1288 (2) Discovery in any docket or proceeding before the  
1289 commission shall be in the manner provided for in Rule 1.280 of  
1290 the Florida Rules of Civil Procedure. Upon a showing by a  
1291 company or other person and a finding by the commission that  
1292 discovery will require the disclosure of proprietary  
1293 confidential business information, the commission shall issue an  
1294 appropriate protective order designating the manner for handling  
1295 such information during the course of the proceeding and for  
1296 protecting such information from disclosure outside the  
1297 proceeding. Such proprietary confidential business information  
1298 shall be exempt from s. 119.07(1). Any records provided pursuant  
1299 to a discovery request for which proprietary confidential  
1300 business information status is requested shall be treated by the  
1301 commission, the Office of Regulatory Staff, ~~and~~ the Office of  
1302 the Public Counsel, and any other party subject to the public  
1303 records law as confidential and shall be exempt from s.  
1304 119.07(1), pending a formal ruling on such request by the  
1305 commission or the return of the records to the person providing  
1306 the records. Any record which has been determined to be  
1307 proprietary confidential business information and is not entered  
1308 into the official record of the proceeding shall be returned to  
1309 the person providing the record within 60 days after the final  
1310 order, unless the final order is appealed. If the final order is  
1311 appealed, any such record shall be returned within 30 days after  
1312 the decision on appeal. The commission shall adopt the necessary  
1313 rules to implement this subsection.

1314 Section 32. Section 364.185, Florida Statutes, is amended  
1315 to read:

CS/CS/HB 7209

2010

1316           364.185 Investigations and inspections; power of office  
 1317 ~~commission~~.—The office ~~commission~~ or its duly authorized  
 1318 representatives may during all reasonable hours enter upon any  
 1319 premises occupied by any telecommunications company and may set  
 1320 up and use thereon all necessary apparatus and appliances for  
 1321 the purpose of making investigations, inspections, examinations,  
 1322 and tests and exercising any power conferred by this chapter or  
 1323 chapter 350; however, the telecommunications company shall be  
 1324 notified of and be represented at the making of such  
 1325 investigations, inspections, examinations, and tests. The  
 1326 requirement to provide prior notification and representation  
 1327 shall not be applicable to the onsite field inspection of  
 1328 equipment used to provide telecommunications services to the  
 1329 transient public, including the facilities of call aggregators.

1330           Section 33. Subsections (2) and (4) of section 364.335,  
 1331 Florida Statutes, are amended to read:

1332           364.335 Application for certificate.—

1333           (2) If the commission grants the requested certificate,  
 1334 any person who would be substantially affected by the requested  
 1335 certification may, within 21 days after the granting of such  
 1336 certificate, file a written objection requesting a proceeding  
 1337 pursuant to ss. 120.569 and 120.57. The commission may, upon  
 1338 petition of the office ~~on its own motion~~, institute a proceeding  
 1339 under ss. 120.569 and 120.57 to determine whether the grant of  
 1340 such certificate is in the public interest. The commission shall  
 1341 order such proceeding conducted in or near the territory applied  
 1342 for, if feasible. If any person requests a public hearing on the  
 1343 application, such hearing shall, if feasible, be held in or near



1344 the territory applied for, and the transcript of the public  
 1345 hearing and any material submitted at or prior to the hearing  
 1346 shall be considered part of the record of the application and  
 1347 any proceeding related to the application.

1348 (4) Except as provided in s. 364.33, revocation,  
 1349 suspension, transfer, or amendment of a certificate shall be  
 1350 subject to the provisions of this section; except that, when the  
 1351 commission institutes a proceeding upon petition of the office  
 1352 ~~initiates the action~~, the commission shall furnish notice to the  
 1353 appropriate local government and to the Public Counsel.

1354 Section 34. Subsection (10) of section 364.3376, Florida  
 1355 Statutes, is amended to read:

1356 364.3376 Operator services.—

1357 (10) The office ~~commission~~ shall conduct an effective  
 1358 program of random, no-notice compliance investigations of the  
 1359 operator services providers and call aggregators operating  
 1360 within the state. When the office ~~commission~~ finds a blocking  
 1361 violation, it shall notify the commission and provide  
 1362 information to assist the commission in determining ~~determine~~  
 1363 whether the blocking is the responsibility of the call  
 1364 aggregator or the operator services provider. The commission ~~and~~  
 1365 may fine the responsible party in accordance with s. 364.285.  
 1366 Upon the failure of the responsible party to correct a violation  
 1367 within a mandatory time limit established by the commission or  
 1368 upon a proven pattern of intentional blocking, the commission  
 1369 shall order the discontinuance of the call aggregator's  
 1370 telephone service or revoke the operator services provider's  
 1371 certificate, as applicable.

CS/CS/HB 7209

2010

1372 Section 35. Subsection (3) of section 364.3381, Florida  
 1373 Statutes, is amended to read:

1374 364.3381 Cross-subsidization.—

1375 (3) The commission shall have continuing oversight  
 1376 jurisdiction over cross-subsidization, predatory pricing, or  
 1377 other similar anticompetitive behavior and may investigate, upon  
 1378 petition or complaint ~~or on its own motion~~, allegations of such  
 1379 practices.

1380 Section 36. Section 364.37, Florida Statutes, is amended  
 1381 to read:

1382 364.37 Controversy concerning territory to be served;  
 1383 powers of commission.—If any person in constructing or extending  
 1384 his or her telecommunications facility unreasonably interferes  
 1385 or is about to unreasonably interfere with any  
 1386 telecommunications facility or service of any other person, or  
 1387 if a controversy arises between any two or more persons with  
 1388 respect to the territory professed to be served by each, the  
 1389 commission, upon petition of the office or ~~on its own initiative~~  
 1390 ~~or on~~ complaint of any person claiming to be adversely affected,  
 1391 may make such order and prescribe such terms and conditions with  
 1392 respect thereto as are just and reasonable.

1393 Section 37. Subsection (4) is added to section 366.02,  
 1394 Florida Statutes, to read:

1395 366.02 Definitions.—As used in this chapter:

1396 (4) "Office" means the Office of Regulatory Staff.

1397 Section 38. Subsections (6), (9), and (11) of section  
 1398 366.05, Florida Statutes, are amended to read:

1399 366.05 Powers.—

1400           (6) The commission or the office, if designated by the  
 1401 commission to conduct testing, may purchase materials,  
 1402 apparatus, and standard measuring instruments for such  
 1403 examination and tests.

1404           (9) Both the commission and the office may require the  
 1405 filing of reports and other data by a public utility or its  
 1406 affiliated companies, including its parent company, regarding  
 1407 transactions, or allocations of common costs, among the utility  
 1408 and such affiliated companies. Both the commission and the  
 1409 office may also require such reports or other data necessary to  
 1410 ensure that a utility's ratepayers do not subsidize nonutility  
 1411 activities. The authority of the commission to access records  
 1412 under this subsection is granted subject to the limitations set  
 1413 forth in s. 350.011(3) and (4).

1414           (11) The office may ~~commission has the authority to~~ assess  
 1415 a public utility for reasonable travel costs associated with  
 1416 reviewing the records of the public utility and its affiliates  
 1417 when such records are kept out of state. The public utility may  
 1418 bring the records back into the state for review.

1419           Section 39. Subsections (2) and (3) of section 366.06,  
 1420 Florida Statutes, are amended to read:

1421           366.06 Rates; procedure for fixing and changing.—

1422           (2) Whenever the commission finds, upon request made ~~or~~  
 1423 ~~upon its own motion,~~ that the rates demanded, charged, or  
 1424 collected by any public utility for public utility service, or  
 1425 that the rules, regulations, or practices of any public utility  
 1426 affecting such rates, are unjust, unreasonable, unjustly  
 1427 discriminatory, or in violation of law; that such rates are

1428 insufficient to yield reasonable compensation for the services  
 1429 rendered; that such rates yield excessive compensation for  
 1430 services rendered; or that such service is inadequate or cannot  
 1431 be obtained, the commission shall order and hold a public  
 1432 hearing, giving notice to the public and to the public utility,  
 1433 and shall thereafter determine just and reasonable rates to be  
 1434 thereafter charged for such service and promulgate rules and  
 1435 regulations affecting equipment, facilities, and service to be  
 1436 thereafter installed, furnished, and used.

1437 (3) Pending a final order by the commission in any rate  
 1438 proceeding under this section, the commission may withhold  
 1439 consent to the operation of all or any portion of the new rate  
 1440 schedules, delivering to the utility requesting such increase,  
 1441 within 60 days, a reason or written statement of good cause for  
 1442 withholding its consent. Such consent shall not be withheld for  
 1443 a period longer than 8 months from the date of filing the new  
 1444 schedules. The new rates or any portion not consented to shall  
 1445 go into effect under bond or corporate undertaking at the end of  
 1446 such period, but the commission shall, by order, require such  
 1447 public utility to keep accurate account in detail of all amounts  
 1448 received by reason of such increase, specifying by whom and in  
 1449 whose behalf such amounts were paid and, upon completion of  
 1450 hearing and final decision in such proceeding, shall by further  
 1451 order require such public utility to refund with interest at a  
 1452 fair rate, to be determined by the commission in such manner as  
 1453 it may direct, such portion of the increased rate or charge as  
 1454 by its decision shall be found not justified. Any portion of  
 1455 such refund not thus refunded to patrons or customers of the

1456 public utility shall be refunded or disposed of by the public  
1457 utility as the commission may direct; however, no such funds  
1458 shall accrue to the benefit of the public utility. The  
1459 commission shall take final commission action in the docket and  
1460 enter its final order within 12 months of the commencement date  
1461 for final agency action. As used in this subsection, the  
1462 "commencement date for final agency action" means the date upon  
1463 which it has been determined by the commission or its designee  
1464 that the utility has filed with the clerk the minimum filing  
1465 requirements as established by rule of the commission. Within 30  
1466 days after receipt of the application, rate request, or other  
1467 written document for which the commencement date for final  
1468 agency action is to be established, the commission or its  
1469 designee shall either determine the commencement date for final  
1470 agency action or issue a statement of deficiencies to the  
1471 applicant, specifically listing why said applicant has failed to  
1472 meet the minimum filing requirements. Such statement of  
1473 deficiencies shall be binding upon the commission to the extent  
1474 that, once the deficiencies in the statement are satisfied, the  
1475 commencement date for final agency action shall be promptly  
1476 established as provided herein. Thereafter, within 15 days after  
1477 the applicant indicates to the commission that it believes that  
1478 it has met the minimum filing requirements, the commission or  
1479 its designee shall either determine the commencement date for  
1480 final agency action or specifically enumerate in writing why the  
1481 requirements have not been met, in which case this procedure  
1482 shall be repeated until the commencement date for final agency  
1483 action is established. When the commission initiates a

CS/CS/HB 7209

2010

1484 proceeding upon a request made by a person other than the  
 1485 utility, the commencement date for final agency action shall be  
 1486 the date upon which the order initiating the proceeding is  
 1487 issued.

1488 Section 40. Section 366.07, Florida Statutes, is amended  
 1489 to read:

1490 366.07 Rates; adjustment.—Whenever the commission, after  
 1491 public hearing either upon petition of the office ~~its own motion~~  
 1492 or upon complaint, shall find the rates, rentals, charges or  
 1493 classifications, or any of them, proposed, demanded, observed,  
 1494 charged or collected by any public utility for any service, or  
 1495 in connection therewith, or the rules, regulations,  
 1496 measurements, practices or contracts, or any of them, relating  
 1497 thereto, are unjust, unreasonable, insufficient, excessive, or  
 1498 unjustly discriminatory or preferential, or in anywise in  
 1499 violation of law, or any service is inadequate or cannot be  
 1500 obtained, the commission shall determine and by order fix the  
 1501 fair and reasonable rates, rentals, charges or classifications,  
 1502 and reasonable rules, regulations, measurements, practices,  
 1503 contracts or service, to be imposed, observed, furnished or  
 1504 followed in the future.

1505 Section 41. Subsections (1) and (3) of section 366.071,  
 1506 Florida Statutes, are amended to read:

1507 366.071 Interim rates; procedure.—

1508 (1) The commission may, during any proceeding for a change  
 1509 of rates, ~~upon its own motion, or~~ upon petition from any party,  
 1510 or by a tariff filing of a public utility, authorize the  
 1511 collection of interim rates until the effective date of the

CS/CS/HB 7209

2010

1512 final order. Such interim rates may be based upon a test period  
 1513 different from the test period used in the request for permanent  
 1514 rate relief. To establish a prima facie entitlement for interim  
 1515 relief, ~~the commission,~~ the petitioning party, or the public  
 1516 utility shall demonstrate that the public utility is earning  
 1517 outside the range of reasonableness on rate of return calculated  
 1518 in accordance with subsection (5).

1519 (3) In granting such relief, the commission may, in an  
 1520 expedited hearing but within 60 days of the commencement of the  
 1521 proceeding, upon petition ~~or upon its own motion,~~ preclude the  
 1522 recovery of any extraordinary or imprudently incurred  
 1523 expenditures or, for good cause shown, increase the amount of  
 1524 the bond or corporate undertaking.

1525 Section 42. Subsection (1) of section 366.076, Florida  
 1526 Statutes, is amended to read:

1527 366.076 Limited proceedings; rules on subsequent  
 1528 adjustments.—

1529 (1) Upon petition ~~or its own motion,~~ the commission may  
 1530 conduct a limited proceeding to consider and act upon any matter  
 1531 within its jurisdiction, including any matter the resolution of  
 1532 which requires a public utility to adjust its rates to consist  
 1533 with the provisions of this chapter. The commission shall  
 1534 determine the issues to be considered during such a proceeding  
 1535 and may grant or deny any request to expand the scope of the  
 1536 proceeding to include other matters.

1537 Section 43. Section 366.08, Florida Statutes, is amended  
 1538 to read:

1539 366.08 Investigations, inspections; power of office

CS/CS/HB 7209

2010

1540 ~~commission.~~—The office ~~commission~~ or its duly authorized  
 1541 representatives may during all reasonable hours enter upon any  
 1542 premises occupied by any public utility and may set up and use  
 1543 thereon all necessary apparatus and appliances for the purpose  
 1544 of making investigations, inspections, examinations and tests  
 1545 and exercising any power conferred by this chapter or chapter  
 1546 350; however provided, such public utility shall have the right  
 1547 to be notified of and be represented at the making of such  
 1548 investigations, inspections, examinations and tests.

1549 Section 44. Subsections (1) and (2) of section 366.093,  
 1550 Florida Statutes, are amended to read:

1551 366.093 Public utility records; confidentiality.—

1552 (1) The commission and the office shall ~~continue to~~ have  
 1553 reasonable access to all public utility records and records of  
 1554 the utility's affiliated companies, including its parent  
 1555 company, regarding transactions or cost allocations among the  
 1556 utility and such affiliated companies, and such records  
 1557 necessary to ensure that a utility's ratepayers do not subsidize  
 1558 nonutility activities. Upon request of the public utility or  
 1559 other person, any records received by the commission or the  
 1560 office which are shown and found by the commission to be  
 1561 proprietary confidential business information shall be kept  
 1562 confidential and shall be exempt from s. 119.07(1). The  
 1563 authority of the commission to access records under this section  
 1564 is granted subject to the limitations set forth in s. 350.011(3)  
 1565 and (4).

1566 (2) Discovery in any docket or proceeding before the  
 1567 commission shall be in the manner provided for in Rule 1.280 of



CS/CS/HB 7209

2010

1568 the Florida Rules of Civil Procedure. Information which affects  
1569 a utility's rates or cost of service shall be considered  
1570 relevant for purposes of discovery in any docket or proceeding  
1571 where the utility's rates or cost of service are at issue. The  
1572 commission shall determine whether information requested in  
1573 discovery affects a utility's rates or cost of service. Upon a  
1574 showing by a utility or other person and a finding by the  
1575 commission that discovery will require the disclosure of  
1576 proprietary confidential business information, the commission  
1577 shall issue appropriate protective orders designating the manner  
1578 for handling such information during the course of the  
1579 proceeding and for protecting such information from disclosure  
1580 outside the proceeding. Such proprietary confidential business  
1581 information shall be exempt from s. 119.07(1). Any records  
1582 provided pursuant to a discovery request for which proprietary  
1583 confidential business information status is requested shall be  
1584 treated by the commission, the Office of Regulatory Staff, ~~and~~  
1585 the office of the Public Counsel, and any other party subject to  
1586 the public records law as confidential and shall be exempt from  
1587 s. 119.07(1), pending a formal ruling on such request by the  
1588 commission or the return of the records to the person providing  
1589 the records. Any record which has been determined to be  
1590 proprietary confidential business information and is not entered  
1591 into the official record of the proceeding must be returned to  
1592 the person providing the record within 60 days after the final  
1593 order, unless the final order is appealed. If the final order is  
1594 appealed, any such record must be returned within 30 days after  
1595 the decision on appeal. The commission shall adopt the necessary

1596 rules to implement this provision.

1597 Section 45. Subsections (6) and (7) of section 366.82,  
 1598 Florida Statutes, are amended to read:

1599 366.82 Definition; goals; plans; programs; annual reports;  
 1600 energy audits.—

1601 (6) The commission may change the goals upon a showing of  
 1602 ~~for~~ reasonable cause. The time period to review the goals,  
 1603 however, shall not exceed 5 years. After the programs and plans  
 1604 to meet those goals are completed, the commission shall  
 1605 determine what further goals, programs, or plans are warranted  
 1606 and adopt them.

1607 (7) Following adoption of goals pursuant to subsections  
 1608 (2) and (3), the commission shall require each utility to  
 1609 develop plans and programs to meet the overall goals within its  
 1610 service area. Upon petition, the commission may require  
 1611 modifications or additions to a utility's plans and programs at  
 1612 any time it is shown to be in the public interest consistent  
 1613 with this act. In approving plans and programs for cost  
 1614 recovery, the commission shall have the flexibility to modify or  
 1615 deny plans or programs that would have an undue impact on the  
 1616 costs passed on to customers. If any plan or program includes  
 1617 loans, collection of loans, or similar banking functions by a  
 1618 utility and the plan is approved by the commission, the utility  
 1619 shall perform such functions, notwithstanding any other  
 1620 provision of the law. However, no utility shall be required to  
 1621 loan its funds for the purpose of purchasing or otherwise  
 1622 acquiring conservation measures or devices, but nothing herein  
 1623 shall prohibit or impair the administration or implementation of

CS/CS/HB 7209

2010

1624 a utility plan as submitted by a utility and approved by the  
1625 commission under this subsection. If the commission disapproves  
1626 a plan, it shall specify the reasons for disapproval, and the  
1627 utility whose plan is disapproved shall resubmit its modified  
1628 plan within 30 days. Prior approval by the commission shall be  
1629 required to modify or discontinue a plan, or part thereof, which  
1630 has been approved. If any utility has not implemented its  
1631 programs and is not substantially in compliance with the  
1632 provisions of its approved plan at any time, the commission  
1633 shall adopt programs required for that utility to achieve the  
1634 overall goals. Utility programs may include variations in rate  
1635 design, load control, cogeneration, residential energy  
1636 conservation subsidy, or any other measure within the  
1637 jurisdiction of the commission which the commission finds likely  
1638 to be effective; this provision shall not be construed to  
1639 preclude these measures in any plan or program.

1640 Section 46. Subsections (9) through (13) of section  
1641 367.021, Florida Statutes, are renumbered as subsections (10)  
1642 through (14), respectively, and a new subsection (9) is added to  
1643 that section to read:

1644 367.021 Definitions.—As used in this chapter, the  
1645 following words or terms shall have the meanings indicated:

1646 (9) "Office" means the Office of Regulatory Staff.

1647 Section 47. Paragraph (a) of subsection (1), paragraph (a)  
1648 of subsection (2), and subsections (4) and (6) of section  
1649 367.045, Florida Statutes, are amended to read:

1650 367.045 Certificate of authorization; application and  
1651 amendment procedures.—

1652 (1) When a utility applies for an initial certificate of  
 1653 authorization from the commission, it shall:

1654 (a) Provide notice of the actual application filed by mail  
 1655 or personal delivery to the governing body of the county or city  
 1656 affected, ~~to~~ the Public Counsel, the office, ~~to~~ the commission,  
 1657 and ~~to~~ such other persons and in such other manner as may be  
 1658 prescribed by commission rule;

1659 (2) A utility may not delete or extend its service outside  
 1660 the area described in its certificate of authorization until it  
 1661 has obtained an amended certificate of authorization from the  
 1662 commission. When a utility applies for an amended certificate of  
 1663 authorization from the commission, it shall:

1664 (a) Provide notice of the actual application filed by mail  
 1665 or personal delivery to the governing body of the county or  
 1666 municipality affected, ~~to~~ the Public Counsel, the office, ~~to~~ the  
 1667 commission, and ~~to~~ such other persons and in such other manner  
 1668 as may be prescribed by commission rule;

1669 (4) If, within 30 days after the last day that notice was  
 1670 mailed or published by the applicant, whichever is later, the  
 1671 commission receives from the Public Counsel, the office, a  
 1672 governmental authority, or a utility or consumer who would be  
 1673 substantially affected by the requested certification or  
 1674 amendment a written objection requesting a proceeding pursuant  
 1675 to ss. 120.569 and 120.57, the commission shall order such  
 1676 proceeding conducted in or near the area for which application  
 1677 is made, if feasible. Notwithstanding the ability to object on  
 1678 any other ground, a county or municipality has standing to  
 1679 object on the ground that the issuance or amendment of the

1680 certificate of authorization violates established local  
 1681 comprehensive plans developed pursuant to ss. 163.3161-163.3211.  
 1682 If a consumer, utility, or governmental authority or the office  
 1683 or Public Counsel requests a public hearing on the application,  
 1684 such hearing must, if feasible, be held in or near the area for  
 1685 which application is made; and the transcript of such hearing  
 1686 and any material submitted at or before the hearing must be  
 1687 considered as part of the record of the application and any  
 1688 proceeding related thereto.

1689 (6) The revocation, suspension, transfer, or amendment of  
 1690 a certificate of authorization is subject to the provisions of  
 1691 this section. The commission shall give 30 days' notice before  
 1692 it initiates any such action upon petition of the office.

1693 Section 48. Paragraph (a) of subsection (2) and paragraph  
 1694 (a) of subsection (4) of section 367.081, Florida Statutes, are  
 1695 amended to read:

1696 367.081 Rates; procedure for fixing and changing.—

1697 (2)(a)1. The commission shall, ~~either upon request or upon~~  
 1698 ~~its own motion~~, fix rates which are just, reasonable,  
 1699 compensatory, and not unfairly discriminatory. In every such  
 1700 proceeding, the commission shall consider the value and quality  
 1701 of the service and the cost of providing the service, which  
 1702 shall include, but not be limited to, debt interest; the  
 1703 requirements of the utility for working capital; maintenance,  
 1704 depreciation, tax, and operating expenses incurred in the  
 1705 operation of all property used and useful in the public service;  
 1706 and a fair return on the investment of the utility in property  
 1707 used and useful in the public service. However, the commission

1708 shall not allow the inclusion of contributions-in-aid-of-  
 1709 construction in the rate base of any utility during a rate  
 1710 proceeding, nor shall the commission impute prospective future  
 1711 contributions-in-aid-of-construction against the utility's  
 1712 investment in property used and useful in the public service;  
 1713 and accumulated depreciation on such contributions-in-aid-of-  
 1714 construction shall not be used to reduce the rate base, nor  
 1715 shall depreciation on such contributed assets be considered a  
 1716 cost of providing utility service.

1717 2. For purposes of such proceedings, the commission shall  
 1718 consider utility property, including land acquired or facilities  
 1719 constructed or to be constructed within a reasonable time in the  
 1720 future, not to exceed 24 months after the end of the historic  
 1721 base year used to set final rates unless a longer period is  
 1722 approved by the commission, to be used and useful in the public  
 1723 service, if:

1724 a. Such property is needed to serve current customers;

1725 b. Such property is needed to serve customers 5 years  
 1726 after the end of the test year used in the commission's final  
 1727 order on a rate request as provided in subsection (6) at a  
 1728 growth rate for equivalent residential connections not to exceed  
 1729 5 percent per year; or

1730 c. Such property is needed to serve customers more than 5  
 1731 full years after the end of the test year used in the  
 1732 commission's final order on a rate request as provided in  
 1733 subsection (6) only to the extent that the utility presents  
 1734 clear and convincing evidence to justify such consideration.

1735

1736 Notwithstanding the provisions of this paragraph, the commission  
 1737 shall approve rates for service which allow a utility to recover  
 1738 from customers the full amount of environmental compliance  
 1739 costs. Such rates may not include charges for allowances for  
 1740 funds prudently invested or similar charges. For purposes of  
 1741 this requirement, the term "environmental compliance costs"  
 1742 includes all reasonable expenses and fair return on any prudent  
 1743 investment incurred by a utility in complying with the  
 1744 requirements or conditions contained in any permitting,  
 1745 enforcement, or similar decisions of the United States  
 1746 Environmental Protection Agency, the Department of Environmental  
 1747 Protection, a water management district, or any other  
 1748 governmental entity with similar regulatory jurisdiction.

1749 (4) (a) On or before March 31 of each year, the commission  
 1750 by order shall establish a price increase or decrease index for  
 1751 major categories of operating costs incurred by utilities  
 1752 subject to its jurisdiction reflecting the percentage of  
 1753 increase or decrease in such costs from the most recent 12-month  
 1754 historical data available. The commission by rule shall  
 1755 establish the procedure to be used in determining such indices  
 1756 and a procedure by which a utility, without further action by  
 1757 the commission, or the commission upon petition of the office ~~on~~  
 1758 ~~its own motion~~, may implement an increase or decrease in its  
 1759 rates based upon the application of the indices to the amount of  
 1760 the major categories of operating costs incurred by the utility  
 1761 during the immediately preceding calendar year, except to the  
 1762 extent of any disallowances or adjustments for those expenses of  
 1763 that utility in its most recent rate proceeding before the

CS/CS/HB 7209

2010

1764 commission. The rules shall provide that, upon a finding of good  
1765 cause, including inadequate service, the commission may order a  
1766 utility to refrain from implementing a rate increase hereunder  
1767 unless implemented under a bond or corporate undertaking in the  
1768 same manner as interim rates may be implemented under s.  
1769 367.082. A utility may not use this procedure between the  
1770 official filing date of the rate proceeding and 1 year  
1771 thereafter, unless the case is completed or terminated at an  
1772 earlier date. A utility may not use this procedure to increase  
1773 any operating cost for which an adjustment has been or could be  
1774 made under paragraph (b), or to increase its rates by  
1775 application of a price index other than the most recent price  
1776 index authorized by the commission at the time of filing.

1777 Section 49. Subsections (1), (2), (4), (6), (8), and (10)  
1778 of section 367.0814, Florida Statutes, are amended to read:

1779 367.0814 Office of Regulatory Staff assistance in changing  
1780 rates and charges; interim rates.—

1781 (1) The commission may establish rules by which a water or  
1782 wastewater utility whose gross annual revenues are \$250,000 or  
1783 less may request and obtain ~~staff~~ assistance from the Office of  
1784 Regulatory Staff for the purpose of changing its rates and  
1785 charges. A utility may request such ~~staff~~ assistance by filing  
1786 an application with the commission. The gross annual revenue  
1787 level shall be adjusted on July 1, 2013, and every 5 years  
1788 thereafter, based on the most recent cumulative 5 years of the  
1789 price index established by the commission pursuant to s.  
1790 367.081(4)(a).

1791 (2) The official date of filing is established as 30 days



1792 after official acceptance by the office ~~commission~~ of the  
 1793 application. If a utility does not remit a fee, as provided by  
 1794 s. 367.145, within 30 days after acceptance, the commission may  
 1795 deny the application. The commission has 15 months after the  
 1796 official date of filing within which to issue a final order.

1797 (4) The commission may, upon petition from the office or  
 1798 ~~its own motion, or upon petition~~ from the regulated utility,  
 1799 authorize the collection of interim rates until the effective  
 1800 date of the final order. Such interim rates may be based upon a  
 1801 test period different from the test period used in the request  
 1802 for permanent rate relief. To establish interim relief, there  
 1803 must be a demonstration that the operation and maintenance  
 1804 expenses exceed the revenues of the regulated utility, and  
 1805 interim rates shall not exceed the level necessary to cover  
 1806 operation and maintenance expenses as defined by the Uniform  
 1807 System of Accounts for Class C Water and Wastewater Utilities  
 1808 (1996) of the National Association of Regulatory Utility  
 1809 Commissioners.

1810 (6) The utility, in requesting ~~staff~~ assistance from the  
 1811 office, shall agree to accept the final rates and charges  
 1812 approved by the commission unless the final rates and charges  
 1813 produce less revenue than the existing rates and charges.

1814 (8) If a utility becomes exempt from commission regulation  
 1815 or jurisdiction during the pendency of a ~~staff-assisted~~ rate  
 1816 case conducted pursuant to this section, the request for rate  
 1817 relief is deemed to have been withdrawn. Interim rates, if  
 1818 previously approved, shall become final. Temporary rates, if  
 1819 previously approved, must be discontinued, and any money

1820 collected pursuant to the temporary rates, or the difference  
 1821 between temporary and interim rates, if previously approved,  
 1822 must be refunded to the customers of the utility with interest.

1823 (10) The commission shall submit to the President of the  
 1824 Senate and the Speaker of the House of Representatives by  
 1825 January 1, 2013, and every 5 years thereafter, a report of the  
 1826 status of proceedings conducted under this section, including  
 1827 the number of utilities eligible to request ~~staff~~ assistance  
 1828 from the office, the number of proceedings conducted annually  
 1829 for the most recent 5-year period, the associated impact on  
 1830 commission and office resources, and any other information the  
 1831 commission deems appropriate. The commission shall request from  
 1832 the office any information necessary to complete this report.

1833 Section 50. Subsection (6) of section 367.0817, Florida  
 1834 Statutes, is amended to read:

1835 367.0817 Reuse projects.—

1836 (6) After the reuse project is placed in service, the  
 1837 commission, upon ~~by~~ petition ~~or on its own motion~~, may initiate  
 1838 a proceeding to true-up the costs of the reuse project and the  
 1839 resulting rates.

1840 Section 51. Subsections (1) and (3) of section 367.082,  
 1841 Florida Statutes, are amended to read:

1842 367.082 Interim rates; procedure.—

1843 (1) The commission may, during any proceeding for a change  
 1844 of rates, ~~upon its own motion~~, upon petition from any party, or  
 1845 by a tariff filing of a utility or a regulated company,  
 1846 authorize the collection of interim rates until the effective  
 1847 date of the final order. Such interim rates may be based upon a

1848 test period different from the test period used in the request  
 1849 for permanent rate relief. Upon application by a utility, the  
 1850 commission may use the projected test-year rate base when  
 1851 determining the interim rates or revenues subject to refund. To  
 1852 establish a prima facie entitlement for interim relief, ~~the~~  
 1853 ~~commission,~~ the petitioning party, the utility, or the regulated  
 1854 company shall demonstrate that the utility or the regulated  
 1855 company is earning outside the range of reasonableness on rate  
 1856 of return calculated in accordance with subsection (5).

1857 (3) In granting such relief, the commission may, in an  
 1858 expedited hearing but within 60 days of the commencement of the  
 1859 proceeding, upon petition ~~or upon its own motion,~~ preclude the  
 1860 recovery of any extraordinary or imprudently incurred  
 1861 expenditures or, for good cause shown, increase the amount of  
 1862 the bond, escrow, letter of credit, or corporate undertaking.

1863 Section 52. Subsection (1) of section 367.0822, Florida  
 1864 Statutes, is amended to read:

1865 367.0822 Limited proceedings.—

1866 (1) Upon petition ~~or by its own motion,~~ the commission may  
 1867 conduct limited proceedings to consider, and act upon, any  
 1868 matter within its jurisdiction, including any matter the  
 1869 resolution of which requires a utility to adjust its rates. The  
 1870 commission shall determine the issues to be considered during  
 1871 such a proceeding and may grant or deny any request to expand  
 1872 the scope of the proceeding to include other related matters.  
 1873 However, unless the issue of rate of return is specifically  
 1874 addressed in the limited proceeding, the commission shall not  
 1875 adjust rates if the effect of the adjustment would be to change

1876 the last authorized rate of return.

1877 Section 53. Section 367.083, Florida Statutes, is amended  
1878 to read:

1879 367.083 Determination of official date of filing.—Within  
1880 30 days after receipt of an application, rate request, or other  
1881 written document for which an official date of filing is to be  
1882 established, the commission or its designee shall either  
1883 determine the official date of filing or issue a statement of  
1884 deficiencies to the applicant, specifically listing why said  
1885 applicant has failed to meet the minimum filing requirements.  
1886 Such statement of deficiencies shall be binding upon the  
1887 commission to the extent that, once the deficiencies in the  
1888 statement are satisfied, the official date of filing shall be  
1889 promptly established as provided herein. Thereafter, within 20  
1890 days after the applicant indicates to the commission that it  
1891 believes that it has met the minimum filing requirements, the  
1892 commission or its designee shall either determine the official  
1893 date of filing or issue another statement of deficiencies,  
1894 specifically listing why the requirements have not been met, in  
1895 which case this procedure shall be repeated until the applicant  
1896 meets the minimum filing requirements and the official date of  
1897 filing is established. When the commission initiates a  
1898 proceeding upon request made by a person other than the utility,  
1899 the official date of filing shall be the date upon which the  
1900 order initiating the proceeding is issued.

1901 Section 54. Subsection (1) of section 367.101, Florida  
1902 Statutes, is amended to read:

1903 367.101 Charges for service availability.—

CS/CS/HB 7209

2010

1904 (1) The commission shall set just and reasonable charges  
 1905 and conditions for service availability. The commission by rule  
 1906 may set standards for and levels of service-availability charges  
 1907 and service-availability conditions. Such charges and conditions  
 1908 shall be just and reasonable. The commission shall, upon request  
 1909 ~~or upon its own motion,~~ direct the office to investigate  
 1910 agreements or proposals for charges and conditions for service  
 1911 availability and report the results to the commission.

1912 Section 55. Paragraphs (i) and (k) of subsection (1) and  
 1913 subsection (2) of section 367.121, Florida Statutes, are amended  
 1914 to read:

1915 367.121 Powers of commission and office.—

1916 (1) In the exercise of its jurisdiction, the commission  
 1917 shall have power:

1918 (i) To require the filing of reports and other data by a  
 1919 public utility or its affiliated companies, including its parent  
 1920 company, regarding transactions or allocations of common costs,  
 1921 among the utility and such affiliated companies. The commission  
 1922 may also require such reports or other data necessary to ensure  
 1923 that a utility's ratepayers do not subsidize nonutility  
 1924 activities. The authority of the commission to access records  
 1925 under this paragraph is granted subject to the limitations set  
 1926 forth in s. 350.011(3) and (4).

1927 ~~(k) To assess a utility for reasonable travel costs~~  
 1928 ~~associated with reviewing the records of the utility and its~~  
 1929 ~~affiliates when such records are kept out of state. The utility~~  
 1930 ~~may bring the records back into the state for review.~~

1931 (2) (a) The office ~~commission~~ or its duly authorized

1932 representatives may, during all reasonable hours, enter upon any  
 1933 premises occupied by any utility and set up and use thereon any  
 1934 necessary apparatus and appliance for the purpose of making  
 1935 investigations, inspections, examinations, and tests and  
 1936 exercising any power conferred by this chapter. Such utility  
 1937 shall have the right to be notified of and be represented at the  
 1938 making of such investigations, inspections, examinations, and  
 1939 tests.

1940 (b) The office may assess a utility for reasonable travel  
 1941 costs associated with reviewing the records of the utility and  
 1942 its affiliates when such records are kept out of state. The  
 1943 utility may bring the records back into the state for review.

1944 Section 56. Subsections (3) and (4) of section 367.122,  
 1945 Florida Statutes, are amended to read:

1946 367.122 Examination and testing of meters.—

1947 (3) The commission shall establish reasonable fees to be  
 1948 paid for testing such meters on the request of the customers.  
 1949 Current utility customers or users may, at their discretion, pay  
 1950 the fee fixed by the commission at the time of the request or  
 1951 have the utility include the fee with their next regularly  
 1952 scheduled statement. However, the fee shall be paid by the  
 1953 utility and repaid to the customer or user if the meter is found  
 1954 defective or incorrect to the disadvantage of the customer or  
 1955 user in excess of the degree or amount of tolerance customarily  
 1956 allowed for such meters, or as may be provided for in rules and  
 1957 regulations of the commission. No fee may be charged for any  
 1958 such testing done by the commission or its representatives. The  
 1959 commission may designate the office to conduct testing on its

CS/CS/HB 7209

2010

1960 behalf.

1961 (4) The commission or the office, if designated by the  
 1962 commission to conduct testing, may purchase materials,  
 1963 apparatus, and standard measuring instruments for such  
 1964 examinations and tests.

1965 Section 57. Subsection (3) of section 367.145, Florida  
 1966 Statutes, is amended to read:

1967 367.145 Regulatory assessment and application fees.—

1968 (3) Fees collected by the commission pursuant to this  
 1969 section may only be used to cover the cost of the commission and  
 1970 the office in regulating water and wastewater systems. Fees  
 1971 collected by the commission pursuant to chapters 364 and 366 may  
 1972 not be used to pay the cost of regulating water and wastewater  
 1973 systems.

1974 Section 58. Subsections (1) and (2) of section 367.156,  
 1975 Florida Statutes, are amended to read:

1976 367.156 Public utility records; confidentiality.—

1977 (1) The commission and the office shall ~~continue to~~ have  
 1978 reasonable access to all utility records and records of  
 1979 affiliated companies, including its parent company, regarding  
 1980 transactions or cost allocations among the utility and such  
 1981 affiliated companies, and such records necessary to ensure that  
 1982 a utility's ratepayers do not subsidize nonutility activities.  
 1983 Upon request of the utility or any other person, any records  
 1984 received by the commission or the office which are shown and  
 1985 found by the commission to be proprietary confidential business  
 1986 information shall be kept confidential and shall be exempt from  
 1987 s. 119.07(1). The authority of the commission to access records

1988 | under this section is granted subject to the limitations set  
 1989 | forth in s. 350.011(3) and (4).

1990 | (2) Discovery in any docket or proceeding before the  
 1991 | commission shall be in the manner provided for in Rule 1.280 of  
 1992 | the Florida Rules of Civil Procedure. Information which affects  
 1993 | a utility's rates or cost of service shall be considered  
 1994 | relevant for purposes of discovery in any docket or proceeding  
 1995 | where the utility's rates or cost of service are at issue. The  
 1996 | commission shall determine whether information requested in  
 1997 | discovery affects a utility's rates or cost of service. Upon  
 1998 | showing by a utility or other person and a finding by the  
 1999 | commission that discovery will require the disclosure of  
 2000 | proprietary confidential business information, the commission  
 2001 | shall issue appropriate protective orders designating the manner  
 2002 | for handling such information during the course of the  
 2003 | proceeding and for protecting such information from disclosure  
 2004 | outside the proceeding. Such proprietary confidential business  
 2005 | information shall be exempt from s. 119.07(1). Any records  
 2006 | provided pursuant to a discovery request for which proprietary  
 2007 | confidential business information status is requested shall be  
 2008 | treated by the commission, the Office of Regulatory Staff, and  
 2009 | the Office of the Public Counsel, and any other party subject to  
 2010 | the public records act as confidential and shall be exempt from  
 2011 | s. 119.07(1), pending a formal ruling on such request by the  
 2012 | commission or the return of the records to the person providing  
 2013 | the records. Any record which has been determined to be  
 2014 | proprietary confidential business information and is not entered  
 2015 | into the official record of the proceeding must be returned to



CS/CS/HB 7209

2010

2016 the person providing the record within 60 days after the final  
 2017 order, unless the final order is appealed. If the final order is  
 2018 appealed, any such record must be returned within 30 days after  
 2019 the decision on appeal. The commission shall adopt the necessary  
 2020 rules to implement this provision.

2021 Section 59. Subsection (5) of section 367.171, Florida  
 2022 Statutes, is amended to read:

2023 367.171 Effectiveness of this chapter.—

2024 (5) When a utility becomes subject to regulation by a  
 2025 county, all cases in which the utility is a party then pending  
 2026 before the commission, or in any court by appeal from any order  
 2027 of the commission, shall remain within the jurisdiction of the  
 2028 commission or court until disposed of in accordance with the law  
 2029 in effect on the day such case was filed by any party with the  
 2030 commission or initiated by the commission upon the petition of  
 2031 any party, whether or not the parties or the subject of any such  
 2032 case relates to a utility in a county wherein this chapter no  
 2033 longer applies.

2034 Section 60. Subsection (4) is added to section 368.05,  
 2035 Florida Statutes, to read:

2036 368.05 Commission jurisdiction; rules.—

2037 (4) The commission may not, on its own motion, initiate  
 2038 any proceeding under this part. The authority of the commission  
 2039 to access records under this section is granted subject to the  
 2040 limitations set forth in s. 350.011(3) and (4).

2041 Section 61. Subsections (2) and (3) of section 368.061,  
 2042 Florida Statutes, are amended to read:

2043 368.061 Penalty.—

2044 (2) Any such civil penalty may be compromised by the  
 2045 commission ~~commissioners~~. In determining the amount of such  
 2046 penalty or the amount agreed upon in compromise, the  
 2047 appropriateness of such penalty to the size of the business of  
 2048 the person charged, the gravity of the violation, and the good  
 2049 faith of the person charged in attempting to achieve compliance  
 2050 after notification of a violation shall be considered. Each  
 2051 penalty shall be a lien upon the real and personal property of  
 2052 said persons and enforceable by the commission as statutory  
 2053 liens under chapter 85, the proceeds of which shall be deposited  
 2054 in the general revenue fund of the state.

2055 (3) The commission ~~commissioners~~ may, upon petition at  
 2056 ~~their discretion~~, cause to be instituted in any court of  
 2057 competent jurisdiction in this state proceedings for injunction  
 2058 against any person subject to the provisions of this part to  
 2059 compel the observance of the provisions of this part or any  
 2060 rule, regulation, or requirement of the commission made  
 2061 thereunder.

2062 Section 62. Subsections (5) and (6) of section 368.103,  
 2063 Florida Statutes, are renumbered as subsections (6) and (7),  
 2064 respectively, and a new subsection (5) is added to that section  
 2065 to read:

2066 368.103 Definitions.—As used in ss. 368.101-368.112, the  
 2067 term:

2068 (5) "Office" means the Office of Regulatory Staff.

2069 Section 63. Subsection (2) of section 368.106, Florida  
 2070 Statutes, is amended to read:

2071 368.106 Statement of intent to increase rates; major

CS/CS/HB 7209

2010

2072 changes; hearing; suspension of rate schedules; determination of  
 2073 rate level.—

2074 (2) Except when a rate is deemed just and reasonable  
 2075 pursuant to s. 368.105(3), if there is filed with the commission  
 2076 an initial rate, or a change or modification in any rate in  
 2077 effect, the commission shall, on complaint by any person whose  
 2078 substantial interests are affected by the rate, or may, upon  
 2079 petition by the office ~~on its own motion~~, at any time before  
 2080 such rate would have taken effect, order a hearing pursuant to  
 2081 ss. 120.569 and 120.57 to determine whether the rate is just and  
 2082 reasonable.

2083 Section 64. Section 368.107, Florida Statutes, is amended  
 2084 to read:

2085 368.107 Unreasonable or violative existing rates and  
 2086 services.—If the commission, after reasonable notice and  
 2087 hearing, upon petition by the office ~~on its own motion~~ or  
 2088 written complaint by any person who has a substantial interest,  
 2089 finds that any rate or service filed with the commission,  
 2090 including any rate filed pursuant to s. 368.105(3), whether or  
 2091 not being demanded, observed, charged, or collected by any  
 2092 natural gas transmission company for any service is unjust,  
 2093 unreasonable, or unduly discriminatory or preferential, or in  
 2094 any way in violation of any provision of law, the commission  
 2095 shall determine the just and reasonable rates, including maximum  
 2096 or minimum rates and services, to be thereafter observed and in  
 2097 force, and shall fix the same by order to be served on the  
 2098 natural gas transmission company. Those rates and services shall  
 2099 constitute the legal rates and services of the natural gas

2100 transmission company until changed as provided by ss. 368.101-  
 2101 368.112.

2102 Section 65. Subsections (1) and (2) of section 368.108,  
 2103 Florida Statutes, are amended to read:

2104 368.108 Confidentiality; discovery.-

2105 (1) The commission and the office shall ~~continue to~~ have  
 2106 reasonable access to all natural gas transmission company  
 2107 records and records of the natural gas transmission company's  
 2108 affiliated companies, including its parent company, regarding  
 2109 transactions or cost allocations among the natural gas  
 2110 transmission company and such affiliated companies, and such  
 2111 records necessary to ensure that a natural gas transmission  
 2112 company's ratepayers do not subsidize unregulated activities.  
 2113 Upon request of the natural gas transmission company or other  
 2114 person, any records received by the commission or the office  
 2115 which are shown and found by the commission to be proprietary  
 2116 confidential business information shall be confidential and  
 2117 exempt from s. 119.07(1). The authority of the commission to  
 2118 access records under this section is granted subject to the  
 2119 limitations set forth in s. 350.011(3) and (4).

2120 (2) Discovery in any docket or proceeding before the  
 2121 commission shall be in the manner provided for in Rule 1.280 of  
 2122 the Florida Rules of Civil Procedure. Information which affects  
 2123 a natural gas transmission company's rates or cost of service  
 2124 shall be considered relevant for purposes of discovery in any  
 2125 docket or proceeding where the natural gas transmission  
 2126 company's rates or cost of service are at issue. The commission  
 2127 shall determine whether information requested in discovery

CS/CS/HB 7209

2010

2128 affects a natural gas transmission company's rates or cost of  
 2129 service. Upon a showing by a natural gas transmission company or  
 2130 other person and a finding by the commission that discovery will  
 2131 require the disclosure of proprietary confidential business  
 2132 information, the commission shall issue appropriate protective  
 2133 orders designating the manner for handling such information  
 2134 during the course of the proceeding and for protecting such  
 2135 information from disclosure outside the proceeding. Such  
 2136 proprietary confidential business information shall be exempt  
 2137 from s. 119.07(1). Any records provided pursuant to a discovery  
 2138 request for which proprietary confidential business information  
 2139 status is requested shall be treated by the commission, the  
 2140 Office of Regulatory Staff, ~~and~~ the Office of the Public  
 2141 Counsel, and any other party subject to the public records law  
 2142 as confidential and shall be exempt from s. 119.07(1) pending a  
 2143 formal ruling on such request by the commission or the return of  
 2144 the records to the person providing the records. Any record  
 2145 which has been determined to be proprietary confidential  
 2146 business information and is not entered into the official record  
 2147 of the proceeding must be returned to the person providing the  
 2148 record within 60 days after the final order, unless the final  
 2149 order is appealed. If the final order is appealed, any such  
 2150 record must be returned within 30 days after the decision on  
 2151 appeal. The commission shall adopt the necessary rules to  
 2152 implement this provision.

2153 Section 66. Section 368.1085, Florida Statutes, is amended  
 2154 to read:

2155 368.1085 Travel costs.—The office ~~commission~~ has the

CS/CS/HB 7209

2010

2156 authority to assess a natural gas transmission company for  
 2157 reasonable travel costs associated with reviewing the records of  
 2158 the natural gas transmission company and its affiliates when  
 2159 such records are kept out of state. The natural gas transmission  
 2160 company may bring the records back into the state for review.

2161 Section 67. Section 368.109, Florida Statutes, is amended  
 2162 to read:

2163 368.109 Regulatory assessment fees.—Each natural gas  
 2164 transmission company operating under ss. 368.101-368.112, for  
 2165 all or any part of the preceding 6-month period, shall pay to  
 2166 the commission, within 30 days following the end of each 6-month  
 2167 period, a fee that may not exceed 0.25 percent annually of its  
 2168 gross operating revenues derived from intrastate business  
 2169 excluding sales for resales to natural gas transmission  
 2170 companies, public utilities that supply gas, municipal gas  
 2171 utilities, and gas districts. The fee shall, to the extent  
 2172 practicable, be related to the cost of the commission and the  
 2173 office in regulating such natural gas transmission companies.

2174 Section 68. Subsection (1) of section 403.519, Florida  
 2175 Statutes, is amended to read:

2176 403.519 Exclusive forum for determination of need.—

2177 (1) On request by an applicant or upon petition by the  
 2178 Office of Regulatory Staff ~~on its own motion~~, the commission  
 2179 shall begin a proceeding to determine the need for an electrical  
 2180 power plant subject to the Florida Electrical Power Plant Siting  
 2181 Act.

2182 Section 69. Paragraph (a) of subsection (1) of section  
 2183 403.537, Florida Statutes, is amended to read:

CS/CS/HB 7209

2010

2184 403.537 Determination of need for transmission line;  
2185 powers and duties.—

2186 (1) (a) Upon request by an applicant or upon petition by  
2187 the Office of Regulatory Staff ~~its own motion~~, the Florida  
2188 Public Service Commission shall schedule a public hearing, after  
2189 notice, to determine the need for a transmission line regulated  
2190 by the Florida Electric Transmission Line Siting Act, ss.  
2191 403.52-403.5365. The notice shall be published at least 21 days  
2192 before the date set for the hearing and shall be published by  
2193 the applicant in at least one-quarter page size notice in  
2194 newspapers of general circulation, and by the commission in the  
2195 manner specified in chapter 120, by giving notice to counties  
2196 and regional planning councils in whose jurisdiction the  
2197 transmission line could be placed, and by giving notice to any  
2198 persons who have requested to be placed on the mailing list of  
2199 the commission for this purpose. Within 21 days after receipt of  
2200 a request for determination by an applicant, the commission  
2201 shall set a date for the hearing. The hearing shall be held  
2202 pursuant to s. 350.01 within 45 days after the filing of the  
2203 request, and a decision shall be rendered within 60 days after  
2204 such filing.

2205 Section 70. Paragraph (a) of subsection (1) of section  
2206 403.9422, Florida Statutes, is amended to read:

2207 403.9422 Determination of need for natural gas  
2208 transmission pipeline; powers and duties.—

2209 (1) (a) Upon request by an applicant or upon petition by  
2210 the Office of Regulatory Staff ~~its own motion~~, the commission  
2211 shall schedule a public hearing, after notice, to determine the

2212 need for a natural gas transmission pipeline regulated by ss.  
 2213 403.9401-403.9425. Such notice shall be published at least 45  
 2214 days before the date set for the hearing and shall be published  
 2215 in at least one-quarter page size in newspapers of general  
 2216 circulation and in the Florida Administrative Weekly, by giving  
 2217 notice to counties and regional planning councils in whose  
 2218 jurisdiction the natural gas transmission pipeline could be  
 2219 placed, and by giving notice to any persons who have requested  
 2220 to be placed on the mailing list of the commission for this  
 2221 purpose. Within 21 days after receipt of a request for  
 2222 determination by an applicant, the commission shall set a date  
 2223 for the hearing. The hearing shall be held pursuant to s. 350.01  
 2224 within 75 days after the filing of the request, and a decision  
 2225 shall be rendered within 90 days after such filing.

2226 Section 71. Subsection (6) of section 196.012, Florida  
 2227 Statutes, is amended to read:

2228 196.012 Definitions.—For the purpose of this chapter, the  
 2229 following terms are defined as follows, except where the context  
 2230 clearly indicates otherwise:

2231 (6) Governmental, municipal, or public purpose or function  
 2232 shall be deemed to be served or performed when the lessee under  
 2233 any leasehold interest created in property of the United States,  
 2234 the state or any of its political subdivisions, or any  
 2235 municipality, agency, special district, authority, or other  
 2236 public body corporate of the state is demonstrated to perform a  
 2237 function or serve a governmental purpose which could properly be  
 2238 performed or served by an appropriate governmental unit or which  
 2239 is demonstrated to perform a function or serve a purpose which



CS/CS/HB 7209

2010

2240 would otherwise be a valid subject for the allocation of public  
 2241 funds. For purposes of the preceding sentence, an activity  
 2242 undertaken by a lessee which is permitted under the terms of its  
 2243 lease of real property designated as an aviation area on an  
 2244 airport layout plan which has been approved by the Federal  
 2245 Aviation Administration and which real property is used for the  
 2246 administration, operation, business offices and activities  
 2247 related specifically thereto in connection with the conduct of  
 2248 an aircraft full service fixed base operation which provides  
 2249 goods and services to the general aviation public in the  
 2250 promotion of air commerce shall be deemed an activity which  
 2251 serves a governmental, municipal, or public purpose or function.  
 2252 Any activity undertaken by a lessee which is permitted under the  
 2253 terms of its lease of real property designated as a public  
 2254 airport as defined in s. 332.004(14) by municipalities,  
 2255 agencies, special districts, authorities, or other public bodies  
 2256 corporate and public bodies politic of the state, a spaceport as  
 2257 defined in s. 331.303, or which is located in a deepwater port  
 2258 identified in s. 403.021(9)(b) and owned by one of the foregoing  
 2259 governmental units, subject to a leasehold or other possessory  
 2260 interest of a nongovernmental lessee that is deemed to perform  
 2261 an aviation, airport, aerospace, maritime, or port purpose or  
 2262 operation shall be deemed an activity that serves a  
 2263 governmental, municipal, or public purpose. The use by a lessee,  
 2264 licensee, or management company of real property or a portion  
 2265 thereof as a convention center, visitor center, sports facility  
 2266 with permanent seating, concert hall, arena, stadium, park, or  
 2267 beach is deemed a use that serves a governmental, municipal, or

CS/CS/HB 7209

2010

2268 public purpose or function when access to the property is open  
2269 to the general public with or without a charge for admission. If  
2270 property deeded to a municipality by the United States is  
2271 subject to a requirement that the Federal Government, through a  
2272 schedule established by the Secretary of the Interior, determine  
2273 that the property is being maintained for public historic  
2274 preservation, park, or recreational purposes and if those  
2275 conditions are not met the property will revert back to the  
2276 Federal Government, then such property shall be deemed to serve  
2277 a municipal or public purpose. The term "governmental purpose"  
2278 also includes a direct use of property on federal lands in  
2279 connection with the Federal Government's Space Exploration  
2280 Program or spaceport activities as defined in s. 212.02(22).  
2281 Real property and tangible personal property owned by the  
2282 Federal Government or Space Florida and used for defense and  
2283 space exploration purposes or which is put to a use in support  
2284 thereof shall be deemed to perform an essential national  
2285 governmental purpose and shall be exempt. "Owned by the lessee"  
2286 as used in this chapter does not include personal property,  
2287 buildings, or other real property improvements used for the  
2288 administration, operation, business offices and activities  
2289 related specifically thereto in connection with the conduct of  
2290 an aircraft full service fixed based operation which provides  
2291 goods and services to the general aviation public in the  
2292 promotion of air commerce provided that the real property is  
2293 designated as an aviation area on an airport layout plan  
2294 approved by the Federal Aviation Administration. For purposes of  
2295 determination of "ownership," buildings and other real property

CS/CS/HB 7209

2010

2296 improvements which will revert to the airport authority or other  
 2297 governmental unit upon expiration of the term of the lease shall  
 2298 be deemed "owned" by the governmental unit and not the lessee.  
 2299 Providing two-way telecommunications services to the public for  
 2300 hire by the use of a telecommunications facility, as defined in  
 2301 s. 364.02 (16) ~~(15)~~, and for which a certificate is required under  
 2302 chapter 364 does not constitute an exempt use for purposes of s.  
 2303 196.199, unless the telecommunications services are provided by  
 2304 the operator of a public-use airport, as defined in s. 332.004,  
 2305 for the operator's provision of telecommunications services for  
 2306 the airport or its tenants, concessionaires, or licensees, or  
 2307 unless the telecommunications services are provided by a public  
 2308 hospital.

2309 Section 72. Paragraph (b) of subsection (1) of section  
 2310 199.183, Florida Statutes, is amended to read:

2311 199.183 Taxpayers exempt from nonrecurring taxes.—

2312 (1) Intangible personal property owned by this state or  
 2313 any of its political subdivisions or municipalities shall be  
 2314 exempt from taxation under this chapter. This exemption does not  
 2315 apply to:

2316 (b) Property related to the provision of two-way  
 2317 telecommunications services to the public for hire by the use of  
 2318 a telecommunications facility, as defined in s. 364.02 (16) ~~(15)~~,  
 2319 and for which a certificate is required under chapter 364, when  
 2320 the service is provided by any county, municipality, or other  
 2321 political subdivision of the state. Any immunity of any  
 2322 political subdivision of the state or other entity of local  
 2323 government from taxation of the property used to provide

2324 telecommunication services that is taxed as a result of this  
 2325 paragraph is hereby waived. However, intangible personal  
 2326 property related to the provision of telecommunications services  
 2327 provided by the operator of a public-use airport, as defined in  
 2328 s. 332.004, for the operator's provision of telecommunications  
 2329 services for the airport or its tenants, concessionaires, or  
 2330 licensees, and intangible personal property related to the  
 2331 provision of telecommunications services provided by a public  
 2332 hospital, are exempt from taxation under this chapter.

2333 Section 73. Subsection (6) of section 212.08, Florida  
 2334 Statutes, is amended to read:

2335 212.08 Sales, rental, use, consumption, distribution, and  
 2336 storage tax; specified exemptions.—The sale at retail, the  
 2337 rental, the use, the consumption, the distribution, and the  
 2338 storage to be used or consumed in this state of the following  
 2339 are hereby specifically exempt from the tax imposed by this  
 2340 chapter.

2341 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—There are also  
 2342 exempt from the tax imposed by this chapter sales made to the  
 2343 United States Government, a state, or any county, municipality,  
 2344 or political subdivision of a state when payment is made  
 2345 directly to the dealer by the governmental entity. This  
 2346 exemption shall not inure to any transaction otherwise taxable  
 2347 under this chapter when payment is made by a government employee  
 2348 by any means, including, but not limited to, cash, check, or  
 2349 credit card when that employee is subsequently reimbursed by the  
 2350 governmental entity. This exemption does not include sales of  
 2351 tangible personal property made to contractors employed either

CS/CS/HB 7209

2010

2352 directly or as agents of any such government or political  
2353 subdivision thereof when such tangible personal property goes  
2354 into or becomes a part of public works owned by such government  
2355 or political subdivision. A determination whether a particular  
2356 transaction is properly characterized as an exempt sale to a  
2357 government entity or a taxable sale to a contractor shall be  
2358 based on the substance of the transaction rather than the form  
2359 in which the transaction is cast. The department shall adopt  
2360 rules that give special consideration to factors that govern the  
2361 status of the tangible personal property before its affixation  
2362 to real property. In developing these rules, assumption of the  
2363 risk of damage or loss is of paramount consideration in the  
2364 determination. This exemption does not include sales, rental,  
2365 use, consumption, or storage for use in any political  
2366 subdivision or municipality in this state of machines and  
2367 equipment and parts and accessories therefor used in the  
2368 generation, transmission, or distribution of electrical energy  
2369 by systems owned and operated by a political subdivision in this  
2370 state for transmission or distribution expansion. Likewise  
2371 exempt are charges for services rendered by radio and television  
2372 stations, including line charges, talent fees, or license fees  
2373 and charges for films, videotapes, and transcriptions used in  
2374 producing radio or television broadcasts. The exemption provided  
2375 in this subsection does not include sales, rental, use,  
2376 consumption, or storage for use in any political subdivision or  
2377 municipality in this state of machines and equipment and parts  
2378 and accessories therefor used in providing two-way  
2379 telecommunications services to the public for hire by the use of

2380 a telecommunications facility, as defined in s. 364.02 (16) ~~(15)~~,  
 2381 and for which a certificate is required under chapter 364, which  
 2382 facility is owned and operated by any county, municipality, or  
 2383 other political subdivision of the state. Any immunity of any  
 2384 political subdivision of the state or other entity of local  
 2385 government from taxation of the property used to provide  
 2386 telecommunication services that is taxed as a result of this  
 2387 section is hereby waived. However, the exemption provided in  
 2388 this subsection includes transactions taxable under this chapter  
 2389 which are for use by the operator of a public-use airport, as  
 2390 defined in s. 332.004, in providing such telecommunications  
 2391 services for the airport or its tenants, concessionaires, or  
 2392 licensees, or which are for use by a public hospital for the  
 2393 provision of such telecommunications services.

2394 Section 74. Paragraph (b) of subsection (2) of section  
 2395 288.0655, Florida Statutes, is amended to read:

2396 288.0655 Rural Infrastructure Fund.—

2397 (2)

2398 (b) To facilitate access of rural communities and rural  
 2399 areas of critical economic concern as defined by the Rural  
 2400 Economic Development Initiative to infrastructure funding  
 2401 programs of the Federal Government, such as those offered by the  
 2402 United States Department of Agriculture and the United States  
 2403 Department of Commerce, and state programs, including those  
 2404 offered by Rural Economic Development Initiative agencies, and  
 2405 to facilitate local government or private infrastructure funding  
 2406 efforts, the office may award grants for up to 30 percent of the  
 2407 total infrastructure project cost. If an application for funding

CS/CS/HB 7209

2010

2408 is for a catalyst site, as defined in s. 288.0656, the office  
2409 may award grants for up to 40 percent of the total  
2410 infrastructure project cost. Eligible projects must be related  
2411 to specific job-creation or job-retention opportunities.  
2412 Eligible projects may also include improving any inadequate  
2413 infrastructure that has resulted in regulatory action that  
2414 prohibits economic or community growth or reducing the costs to  
2415 community users of proposed infrastructure improvements that  
2416 exceed such costs in comparable communities. Eligible uses of  
2417 funds shall include improvements to public infrastructure for  
2418 industrial or commercial sites and upgrades to or development of  
2419 public tourism infrastructure. Authorized infrastructure may  
2420 include the following public or public-private partnership  
2421 facilities: storm water systems; telecommunications facilities;  
2422 broadband facilities; roads or other remedies to transportation  
2423 impediments; nature-based tourism facilities; or other physical  
2424 requirements necessary to facilitate tourism, trade, and  
2425 economic development activities in the community. Authorized  
2426 infrastructure may also include publicly or privately owned  
2427 self-powered nature-based tourism facilities, publicly owned  
2428 telecommunications facilities, and broadband facilities, and  
2429 additions to the distribution facilities of the existing natural  
2430 gas utility as defined in s. 366.04(3)(c), the existing electric  
2431 utility as defined in s. 366.02, or the existing water or  
2432 wastewater utility as defined in s. 367.021(13)~~(12)~~, or any  
2433 other existing water or wastewater facility, which owns a gas or  
2434 electric distribution system or a water or wastewater system in  
2435 this state where:

2436 1. A contribution-in-aid of construction is required to  
 2437 serve public or public-private partnership facilities under the  
 2438 tariffs of any natural gas, electric, water, or wastewater  
 2439 utility as defined herein; and

2440 2. Such utilities as defined herein are willing and able  
 2441 to provide such service.

2442 Section 75. Subsection (8) of section 290.007, Florida  
 2443 Statutes, is amended to read:

2444 290.007 State incentives available in enterprise zones.—  
 2445 The following incentives are provided by the state to encourage  
 2446 the revitalization of enterprise zones:

2447 (8) Notwithstanding any law to the contrary, the Public  
 2448 Service Commission may allow public utilities and  
 2449 telecommunications companies to grant discounts of up to 50  
 2450 percent on tariffed rates for services to small businesses  
 2451 located in an enterprise zone designated pursuant to s.  
 2452 290.0065. Such discounts may be granted for a period not to  
 2453 exceed 5 years. For purposes of this subsection, the term  
 2454 "public utility" has the same meaning as in s. 366.02(1) and the  
 2455 term "telecommunications company" has the same meaning as in s.  
 2456 364.02 (15) ~~(14)~~.

2457 Section 76. Subsection (4) of section 364.602, Florida  
 2458 Statutes, is amended to read:

2459 364.602 Definitions.—For purposes of this part:

2460 (4) "Originating party" means any person, firm,  
 2461 corporation, or other entity, including a telecommunications  
 2462 company or a billing clearinghouse, that provides any  
 2463 telecommunications service or information service to a customer



CS/CS/HB 7209

2010

2464 or bills a customer through a billing party, except the term  
 2465 "originating party" does not include any entity specifically  
 2466 exempted from the definition of "telecommunications company" as  
 2467 provided in s. 364.02 (15) ~~(14)~~.

2468 Section 77. Subsection (5) of section 489.103, Florida  
 2469 Statutes, is amended to read:

2470 489.103 Exemptions.—This part does not apply to:

2471 (5) Public utilities, including special gas districts as  
 2472 defined in chapter 189, telecommunications companies as defined  
 2473 in s. 364.02 (15) ~~(14)~~, and natural gas transmission companies as  
 2474 defined in s. 368.103(4), on construction, maintenance, and  
 2475 development work performed by their employees, which work,  
 2476 including, but not limited to, work on bridges, roads, streets,  
 2477 highways, or railroads, is incidental to their business. The  
 2478 board shall define, by rule, the term "incidental to their  
 2479 business" for purposes of this subsection.

2480 Section 78. Section 624.105, Florida Statutes, is amended  
 2481 to read:

2482 624.105 Waiver of customer liability.—Any regulated  
 2483 company as defined in s. 350.111, any electric utility as  
 2484 defined in s. 366.02(2), any utility as defined in s.  
 2485 367.021 (13) ~~(12)~~ or s. 367.022(2) and (7), and any provider of  
 2486 communications services as defined in s. 202.11(2) may charge  
 2487 for and include an optional waiver of liability provision in  
 2488 their customer contracts under which the entity agrees to waive  
 2489 all or a portion of the customer's liability for service from  
 2490 the entity for a defined period in the event of the customer's  
 2491 call to active military service, death, disability, involuntary

CS/CS/HB 7209

2010

2492 unemployment, qualification for family leave, or similar  
2493 qualifying event or condition. Such provisions may not be  
2494 effective in the customer's contract with the entity unless  
2495 affirmatively elected by the customer. No such provision shall  
2496 constitute insurance so long as the provision is a contract  
2497 between the entity and its customer.

2498 Section 79. This act shall take effect October 1, 2010.