

By Senator Fasano

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

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

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

77

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

79

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

82 350.041 Commissioners; standards of conduct.—

83 (2) STANDARDS OF CONDUCT.—

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

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

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

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

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

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

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

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

115 2. "Prohibited communication" means any communication
116 regarding a docketed matter which, if written, is not served on

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117 all the parties to a proceeding, and, if oral, is made without
118 adequate notice to the parties and an opportunity for them to be
119 present and heard.

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

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

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

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

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

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

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

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

169 (3)-(2) The provisions of This section does shall not
170 prohibit an individual residential ratepayer from communicating
171 with a commissioner or the commissioner's direct reporting staff
172 if, provided that the ratepayer is representing only himself or
173 herself, without compensation.

174 (4) The restrictions on prohibited communications as

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

187 (5)-(3) This section does ~~shall~~ not apply to oral
188 communications or discussions in scheduled and noticed open
189 public meetings of educational programs or of a conference or
190 other meeting of an association of regulatory agencies. This
191 exemption does not authorize a commissioner or the
192 commissioner's direct reporting staff to discuss matters with
193 any party to a proceeding or legally interested person.

194 (6)-(4) If a commissioner or the commissioner's direct
195 reporting staff knowingly receives a prohibited ~~an ex parte~~
196 communication as provided in subsection (1) which is related
197 relative to a proceeding ~~other than as set forth in subsection~~
198 ~~(1)~~, to which the commissioner ~~he or she~~ is assigned, he or she
199 must place on the record of the proceeding copies of all written
200 communications received, all written responses to the
201 communications, and a memorandum stating the substance of all
202 oral communications received and all oral responses made. The
203 commissioner or the commissioner's direct reporting staff, ~~and~~

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

214 ~~(7)-(5)~~ Any individual who makes a prohibited ~~an ex parte~~
215 communication shall submit to the commission a written statement
216 describing the nature of the ~~such~~ communication, to include the
217 name of the person making the communication, the name of each
218 ~~the~~ commissioner or member of the commissioner's direct
219 reporting staff ~~or commissioners~~ receiving the communication,
220 copies of all written communications made, all written responses
221 to such communications, and a memorandum stating the substance
222 of all oral communications received and all oral responses made.
223 The commission shall place on the record of a proceeding all
224 such communications.

225 ~~(8)-(6)~~ Any commissioner or member of the commissioner's
226 direct reporting staff who knowingly fails to place on the
227 record any such communications, in violation of this ~~the~~
228 section, within 15 days after ~~of~~ the date of the ~~such~~
229 communication is subject to removal or dismissal and may be
230 assessed a civil penalty not to exceed \$5,000.

231 ~~(9)-(7)~~(a) It is ~~shall be~~ the duty of the Commission on
232 Ethics to receive and investigate sworn complaints of violations

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233 of this section pursuant to the procedures contained in ss.
234 112.322-112.3241.

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

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

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

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262 calendar year.

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

265 350.0605 Former commissioners and employees; representation
266 of clients or industry before commission; lobbying the
267 legislative or executive branch.—

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

273 (b) Any former commissioner of the Public Service
274 Commission is prohibited from lobbying the legislative or
275 executive branch of state government on behalf of any client or
276 any industry regulated by the commission for a period of 4 years
277 following his or her termination of service on the commission.
278 This subsection applies only to commissioners who are appointed
279 or reappointed on or after July 1, 2011.

280 (2) Any former member of the commissioner's direct
281 reporting staff is prohibited from appearing before the
282 commission representing any client or industry regulated by the
283 Public Service Commission, or from lobbying the legislative or
284 executive branch of state government on behalf of any client or
285 any industry regulated by the commission, for a period of 4
286 years following his or her termination of employment with the
287 commission. This subsection applies only to a member of the
288 commissioner's direct reporting staff who is hired with the
289 commission on or after July 1, 2011. For purposes of this
290 section, the term "commissioner's direct reporting staff" means

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

297 (3) For a period of 4 years following termination of
298 service on the commission or employment with the commission, a
299 former commissioner or former member of the commissioner's
300 direct reporting staff may not accept employment by or
301 compensation from a business entity that, directly or
302 indirectly, owns or controls a public utility regulated by the
303 commission; from a public utility regulated by the commission;
304 from a business entity that, directly or indirectly, is an
305 affiliate or subsidiary of a public utility regulated by the
306 commission or is an actual business competitor of a local
307 exchange company or public utility regulated by the commission
308 and that is otherwise exempt from regulation by the commission
309 under ss. 364.02(14) and 366.02(1); or from a business entity or
310 trade association that has been a party to a commission
311 proceeding within the 4 years preceding the former
312 commissioner's termination of service or the former
313 commissioner's direct reporting staff member's termination of
314 employment with the commission. This subsection applies only to
315 former commissioners and members of the commissioner's direct
316 reporting staff who are appointed or reappointed to or hired
317 with the commission on or after July 1, 2011.

318 ~~(3) For a period of 2 years following termination of~~
319 ~~service on the commission, a former member may not accept~~

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320 ~~employment by or compensation from a business entity which,~~
321 ~~directly or indirectly, owns or controls a public utility~~
322 ~~regulated by the commission, from a public utility regulated by~~
323 ~~the commission, from a business entity which, directly or~~
324 ~~indirectly, is an affiliate or subsidiary of a public utility~~
325 ~~regulated by the commission or is an actual business competitor~~
326 ~~of a local exchange company or public utility regulated by the~~
327 ~~commission and is otherwise exempt from regulation by the~~
328 ~~commission under ss. 364.02(14) and 366.02(1), or from a~~
329 ~~business entity or trade association that has been a party to a~~
330 ~~commission proceeding within the 2 years preceding the member's~~
331 ~~termination of service on the commission. This subsection~~
332 ~~applies only to members of the Florida Public Service Commission~~
333 ~~who are appointed or reappointed after May 10, 1993.~~

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

336 350.061 Public Counsel; appointment; oath; restrictions on
337 Public Counsel and his or her employees.—

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

348 Section 5. This act shall take effect July 1, 2011.