

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7211 PCB ENUS 11-02 Organization and Standards of the Public Service

Commission

SPONSOR(S): State Affairs Committee, Energy & Utilities Subcommittee, Nehr and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee	15 Y, 0 N	Keating	Collins
1) State Affairs Committee	17 Y, 0 N, As CS	Keating	Hamby

SUMMARY ANALYSIS

The Florida Public Service Commission (PSC) came under intense scrutiny in recent years as a result of several allegations of unethical behavior. This string of allegations cast the PSC in a negative light, heightened public distrust of the agency, and created uncertainty in Florida's regulatory environment.

The bill addresses these concerns through the following reforms:

- Adopts certain provisions from the Code of Judicial Conduct as standards of conduct applicable to commissioners.
- Defines ex parte communications and prohibits commissioners and their direct staff from engaging in ex parte communications concerning substantive matters and certain procedural matters related to proposed agency action proceedings and formal proceedings under ss. 120.565, 120.569, or 120.57, F.S., or concerning the merits of any issue that he or she reasonably foresees will be filed with the PSC.
- Expands monetary penalties to apply to any individual who makes a prohibited ex parte communication and knowingly fails to comply with the reporting requirements of the law.
- Provides that persons involved in the selection of PSC commissioners, including the Governor and specified legislative members, may not attempt to sway the independent judgment of the commission by bringing pressure to bear upon a commissioner, an applicant to fill a vacancy on the commission, or a commission employee by threat or offer of reward in relation to the commissioner selection or confirmation process, and designates the Commission on Ethics to receive and investigate sworn complaints of violations.
- Provides that an individual commissioner may not demand or require any member of the PSC staff, other than the commissioner's direct staff, to develop, present, or pursue a particular opinion, position, or course of action in relation to a pending substantive matter, and designates the PSC's inspector general to receive and investigate complaints of violations.
- Establishes training and continuing education requirements, concerning substantive and ethical matters, for commissioners and PSC staff.
- Specifies the authority of the PSC to employ an executive director, a general counsel, and an inspector general, and specifies the authority of the executive director to serve as the agency head for certain purposes, such as personnel and procurement matters.
- Requires each person offering testimony in a PSC proceeding to disclose, at the time the testimony is offered, any financial or fiduciary relationship between the person and any party to the proceeding.

The bill transfers the Office of Public Counsel from the legislative branch to the Office of the Attorney General as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel is \$2.5 million and 16.5 full time positions from the General Revenue Fund for the 2010-2011 fiscal year.

The bill will have no fiscal impact on state or local governments and no economic impact on the private sector.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7211a.SAC

DATE: 4/8/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Role and Organization of the Florida Public Service Commission

The Florida Public Service Commission (PSC or commission) is an arm of the legislative branch of government.¹ The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.² In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.³

On its website,⁴ the PSC provides the following overview of its role:

The work of the Florida Public Service Commission is a balancing act. The Commission must balance the needs of a utility and its shareholders with the needs of consumers. Traditionally, the Commission achieved this goal by establishing exclusive utility service territories, regulating the rates and profits of a utility, and placing an affirmative obligation on the utility to provide service to all who requested it. For electric and water customers in the state, many of the Commission's traditional methods for achieving the balance continue today. Legislative action during the 1995 session to open up the local telephone market to increased competition, however, calls for the Commission to facilitate entry of new firms into the local telephone market, while at the same time ensuring that neither the new entrant nor the incumbent local exchange company is unfairly advantaged or disadvantaged. Section 364.01(4), F.S., calls for the Commission to exercise its jurisdiction to encourage and promote competition. The Commission's role in the increasingly competitive telephone industry remains one of balance.

In performing this role, the PSC conducts proceedings ranging from workshops and rulemaking to informal "proposed agency action" proceedings and formal evidentiary hearings. Although it is authorized to refer matters to the Division of Administrative Hearings (DOAH) for assignment to an administrative law judge (ALJ),⁵ the PSC is unique in that it conducts most of its own formal evidentiary hearings. In these hearings, commissioners rule on procedural matters, establish evidence of record, weigh the record evidence, and apply the law to the facts of the case. Thus, in conducting formal hearings, PSC commissioners essentially serve the role of administrative law judges. Unlike ALJs, however, commissioners have the authority to make the final findings of fact and conclusion of law. In proceedings at either DOAH or the PSC, parties and interested persons are prohibited from making ex parte communications with the decision maker concerning the merits of the proceeding.⁶

¹ Section 350.001, F.S.

² <http://www.psc.state.fl.us/about/overview.aspx#one>

³ *Id.* During 2009, the PSC regulated five investor-owned electric companies, seven investor-owned natural gas utilities, and more than 160 investor-owned water and/or wastewater utilities. The PSC also has competitive market oversight for more than 1,250 telecommunications companies in the state of Florida. While the PSC does not regulate the rates and service of publicly-owned, municipal or cooperative utilities, it does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations and planning, over 34 municipally-owned electric systems and 18 rural electric cooperatives. The PSC also has jurisdiction, with regard to territorial boundaries and safety, over 27 municipally-owned natural gas utilities and exercises safety authority over all electric and natural gas systems operating in the state.

⁴ *Id.*

⁵ Sections 350.125 and 120.569(2), F.S.

⁶ Sections 120.66(1), F.S., and 350.042(1), F.S.

The PSC is authorized to employ clerical, technical, and professional personnel reasonably necessary for the performance of its duties, including one or more court reporters.⁷ As set forth in its most recent Statement of Agency Organization & Operations, the PSC carries out its work primarily through two offices: the Office of the Executive Director and the Office of the General Counsel.⁸

The Office of the Executive Director is responsible for directing, planning, and administering the overall activities of the commission staff with the exception of the Office of the General Counsel. The Executive Director, who is selected by the commission, consults with and advises the commissioners on regulatory, internal management, and budgetary matters and acts as an interagency liaison. In addition, the Office of Executive Director oversees the technical divisions involved directly in the substantive issues within the PSC's jurisdiction.

The Office of the General Counsel provides legal counsel to the commission on all matters under its jurisdiction. This office also supervises the procedural and legal aspects of all cases before the commission. In conjunction with the appropriate technical staff, the office prepares recommendations to the commission and prepares written commission orders. The office is also responsible for defending commission orders on appeal, for defending commission rules challenged before the Division of Administrative Hearings, and for representing the commission before state and federal courts.

Under current PSC practice, the PSC selects an executive director and a general counsel by majority vote of the commission. Pursuant to s. 20.055, F.S., the chair of the commission is established as the agency head for purposes of selecting and terminating the agency's inspector general. In general, the commission, as a collegial body, serves as the agency head for all other purposes. The chair of the PSC serves as the chief administrative officer for the commission, distributing the workload and expediting the commission's calendar.⁹

Prior to 1979, three commissioners were elected to the PSC in a statewide election. In 1978, the Legislature changed the commission to a five-member board,¹⁰ with members appointed to staggered 4-year terms.¹¹ This structure remains today. A Chair is selected by majority vote of the commissioners to serve a two-year term.¹² The Chair is the chief administrative officer of the PSC, presiding at all hearings and conferences when present, setting PSC hearings, and performing those duties prescribed by law.¹³

Public Service Commissioners – Standards of Conduct

The PSC is required to perform its duties independently.¹⁴ Part III of Chapter 112, F.S., establishes a code of ethics for public officers and employees, which includes public service commissioners. Generally, this code prohibits public officers, including commissioners, from soliciting or accepting anything of value to influence a vote or official action, using their official position to secure a special benefit, disclosing or using non-public information for personal benefit, soliciting gifts from lobbyists, and soliciting an honorarium from anyone or accepting an honorarium from a lobbyist. This code also establishes restrictions on public officers, including commissioners, from doing business with one's own agency, having outside employment or contractual relationships that conflict with public duties, representing any party before one's agency for compensation for two years after leaving office, and employing relatives in the agency. Finally, this code requires that public officers, including commissioners, disclose voting conflicts when a vote would result in a special private gain or loss, file quarterly reports for gifts over \$100 from persons not lobbyists or relatives, file quarterly reports for receipt of honorarium-related expenses from lobbyists, and disclose certain financial interests.

⁷ Section 350.06, F.S.

⁸ *Florida Public Service Commission, Statement of Agency Organization & Operations*, February 2010.

<http://www.psc.state.fl.us/home/files/SAOO.pdf>

⁹ Section 350.01(5), F.S.

¹⁰ <http://www.psc.state.fl.us/about/overview.aspx#one>

¹¹ Section 350.01, F.S.

¹² *Id.*

¹³ *Id.* See also, <http://www.psc.state.fl.us/about/overview.aspx#one>

¹⁴ Section 350.001, F.S.

In addition to the provisions of part III of chapter 112, public service commissioners are subject to more stringent requirements in s. 350.041, F.S. In the event of a conflict between part III of chapter 112 and s. 350.041, F.S., the more restrictive provision applies.¹⁵ Section 350.041, F.S., provides the following standards of conduct:

- A commissioner may not accept anything from a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not accept anything from a party in a proceeding currently pending before the commission.
- A commissioner may not accept any form of employment with, or engage in any business activity with, a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not have any financial interest in a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility), except for shares in a mutual fund.
- A commissioner may not serve as the representative of, or serve as an executive officer or employee of, a political party; campaign for any candidate for public office; or become a candidate for any public office without first resigning.
- A commissioner, during his or her term of office, may not make any public comment on the merits of a formal proceeding in which a person's substantial interests are determined.
- A commissioner may not conduct himself or herself in an unprofessional manner during the performance of official duties.
- A commissioner must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.
- A Commissioner may not directly or indirectly, through staff or other means, solicit anything of value from a regulated public utility, an affiliate or subsidiary of the utility, or any party appearing in a proceeding considered by the Commission in the last 2 years.

Ex Parte Communications

Commissioners are prohibited from engaging in certain ex parte communications with persons who are “legally interested in a proceeding” before the commission.¹⁶ This prohibition applies only to communications concerning “the merits, threat, or offer of reward” in a proceeding, and thus does not include discussions on procedural issues.¹⁷ This prohibition does not preclude ex parte communications in all proceedings: rulemaking, declaratory statements, workshops, and internal affairs meetings are specifically excluded.¹⁸ Thus, the prohibition applies to proceedings in which the substantial interests of a person are determined, including proposed agency action proceedings and formal hearings under ss. 120.569 or 120.57, F.S. This prohibition prohibits an individual from discussing ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days.¹⁹ The prohibition does not apply to each commissioner's personal aide and administrative assistant.²⁰ The law does not define ex parte communications.

If a commissioner receives a prohibited ex parte communication, he or she must: place on the record of the proceeding a copy of any written correspondence or a memo stating the substance of any oral communication; provide written notice to all parties to the proceeding; and provide all parties the opportunity to respond to the ex parte communication.²¹ The commissioner may choose to withdraw from the proceeding if he or she believes it is necessary to do so to eliminate the effect of having

¹⁵ Section 350.041(1), F.S.

¹⁶ Section 350.042(1), F.S. The law does not define “ex parte communications” for purposes of this section. The law also does not define what persons are “legally interested in a proceeding.”

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 350.042(4), F.S.

received the communication. Any individual other than a commissioner that makes a prohibited ex parte communication must submit to the PSC: a written statement describing the nature of the communication; copies of all written communications made and written responses received; and a memorandum stating the substance of all oral communications made and oral responses received. The PSC must place this information on the record of the relevant proceeding.²²

The penalties for failing to timely place a prohibited ex parte communication on the record depend on the party involved. A commissioner who fails to place the communication on the record within 15 days is subject to removal and a civil penalty of up to \$5,000.²³ Any other person who participated in the communication faces a 2-year ban on practice before the PSC.²⁴

Office of Public Counsel

The Office of Public Counsel was created by the Legislature in 1974, as an office of the Legislature. The Public Counsel represents the general public of Florida in proceedings before the PSC and in proceedings before counties that have elected to regulate private water and wastewater companies.²⁵ The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court.²⁶ The Public Counsel must perform his or her duties independently.²⁷

To perform its duties, the Public Counsel is granted the following specific powers in s. 350.0611, F.S.:

- To appear in, or petition to initiate, proceedings before the PSC or counties and advocate any position which he or she deems to be in the public interest, and to conduct discovery in such proceedings.
- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in such proceedings.
- To seek review of any determination, finding, or order of the commission or the counties in any proceeding in which he or she has participated as a party.
- To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions.
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission.

In a January 25, 2011, presentation to the Energy & Utilities Subcommittee, the Public Counsel provided examples of the types of cases that his office handles. These cases include proceedings involving utility base rates, charges for the recovery of nuclear power plant development costs, and other types of cost-recovery and pass-through charges for electric, natural gas, water, and wastewater utilities. The Office of Public Counsel also administers a portion of the Lifeline program that provides credits from the federal Universal Service Fund to certain low-income customers for local phone service.²⁸

In 2005, the Legislature created the Committee on Public Service Commission Oversight in s. 350.012, F.S. The committee, comprised of 12 members (6 Senate members appointed by the President of the Senate and 6 House members appointed by the Speaker of the House of Representatives), was created to appoint a public counsel and to screen persons nominated by the PSC Nominating Council for the Governor's consideration for appointment.²⁹

²² Section 350.042(5), F.S.

²³ Section 350.042(6), F.S.

²⁴ Section 350.042(7)(d), F.S.

²⁵ Section 350.0611, F.S.

²⁶ Section 350.061(1), F.S.

²⁷ *Id.*

²⁸ Section 364.10(3), F.S.

²⁹ Chapter 2005-132, L.O.F.

In 2008, the Legislature removed the committee's role in the public service commissioner selection process. The committee was renamed the Committee on Public Counsel Oversight.³⁰ The committee's primary duty is to appoint a Public Counsel, though it also may file a complaint with the Commission on Ethics alleging a violation of Chapter 350, F.S., by a commissioner, former commissioner, former commission employee, or member of the Public Service Commission Nominating Council.³¹ The Public Counsel serves at the pleasure of the Committee on Public Counsel Oversight, subject to biennial reconfirmation by the committee.³²

In addition to the Office of Public Counsel, the Attorney General often intervenes in high-profile utility rate-setting proceedings at the PSC to represent the citizens of Florida.

Effect of Proposed Changes

Role and Organization of the Florida Public Service Commission

The bill establishes the respective powers of the commission and its executive director and general counsel with respect to agency matters. The bill specifies that the commission must employ an executive director, a general counsel, and an inspector general. Each individual commissioner is authorized to employ a chief advisor and executive assistant to serve as the direct staff of the commissioner. These provisions appear to reflect existing practice within the agency, except that the bill places the responsibility to select an inspector general on the commission as a whole rather than only the chair.

The bill provides that the executive director selected by the commission is subject to confirmation by the Senate. The bill further provides that the executive director shall serve as the agency head for purposes of Chapters 110, F.S. (related to state employment), 112, F.S. (related to public officers and employees), 216, F.S. (related to planning and budgeting), 282, F.S. (related to information technology personnel), and 287, F.S. (related to procurement). The bill specifies that the executive director is responsible for employing clerical, technical, and professional personnel, including court reporters, reasonably necessary to assist the PSC in performing its duties. The bill grants the executive director sole authority with respect to employment, compensation, supervision, and direction of these personnel. Further, the bill specifies that the general counsel, in consultation with the executive director, is responsible for employing legal staff reasonably necessary to assist the PSC in performing its duties. These provisions appear generally to reflect agency practice, though they clearly specify the executive director's sole authority – distinct from the commission's authority – over agency personnel matters.

As a whole, these provisions may help ensure that the PSC's professional, technical, and legal staff provide unbiased and independent analysis and advice to the commission.

The bill provides that the commission, in exercising its jurisdiction, shall not establish or implement any policy that is contrary to or an expansion of the authority granted by the legislature. This language appears to restate but emphasize existing law with respect to the delegation of authority to an agency.

Public Service Commissioners – Standards of Conduct

The bill adopts new provisions into the standards of conduct applicable to commissioners. Specifically, the bill adds a statement of intent which provides:

Professional, impartial, and honorable commissioners are indispensable to the effective performance of the commission's duties. A commissioner shall maintain high standards

³⁰ Chapter 2008-227, L.O.F.

³¹ Section 350.012, F.S.

³² Section 350.061(1), F.S.

of conduct and shall personally observe those standards so that the integrity and impartiality of the commission may be preserved.

This provision is an adaptation of the first Canon of the Code of Judicial Conduct.³³

The bill adopts additional new standards, again adapted from the Code of Judicial Conduct, to reflect that they are being applied to public service commissioners rather than members of the judicial branch. These standards provide:

- The chair, or the presiding commissioner in the chair's absence, shall require order and decorum in commission proceedings.
- A commissioner shall be patient, dignified, and courteous to litigants, other commissioners, witnesses, lawyers, PSC staff, and others with whom the commissioner deals in an official capacity.
- A commissioner shall perform official duties without bias or prejudice.
- A commissioner shall not, with respect to parties or classes of parties, cases, controversies, or issues likely to come before the commission, make pledges, promises, or commitments that are inconsistent with the impartial performance of the commissioner's official duties.
- A commissioner shall not be swayed by partisan interests, public clamor, or fear of criticism.

Any alleged violation of these standards would continue to be accepted and investigated by the Commission on Ethics, with any findings and recommendations sent to the Governor and the PSC Nominating Council. The Governor would continue to have authority to enforce these findings.

Ex Parte Communications

The bill establishes a definition of "ex parte communication" as any communication that, if written or printed or in electronic form, is not served on all parties to a proceeding or, if oral, is made without adequate notice to the parties and an opportunity for the parties to be present and heard.

The bill extends the prohibition on ex parte communications to apply not just to commissioners but also to each commissioner's direct staff. This provision should ensure that the commission's direct staff, who currently are not subject to statutory limits on ex parte communications, do not serve, intentionally or unintentionally, as a conduit for ex parte communications to commissioners.

The bill extends the prohibition on ex parte communications to cover both the merits and procedural issues in pending proposed agency action proceedings, formal hearing proceedings under ss. 120.569 and 120.57, F.S., and proceedings on declaratory statements under s. 120.565, F.S. With respect to certain procedural matters, the bill allows ex parte communications only if the commissioner, or a member of the commissioner's direct staff, reasonably believes that no party will gain a procedural or tactical advantage and notifies other parties so that they have an opportunity to respond. This provision is adopted from the Code of Judicial Conduct applicable to judges.

The bill prohibits an individual from discussing ex parte with a commissioner, or a member of the commissioner's direct staff, the merits of any issue that the individual reasonably foresees will be filed with the commission. Current law limits these discussions to matters that an individual knows will be filed with the PSC within 90 days.

The bill authorizes up to a \$5,000 civil penalty for individuals, other than commissioners and their direct staff, who knowingly fail to comply with the ex parte laws. This is the same monetary penalty that commissioners and their staff are subject to.

³³ The Code of Judicial Conduct is established and may be amended by the Florida Supreme Court. Accordingly, adoption of the code solely by reference may constitute an unlawful delegation of legislative authority. The bill does not adopt the code solely by reference, instead adapting concepts from the code into statutory standards. Hence, the bill does not present a delegation issue.

Prohibited Influence on Commissioners and Staff

The bill creates a new provision of law which states that neither the Governor, the House Speaker, the Senate President, nor any member of the PSC Nominating Council may attempt to sway the independent judgment of the commission by bringing pressure to bear upon a commissioner, an applicant to fill a vacancy on the commission, or a commission employee by threat or offer of reward in relation to the nomination, appointment, or confirmation of a commissioner. The bill authorizes the Commission on Ethics to receive and investigate sworn complaints of violations.

The bill also creates new provisions which prohibit an individual commissioner from demanding or requiring any member of the commission staff, other than the commissioner's direct staff, to develop, present, or pursue a particular opinion, position, or course of action in relation to any substantive matter pending before the commission or a panel of commissioners. The bill indicates that the purpose of this provision is to ensure that each commissioner, as a member of a collegial body, is afforded the benefit of unbiased and independent analysis and advice from its professional and technical staff. The bill authorizes the PSC's inspector general to receive and investigate complaints of violations of this subsection. Violations of these provisions are treated as acts of malfeasance for purposes of Florida's Whistle-blower's Act, codified at ss. 112.3187-112.31895, F.S. The bill clarifies that the commission, as a collegial body, is not prohibited from directing its staff to pursue a course of action consistent with direction provided by the collegial body. Further, the bill clarifies that it does not prohibit an individual commissioner from any otherwise lawful communication with commission staff, including any expression of opinion, position, or concern regarding a matter within the jurisdiction of the commission.

Initial and Continuing Education Requirements

The bill establishes initial and continuing training and education requirements for commissioners. The bill requires that a person appointed to the commission must complete a comprehensive study course before voting on any matter. This course would cover substantive matters within the commission's jurisdiction, relevant aspects of administrative law, and standards of conduct. In addition, the bill requires annual ethics training for commissioners and PSC staff. The bill requires the executive director and general counsel to develop these training courses. The bill also requires that each commissioner complete at least 10 hours of continuing professional education each year related to substantive matters within the PSC's jurisdiction.

Testimony in Commission Proceedings

The bill creates provisions that require each person offering testimony in a commission proceeding to disclose, at the time the testimony is offered, any financial or fiduciary relationship between the person and any party to the proceeding. The bill provides that a determination by the commission that a person has knowingly violated this requirement constitutes agency action upon which a hearing may be sought under Chapter 120, F.S.

Public Counsel

The bill moves the Office of Public Counsel from the Legislature to the Attorney General's office. Because the Attorney General's office is authorized to intervene in actions affecting the citizens of Florida and has done so in numerous PSC proceedings, transfer of the Office of Public Counsel to the Attorney General's office should avoid the situation in which more than one state entity participates on behalf of the same client, i.e., Floridians.

To effect this change, the bill provides that the Public Counsel shall be appointed by, and serve at the pleasure of, the Attorney General. The bill also provides that the Attorney General may authorize the Public Counsel to employ personnel and retain experts. The bill provides that the Attorney General shall allocate salaries and expenses of the Public Counsel and his or her employees from funds appropriated by the Legislature. To reflect the transfer of the Office of Public Counsel out of the Legislature, the bill eliminates the Committee on Public Counsel Oversight through the repeal of s. 350.012, F.S.

The bill transfers the Office of Public Counsel from the legislative branch to the Office of the Attorney General as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel is \$2.5 million and 16.5 full time positions from the General Revenue Fund for the 2010-2011 fiscal year.

The bill amends s. 112.324(8)(a) and (c), F.S., concerning the proper authorities to take action on reports and findings of the Commission on Ethics, to reflect the transfer of the Office of Public Counsel from the legislative to the executive branch.

Miscellaneous Provisions

The bill repeals s. 350.121, F.S., related to commission inquiries. It appears that this provision has not been used in almost 20 years and that the investigatory powers set forth in the provision are largely duplicative of the PSC's authority to access records of regulated entities.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.055, F.S., relating to agency inspectors general.

Section 2. Amends s. 112.324, F.S., relating to procedures on complaints of ethics violations.

Section 3. Amends s. 350.001, F.S., providing legislative intent with respect to the Florida Public Service Commission (PSC).

Section 4. Repeals s. 350.012, F.S., relating to the Committee on Public Counsel Oversight.

Section 5. Amends s. 350.031, F.S., relating to the Florida Public Service Commission Nominating Council.

Section 6. Creates s. 350.035, F.S., relating to prohibited influence on PSC commissioners and staff.

Section 7. Amends s. 350.04, F.S., relating to training and continuing education of PSC commissioners.

Section 8. Amends s. 350.041, F.S., relating to PSC commissioner standards of conduct.

Section 9. Amends s. 350.042, F.S., relating to ex parte communications.

Section 10. Amends s. 350.06, F.S., relating to the PSC place of meeting, expenditures, and employment of personnel.

Section 11. Amends s. 350.061, F.S., relating to appointment of the Public Counsel.

Section 12. Amends s. 350.0613, F.S., relating to employees of the Public Counsel.

Section 13. Amends s. 350.0614, F.S., relating to compensation and expenses of the Public Counsel.

Section 14. Provides for a type two transfer of the Office of Public Counsel from the Legislature to the Office of the Attorney General.

Section 15. Repeals s. 350.121, F.S., relating to commission inquiries.

Section 16. Creates s. 350.122, F.S., relating to disclosure of certain affiliations upon providing testimony before the commission.

Section 17. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill transfers the Office of Public Counsel from the legislative branch to the Office of Attorney General as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel is \$2.5 million and 16.5 full time positions from the General Revenue Fund for the 2010-2011 fiscal year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 7, 2011, the State Affairs Committee adopted amendments to HB 7211 that have been incorporated into the committee substitute that is the subject of this analysis. These amendments:

- Established the PSC's executive director as the agency head for certain purposes.
- Made a conforming change to reflect the authority of the commission, as a collegial body, to select an inspector general.
- Clarified that all commissioners – not just newly appointed commissioners – are subject to continuing education requirements.
- Clarified that the bill prohibits certain officials involved in the selection and confirmation of commissioners from attempting to sway the independent judgment of the commission by bringing pressure to bear upon a commissioner, an applicant to fill a vacancy on the commission, or a commission employee by threat or offer of reward in relation to the nomination, appointment, or confirmation of a commissioner.