

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 definitions;  
12          prohibiting a commissioner or the commissioner's  
13          direct reporting staff from initiating, engaging in,  
14          or considering prohibited communications in any  
15          proceeding other than an undocketed workshop or an  
16          internal affairs meeting; prohibiting any individual  
17          from discussing any matter with a commissioner or the  
18          commissioner's direct reporting staff which the  
19          individual reasonably foresees will be filed with the  
20          commission; requiring that any communication between a  
21          commissioner or the commissioner's direct reporting  
22          staff and a representative of a utility be made  
23          available to the public; requiring that any  
24          communication be posted on the commission's website  
25          within a specified time after the communication is  
26          made or received; requiring that the commission post  
27          on its website a copy of written communications  
28          received by the commission; requiring that the  
29          commission prepare a written summary of certain

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30 communications and post such summary on its website  
31 within a specified time after the communication is  
32 made or received; requiring that notice be posted on  
33 the commission's website a minimum number of hours  
34 before the occurrence of any meeting, telephone  
35 conference call, or written communication between a  
36 commissioner or the commissioner's direct reporting  
37 staff; authorizing the Office of Public Counsel to  
38 participate in such communications for limited  
39 purposes; providing an exception for certain  
40 commission staff or industry representatives;  
41 providing that the restrictions on prohibited  
42 communications apply to communications made to or from  
43 the Governor, a member of the Cabinet, or a member of  
44 the Legislature; providing penalties for commissioners  
45 or members of a commissioner's direct reporting staff  
46 who fail to report certain communications; providing  
47 that a civil penalty may be assessed against the  
48 regulated entity represented by a person who makes a  
49 prohibited communication; amending s. 350.0605, F.S.;

50 prohibiting former commissioners and members of a  
51 commissioner's direct reporting staff from lobbying  
52 the legislative or executive branch of state  
53 government on behalf of any client or industry  
54 regulated by the commission for 4 years after  
55 termination of service or employment with the  
56 commission; defining the term "commissioner's direct  
57 reporting staff"; prohibiting any former  
58 commissioner's direct reporting staff from appearing

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

79

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

81

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

84 350.041 Commissioners; standards of conduct.—

85 (2) STANDARDS OF CONDUCT.—

86 (j) Each commissioner shall observe and abide by the Code  
87 of Judicial Conduct as adopted by the Supreme Court in docketed

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88 proceedings before the Public Service Commission. If any canon  
89 of the Code of Judicial Conduct is in direct conflict with a  
90 statutory provision that applies to the commissioners or the  
91 commission, the statutory provision controls. A commissioner who  
92 materially violates the Code of Judicial Conduct, excluding any  
93 canon preempted by a conflicting statutory provision, may be  
94 suspended or removed by the Governor.

95 Section 2. Section 350.042, Florida Statutes, is amended to  
96 read:

97 350.042 Prohibited ~~Ex parte~~ communications; communications  
98 with a commissioner or a commissioner's direct reporting staff.-

99 (1) For the purposes of this section, the term:

100 (a) "Commissioner's direct reporting staff" means a  
101 commissioner's chief advisor and executive assistant.

102 (b) "Legally interested person" means a party or his or her  
103 representative to a proceeding or a proceeding pending before  
104 the commission. The term also includes a corporation,  
105 partnership, limited liability company, elected or appointed  
106 official of state government, or other public or elected  
107 official who directly or indirectly has an interest in the  
108 commission's decision in the proceeding.

109 (c) "Prohibited communication" means any communication made  
110 by or directed to a commissioner or his or her direct reporting  
111 staff regarding a docketed matter or a proceeding pending before  
112 the commission which, if written, is not served on all the  
113 parties in the docketed matter, and if oral, is made without  
114 adequate notice to the parties and an opportunity for them to be  
115 present and heard when the communication is made.

116 (2) Proceedings before the commission shall be fair and its

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117 decisions may not be influenced by prohibited communications  
118 between commissioners and legally interested persons.

119 (a) The commission shall afford to every legally interested  
120 person in a proceeding or in a proceeding pending before the  
121 commission the full right to be heard according to law except as  
122 otherwise prohibited in this section.

123 (b) ~~(1)~~ A commissioner or the commissioner's direct  
124 reporting staff may not ~~should accord to every person who is~~  
125 ~~legally interested in a proceeding, or the person's lawyer, full~~  
126 ~~right to be heard according to law, and, except as authorized by~~  
127 ~~law, shall neither initiate, engage in, or nor consider~~  
128 ~~prohibited ex parte communications concerning the merits,~~  
129 ~~threat, or offer of reward in any proceeding other than an~~  
130 ~~undocketed workshop a proceeding under s. 120.54 or s. 120.565,~~  
131 ~~workshops, or an internal affairs meeting meetings. No~~  
132 ~~individual shall discuss ex parte with a commissioner the merits~~  
133 ~~of any issue that he or she knows will be filed with the~~  
134 ~~commission within 90 days. The provisions of this subsection do~~  
135 ~~shall not apply to commission staff unless otherwise provided~~  
136 ~~for in this section.~~

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

141 (d) The restrictions on prohibited communications as  
142 provided in this section apply to communications made by or  
143 directed to a commissioner and the commissioner's direct  
144 reporting staff to or from the Governor, a member of the  
145 Cabinet, or a member of the Legislature. Any written or oral

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146 communication from the Governor, a member of the Cabinet, or a  
147 member of the Legislature which is only a status inquiry and  
148 does not address the merits of a proceeding is not a prohibited  
149 communication.

150 (3) (a) Any oral or written communication, not otherwise  
151 prohibited under subsection (1), between a commissioner or the  
152 commissioner's direct reporting staff and a representative of an  
153 entity regulated by the commission must be made available to the  
154 public. Such oral or written communication must be posted to the  
155 commission's website within 72 hours after the communication is  
156 made or received.

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

160 (c) The commission shall prepare a written summary of any  
161 communication related to a documented emergency or a  
162 communication related to a brief, unscheduled follow-up to a  
163 previously scheduled meeting or previously scheduled telephone  
164 conference call. The commission shall post the written summary  
165 on its website within 72 hours after the communication is made  
166 or received.

167 (d) The commission shall post notice on the commission's  
168 website at least 72 hours before the occurrence of any meeting,  
169 telephone conference call, or written communication between a  
170 commissioner or the commissioner's direct reporting staff and a  
171 representative of a regulated entity. The Public Counsel may  
172 participate in the meeting, telephone conference call, or  
173 written communication for the purpose of questioning or directly  
174 responding to the communication.

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175 (e) This subsection does not apply to commission staff or  
176 representatives of a regulated entity who are required to  
177 initiate or receive brief, unscheduled communications for the  
178 purpose of obtaining additional information that is needed after  
179 the completion of an audit.

180 (f) A written communication from the Governor, a member of  
181 the Cabinet, or a member of the Legislature which attaches or  
182 forwards a constituent's correspondence concerning the merits of  
183 a docketed proceeding shall be placed in the commission's docket  
184 files.

185 ~~(4)(2)~~ The provisions of This section does shall not  
186 prohibit an individual ~~residential~~ ratepayer from communicating  
187 with a commissioner or the commissioner's direct reporting staff  
188 ~~if, provided that~~ the ratepayer is representing only himself or  
189 herself, without compensation.

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

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

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

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

228 (8) ~~(6)~~ Any commissioner or member of the commissioner's  
229 direct reporting staff who knowingly fails to place on the  
230 record any such communications, in violation of this ~~the~~  
231 section, within 15 days after ~~of~~ the date of the ~~such~~  
232 communication is subject to removal or dismissal and may be



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233 assessed a civil penalty not to exceed \$5,000.

234 ~~(9)(7)~~(a) It is ~~shall be~~ the duty of the Commission on  
235 Ethics to receive and investigate sworn complaints of violations  
236 of this section pursuant to the procedures contained in ss.  
237 112.322-112.3241.

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

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

251 (d) If, during the course of an investigation by the  
252 Commission on Ethics into an alleged violation of this section,  
253 allegations are made as to the identity of the person who  
254 participated in the prohibited ~~ex parte~~ communication, that  
255 person must be given notice and an opportunity to participate in  
256 the investigation and relevant proceedings to present a defense.  
257 If the Commission on Ethics determines that the person  
258 participated in the prohibited ~~ex parte~~ communication, the  
259 person may not appear before the commission or otherwise  
260 represent anyone before the commission for a period of 2 years  
261 and may be assessed a civil penalty not to exceed \$5,000. The

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262 regulated entity represented by the person, if applicable, may  
263 also be assessed a penalty of up to 0.001 percent of the  
264 entity's annual operating revenue for the most recent calendar  
265 year.

266 Section 3. Section 350.0605, Florida Statutes, is amended  
267 to read:

268 350.0605 Former commissioners and employees; representation  
269 of clients or industry before commission; lobbying the  
270 legislative or executive branch.-

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

276 (b) Any former commissioner of the Public Service  
277 Commission is prohibited from lobbying the legislative or  
278 executive branch of state government on behalf of any client or  
279 any industry regulated by the commission for a period of 4 years  
280 after his or her termination of service on the commission. This  
281 subsection applies only to commissioners who are appointed or  
282 reappointed on or after July 1, 2012.

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

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291 commissioner's direct reporting staff who is hired with the  
292 commission on or after July 1, 2012. For purposes of this  
293 section, the term "commissioner's direct reporting staff" means  
294 a commissioner's chief advisor and executive assistant. Any  
295 former employee of the commission is prohibited from appearing  
296 before the commission representing any client regulated by the  
297 Public Service Commission on any matter that ~~which~~ was pending  
298 at the time of termination and in which such former employee had  
299 participated.

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

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321 ~~(3) For a period of 2 years following termination of~~  
322 ~~service on the commission, a former member may not accept~~  
323 ~~employment by or compensation from a business entity which,~~  
324 ~~directly or indirectly, owns or controls a public utility~~  
325 ~~regulated by the commission, from a public utility regulated by~~  
326 ~~the commission, from a business entity which, directly or~~  
327 ~~indirectly, is an affiliate or subsidiary of a public utility~~  
328 ~~regulated by the commission or is an actual business competitor~~  
329 ~~of a local exchange company or public utility regulated by the~~  
330 ~~commission and is otherwise exempt from regulation by the~~  
331 ~~commission under ss. 364.02(13) and 366.02(1), or from a~~  
332 ~~business entity or trade association that has been a party to a~~  
333 ~~commission proceeding within the 2 years preceding the member's~~  
334 ~~termination of service on the commission. This subsection~~  
335 ~~applies only to members of the Florida Public Service Commission~~  
336 ~~who are appointed or reappointed after May 10, 1993.~~

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

339 350.061 Public Counsel; appointment; oath; restrictions on  
340 Public Counsel and his or her employees.—

341 (1) The committee designated by joint rule of the  
342 Legislature or by agreement between the President of the Senate  
343 and the Speaker of the House of Representatives as the Committee  
344 on Public Counsel Oversight shall appoint a Public Counsel to  
345 represent the general public of Florida before the Florida  
346 Public Service Commission. The Public Counsel must ~~shall~~ be an  
347 attorney admitted to practice before the Florida Supreme Court  
348 and shall serve at the pleasure of the Committee on Public

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349 Counsel Oversight, subject to ~~biennial~~ reconfirmation every 4  
350 years by the committee. The Public Counsel shall perform his or  
351 her duties independently. Vacancies in the office shall be  
352 filled in the same manner as the original appointment.

353 Section 5. This act shall take effect July 1, 2012.