

By Senator Bullard

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1 A bill to be entitled
2 An act relating to the Public Service Commission;
3 amending s. 112.324, F.S., relating to the code of
4 conduct for public officers; removing a reference to
5 the Florida Public Service Commission Nominating
6 Council; amending s. 350.001, F.S.; removing a
7 provision for participation by the Governor in the
8 process for selection of members of the commission;
9 amending s. 350.01, F.S.; providing for nonpartisan
10 election of commissioners; providing for commission
11 districts; providing for terms of commissioners;
12 providing for the filling of vacancies on the
13 commission; limiting the number of years a
14 commissioner may serve; requiring the commission to
15 consult with the Public Counsel before ruling on any
16 change of rates; amending s. 350.041, F.S.;
17 prohibiting a commissioner from accepting employment
18 at certain business entities until a specified time
19 after the commissioner has left office; prohibiting a
20 candidate for the office of commissioner from
21 accepting contributions from certain regulated
22 entities; amending ss. 350.042 and 350.043, F.S.;
23 removing references to conform to changes made by the
24 act; amending s. 350.0605, F.S.; increasing the length
25 of time a former member may not accept employment or
26 compensation from a public utility regulated by the
27 commission; amending 350.0611, F.S.; revising duties
28 of the Public Counsel; repealing s. 350.031, F.S.,
29 relating to the Florida Public Service Commission

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30 Nominating Council; providing effective dates.

31
32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Paragraph (a) of subsection (8) of section
35 112.324, Florida Statutes, is amended to read:

36 112.324 Procedures on complaints of violations; public
37 records and meeting exemptions.-

38 (8) If, in cases pertaining to complaints other than
39 complaints against impeachable officers or members of the
40 Legislature, upon completion of a full and final investigation
41 by the commission, the commission finds that there has been a
42 violation of this part or of s. 8, Art. II of the State
43 Constitution, it shall be the duty of the commission to report
44 its findings and recommend appropriate action to the proper
45 disciplinary official or body as follows, and such official or
46 body shall have the power to invoke the penalty provisions of
47 this part, including the power to order the appropriate
48 elections official to remove a candidate from the ballot for a
49 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the
50 State Constitution:

51 (a) The President of the Senate and the Speaker of the
52 House of Representatives, jointly, in any case concerning the
53 Public Counsel, members of the Public Service Commission,
54 ~~members of the Public Service Commission Nominating Council,~~ the
55 Auditor General, or the director of the Office of Program Policy
56 Analysis and Government Accountability.

57 Section 2. Section 350.001, Florida Statutes, is amended to
58 read:

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59 350.001 Legislative intent.—The Florida Public Service
60 Commission has been and shall continue to be an arm of the
61 legislative branch of government. The Public Service Commission
62 shall perform its duties independently. ~~It is the desire of the~~
63 ~~Legislature that the Governor participate in the appointment~~
64 ~~process of commissioners to the Public Service Commission. The~~
65 ~~Legislature accordingly delegates to the Governor a limited~~
66 ~~authority with respect to the Public Service Commission by~~
67 ~~authorizing him or her to participate in the selection of~~
68 ~~members only in the manner prescribed by s. 350.031.~~

69 Section 3. Section 350.01, Florida Statutes, is amended to
70 read:

71 350.01 Florida Public Service Commission; election and
72 terms of commissioners; vacancies; election and duties of chair;
73 quorum; proceedings.—

74 (1) The Florida Public Service Commission shall consist of
75 five commissioners elected for terms of 2 years each by the
76 qualified electors of this state voting in nonpartisan elections
77 within each of the following commission districts: ~~appointed~~
78 pursuant to s. 350.031.

79 (a) District one.—One commissioner shall be elected within
80 a district comprising the First Appellate District described in
81 s. 35.02.

82 (b) District two.—One commissioner shall be elected within
83 a district comprising the Second Appellate District described in
84 s. 35.03.

85 (c) District three.—One commissioner shall be elected
86 within a district comprising the Third Appellate District
87 described in s. 35.04.

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88 (d) District four.—One commissioner shall be elected within
89 a district comprising the Fourth Appellate District described in
90 s. 35.042.

91 (e) District five.—One commissioner shall be elected within
92 a district comprising the Fifth Appellate District described in
93 s. 35.043.

94 (2) (a) Each appointed commissioner serving on July 1, 2014,
95 shall remain in office until January 2, 2015, unless the
96 commissioner vacates the office or is otherwise removed from the
97 commission before that date. ~~July 1, 1978, shall be permitted to~~
98 remain in office until the completion of his or her current
99 term. Upon the expiration of the term, a successor shall be
100 appointed in the manner prescribed by s. ~~350.031~~ for a 4-year
101 term, except that the terms of the initial members appointed
102 under this act shall be as follows:

103 1. The vacancy created by the present term ending in
104 January, 1981, shall be filled by appointment for a 4-year term
105 and for 4-year terms thereafter; and

106 2. The vacancies created by the two present terms ending in
107 January, 1979, shall be filled by appointment for a 3-year term
108 and for 4-year terms thereafter.

109 ~~(b) Two additional commissioners shall be appointed in the~~
110 ~~manner prescribed by s. 350.031 for 4-year terms beginning the~~
111 ~~first Tuesday after the first Monday in January, 1979, and~~
112 ~~successors shall be appointed for 4-year terms thereafter with~~
113 ~~each term beginning on January 2 of the year the term commences~~
114 ~~and ending 4 years later on January 1.~~

115 (b) ~~(e)~~ Vacancies on the commission shall be filled for the
116 unexpired portion of the term by appointment by the Governor

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117 subject to confirmation by the Senate ~~in the same manner as~~
118 ~~original appointments to the commission.~~

119 (3) Any person serving on the commission may seek election
120 or reelection to the commission; however, a person may not
121 appear on the ballot for reelection as a commissioner if, by the
122 end of the current term of office, the person will have served,
123 or, but for resignation, would have served, as commissioner for
124 8 or more years, inclusive of service as an elected or ~~who seeks~~
125 ~~to be appointed commissioner or reappointed shall file with the~~
126 ~~nominating council no later than June 1 prior to the year in~~
127 ~~which his or her term expires a statement that he or she desires~~
128 ~~to serve an additional term.~~

129 (4) One member of the commission shall be elected by
130 majority vote to serve as chair for a term of 2 years, beginning
131 on January 2 of the first year of the term. A member may not
132 serve two consecutive terms as chair.

133 (5) The primary duty of the chair is to serve as chief
134 administrative officer of the commission; however, the chair may
135 participate in any proceedings pending before the commission
136 when administrative duties and time permit. In order to
137 distribute the workload and expedite the commission's calendar,
138 the chair, in addition to other administrative duties, has
139 authority to assign the various proceedings pending before the
140 commission requiring hearings to two or more commissioners or to
141 the commission's staff of hearing examiners under the
142 supervision of the office of general counsel. Only those
143 commissioners assigned to a proceeding requiring hearings are
144 entitled to participate in the final decision of the commission
145 as to that proceeding; however provided, if only two

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146 commissioners are assigned to a proceeding requiring hearings
147 and cannot agree on a final decision, the chair shall cast the
148 deciding vote for final disposition of the proceeding. If more
149 than two commissioners are assigned to any proceeding, a
150 majority of the members assigned shall constitute a quorum and a
151 majority vote of the members assigned shall be essential to
152 final commission disposition of those proceedings requiring
153 actual participation by the commissioners. If a commissioner
154 becomes unavailable after assignment to a particular proceeding,
155 the chair shall assign a substitute commissioner. In those
156 proceedings assigned to a hearing examiner, after ~~following~~ the
157 conclusion of the hearings, the designated hearing examiner is
158 responsible for preparing recommendations for final disposition
159 by a majority vote of the commission. A petition for
160 reconsideration shall be voted upon by those commissioners
161 participating in the final disposition of the proceeding.

162 (6) A majority of the commissioners may determine that the
163 full commission shall sit in any proceeding. The public counsel
164 or a person regulated by the Public Service Commission and
165 substantially affected by a proceeding may file a petition that
166 the proceeding be assigned to the full commission. Within 15
167 days after ~~of~~ receipt by the commission of any petition or
168 application, the full commission shall dispose of such petition
169 by majority vote and render a written decision thereon before
170 ~~prior to~~ assignment of less than the full commission to a
171 proceeding. In disposing of such petition, the commission shall
172 consider the overall general public interest and impact of the
173 pending proceeding, including, but not limited to, the following
174 criteria: the magnitude of a rate filing, including the number

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175 of customers affected and the total revenues requested; the
176 services rendered to the affected public; the urgency of the
177 requested action; the needs of the consuming public and the
178 utility; value of service involved; the effect on consumer
179 relations, regulatory policies, conservation, economy,
180 competition, public health, and safety of the area involved. If
181 the petition is denied, the commission shall set forth the
182 grounds for denial.

183 (7) This section does not prohibit a commissioner,
184 designated by the chair, from conducting a hearing as provided
185 under ss. 120.569 and 120.57(1) and the rules of the commission
186 adopted pursuant thereto.

187 (8) The commission shall consult with the Public Counsel
188 before ruling on any change of rates for a regulated company as
189 defined in s. 350.111.

190 Section 4. Paragraph (b) of subsection (2) and subsection
191 (3) of section 350.041, Florida Statutes, are amended, and
192 paragraph (j) is added to subsection (2) of that section, to
193 read:

194 350.041 Commissioners; candidates for office of
195 commissioner; standards of conduct.—

196 (2) STANDARDS OF CONDUCT.—

197 (b) A commissioner, during his or her term of office and
198 until the end of 8 years after leaving office as commissioner,
199 may not accept any form of employment with or engage in any
200 business activity with any business entity which, either
201 directly or indirectly, owns or controls any public utility
202 regulated by the commission, any public utility regulated by the
203 commission, or any business entity which, either directly or

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204 indirectly, is an affiliate or subsidiary of any public utility
205 regulated by the commission.

206 (j) A candidate for election to the office of commissioner
207 may not directly or indirectly, through staff or other means,
208 solicit or accept a campaign contribution from a public utility
209 regulated by the commission; from a business entity that,
210 whether directly or indirectly, is an affiliate or subsidiary of
211 any public utility regulated by the commission; or from a party
212 appearing in a proceeding considered by the commission during
213 the previous 2 years.

214 (3) The Commission on Ethics shall accept and investigate
215 any alleged violations of this section pursuant to the
216 procedures contained in ss. 112.322-112.3241. The Commission on
217 Ethics shall provide the Governor and the Florida Public Service
218 Commission Nominating Council with a report of its findings and
219 recommendations. The Governor is authorized to enforce the
220 findings and recommendations of the Commission on Ethics,
221 pursuant to part III of chapter 112. A public service
222 commissioner ~~or a member of the Florida Public Service~~
223 ~~Commission Nominating Council~~ may request an advisory opinion
224 from the Commission on Ethics, pursuant to s. 112.322(3)(a),
225 regarding the standards of conduct or prohibitions set forth in
226 this section and ss. ~~350.031~~, 350.04~~7~~, and 350.042.

227 Section 5. Paragraph (b) of subsection (7) of section
228 350.042, Florida Statutes, is amended to read:

229 350.042 Ex parte communications.-

230 (7)

231 (b) If the Commission on Ethics finds that there has been a
232 violation of this section by a public service commissioner, it

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233 shall provide the Governor ~~and the Florida Public Service~~
234 ~~Commission Nominating Council~~ with a report of its findings and
235 recommendations. The Governor is authorized to enforce the
236 findings and recommendations of the Commission on Ethics,
237 pursuant to part III of chapter 112.

238 Section 6. Section 350.043, Florida Statutes, is amended to
239 read:

240 350.043 Enforcement and interpretation.—Any violation of ~~s.~~
241 ~~350.031~~, s. 350.04, s. 350.041, s. 350.042, or s. 350.0605 by a
242 commissioner, former commissioner, or former employee, ~~or Public~~
243 ~~Service Commission Nominating Council member~~ shall be punishable
244 as provided in ss. 112.317 and 112.324. The Commission on Ethics
245 is hereby given the power and authority to investigate
246 complaints of violation of this chapter in the manner provided
247 in part III of chapter 112, as if this section were included in
248 that part. A commissioner may request an advisory opinion from
249 the Commission on Ethics as provided by s. 112.322(3)(a).

250 Section 7. Subsection (3) of section 350.0605, Florida
251 Statutes, is amended to read:

252 350.0605 Former commissioners and employees; representation
253 of clients before commission.—

254 (3) For a period of 8 ~~2~~ years following termination of
255 service on the commission, a former member may not accept
256 employment by or compensation from a business entity which,
257 directly or indirectly, owns or controls a public utility
258 regulated by the commission, from a public utility regulated by
259 the commission, from a business entity which, directly or
260 indirectly, is an affiliate or subsidiary of a public utility
261 regulated by the commission or is an actual business competitor

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262 of a local exchange company or public utility regulated by the
263 commission and is otherwise exempt from regulation by the
264 commission under ss. 364.02(13) and 366.02(1), or from a
265 business entity or trade association that has been a party to a
266 commission proceeding within the 2 years preceding the member's
267 termination of service on the commission. ~~This subsection~~
268 ~~applies only to members of the Florida Public Service Commission~~
269 ~~who are appointed or reappointed after May 10, 1993.~~

270 Section 8. Section 350.0611, Florida Statutes, is amended
271 to read:

272 350.0611 Public Counsel; duties and powers.—In addition to
273 consultation with the commission regarding rate changes pursuant
274 to s. 350.01, it ~~is shall be~~ the duty of the Public Counsel to
275 provide legal representation for the people of the state in
276 proceedings before the commission and in proceedings before
277 counties pursuant to s. 367.171(8). The Public Counsel shall
278 have such powers as are necessary to carry out the duties of his
279 or her office, including, but not limited to, the following
280 specific powers:

281 (1) To recommend to the commission or the counties, by
282 petition, the commencement of any proceeding or action or to
283 appear, in the name of the state or its citizens, in any
284 proceeding or action before the commission or the counties and
285 urge therein any position which he or she deems to be in the
286 public interest, whether consistent or inconsistent with
287 positions previously adopted by the commission or the counties,
288 and utilize therein all forms of discovery available to
289 attorneys in civil actions generally, subject to protective
290 orders of the commission or the counties which shall be

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291 reviewable by summary procedure in the circuit courts of this
292 state;

293 (2) To have access to and use of all files, records, and
294 data of the commission or the counties available to any other
295 attorney representing parties in a proceeding before the
296 commission or the counties;

297 (3) In any proceeding in which he or she has participated
298 as a party, to seek review of any determination, finding, or
299 order of the commission or the counties, or of any hearing
300 examiner designated by the commission or the counties, in the
301 name of the state or its citizens;

302 (4) To prepare and issue reports, recommendations, and
303 proposed orders to the commission, the Governor, and the
304 Legislature on any matter or subject within the jurisdiction of
305 the commission, and to make such recommendations as he or she
306 deems appropriate for legislation relative to commission
307 procedures, rules, jurisdiction, personnel, and functions; and

308 (5) To appear before other state agencies, federal
309 agencies, and state and federal courts in connection with
310 matters under the jurisdiction of the commission, in the name of
311 the state or its citizens.

312 Section 9. Effective January 1, 2015, section 350.031,
313 Florida Statutes, is repealed.

314 Section 10. Except as otherwise expressly provided in this
315 act, this act shall take effect July 1, 2013.