The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES
Senator Benacquisto, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, April 4, 2011
TIME: 1:00 —3:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Smith, Vice Chair; Senators Altman, Bogdanoff, Braynon, Diaz de la Portilla, Evers, Fasano, Flores, Joyner, Lynn, Margolis, Negron, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 2078** Communications, Energy, and Public Utilities (Compare H 1349, S 1102, S 1336, S 1724)	Energy; Requires all public utilities to perform a free energy audit of the business structures of commercial customers. Provides that the audit is deemed satisfied under certain conditions. Requires the Department of Management Services to prioritize buildings for an energy audit and retrofits and to proceed with performing those audits and retrofits. Deletes obsolete provisions. Provides new conditions for full cost recovery for regulated electric utilities for the costs of renewable energy projects, etc. CU 04/04/2011 GO BC	
2	**CS/SB 888** Judiciary / Dean (Similar CS/H 75)	Offense of Sexting; Provides that a minor commits the offense of sexting if he or she knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors. Provides noncriminal and criminal penalties. Provides that the act does not prohibit prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement or for stalking, etc. CJ 03/14/2011 Fav/1 Amendment JU 03/28/2011 Fav/CS CU 04/04/2011 BC	
3	**SB 212** Fasano	Public Service Commission; Revises the standards of conduct for commissioners of the Public Service Commission. Requires that commissioners observe and abide by the Code of Judicial Conduct while conducting docketed proceedings. Prohibits a commissioner or the commissioner's direct reporting staff from initiating, engaging in, or considering prohibited communications in any proceeding other than an undocketed workshop or an internal affairs meeting, etc. CU 04/04/2011 JU GO	

830712

LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 160 - 251

and insert:

(b) Each provider shall purchase renewable energy pursuant to a standard form contract for the purchase of renewable energy from different types of renewable energy facilities located in Florida.

1. The price to be paid for renewable energy purchased through a standard form contract shall be expressed in a levelized, or constant, price per kilowatt hour for the term of the contract. The price shall be determined by a competitive

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auction conducted by an independent auction administrator engaged by the commission to ensure the objectivity and fairness of the auction. The provider shall reimburse the commission for the cost for the independent auction administrator, and the cost is recoverable by the provider through the environmental cost-recovery clause.

2. The commission shall set the terms and conditions of the standard form contract before such contract may be issued and shall establish procedures for the conduct of the auction provided for in this paragraph.

3. The commission shall set the term of a minimum of 20 years and a maximum of 30 years for the standard form contract.

4. A renewable energy supplier's generating facility must be located in the state to be eligible to participate in an auction.

(c) Each provider must offer a standard form contract for each of the following types of renewable energy technologies and sizes:

1. Solar electric technologies under 250 kilowatts and solar electric technologies over 250 kilowatts but no more than 5 megawatts, including crystalline photovoltaic, solar thermoelectric, and solar thermal generating technologies.

2. Wind technologies.

3. Hydroelectric technologies, including technologies that use the energy in waves, ocean currents, or thermal energy differentials.

4. Biomass technologies.

5. Waste-heat technologies.

(d) The commission shall require that a minimum of 20

percent of the total funding is spent by each provider on the building of Florida renewable energy resources or the conversion of an existing fossil fuel generation plant to a Florida renewable energy resource. Fifty percent of the utility's purchased renewable energy shall be from biomass and other renewable energy technologies, and 50 percent shall be from solar suppliers, of which at least 50 percent shall be from systems under 250 kilowatts.

(e) If the bids received from the auction are insufficient to spend the total amount of funds available, the residual funds are available for purchase of renewable energy from either technologies or size class other than the undersubscribed technologies or size class or may be carried forward and spent, on a pro rata basis, over the succeeding 4 years.

(f) A renewable energy generating facility that is constructed by a renewable energy supplier or by a provider of renewable energy is not subject to s. 403.519. The commission is not required to submit a report pursuant to s. 403.507(4)(a) for the project.

(g) After the completion of construction of a new renewable energy project, the completion of the conversion of an existing facility to renewable energy, or the completion of a purchase of renewable energy, and the filing by a provider of a petition for approval of cost recovery, the commission must schedule a formal administrative hearing within 10 days after the date of the filing of the petition and vote on the petition within 90 days after the date of the filing.

(h)1. The costs incurred by a provider in connection with the construction or conversion, operation, and maintenance of a

renewable energy project are deemed to be prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner that is appropriate for the type of renewable energy facility and appropriate to the location of the facility. A provider may recover all prudently incurred costs of renewable energy under the environmental cost-recovery clause provisions of s. 366.8255. As part of the cost-recovery proceedings, the provider must report to the commission the construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy project, and any other information deemed relevant by the commission.

2. The commission must allow full cost recovery over the entire useful life of the Florida renewable energy resource of the revenue requirements using traditional declining balance amortization of all reasonable and prudently incurred costs, including, but not limited to, the following:

a. The siting, licensing, engineering, design, permitting, construction, operation, and maintenance of a renewable energy facility and associated transmission facilities by the provider. For purposes of this paragraph, the term "cost" includes, but is not limited to, all capital investments, including rate of return, and any applicable taxes and all expenses, including operation and maintenance expenses; and

b. The costs associated with the purchase of capacity and energy from new renewable energy resources;

c. The costs for conversion of an existing fossil fuel generating plant to a renewable energy facility, including the

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costs of retirement of the fossil fuel generation plant.

(i) The cost of producing or purchasing renewable energy in any calendar year may not exceed 2 percent of the investor-owned utility's total revenue from retail sales of electricity for the 2010 calendar year.

(j) A provider must submit the proposed project to the same bid process as with any other generating facility to develop a renewable energy project.

(k) If a provider pays costs for purchased power above the provider's full avoided costs, the seller must surrender to the provider all renewable attributes of the energy being purchased by the provider.

(l) Any revenues or other economic benefit that is derived from any renewable energy credit, carbon credit, or other mechanism that attributes value to the production of renewable energy and that is received by a provider relating to renewable energy or other carbon-neutral or carbon-free means of producing electricity must be shared with the provider's ratepayers, such that the ratepayers are credited with at least 90 percent of such revenues or of the value of such other economic benefit.

(m) The Legislature finds that there is a need for the renewable energy facilities to be developed pursuant to this subsection and this legislative finding serves as the determination of need required under s. 403.519 and as the commission's agency report required under s. 403.507(4)(a). This legislative determination of need creates a presumption of public need and necessity which may not be raised in any other forum or in the review of proceedings in such other forum and substitutes for the commission's report required by s.

403.507(4).

(n) Each provider obtaining cost recovery under this subsection must, for the duration of the recovery period, file an annual report with the commission containing the information required in this subsection and any other information the commission deems necessary. The commission must gather all such reports annually and file a report with the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than March 1 of each year. Each provider report must contain the following:

1. A description of the project, including a description of the technology used, the size of the project, and its location.

2. A description and the amounts of the costs of construction, operation, and maintenance of the project.

3. A description and the total number of the jobs created as a result of the project, including how long each job lasted.

4. A description of the impact of the project on existing and planned generation and transmission facilities and on ratepayers, including how much production by traditional means was avoided, any planned traditional plants included in the 10-year site plan which were made unnecessary, any additional transmission that was necessary, a description of any impact on grid security and reliability, and a description of the price impact on ratepayers.

(o) The commission shall adopt rules to implement this section.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:


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Between lines 13 and 14
insert:
requiring certain electric providers to purchase renewable energy by a standard form contract from different types of renewable energy facilities in the state; providing criteria for an auction that sets the price to be paid for the renewable energy; requiring the provider to reimburse the cost for the independent auction administrator; providing that the cost is recoverable through the environmental cost-recovery clause; requiring the commission to oversee the auction and ensure that certain conditions are met; providing criteria for the standard form contract; requiring each provider to offer a standard form contract for certain types of renewable energy technology and size; requiring a certain percent of the total funding expended by each provider be spent on renewable energy and solar energy resources; providing for expenditure of funds if the bids from the auction are insufficient to expend the total funds available; exempting certain renewable energy generating facilities from the siting act; requiring the commission to adopt rules implementing the section;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Altman) recommended the following:

Senate Amendment to Amendment (830712)

Delete lines 42 - 45

and insert:

percent of the total funding that is spent by each provider on the building of Florida renewable energy resources or the conversion of an existing fossil fuel generation plant to a Florida renewable energy resource is purchased renewable energy. Fifty percent of the utility's

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 352 and 353
insert:
Section 4. Section 366.93, Florida Statutes, is repealed.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Between lines 17 and 18
insert:
repealing s. 366.93, F.S., relating to cost recovery for the siting, design, licensing, and construction of

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nuclear and integrated gasification combined cycle power plants;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Between lines 159 and 160

insert:

(b) Five percent of the total costs of solar generation for which a provider is permitted recovery in any calendar year under this subsection shall be added to any amounts authorized for a provider's demand-side renewable energy system projects approved by the commission pursuant to s. 366.82. At least 50 percent of this incremental amount added to the provider's demand-side renewable energy system projects in any calendar year under this subsection shall be made available by the

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provider for incentives for solar projects of up to 10 kilowatts.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 13 and 14

insert:

authorizing a certain amount of recoverable costs for solar generation to be added to the provider's demand-side renewable energy system projects; making available certain amounts for solar projects of up to 10 kilowatts;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Between lines 45 and 46

insert:

Section 1. Section 366.051, Florida Statutes, is amended to read:

366.051 Cogeneration; small power production; commission jurisdiction.—Electricity produced by cogeneration and small power production, including that produced by individual property owners using rooftop solar equipment, is of benefit to the public when included as part of the total energy supply of the entire electric grid of the state or consumed by a cogenerator

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or small power producer. To empower individual property owners to invest in renewable energy alternatives on their own property so that they may reduce their individual energy cost and consumption of fossil fuels, utilities are required to purchase the excess electrical output generated by any property owner within its service area who has installed rooftop solar equipment. The electric utility in whose service area a cogenerator or small power producer is located shall purchase, in accordance with applicable law, all electricity offered for sale by such cogenerator or small power producer; or the cogenerator or small power producer may sell such electricity to any other electric utility in the state. The commission shall establish guidelines relating to the purchase of power or energy by public utilities from cogenerators or small power producers and may set rates at which a public utility must purchase power or energy from a cogenerator or small power producer. In fixing rates for power purchased by public utilities from cogenerators or small power producers, the commission shall authorize a rate equal to the purchasing utility's full avoided costs. A utility's "full avoided costs" are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source. The commission may use a statewide avoided unit when setting full avoided capacity costs. If the cogenerator or small power producer provides adequate security, based on its financial stability, and no costs in excess of full avoided costs are likely to be incurred by the electric utility over the term during which electricity is to be provided, the commission

shall authorize the levelization of payments and the elimination of discounts due to risk factors in determining the rates. Public utilities shall provide transmission or distribution service to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location, if the commission finds that the provision of this service, and the charges, terms, and other conditions associated with the provision of this service, are not likely to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers. Notwithstanding any other provision of law, power generated by the customer and provided by the utility to the customers' facility at another location is subject to the gross receipts tax imposed under s. 203.01 and the use tax imposed under s. 212.06. Such taxes shall apply at the time the power is provided at such other location and shall be based upon the cost price of such power as provided in s. 212.06(1)(b).

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 2

and insert:

An act relating to energy; amending s. 366.051, F.S.; requiring a utility to purchase excess electrical output generated by any property owner's rooftop solar equipment within its service area; amending s. 366.82, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Benacquisto) recommended the following:

Senate Amendment

Delete line 203

and insert:

2010 calendar year. All cost recovery sought under this section shall be limited to no greater than a 2 percent increase to the average monthly bill for each of the utility's ratepayers.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Benacquisto) recommended the following:

Senate Amendment

Delete lines 409 - 411
and insert:
(f) Determines optimal percentages of fuels and technologies, both traditional and renewable, in the electric generation fleet for the next 10-year period.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Benacquisto) recommended the following:

Senate Amendment

Delete lines 372 - 374
and insert:
plan requirements of s. 186.801.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL:	SB 2078
INTRODUCER:	Communications, Energy, and Public Utilities
SUBJECT:	Energy
DATE:	March 31, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Pre-meeting**
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill contains provisions relating to renewable energy, energy conservation, and economic development. In the short term, it allows an investor-owned utility to recover the costs of renewable energy projects. If a utility chooses to do so, at least twenty-five percent of the total renewable energy capacity must be from renewable energy resources other than solar energy. Total costs for a utility in any calendar year cannot exceed two percent of the utility's total revenue from retail sales of electricity for the calendar year 2010. Each utility receiving cost recovery must annually report on the costs and benefits of the projects, including the number of jobs created.

For the long term, the bill establishes a process for creating a state energy resources plan which will incorporate renewable energy into the existing planning process and electricity generation fleet in a strategic and economical way.

The bill also addresses energy conservation, requiring each public utility to conduct a free energy audit of the business structures of each of commercial customer within its service territory and requiring that the Department of Management Services develop and implement a prioritized list of buildings on which to have an energy audit and economical, energy-saving retrofits done.

As to economic development, the bill abolishes the Florida Energy and Climate Commission and statutorily creates an independent Florida Energy Office, which is not only to have all of the current FECC duties, but also is to market the state as a location for energy-related investment, businesses, and research and development and to assist those interested in relocating in the state.

The bill takes effect July 1, 2011.

The bill amends the following sections of the Florida Statutes: 366.02, 366.82, 255.252, 366.92, and 377.6015. It also creates section 366.95 of the Florida Statutes.

II. Present Situation:

Renewable energy, pricing, and cost recovery

Currently, electricity produced by use of renewable energy technology costs more than that produced by traditional means. Any additional value renewable energy has over that produced by traditional means is due to a societal benefit of having electricity produced by use of renewable energy instead of the traditional fuels and technologies. The current statutory statements relating to societal benefits of renewable energy are:

- The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[1]
- It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.[2]

The statutes on retail pricing of electricity require that rates be "fair and reasonable" for customers, or ratepayers,[3] and "just, reasonable, and compensatory" as to the utility.[4] As a result, when a statute requires that a utility purchase electricity from a non-utility and pass the costs on to its customers,[5] the purchase is at the purchasing utility's "full avoided costs," defined as "the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase . . . such utility would generate itself or purchase from another source."[6] Thus, the renewable energy is purchased at the purchasing utility's cost to produce the energy using traditional means, with no regard for any value of any societal benefit the renewable energy may have.

Subsection 366.92(3), F.S., requires the Public Service Commission (PSC) to adopt rules for a renewable portfolio standard (RPS) requiring each provider[7] to supply renewable energy to its customers either by producing it, by purchasing renewable energy itself, or by purchasing

[1] s. 366.91(1), F.S.
[2] s. 366.92(1), F.S.
[3] s. 366.03, F.S.
[4] s. 366.041, F.S.
[5] ss. 366.051 and 366.91(3), F.S.
[6] Section 366.051, F.S. Section 366.051, F.S. requires such purchases to encourage conservation, sections 366.91 and 366.92 to encourage increased use of renewable energy.
[7] The term "provider" is defined in paragraph 366.92(2)b. as a "utility" as defined in s. 366.8255(1)(a), which in turn is defined as "any investor-owned electric utility (IOU) that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter."

renewable energy credits.[8] The rule is not to be implemented until ratified by the Legislature. The commission was required to, and did, present a draft rule for legislative consideration by February 1, 2009. The Legislature did not ratify the rule. A bill modeled on the rule, 2009 SB 1154, passed the Senate but died in the House.

Subsection 366.92(4), F.S., provides that, in order to demonstrate the feasibility and viability of clean energy systems, the commission must provide for full cost recovery of all reasonable and prudent costs incurred for investor-owned utility (IOU) renewable energy projects meeting specified criteria, up to a total of 110 megawatts statewide. To obtain cost recovery, the projects must be zero greenhouse gas emitting at the point of generation, the provider must have secured necessary land, zoning permits, and transmission rights within the state, and the provider must file for cost recovery no later than July 1, 2009. The costs are to be deemed reasonable and prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility. The provider must report to the commission as part of the cost-recovery proceedings the construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy project, and any other information deemed relevant by the commission. This authorization resulted in three solar projects by Florida Power and Light: a 25 megawatt solar photovoltaic project in Desoto County; a 75 megawatt solar thermal project co-located with an existing combined-cycle power plant in Martin County; and a 10 megawatt solar photovoltaic project located at Kennedy Space Center.

Section 366.8255, F.S., provides for IOU recovery of costs of compliance with environmental laws or regulations through a recovery clause instead of base rates.

Energy conservation and audits

Section 366.82(11), F.S., provides that the PSC must require each utility[9] to offer, or to contract to offer, energy audits to its residential customers. The requirement needn't be uniform, and may be based on such factors as level of usage, geographic location, or any other reasonable criterion, so long as all eligible customers are notified. The commission may extend this requirement to some or all commercial customers.

The commission is to set the charge for audits by rule, not to exceed the actual cost, and may describe by rule the general form and content of an audit. Each IOU is to estimate its costs and revenues for audits, conservation programs, and implementation of its plan for the immediately following 6-month period, and reasonable and prudent unreimbursed costs projected to be incurred may be added to the rates which would otherwise be charged by a utility upon approval by the PSC. Following each 6-month period, each utility must report to the PSC the actual results

[8] The term "renewable energy credit is defined in paragraph 366.93(2)(d) as "a product that represents the unbundled, separable, renewable attribute of renewable energy produced in Florida and is equivalent to 1 megawatt-hour of electricity generated by a source of renewable energy located in Florida." This credit is a method of separating-out and quantifying the value of the societal benefit, so that this value can be recovered separate from the sale of the electricity itself.

[9] The term "utility" is defined, for purposes of the Florida Energy Efficiency and Conservation Act, ss. 366.80-366.85 and 403.519, to mean any entity of whatever form which provides electricity at retail to the public, specifically including municipalities and cooperatives but specifically excluding any municipality or cooperative whose annual sales as of July 1, 1993, to end-use customers were less than 2,000 gigawatt hours. s. 366.82(1)(a), F.S.

for that period, and the difference, if any, between actual and projected results must be taken into account in succeeding periods.

Section 255.252(5), F.S., enacted in 2008,[10] requires that each state agency occupying space within buildings owned or managed by the Department of Management Services identify and compile a list of projects determined to be suitable for a guaranteed energy, water, and wastewater performance savings contract pursuant to s. 489.145.[11] The list of projects compiled by each state agency must be submitted to the Department of Management Services by December 31, 2008, and must include all criteria used to determine suitability. The list of projects must be developed from the list of state-owned facilities more than 5,000 square feet in area and for which the state agency is responsible for paying the expenses of utilities and other operating expenses as they relate to energy use. In consultation with the head of each state agency, by July 1, 2009, the department must prioritize all projects deemed suitable by each state agency and must develop an energy-efficiency project schedule based on factors such as project magnitude, efficiency and effectiveness of energy conservation measures to be implemented, and other factors that may prove to be advantageous to pursue. The schedule must provide the deadline for guaranteed energy, water, and wastewater performance savings contract improvements to be made to the state-owned buildings.

Electricity system resource planning

Ten-year site plan

Section 186.801, F.S, requires each electric utility to submit to the Public Service Commission a 10-year site plan estimating its power-generating needs and the general location of its proposed power plant sites. The plan must be reviewed and submitted no less frequently than every 2 years.

Within nine months after the receipt of the proposed plan, the commission must make a preliminary study of the plan, must consider the plan as a planning document, and must review:

- The need, including the need as determined by the commission, for electrical power in the area to be served.
- The effect on fuel diversity within the state.
- The anticipated environmental impact of each proposed electrical power plant site.
- Possible alternatives to the proposed plan.
- The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.
- The extent to which the plan is consistent with the state comprehensive plan.
- The plan with respect to the information of the state on energy availability and consumption.

Within this nine-month timeframe, the commission must classify the plan as either "suitable" or "unsuitable." It also may suggest alternatives to the plan.

[10] Section 17 of chapter 2008-227, Laws of Florida.
[11] This statute provides a process by which an agency may enter into a contract with a third party that guarantees savings to the agency relating to either energy, water, or wastewater costs.

All findings of the commission must be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, constitutes an amendment to the 10-year site plan.

In order to enable it to carry out its duties under this section, the commission may, after hearing, establish a study fee not to exceed $1,000 for each proposed plan studied. The commission also may adopt rules governing the method of submitting, processing, and studying the 10-year plans.

Determination of need for a proposed power plant

Sections 403.501-403.518 are the "Florida Electrical Power Plant Siting Act." The act requires that anyone intending to site (that is to locate, and by implication construct and operate) an electrical power plant do so pursuant to the procedures set forth in the act. Paragraph 403.503(14), F.S., defines the term "electrical power plant" to mean, in the relevant part, "any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act."

Section 403.519, F.S., requires that the PSC make a determination of need for any proposed electrical power plant. In making its determination, the PSC is to consider:

- the need for electric system reliability and integrity,
- the need for adequate electricity at a reasonable cost,
- the need for fuel diversity and supply reliability,
- whether the proposed plant is the most cost-effective alternative available, and
- whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

The Florida Energy and Climate Commission and the energy office

Section 377.6015, F.S., creates the Florida Energy and Climate Commission (FECC) within the Executive Office of the Governor. The FECC consists of nine members, seven appointed by the Governor, one appointed by the Commissioner of Agriculture, and one appointed by the Chief Financial Officer. Each appointment is made from a list of three persons nominated by the Florida Public Service Commission Nominating Council. Members are appointed to 3-year terms. The Governor selects the chair. Appointments are subject to confirmation by the Senate during the next regular session after the vacancy occurs.

The chair may designate the following ex officio, nonvoting members to provide information and advice to the FECC at the request of the chair:

- The chair of the PSC, or his or her designee.
- The Public Counsel, or his or her designee.

- A representative of the Department of Agriculture and Consumer Services.
- A representative of the Department of Financial Services.
- A representative of the Department of Environmental Protection.
- A representative of the Department of Community Affairs.
- A representative of the Board of Governors of the State University System.
- A representative of the Department of Transportation.

Members must meet the following qualifications and restrictions:

- A member must be an expert in one or more of the following fields: energy, natural resource conservation, economics, engineering, finance, law, transportation and land use, consumer protection, state energy policy, or another field substantially related to the duties and functions of the FECC and the FECC must fairly represent these fields.
- Each member must, at the time of appointment and at each FECC meeting during his or her term of office, disclose:
    - Whether he or she has any financial interest, other than ownership of shares in a mutual fund, in any business entity that, directly or indirectly, owns or controls, or is an affiliate or subsidiary of, any business entity that may be affected by the policy recommendations developed by the FECC.
    - Whether he or she is employed by or is engaged in any business activity with any business entity that, directly or indirectly, owns or controls, or is an affiliate or subsidiary of, any business entity that may be affected by the policy recommendations developed by the FECC.

Members serve without compensation but are entitled to reimbursement for per diem and travel expenses. Meetings may be held in various locations around the state and at the call of the chair; however, the FECC must meet at least six times each year.

The FECC is authorized to:

- Employ staff and counsel as needed in the performance of its duties.
- Prosecute and defend legal actions in its own name.
- Form advisory groups consisting of members of the public to provide information on specific issues.

The FECC is required to:

- Administer the Florida Renewable Energy and Energy-Efficient Technologies Grants Program pursuant to s. 377.804 to assure a robust grant portfolio.
- Develop policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant.
- Administer the Florida Green Government Grants Act pursuant to s. 377.808 and set annual priorities for grants.
- Administer the information gathering and reporting functions pursuant to ss. 377.601-377.608.
- Administer petroleum planning and emergency contingency planning pursuant to ss. 377.701, 377.703, and 377.704.
- Represent Florida in the Southern States Energy Compact pursuant to ss. 377.71-377.712.

- Complete the annual assessment of the efficacy of Florida's Energy and Climate Change Action Plan, upon completion by the Governor's Action Team on Energy and Climate Change pursuant to the Governor's Executive Order 2007-128, and provides specific recommendations to the Governor and the Legislature each year to improve results.
- Administer the provisions of the Florida Energy and Climate Protection Act pursuant to ss. 377.801-377.806.
- Advocate for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions.
- Be a party in the proceedings to adopt goals and submit comments to the Public Service Commission pursuant to s. 366.82.
- Adopt rules pursuant to chapter 120 in order to implement all powers and duties described in this section.

Many of these functions were performed by the staff of "the state energy program" prior to the creation of the FECC. This program staff, typically referred to as the "energy office" currently staffs the FECC.[12]

III. Effect of Proposed Changes:

Section 1 amends s. 366.82, F.S., to require each public utility to make a written offer to conduct a free energy audit of the business structures of each of commercial customer within its service territory and provide each customer with a report of the energy savings options and of any available financial assistance prior to December 31, 2016. If a customer has been audited in the previous five years, this requirement is deemed satisfied.

Section 2 amends s. 255.252(5), F.S., to require that the Department of Management Services, beginning on July 1, 2011, and in consultation with the head of each state agency, develop a prioritized list of buildings on which to have an energy audit performed. The department is then to perform the energy saving retrofits in order of the anticipated shortest payback period.

Section 3 amends s. 366.92, F.S., to provide for IOU recovery of costs of renewable energy projects. An IOU has until July 1, 2016, to petition the PSC for recovery of costs to produce or purchase renewable energy. An IOU can build renewable energy resources, convert existing fossil fuel generation plants to a renewable energy resource, or purchase renewable energy. A provider must submit the proposed project to the same bid process as with any other generating facility.

If an IOU chooses to develop renewable energy, at least twenty-five percent of the total nameplate capacity for which a provider is permitted to recover costs in any calendar year must be produced or purchased from renewable energy resources other than solar energy. In the case of a purchase of non-solar renewable energy, the provider must purchase actual production from nameplate capacity of that amount.

The IOU cannot petition for cost recovery until completion of construction of a new renewable energy project, the completion of the conversion of an existing facility to renewable energy, or

[12] Section 48, Chapter 2008-227, Laws of Florida.

the completion of a purchase of renewable energy. Upon the filing of a petition for approval of cost recovery, the PSC must schedule a formal administrative hearing within 10 days of the date of the filing of the petition and vote on the petition within 90 days after the date the filing.

Costs are to be deemed to be prudent if the IOU used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate for the type of renewable energy facility and appropriate to the location of the facility. An IOU may recover all prudently incurred costs of renewable energy under the environmental cost recovery clause.

As part of the cost-recovery proceedings, the provider must report to the commission the construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy project, and any other information deemed relevant by the commission.

The PSC must allow full cost recovery over the entire useful life of the renewable energy resource of the revenue requirements utilizing traditional declining balance amortization of all reasonable and prudent costs, including but not limited to the following:

- for construction of a project, the siting, licensing, engineering, design, permitting, construction, operation, and maintenance of a renewable energy facility and associated transmission facilities by the IOU, with the term "cost" to include, but not be limited to, all capital investments including rate of return, and any applicable taxes and all expenses, including operation and maintenance expenses;
- for a purchase, the costs associated with the purchase of capacity and energy from new renewable energy resources;
- for a conversion, the costs of conversion of existing fossil fuel generating plants to a renewable energy facility, including the costs of retirement of the fossil fuel generation plant.

The cost of producing or purchasing renewable energy in any calendar year cannot exceed two percent of the investor-owned utility's total revenue from retail sales of electricity for the calendar year 2010.

When a provider pays costs for purchased power above the provider's full avoided costs, the seller must surrender to the provider all renewable attributes of the energy being purchased by the provider. Any revenues or other economic benefit derived from any renewable energy credit, carbon credit, or other mechanism that attributes value to the production of renewable energy that is received by a provider relating to renewable energy or other carbon-neutral or carbon-free means of producing electricity must be shared with the provider's ratepayers, such that the ratepayers are credited with at least 90 percent of such revenues or of the value of such other economic benefit.
The bill provides a legislative finding of need for the renewable energy projects that is to serve in lieu of the statutorily required PSC determination of need and the related PSC report.

Each provider obtaining cost recovery under this subsection must, for the duration of the recovery period, file an annual report with the commission containing the information listed below and any other information the commission deems necessary. The commission must gather all such reports annually and file a report with the President of the Senate, the Speaker of the

House, and the Governor no later than March 1 of each year. Each provider report must contain, at a minimum, the following:

- A description of the project, including a description of the technology used, the size of the project, and its location.
- A description and the amounts of the costs of construction, operation, and maintenance of the project.
- A description and the total number of the jobs created as a result of the project, including how long each job lasted.
- A description of the impact of the project on existing and planned generation and transmission facilities and on ratepayers, including how much production by traditional means was avoided, any planned traditional plants included in the ten-year site plan that were made unnecessary, any additional transmission that was necessary, a description of any impact on grid security and reliability, and a description of the price impact on ratepayers.

This section also deletes all existing provisions relating to the requirement that the PSC adopt an RPS rule.

Section 4 creates s. 366.95, F.S., to establish a process for creating a state energy resources plan. The bill makes legislative findings, including:

- Florida currently has very little renewable energy in production and that to increase this quickly would be costly to ratepayers;
- each of the regulated utilities is different, and each would be affected differently by a renewable energy requirement;
- as such, a mandate would be inappropriate, and instead the PSC is to develop a state energy resources plan as an expansion of its duties relating to the ten-year site plan requirements.

The bill requires the PSC to develop a state energy resources plan that:

- forecasts:
- demand for electricity;
- energy supply requirements needed to satisfy this projected demand, including the amount of capacity needed to provide adequate reserve margins and capacity needed to ensure reliability;
- the ability of the existing energy supply sources and the existing transmission systems to satisfy this need together with those sources or systems reasonably certain to be available including planned additions, retirements, substantial planned outages, and any other expected changes in levels of generating and production capacity; and
- additional electric capacity or transmission systems needed to meet such energy supply requirements that will not be met by existing sources of supply and those reasonably certain to be available, where such analysis should identify system constraints and possible alternatives available, both supply-side and demand-side alternatives, including but not limited to distributed generation, energy efficiency and conservation measures, to redress such constraint;
- identifies and assesses the costs, risks, benefits, and uncertainties of energy supply source alternatives, including demand-reducing measures, renewable energy resources, distributed generation technologies, cogeneration technologies, and other methods and technologies reasonably available for satisfying energy supply requirements;

- identifies and analyzes emerging trends related to energy supply, price and demand;
- identifies potential future sites for biomass power plants and solar power plants;
- identifies potential future sites for transmission and distribution lines;
- determines optimal percentages of fuels and technologies, both traditional and renewable, in the electric generation fleet for the next twenty-year period;
- determines the process and timeline for incorporating renewable energy resources into the generation fleet, and address redundancy of plants, both necessary and unnecessary, and retirement of unnecessary existing plants; and
- determines if any changes should be made to capacity, including any additions or retirements, and if any additional transmission or distribution lines are necessary.

In determining whether any new renewable energy resources should be added into the generation fleet, the PSC is to consider the following:

- the societal benefits of renewable energy;
- the necessity of maintaining an adequate and reliable source for energy and capacity needs;
- the necessity of maintaining an adequate and reliable transmission and distribution grid;
- the necessity to maintain fuel mix and diversity and source reliability and to minimize price fluctuations; and
- the necessity of minimizing overall price impacts to ratepayers.

Upon such a determination that renewable energy resources should be added, any public utility may obtain additional renewable energy resources by building a renewable energy facility, converting an existing fossil fuel facility to renewable energy, or purchasing renewable energy. All projects are subject to the same bid process as with any other generating facility. If the provider seeks to build the project, it must submit a bid to do so. The utility may recover all prudent costs in base rates. All determinations of prudency of costs are to be made giving consideration to the considerations and goals of this statute and of the state energy resources plan. All revenues from renewable energy credits or carbon credits are to be shared with ratepayers in a manner such that ratepayers receive a minimum of 90 percent of the revenue.

The Energy Office may be a party to all proceedings under this section, and the Department of Agriculture and Consumer Services may be a party in any proceeding relating to biomass plants on issues relating to proper siting for proximity to foodstocks, forestry management, or related matters.

The PSC must review the state energy resources plan biennially.

This statute will:

- join the PSC's current duties relating to reviewing each utility's ten-year site plans, making a determination of need for individual proposed power plants, and planning for adequacy and reliability of generation and transmission facilities into one, cohesive process, with a state-wide, long-term focus;
- provide for fact-based decisions on whether to add new renewable energy resources, when to do so, what fuels and technologies to use, and who to do the project instead of a general mandate such as a renewable portfolio standard; and

- address issues and potential difficulties of incorporating renewable energy resources into the existing generating and transmission resources such as reliability of both energy supply and transmission, redundancy of generation or alternatively inadequate supply of energy, retirement of existing plants, and efficiency of the process and changes to minimize costs and rate impacts.

Section 5 transfers all of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Florida Energy and Climate Commission are transferred by a type two transfer, pursuant to s. 20.06(2), Florida Statutes, to the Florida Energy Office.

Section 6 amends s. 377.6015, F.S., to abolish the Florida Energy and Climate Commission (FECC) and statutorily create the Florida Energy Office within Department of Environmental Protection as a separate budget entity and exempt from any control, supervision, or direction by the Department of Environmental Protection in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters. The office is to be headed by a director, who is to be appointed by the Governor, subject to confirmation by the Senate. The office is to have all of the duties of the current FECC. In addition it is to:

- act as the principal economic development organization for the state on matters relating to renewable, alternative, or clean energy;
- market the state as a probusiness location for potential new energy-related investment, to create new energy-related businesses, and to retain and expand existing energy-related businesses. In doing so, it is to work with Enterprise Florida, Inc., Space Florida, and all other government entities at all levels, and also with all relevant private sector entities, necessary to facilitate the location of a business in this state by assisting those businesses in such matters as obtaining permits or licenses, determining appropriate tax laws and rules, and obtaining financing, incentives, grants, and other funding;
- work with the Florida energy systems consortium, created in s. 1004.648, to coordinate and promote Florida research on energy and to recruit energy researchers to Florida. As part of this role, it is to serve as the clearinghouse for research information from universities and private sector entities which receive funding or other assistance from the state relating to their research project.

Section 7 provides that the bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PSC staff provided the following information relating to IOU full cost recovery.

Two-percent of each company's 2010 revenues is as follows.

Company	2010 Revenues	2%
FPL	$10,304,092,818	$206,081,856
Gulf	$1,375,520,256	$27,510,405
Progress	$5,024,457,963	$100,489,159
TECO	$2,138,997,853	$42,779,957
Total	$18,843,068,890	$357,861,378

If each company immediately invested the maximum amount in renewable energy projects, the results would be the following.

	2011	2012[3]	2013	2014	2015	2016
Solar MW[1]	569	571	576	581	598	613
Solar GWh[2]	997	1001	1009	1018	1048	1074
Biomass MW	212	216	225	235	277	319
Biomass GWh	1487	1511	1579	1645	1942	2239

[1] MW = megawatt of capacity
[2] GWh = gigawatt hours of actual production; 1 gigawatt-hour = 1,000 megawatt-hours = 1,000,000 kilowatt-hours
[3] The yearly numbers are cumulative, incremental totals, with only slight additions from one year to the next.

The costs are estimated to result in an average .2-.3 cent per kilowatt-hour increase in a customer's monthly bill, with 75 percent of the increase attributable to solar projects and 25 attributable to biomass. The result is summarized in the following table.

Company	Rate impact
FPL	.20
Gulf	.25
Progress	.28
TECO	.22
Total	.22

Multiplying the average rate impact by the average residential monthly usage of 1,200 kilowatt-hours, the average monthly rate impact would be $2.64 (.22 x 1,200 = 264 cents = $2.64). This is an average over the useful life of the project; the expense would be amortized and the rate impact would be higher in early years, lower in later ones.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Altman) recommended the following:

Senate Amendment

Delete lines 39 - 50
and insert:
(b) Commits a misdemeanor of the first degree for a violation that occurs after being found to have committed a noncriminal violation for sexting, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.
(c) Commits a felony of the third degree for a violation that occurs after being found to have committed a misdemeanor of the first degree for sexting, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL:	CS/SB 888
INTRODUCER:	Communications, Energy, and Public Utilities Committee and Senator Dean
SUBJECT:	Offense of Sexting
DATE:	March 31, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/1 amendment**
2.	Boland	Maclure	JU	**Fav/CS**
3.	Wiehle	Carter	CU	**Pre-meeting**
4.			BC	
5.				
6.				

I. Summary:

"Sexting" is a term that describes the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. The bill creates a new offense that applies to minors who engage in sexting that involves knowingly using a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person that depicts nudity and is harmful to minors. A minor who commits this act is subject to penalties that begin with a noncriminal violation for the first offense and escalate with subsequent offenses. Under the only laws that are currently available for prosecution of acts that are covered by this bill, such acts could be prosecuted as a felony and result in the minor having to register as a sexual offender and be subject to residency restriction laws.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Florida law currently contains various statutes that prohibit the creation, possession, and transmission of sexual materials depicting minors. Some of these laws address photographs or videos that do not rise to the level of child pornography, which is statutorily defined as "any image depicting a minor engaged in sexual conduct."[1] Section 847.001(16), F.S., defines "sexual conduct" as:

[1] See ss. 775.0847(1)(b) and 847.001(3), F.S.

> [A]ctual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."[2]

Sexual Performance by a Child

Section 827.071(5), F.S., provides that it is a third-degree felony for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The statute specifies that the possession of each photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.

Prohibition of Acts Relating to Obscene and Lewd Materials

Section 847.011(1)(a), F.S., provides that it is a first-degree misdemeanor for a person to knowingly sell, lend, give away, distribute, transmit, show, or transmute, or have in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, or transmute, specified obscene items, including pictures, photographs, and images. However, s. 847.011(1)(c), F.S., provides that it is a third-degree felony if the violation of s. 847.011(1)(a) or (2), F.S., is based on materials that depict a minor[3] engaged in any act or conduct that is harmful to minors.[4]

Section 847.011(2), F.S., provides that it is a second-degree misdemeanor for a person to have in his or her possession, custody, or control specified obscene items, including pictures, photographs, and images, without the intent to sell, etc., such items.

Protection of Minors

Section 847.0133, F.S., provides that it is a third-degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene[5] material to a minor. "Material" includes pictures, photographs, and images.

Computer Pornography

Section 847.0135(2), F.S., provides that it is a third-degree felony for a person to:

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[2] "Sexual conduct" is defined identically in ss. 775.0847 and 827.071, F.S. It has a more limited definition in s. 365.161, F.S., which relates to obscene or indecent communications made by a telephone that describe certain sexual acts.
[3] The term "minor" is defined as "any person under the age of 18 years." Section 847.001(8), F.S.
[4] The term "harmful to minors" is defined in s. 847.001(6), F.S. For a more detailed definition, see the "Effect of Proposed Changes" section of this bill analysis.
[5] Section 847.001(10), F.S., defines the term "obscene" as the status of material which the average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother's breastfeeding of her baby is not under any circumstance "obscene."

- Knowingly compile, enter into, or transmit the visual depiction of sexual conduct with a minor by use of computer;
- Make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor;
- Knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or
- Buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

Transmission of Pornography

Section 847.0137(2), F.S., provides that any person in this state who knew or reasonably should have known that he or she was transmitting child pornography to another person in this state or another jurisdiction commits a third-degree felony.

Transmission of Material Harmful to Minors

Section 847.0138(2), F.S., provides that any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known or believed by the defendant to be a minor commits a third-degree felony.

Both minors and adults can be charged with any of the offenses described above.

Sexting

"Sexting" is a recently coined term that combines the words "sex" and "texting."[6] It is used to describe the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. As the name suggests, "sext" messages are most commonly sent by a cell phone text message. Media reports and other studies indicate that sexting is a growing trend among teenagers. In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20 percent of teens (ages 13-19) and 33 percent of young adults (ages 20-26) had sent nude or semi-nude photographs of themselves electronically.[7] Additionally, 39 percent of teens and 59 percent of young adults had sent sexually explicit text messages.[8]

There is no Florida law that specifically addresses sexting. Under current law, a person who knowingly sends certain sexually explicit images of a minor to another person, or a person who knowingly receives such images, could be charged with any number of different offenses that relate to sexual material depicting minors. For example, in 2007, 18-year-old Phillip Alpert was arrested and charged with transmitting child pornography (among other things) after he sent a nude photo of his 16-year-old girlfriend to her friends and family after they had an argument. In

[6] Stacey Garfinkle, Sex + Texting = Sexting, *The Washington Post*, Dec. 10, 2008, available at http://voices.washingtonpost.com/parenting/2008/12/sexting.html (last visited March 7, 2011).
[7] National Campaign to Prevent Teen and Unplanned Pregnancy, Sex and Tech: Results from a Survey of Teens and Young Adults, 1, available at http://www.thenationalcampaign.org/sextech/PDF/SexTech_Summary.pdf (last visited March 7, 2011).
[8] *Id.*

total, Alpert was charged with 72 offenses, sentenced to five years of probation, and was required to register as a sexual offender.[9]

Similarly, in other jurisdictions, some law enforcement officers and district attorneys have begun prosecuting teens who "sext" under laws generally reserved for producers and distributors of child pornography. For example, in Pennsylvania, a district attorney gave 17 students who were either pictured in images or found with "provocative" images on their cell phones the option of either being prosecuted under child pornography laws or agreeing to participate in a five-week after school program and probation.[10] Similar incidents have occurred in other states, e.g., Massachusetts, Ohio, and Iowa.[11]

As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors. For example, in 2009, Vermont and Utah passed laws that downgraded the penalties for minors and first-time perpetrators of sexting.[12] A Utah statute that generally makes it a crime to distribute pornography in the state (not specifying child pornography) now sets differing punishments for the same offense based on the age of the offender.[13] If the offense is committed by someone over the age of 18, then the offense is a third-degree felony; if the offense is committed by someone 16 or 17 years of age, then the offense is a class A misdemeanor; and if the offense is committed by someone under the age of 16, then the offense is a class B misdemeanor.[14]

III. Effect of Proposed Changes:

The bill creates a new offense that applies to "sexting" *by a minor*. A minor who commits sexting is subject to penalties that are less than the punishment that could be assessed for the same conduct under existing law. Also, a conviction of sexting would not result in the requirement to register as a sexual offender or to comply with existing residency restriction laws or other laws that apply to persons who are convicted of certain sexual offenses.

Sexting occurs when a minor knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in s. 847.001(9), F.S., and is harmful to minors, as defined in s. 847.0016, F.S.

The term "nudity" is defined in s. 847.001(9), F.S., to mean:

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[9] Vicki Mabrey and David Perozzi, 'Sexting': Should Child Pornography Laws Apply?, *ABC NEWS* (Apr. 1, 2010), available at http://abcnews.go.com/Nightline/phillip-alpert-sexting-teen-child-porn/story?id=10252790 (last March 2, 2011); Deborah Feyerick and Sheila Steffen, 'Sexting' lands teen on sex offender list, *CNN* (Apr. 8, 2009), available at http://www.cnn.com/2009/CRIME/04/07/sexting.busts/index.html (last visited March 7, 2011).

[10] Amanda Lenhart, Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging, *Pew Research Ctr*., 3 (Dec. 15, 2009), available at http://www.pewinternet.org/~/media//Files/Reports/2009/PIP_Teens_and_Sexting.pdf (last visited March 7, 2011).

[11] *Id*.; *see also* Mabrey and Perozzi, *supra* note 9.

[12] Lenhart, *supra* note 10, at 3.

[13] UTAH CODE ANN. s. 76-10-1204.

[14] *Id*.

> [T]he showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.

Section 847.001(6), F.S., defines "harmful to minors" to mean:

> [A]ny reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
> (a) Predominantly appeals to a prurient, shameful, or morbid interest;
> (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
> (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.
> A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

The transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.

The bill provides the following graduated punishment schedule for a violation of sexting:

- A first sexting violation is a noncriminal violation, punishable by eight hours of community service or, if ordered by the court in lieu of community service, a $60 fine. The court may also order the minor to participate in suitable training or instruction[15] in lieu of, or in addition to, the community service or fine.
- A sexting violation that occurs after being found to have committed a noncriminal violation for sexting is a second-degree misdemeanor. A second-degree misdemeanor is punishable by a jail term of not more than 60 days and may include a fine of not more than $500.[16]
- A sexting violation that occurs after being found to have committed a second-degree misdemeanor violation for sexting is a first degree misdemeanor. A first-degree misdemeanor is punishable by a jail term of not more than one year and may include a fine of not more than $1,000.[17]
- A sexting violation that occurs after being found to have committed a first-degree misdemeanor violation for sexting is an unranked third-degree felony. A third-degree felony is punishable by state imprisonment for not more than five years and may include a fine of not more than $5,000.[18] However, because the felony is unranked, the offender may be sentenced to a term of probation under supervision by the Department of Corrections.[19]

[15] The bill does not define "suitable training or instruction," and it is unclear what type of training or instruction is anticipated under the bill.
[16] Sections 775.082 and 775.083, F.S.
[17] *Id*.
[18] *Id*.
[19] "Unranked" is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony

Senate Bill 888 is substantially similar to a bill that passed the Senate last year (CS/SB 2560). According to an analysis prepared by the Florida Department of Law Enforcement (FDLE) on CS/SB 2560, because the first sexting violation is a noncriminal violation, the minor will not have an FDLE record. Therefore, if the offenses occur in different jurisdictions, prosecutors may be unaware of a previous noncriminal violation, and the minor may not be charged with the proper offense.[20]

The bill specifies that the sexting provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

The bill provides that it will take effect October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of criminal legislation, estimates that the bill will have an insignificant prison

degree. An unranked third-degree felony is a Level 1 offense. *Id.* A first-time offender convicted of only the unranked third-degree felony would score a nonprison sanction as the lowest permissible sentence. Section 921.0024, F.S. Further, in this first-time offender scenario, a non prison sanction would be required unless the sentencing court made written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

[20] Florida Department of Law Enforcement, Senate Bill 2560 Relating to Sexting (Mar. 17, 2010) (on file with the Senate Committee on Criminal Justice).

bed impact.[21] However, the bill creates new misdemeanor offenses, which could affect local jails, though the impact is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 28, 2011:
The committee substitute amends the original bill in the following ways:

- Changes language to make it an offense for a minor to transmit any photograph or video of any person, whereas the original bill made it an offense for a minor to transmit photographs or videos of himself or herself only;
- Removes a reference to a possession offense, as the bill does not create an offense for simple possession; and
- Changes the term being defined in the bill from "convicted" to "found to have committed."

B. Amendments:

None.

[21] Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Conference Results*, *available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm, (last visited Mar. 29, 2011).

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL:	SB 212
INTRODUCER:	Senator Fasano
SUBJECT:	The Public Service Commission
DATE:	March 29, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Pre-meeting**
2.			JU	
3.			GO	
4.				
5.				
6.				

I. Summary:

The bill requires that Public Service Commissioners follow the Code of Judicial Conduct in docketed proceedings. It prohibits certain communications between Public Service Commissioners or specified members of their staff and any other person, expressly exempting from the prohibition an individual ratepayer who is representing only himself or herself without compensation and including the Governor, a member of the Cabinet, or a member of the Legislature; establishes a monetary penalty for the individuals involved in such communications; and establishes notice requirements for other communications. It establishes prohibitions on certain types of employment for a 4-year period after leaving the Public Service Commission. Finally, it changes the requirement of biennial reconfirmation of the Public Counsel to reconfirmation every 4 years.

The bill takes effect July 1, 2011.

The bill substantially amends the following sections of the Florida Statutes: 350.041, 350.042, 350.0605, and 350.061.

II. 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

[1] Section 350.001, F.S.

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: 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. Among state agencies in Florida, the PSC is unique with respect to the manner in which it handles formal evidentiary proceedings.

Most state agencies refer contested matters to the Division of Administrative Hearings (DOAH) for formal evidentiary hearings and fact finding. Under this process, an administrative law judge (ALJ) is assigned to hear the case, with due regard to the expertise required for the matter.[5] The agency may participate as a party.[6] After hearing the evidence and arguments presented by the parties, the ALJ issues a recommended order containing findings of fact, conclusions of law, and recommended disposition of the case.[7] The ALJ's findings of fact must be based "exclusively on the evidence of record and on matters officially recognized."[8] Subject to certain requirements, the agency may reject or modify the ALJ's conclusions of law over which the agency has

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[2] http://www.psc.state.fl.us/about/overview.aspx#one
[3] *Ibid.*
[4] *Ibid.*
[5] Section 120.569(2)(a), F.S. Pursuant to s. 120.65, F.S., administrative law judges must have been a member of The Florida Bar in good standing for the preceding 5 years.
[6] *Ibid.*
[7] Section 120.57(1)(k), F.S.
[8] Section 120.57(1)(j), F.S. Pursuant to s. 120.57(1)(f), F.S., the record of a proceeding consists only of the following: all notices, pleadings, motions, and intermediate rulings; evidence admitted; those matters officially recognized; proffers of proof and objections and rulings thereon; proposed findings and exceptions; any decision, opinion, order, or report by the presiding officer; all staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records; all matters placed on the record after an ex parte communication; and the official transcript.

substantive jurisdiction. The agency has limited authority to modify or reject the ALJ's findings of fact.[9]

Although it is authorized to refer matters to DOAH for assignment to an ALJ,[10] 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 ALJ's, 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.[11]

Public Service Commissioners – Standards of Conduct

The PSC is required to perform its duties independently.[12] 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.

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.[13] 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).

[9] Section 120.57(1)(l), F.S.
[10] Sections 350.125 and 120.569(2), F.S.
[11] Sections 120.66(1), F.S., and 350.042(1), F.S.
[12] Section 350.001, F.S.
[13] Section 350.041(1), F.S.

- 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.
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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.[14] The 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.[15] It does not preclude ex parte communications in all proceedings: rulemaking, declaratory statements, workshops, and internal affairs meetings are specifically excluded.[16] 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 and 120.57, F.S. The statute 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.[17] The prohibition does not apply to commission staff.[18]

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.[19] 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 received the communication.[20] Any individual other than a commissioner that makes a prohibited ex parte communication must submit to the commission: 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

[14] Section 350.042(1), F.S. The statute does not define either "ex parte communications" nor what persons are "legally interested in a proceeding" for purposes of this section.
[15] *Ibid.*
[16] *Ibid.*
[17] *Ibid.*
[18] *Ibid.*
[19] Section 350.042(4), F.S.
[20] *Ibid.*

communications made and oral responses received. The commission must place this information on the record of the relevant proceeding.[21]

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.[22] Any other person who participated in the communication faces a 2-year ban on practice before the PSC.[23]

Post-Employment Restrictions on Public Service Commissioners and Staff

For the first two years after leaving office, a former commissioner may not appear before the PSC representing any client or industry regulated by the PSC.[24] Further, during those first two years, a former commissioner may not accept employment or compensation from a regulated public utility, related business entities, business competitors of local telephone companies, or any entity that was a party to a commission proceeding in the prior two years.[25]

A former PSC employee cannot appear before the commission on behalf of a regulated entity in any matter that the employee worked on and that was pending at the time the employee left.[26] In addition, a former PSC employee cannot personally represent anyone before the commission for a period of two years after leaving the commission.[27]

Committee on Public Counsel Oversight

Section 350.012, F.S., creates a standing joint committee of the Legislature, the Committee on Public Counsel Oversight, whose duty is to appoint a Public Counsel as provided by general law. The committee is composed 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. The terms of members are for 2 years and run from the organization of one Legislature to the organization of the next Legislature.

Section 350.061, F.S., provides for the appointment of the Public Counsel by the committee. The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court, serves at the pleasure of the committee, and is subject to biennial reconfirmation by the committee. The Public Counsel is to perform his or her duties independently. Vacancies in the office shall be filled in the same manner as the original appointment.

III. Effect of Proposed Changes:

Section 1 amends s. 350.041, F.S, to add to the standards of conduct for PSC commissioners a requirement that in docketed proceedings before the PSC, each commissioner must observe and

[21] Section 350.042(5), F.S.
[22] Section 350.042(6), F.S.
[23] Section 350.042(7)(d), F.S.
[24] Section 350.0605, F.S.
[25] *Ibid.*
[26] *Ibid.*
[27] Section 112.313(9), F.S.

abide by the Code of Judicial Conduct (Code) as adopted by the Supreme Court. If any canon of the Code is in direct conflict with a statutory provision that applies to the commissioners or the commission, the statutory provision controls. Any material violation of the Code, excluding any canon preempted by a conflicting statutory provision, is grounds for suspension or removal of a commissioner by the Governor.

Section 2 amends s. 350.042, F.S., on ex parte communications. It changes the terminology from ex parte communications to prohibited communications. It provides that the purpose of the section is to ensure the fairness of the commission's proceedings by assuring the public that the decisions by the commission are not influenced by prohibited communications between commissioners and legally interested persons. Further, it is the express intent of the Legislature that the commission afford to every person who is legally interested in a proceeding, or the person's attorney or qualified representative, the full right to be heard according to law except as otherwise prohibited in this section.

The section governs communications made by or directed to commissioners and their direct reporting staff which concern proceedings before the Public Service Commission. It provides the following definitions.

- "Legally interested person" means any party to a proceeding before the commission, or a representative of a party to a proceeding pending before the commission, and includes corporations, partnerships, limited liability companies, elected or appointed officials of state government, and other public and elected officials.
- "Prohibited communication" means any communication regarding a docketed matter which, if written, is not served on all the parties to a proceeding, and, if oral, is made without adequate notice to the parties and an opportunity for them to be present and heard.
- "Commissioner's direct reporting staff" means a commissioner's chief advisor and executive assistant.

Prohibited communications

Neither a commissioner nor a commissioner's direct reporting staff is permitted to initiate, engage in, or consider prohibited communications in any proceeding other than an undocketed workshop or an internal affairs meeting. This prohibition does not apply to communications with an individual ratepayer who is representing only himself or herself without compensation.

No individual may discuss any matter with a commissioner or a commissioner's direct reporting staff which the individual reasonably foresees will be filed with the commission.

The restrictions on prohibited communications also apply to communications made by or directed to a commissioner and the commissioner's direct reporting staff to or from the Governor, a member of the Cabinet, or a member of the Legislature. Any written or oral communication from the Governor, a member of the Cabinet, or a member of the Legislature which is only a status inquiry and does not address the merits of a proceeding is not a prohibited communication. A written communication from the Governor, a member of the Cabinet, or a member of the Legislature which attaches or forwards a constituent's correspondence concerning the merits of a docketed proceeding must be placed in the commission's docket files.

The bill amends the existing exemption for oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies to provide that this exemption does not authorize a commissioner or a commissioner's direct reporting staff to discuss matters with any party to a proceeding or legally interested person.

If a commissioner or the commissioner's direct reporting staff knowingly receives a prohibited communication which is related to a proceeding to which the commissioner is assigned, he or she must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commissioner or the commissioner's direct reporting staff must give written notice to all parties to the communication that such matters have been placed on the record.

The bill provides that a member of a commissioner's direct reporting staff who knowingly fails to place on the record any prohibited communications within 15 days after of the date of the communication is subject to dismissal and may be assessed a civil penalty not to exceed $5,000.

The bill creates monetary penalties for individuals involved in prohibited communications. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this section, allegations are made as to the identity of the person who participated in the prohibited communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the prohibited communication, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years and may be assessed a civil penalty not to exceed $5,000. The regulated entity represented by the person, if applicable, may also be assessed a penalty of up to one-tenth of 1 percent of the entity's annual operating revenue for the most recent year.

Other communications

The bill establishes the following requirements for communications that are not prohibited.

- Any communication between a commissioner or a commissioner's direct reporting staff and a representative of an entity regulated by the commission that is not otherwise prohibited, whether oral or written, must be made available to the public by posting the communication to the commission's website within 72 hours after the communication is made or received.
- The commission must post on its website a copy of any written communication by the close of the next business day after the communication is received by the commission.
- The commission must prepare a written summary of any communication related to a documented emergency or a communication related to a brief, unscheduled followup to a previously scheduled meeting or previously scheduled telephone conference call. The commission shall post the written summary on its website within 72 hours after the communication is made or received.
- Notice must be posted on the commission's website at least 72 hours prior to the occurrence of any meeting, telephone conference call, or written communication between a commissioner or the commissioner's direct reporting staff and a representative of a regulated

entity. The Public Counsel may participate in the meeting, telephone conference call, or written communication for the purpose of questioning or directly responding to the communication.

- These provisions do not apply to commission staff or representatives of a regulated entity who are required to initiate or receive brief, unscheduled communications for the purpose of obtaining additional information that may be needed after the completion of an audit.
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Section 3 amends s. 350.0605, F.S., on post-PSC employment. It expands the existing prohibition against a former commissioner appearing before the commission representing any client or any industry regulated by the commission for a period of 2 years following his or her termination of service on the commission to 4 years.

It also prohibits any former commissioner from lobbying the legislative or executive branch of state government on behalf of any client or any industry regulated by the commission for a period of 4 years following his or her termination of service on the commission. This provision applies only to commissioners who are appointed or reappointed on or after July 1, 2011.

Similarly, it prohibits any former member of the commissioner's direct reporting staff from appearing before the commission representing any client or industry regulated by the commission, or from lobbying the legislative or executive branch of state government on behalf of any client or any industry regulated by the commission, for a period of 4 years following his or her termination of employment with the commission. This provision applies only to a member of a commissioner's direct reporting staff who is hired with the commission on or after July 1, 2011. For purposes of this prohibition, the term "commissioner's direct reporting staff" means a commissioner's chief advisor and executive assistant.

Additionally, for a period of 4 years following termination of service on the commission or employment with the commission, a former commissioner or former member of a commissioner's direct reporting staff may not accept employment by or compensation from a business entity that, directly or indirectly, owns or controls a public utility regulated by the commission; from a public utility regulated by the commission; from a business entity that, directly or indirectly, is an affiliate or subsidiary of a public utility regulated by the commission or is an actual business competitor of a local exchange company or public utility regulated by the commission and that is otherwise exempt from regulation by the commission under ss. 364.02(14) and 366.02(1); or from a business entity or trade association that has been a party to a commission proceeding within the 4 years preceding the former commissioner's termination of service or the former commissioner's direct reporting staff member's termination of employment with the commission. This prohibition applies only to former commissioners and members of a commissioner's direct reporting staff who are appointed or reappointed to or hired with the commission on or after July 1, 2011.

Section 4 amends s. 350.061, F.S., which provides for appointment and reconfirmation of the Public Counsel. The bill changes the requirement of biennial reconfirmation to reconfirmation every 4 years.

Section 5 provides that the bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.