

By the Committee on Communications and Public Utilities

579-1816-05

1 A bill to be entitled
 2 An act relating to the Public Service
 3 Commission; creating the Committee on Public
 4 Service Commission Oversight as a standing
 5 joint committee of the Legislature; providing
 6 for its membership, powers, and duties;
 7 amending s. 350.001, F.S.; requiring that the
 8 commission perform its duties independently;
 9 specifying that the Governor has no planning or
 10 budgetary authority with respect to the
 11 commission; specifying that the Governor and
 12 the Department of Management Services have no
 13 authority over the commission's employees;
 14 amending s. 350.031, F.S.; authorizing the
 15 Florida Public Service Commission Nominating
 16 Council to make expenditures to advertise a
 17 vacancy on the council or the commission;
 18 requiring that the Committee on Public Service
 19 Commission Oversight provide a nominee for
 20 recommendation to the Governor for appointment
 21 to the Public Service Commission; providing
 22 procedures; amending s. 350.041, F.S.;
 23 clarifying the prohibition against accepting
 24 gifts with respect to its application to
 25 commissioners attending conferences; requiring
 26 that a penalty be imposed against a person who
 27 gives a commissioner a prohibited gift;
 28 requiring that commissioners avoid impropriety
 29 and act in a manner that promotes confidence in
 30 the commission; amending s. 350.042, F.S.;
 31 requiring that a penalty be imposed against a

1 person involved in a prohibited ex parte
2 communication with a commissioner; amending s.
3 350.061, F.S.; requiring that the Committee on
4 Public Service Commission Oversight rather than
5 the Joint Legislative Auditing Committee
6 appoint the Public Counsel; providing for
7 biennial reconfirmation rather than annual;
8 requiring that the Public Counsel perform his
9 or her duties independently; amending s.
10 350.0614, F.S.; requiring that the Committee on
11 Public Service Commission Oversight rather than
12 the Joint Legislative Auditing Committee
13 oversee expenditures of the Public Counsel;
14 providing an effective date.

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

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18 Section 1. Committee on Public Service Commission
19 Oversight; creation; membership; powers and duties.--

20 (1) There is created a standing joint committee of the
21 Legislature, designated the Committee on Public Service
22 Commission Oversight, and composed of twelve members appointed
23 as follows: six members of the Senate appointed by the
24 President of the Senate, two of whom must be members of the
25 minority party; and six members of the House of
26 Representatives appointed by the Speaker of the House of
27 Representatives, two of whom must be members of the minority
28 party. The terms of members shall be for 2 years and shall run
29 from the organization of one Legislature to the organization
30 of the next Legislature. The President shall appoint the chair
31 of the committee in even years and the vice chair in odd

1 years, and the Speaker of the House of Representatives shall
2 appoint the chair of the committee in odd years and the vice
3 chair in even years, from among the committee membership.
4 Vacancies shall be filled in the same manner as the original
5 appointment. Members shall serve without additional
6 compensation, but shall be reimbursed for expenses.

7 (2) The committee shall be governed by joint rules of
8 the Senate and the House of Representatives which shall remain
9 in effect until repealed or amended by concurrent resolution.

10 (3) The committee shall:

11 (a) Recommend to the Governor a nominee to fill a
12 vacancy on the Public Service Commission, as provided by
13 general law; and

14 (b) Appoint a Public Counsel as provided by general
15 law.

16 (4) The committee is authorized to file a complaint
17 with the Commission on Ethics alleging a violation of this
18 chapter by a commissioner, former commissioner, former
19 commission employee, or member of the Public Service
20 Commission Nominating Council.

21 (5) The committee will not have a permanent staff, but
22 the President of the Senate and the Speaker of the House of
23 Representatives shall select staff members from among existing
24 legislative staff, when and as needed.

25 Section 2. Section 350.001, Florida Statutes, is
26 amended to read:

27 350.001 Legislative intent.--The Florida Public
28 Service Commission has been and shall continue to be an arm of
29 the legislative branch of government. The Public Service
30 Commission shall perform its duties independently. The
31 Legislature declares and determines that the Public Service

1 Commission is under the legislative branch of government
2 within the intent expressed in chapter 216. The Executive
3 Office of the Governor or its successor is not authorized to
4 release or withhold funds appropriated to the Public Service
5 Commission, but the Committee on Public Service Commission
6 Oversight shall release or withhold funds appropriated to the
7 Public Service Commission as provided by law and the rules or
8 decisions of the Committee on Public Service Commission
9 Oversight. The Executive Office of the Governor, the
10 Department of Management Services, or any successor may not
11 determine the number, or fix the compensation, of employees of
12 the Public Service Commission and may not exercise any manner
13 of control over the employees of the Public Service
14 Commission. It is the desire of the Legislature that the
15 Governor participate in the appointment process of
16 commissioners to the Public Service Commission. The
17 Legislature accordingly delegates to the Governor a limited
18 authority with respect to the Public Service Commission by
19 authorizing him or her to participate in the selection of
20 members only ~~from the list provided by the Florida Public~~
21 ~~Service Commission Nominating Council~~ in the manner prescribed
22 by s. 350.031.

23 Section 3. Section 350.031, Florida Statutes, is
24 amended to read:

25 350.031 Florida Public Service Commission Nominating
26 Council.--

27 (1) There is created a Florida Public Service
28 Commission Nominating Council consisting of nine members. At
29 least one member of the council must be 60 years of age or
30 older. Three members, including one member of the House of
31 Representatives, shall be appointed by and serve at the

1 | pleasure of the Speaker of the House of Representatives; three
2 | members, including one member of the Senate, shall be
3 | appointed by and serve at the pleasure of the President of the
4 | Senate; and three members shall be selected and appointed by a
5 | majority vote of the other six members of the council. All
6 | terms shall be for 4 years except those members of the House
7 | and Senate, who shall serve 2-year terms concurrent with the
8 | 2-year elected terms of House members. Vacancies on the
9 | council shall be filled for the unexpired portion of the term
10 | in the same manner as original appointments to the council. A
11 | member may not be reappointed to the council, except for a
12 | member of the House of Representatives or the Senate who may
13 | be appointed to two 2-year terms or a person who is appointed
14 | to fill the remaining portion of an unexpired term.

15 | (2)(a) No member or spouse shall be the holder of the
16 | stocks or bonds of any company, other than through ownership
17 | of shares in a mutual fund, regulated by the commission, or
18 | any affiliated company of any company regulated by the
19 | commission, or be an agent or employee of, or have any
20 | interest in, any company regulated by the commission or any
21 | affiliated company of any company regulated by the commission,
22 | or in any firm which represents in any capacity either
23 | companies which are regulated by the commission or affiliates
24 | of companies regulated by the commission. As a condition of
25 | appointment to the council, each appointee shall affirm to the
26 | Speaker and the President his or her qualification by the
27 | following certification: "I hereby certify that I am not a
28 | stockholder, other than through ownership of shares in a
29 | mutual fund, in any company regulated by the commission or in
30 | any affiliate of a company regulated by the commission, nor in
31 | any way, directly or indirectly, in the employment of, or

1 engaged in the management of any company regulated by the
2 commission or any affiliate of a company regulated by the
3 commission, or in any firm which represents in any capacity
4 either companies which are regulated by the commission or
5 affiliates of companies regulated by the commission."
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7 This certification is made as condition to appointment to the
8 Florida Public Service Commission Nominating Council.

9 (b) A member of the council may be removed by the
10 Speaker of the House of Representatives and the President of
11 the Senate upon a finding by the Speaker and the President
12 that the council member has violated any provision of this
13 subsection or for other good cause.

14 (c) If a member of the council does not meet the
15 requirements of this subsection, the President of the Senate
16 or the Speaker of the House of Representatives, as
17 appropriate, shall appoint a legislative replacement.

18 (3) A majority of the membership of the council may
19 conduct any business before the council. All meetings and
20 proceedings of the council shall be staffed by the Office of
21 Legislative Services and shall be subject to the provisions of
22 ss. 119.07 and 286.011. Members of the council are entitled
23 to receive per diem and travel expenses as provided in s.
24 112.061, which shall be funded by the Florida Public Service
25 Regulatory Trust Fund. Applicants invited for interviews
26 before the council may, in the discretion of the council,
27 receive per diem and travel expenses as provided in s.
28 112.061, which shall be funded by the Florida Public Service
29 Regulatory Trust Fund. The council shall establish policies
30 and procedures to govern the process by which applicants are
31 nominated.

1 (4) The council may spend a nominal amount, not to
2 exceed \$10,000, to advertise a vacancy on the council, which
3 shall be funded by the Florida Public Service Regulatory Trust
4 Fund.

5 ~~(5)(4)~~ A person may not be nominated to the Committee
6 on Public Service Commission Oversight ~~Governor~~ until the
7 council has determined that the person is competent and
8 knowledgeable in one or more fields, which shall include, but
9 not be limited to: public affairs, law, economics,
10 accounting, engineering, finance, natural resource
11 conservation, energy, or another field substantially related
12 to the duties and functions of the commission. The commission
13 shall fairly represent the above-stated fields.
14 Recommendations of the council shall be nonpartisan.

15 ~~(6)(5)~~ It is the responsibility of the council to
16 nominate to the Committee on Public Service Commission
17 Oversight ~~Governor~~ not fewer than three persons for each
18 vacancy occurring on the Public Service Commission. The
19 council shall submit the recommendations to the committee
20 ~~Governor~~ by August 1 ~~October 1~~ of those years in which the
21 terms are to begin the following January, or within 60 days
22 after a vacancy occurs for any reason other than the
23 expiration of the term.

24 ~~(7)(6)~~ The Committee on Public Service Commission
25 Oversight ~~Governor~~ shall select from the list of nominees
26 provided by the nominating council one nominee for
27 recommendation to the Governor for appointment to the
28 commission. The recommendation must be provided to the
29 Governor within 45 days after receipt of the list of nominees.
30 The committee shall make the recommendation fill a vacancy
31 occurring on the Public Service Commission by appointment of

1 ~~one of the applicants nominated by the council only after a~~
2 background investigation of the recommended nominee ~~such~~
3 ~~applicant~~ has been conducted by the Florida Department of Law
4 Enforcement. If the Governor rejects the recommendation or has
5 not made an appointment within 30 days after the receipt of
6 the recommendation ~~by December 1 to fill a vacancy for a term~~
7 ~~to begin the following January~~, then the council shall
8 immediately initiate the nominating process in accordance with
9 this section. The council shall include in the process all new
10 applicants and all previous applicants for this vacancy. The
11 council must, within 30 days after the Governor's rejection of
12 the previous recommendation or failure to timely make an
13 appointment, submit to the committee a list of no fewer than
14 three persons for each vacancy. The committee must, within 30
15 days after receipt, select one nominee for recommendation to
16 the Governor for appointment to the commission. If the
17 Governor rejects the recommendation or fails to make an
18 appointment within 30 days after receipt of the
19 recommendation, the council shall immediately initiate the
20 nominating process again with the time periods applicable., ~~by~~
21 ~~majority vote, shall appoint by December 31 one person from~~
22 ~~the applicants previously nominated to the Governor to fill~~
23 ~~the vacancy. If the Governor has not made the appointment to~~
24 ~~fill a vacancy occurring for any reason other than the~~
25 ~~expiration of the term by the 60th day following receipt of~~
26 ~~the nominations of the council, the council by majority vote~~
27 ~~shall appoint within 30 days thereafter one person from the~~
28 ~~applicants previously nominated to the Governor to fill the~~
29 ~~vacancy.~~

30 (8)(7) Each appointment to the Public Service
31 Commission shall be subject to confirmation by the Senate

1 during the next regular session after the vacancy occurs. If
2 the Senate refuses to confirm or rejects the Governor's
3 appointment, the council shall initiate, in accordance with
4 this section, the nominating process within 30 days.

5 Section 4. Subsection (2) of section 350.041, Florida
6 Statutes, is amended to read:

7 350.041 Commissioners; standards of conduct.--

8 (2) STANDARDS OF CONDUCT.--

9 (a) A commissioner may not accept anything from any
10 business entity which, either directly or indirectly, owns or
11 controls any public utility regulated by the commission, from
12 any public utility regulated by the commission, or from any
13 business entity which, either directly or indirectly, is an
14 affiliate or subsidiary of any public utility regulated by the
15 commission. A commissioner may attend conferences and
16 associated meals and events that are generally available to
17 all conference participants without payment of any fees in
18 addition to the conference fee. Additionally, while attending
19 a conference, a commissioner may attend meetings, meals, or
20 events that are not sponsored, in whole or in part, by any
21 representative of any public utility regulated by the
22 commission and that are limited to commissioners only,
23 committee members, or speakers if the commissioner is a member
24 of a committee of the association of regulatory agencies that
25 organized the conference or is a speaker at the conference. It
26 is not a violation of this paragraph for a commissioner to
27 attend a conference for which conference participants who are
28 employed by a utility regulated by the commission have paid a
29 higher conference registration fee than the commissioner, or
30 to attend a meal or event that is generally available to all
31 conference participants without payment of any fees in

1 addition to the conference fee and that is sponsored, in whole
2 or in part, by a utility regulated by the commission. If,
3 during the course of an investigation by the Commission on
4 Ethics into an alleged violation of this paragraph,
5 allegations are made as to the identity of the person giving
6 or providing the prohibited gift, that person must be given
7 notice and an opportunity to participate in the investigation
8 and relevant proceedings to present a defense. If the
9 Commission on Ethics determines that the person gave or
10 provided a prohibited gift, the person may not appear before
11 the commission or otherwise represent anyone before the
12 commission for a period of 2 years.

13 (b) A commissioner may not accept any form of
14 employment with or engage in any business activity with any
15 business entity which, either directly or indirectly, owns or
16 controls any public utility regulated by the commission, any
17 public utility regulated by the commission, or any business
18 entity which, either directly or indirectly, is an affiliate
19 or subsidiary of any public utility regulated by the
20 commission.

21 (c) A commissioner may not have any financial
22 interest, other than shares in a mutual fund, in any public
23 utility regulated by the commission, in any business entity
24 which, either directly or indirectly, owns or controls any
25 public utility regulated by the commission, or in any business
26 entity which, either directly or indirectly, is an affiliate
27 or subsidiary of any public utility regulated by the
28 commission. If a commissioner acquires any financial interest
29 prohibited by this section during his or her term of office as
30 a result of events or actions beyond the commissioner's
31 control, he or she shall immediately sell such financial

1 interest or place such financial interest in a blind trust at
2 a financial institution. A commissioner may not attempt to
3 influence, or exercise any control over, decisions regarding
4 the blind trust.

5 (d) A commissioner may not accept anything from a
6 party in a proceeding currently pending before the commission.
7 If, during the course of an investigation by the Commission on
8 Ethics into an alleged violation of this paragraph,
9 allegations are made as to the identity of the person giving
10 or providing the prohibited gift, that person must be given
11 notice and an opportunity to participate in the investigation
12 and relevant proceedings to present a defense. If the
13 Commission on Ethics determines that the person gave or
14 provided a prohibited gift, the person may not appear before
15 the commission or otherwise represent anyone before the
16 commission for a period of 2 years.

17 (e) A commissioner may not serve as the representative
18 of any political party or on any executive committee or other
19 governing body of a political party; serve as an executive
20 officer or employee of any political party, committee,
21 organization, or association; receive remuneration for
22 activities on behalf of any candidate for public office;
23 engage on behalf of any candidate for public office in the
24 solicitation of votes or other activities on behalf of such
25 candidacy; or become a candidate for election to any public
26 office without first resigning from office.

27 (f) A commissioner, during his or her term of office,
28 may not make any public comment regarding the merits of any
29 proceeding under ss. 120.569 and 120.57 currently pending
30 before the commission.
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1 (g) A commissioner may not conduct himself or herself
2 in an unprofessional manner at any time during the performance
3 of his or her official duties.

4 (h) A commissioner must avoid impropriety in all of
5 his or her activities and must act at all times in a manner
6 that promotes public confidence in the integrity and
7 impartiality of the commission.

8 Section 5. Subsection (7) of section 350.042, Florida
9 Statutes, is amended to read:

10 350.042 Ex parte communications.--

11 (7)(a) It shall be the duty of the Commission on
12 Ethics to receive and investigate sworn complaints of
13 violations of this section pursuant to the procedures
14 contained in ss. 112.322-112.3241.

15 (b) If the Commission on Ethics finds that there has
16 been a violation of this section by a public service
17 commissioner, it shall provide the Governor and the Florida
18 Public Service Commission Nominating Council with a report of
19 its findings and recommendations. The Governor is authorized
20 to enforce the findings and recommendations of the Commission
21 on Ethics, pursuant to part III of chapter 112.

22 (c) If a commissioner fails or refuses to pay the
23 Commission on Ethics any civil penalties assessed pursuant to
24 the provisions of this section, the Commission on Ethics may
25 bring an action in any circuit court to enforce such penalty.

26 (d) If, during the course of an investigation by the
27 Commission on Ethics into an alleged violation of this
28 paragraph, allegations are made as to the identity of the
29 person who participated in the ex parte communication, that
30 person must be given notice and an opportunity to participate
31 in the investigation and relevant proceedings to present a

1 defense. If the Commission on Ethics determines that the
2 person participated in the ex parte communication, the person
3 may not appear before the commission or otherwise represent
4 anyone before the commission for a period of 2 years.

5 Section 6. Subsection (1) of section 350.061, Florida
6 Statutes, is amended to read:

7 350.061 Public Counsel; appointment; oath;
8 restrictions on Public Counsel and his or her employees.--

9 (1) The Committee on Public Service Commission
10 ~~Oversight Joint Legislative Auditing Committee~~ shall appoint a
11 Public Counsel by majority vote of the members of the
12 committee to represent the general public of Florida before
13 the Florida Public Service Commission. The Public Counsel
14 shall be an attorney admitted to practice before the Florida
15 Supreme Court and shall serve at the pleasure of the ~~Joint~~
16 ~~Legislative Auditing~~ Committee on Public Service Commission
17 Oversight, subject to biennial ~~annual~~ reconfirmation by the
18 committee. The Public Counsel shall perform his or her duties
19 independently. Vacancies in the office shall be filled in the
20 same manner as the original appointment.

21 Section 7. Subsection (2) of section 350.0614, Florida
22 Statutes, is amended to read:

23 350.0614 Public Counsel; compensation and expenses.--

24 (2) The Legislature ~~hereby~~ declares and determines
25 that the Public Counsel is under the legislative branch of
26 government within the intention of the legislation as
27 expressed in chapter 216, and no power shall be in the
28 Executive Office of the Governor or its successor to release
29 or withhold funds appropriated to it, but the same shall be
30 available for expenditure as provided by law and the rules or
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1 | decisions of the ~~Joint Auditing~~ Committee on Public Service
2 | Commission Oversight.

3 | Section 8. This act shall take effect October 1, 2005;
4 | however, the provisions creating penalties or new standards of
5 | conduct apply to violations occurring on or after that date.

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7 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 | COMMITTEE SUBSTITUTE FOR
9 | SB 1322

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10 | The Committee Substitute for Senate Bill 1322:

11 | Deletes all provisions for the new joint Committee on Public
12 | Service Commission Oversight to replace the Governor in
13 | selecting and disciplining commission members;

13 | Provides that the committee is to receive the list of nominees
14 | for commissioner from the nominating council and select one
15 | nominee to recommend to the Governor as the appointee, and
16 | revises the nominating procedure to reflect this change;

15 | Revises the membership of the joint committee;

16 | Deletes the requirement that commissioners comply with the
17 | Code of Judicial Conduct and requires instead that they avoid
18 | impropriety and act in a manner that promotes public
19 | confidence in the integrity and impartiality of the
20 | commission;

19 | Provides for commissioner attendance at meals and events not
20 | sponsored by a utility; and

21 | Revises provisions for penalties for a person giving a
22 | prohibited gift or engaging in ex parte communications,
23 | allowing a person who is alleged to have committed these acts
24 | an opportunity to defend against the allegations.

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