

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Communications and Public Utilities Committee

BILL: SPB 7036

SPONSOR: Communications and Public Utilities Committee

SUBJECT: Florida Public Service Commission, Review of Chapter 350, F.S.

DATE: January 25, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill is the result of Interim Project 2005-115, Florida Public Service Commission, Review of Chapter 350, F.S. It:

- creates the joint legislative Committee on Public Service Commission Oversight to appoint Public Service Commission commissioners, discipline them for a violation of chapter 350, and appoint the Public Counsel;
- provides for the process of discipline by the joint committee;
- codifies the independence of the Public Service Commission;
- removes the Public Service Commission's budget from the Governor's budgeting process and its employees from administrative control of the Governor or the Department of Management Services;
- provides for the application of the gift prohibition statute to commissioner attendance at conferences and associated meals and events;
- creates a penalty for a person giving a prohibited gift to a commissioner;
- provides for application of the Florida Code of Judicial Conduct to commissioners;
- creates a penalty for the person involved in an ex parte with a commissioner;
- codifies the independence of the Public Counsel; and
- authorizes the Public Service Commission Nominating Council to spend nominal amount to advertise vacancies on the council or the commission.

This bill substantially amends the following sections of the Florida Statutes: 350.001, 350.031, 350.041, 350.042, 350.043, 350.05, 350.061, and 350.0614. It also creates an un-numbered section and repeals section 350.03 of the Florida Statutes.

II. Present Situation:

Chapter 350 of the Florida Statutes creates three entities, the Florida Public Service Commission (PSC or commission), the Public Counsel (OPC), and the Florida Public Service Commission Nominating Council (nominating council or council). The statutes expressly provide that all three are legislative entities.

The last comprehensive legislative review of chapter 350 and these three entities was in 1990. Many of the issues discussed in that report relating to oversight of the PSC and ethics continue to be of concern today. The purpose of this project was to review the responsibilities and the performance of these three entities and to identify any changes that should be made to the chapter to improve the efficiency and effectiveness of operations.

A. Public Service Commission

In general, the functions of the PSC include: ratemaking; regulation of service quality; planning; adjudication, including resolving disputes between regulated companies; ensuring public safety; and consumer services. The PSC is composed of five commissioners. Commissioners must meet statutory qualifications and abide by statutory standards of conduct. The Commission on Ethics investigates any alleged violations and reports its findings and recommendations to the Governor for enforcement. The potential penalties are set forth in s. 112.317, F.S., and include a variety of penalties such as public censure and reprimand, removal of office, a civil penalty not to exceed \$10,000, or forfeiture of no more than one-third of the person's salary for no more than 12 months.

The prohibition on commissioners accepting gifts is set forth in s. 350.(2)(a) and (d), F.S. Paragraph (a) provides that a commissioner may not accept anything from any business entity which, either directly or indirectly, owns or controls any public utility regulated by the commission, from any public utility regulated by the commission, or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any public utility regulated by the commission. Paragraph (d) provides that a commissioner may not accept anything from a party in a proceeding currently pending before the commission.

The provisions on ex parte communications¹ are set forth in s. 350.042, F.S. This section prohibits a commissioner from initiating or considering ex parte communications relating to a proceeding in front of the PSC. If a commissioner does knowingly receive an ex parte communication relating to a proceeding, 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. No individual is to discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. Any commissioner who knowingly fails to place on the record any such communications within 15 days of the date of the communication is subject to removal and may be assessed a civil penalty not to exceed \$5,000. There is no penalty for the individual involved in the ex parte communication.

¹ An ex parte communication is defined as "on one side only; by or for one party; done for, in behalf of, or on the application of, one party only." Blacks Law Dictionary (Revised Fourth Edition West 1968).

B. Public Counsel

The Public Counsel provides legal representation for the people of the state, primarily in proceedings before the commission. The Public Counsel is appointed by a majority vote of the members of the Florida Legislature's Joint Legislative Auditing Committee, and serves at the pleasure of the committee, subject to annual reappointment. The Public Counsel's budget is exempt from the Governor's budgeting and planning authority and neither the Governor nor the Department of Management Services has any authority over OPC employees.

C. Florida Public Service Commission Nominating Council

The nominating council reviews applications to fill vacancies on the PSC and selects the most qualified applicants to interview, interviews these applicants, and provides to the Governor a list of no fewer than three nominees per vacancy, from which the Governor appoints a commissioner, subject to confirmation by the Senate.

III. Effect of Proposed Changes:

A. Public Service Commission

1. Responsibility for oversight of the PSC

To provide a clearer line of accountability for actions by commissioners and a method for public participation in decisions involving the PSC, the bill increases the legislative responsibility for oversight of the PSC, a legislative entity according to both statute and case law.² The starting point for this increase in legislative responsibility is the creation of a standing joint legislative committee to make appointments to the commission, replacing the current practice of having the Governor make these appointments.³ Section 1 of the bill creates the Committee on Public Service Commission Oversight. The committee is composed of six members, appointed as follows: three members of the Senate appointed by the President of the Senate, one of whom must be a member of the minority party; and three members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom must be a member of the minority party. The terms of members is for two years and runs from the organization of one Legislature to the organization of the next Legislature. The President appoints the chair of the committee in even years and the vice chair in odd years, and the Speaker of the House of Representatives appoints the chair of the committee in odd years and the vice chair in even years, from among the committee membership. Vacancies are filled in the same manner as the original appointment. Members serve without additional compensation, but are to be reimbursed for expenses. The committee is governed by joint rules of the Senate and the House of Representatives. The committee is authorized to:

² Sections 350.001 and 350.041, F.S., Chiles v. Public Service Commission Nominating Council, 573 So.2d 829 (Fla. 1991), Commission on Ethics v. Sullivan, 489 So.2d 10 (Fla.1986), and Florida Motor Lines, Inc. v. Railroad Commissioners, 100 Fla. 538, 129 So. 876 (1930).

³ In s. 350.001, F.S., the Legislature delegates to the Governor a limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members only from the list provided by the Florida Public Service Commission Nominating Council in the manner prescribed by general law.

- Fill a vacancy occurring on the Public Service Commission by appointment of an applicant as provided by general law;
- Discipline a member of the Public Service Commission as provided by general law; and
- Appoint a Public Counsel as provided by general law.

To assist in accomplishing the disciplinary duties, the committee is authorized to file a complaint with the Commission on Ethics alleging a violation of chapter 350 by a commissioner, former commissioner, former commission employee, or member of the Public Service Commission Nominating Council. The committee will not have a permanent staff, but the chair selects staff members from among existing legislative staff, when and as needed.

Section 6 amends s. 350.042, F.S., to provide details of the disciplinary process. The Commission on Ethics would continue to receive complaints about alleged violations of chapter 350, to investigate these complaints, and to make findings as to whether a violation has occurred. Then, if the Commission on Ethics finds that there has been a violation, it forwards a copy of the complaint and its findings, including any recommendation as to what penalty should be imposed, if any, by certified mail to the joint committee for its investigation and action, governed by the joint rules of the Senate and the House of Representatives. The committee must report its final action to the Commission on Ethics within 90 days after the date of transmittal to the committee. The committee has authority to determine what penalty it will impose, if any, which may include any penalty provided in part III of chapter 112, F.S., the penalties section of the code of conduct for public officials and employees.

To conform with these changes, section 10 of the bill repeals s. 350.03, F.S., which grants the Governor the power to remove commissioners, and section 7 of the bill makes a conforming change to s. 350.05, F.S., relating to removal of commissioners for becoming disqualified for the office.

Section 2 of the bill amends s. 350.001, F.S., to codify the independence of the PSC, to remove its budget from the Governor's budgeting process, to remove the PSC employees from administrative control of the Governor or the Department of Management Services, and to make conforming changes relating to the appointment of commissioners by the joint committee.

2. Gifts

The provisions on the gift prohibition statute are in section 4 of the bill, which amends s. 350.041, F.S., the standards of conduct for commissioners. The bill provides that commissioners may attend conferences and associated meals and events that are generally available to all conference participants without payment of any fees in addition to the conference fee. Also, it is not a violation of the gift prohibition for a commissioner to attend a conference for which conference participants who are employed by a utility regulated by the commission have paid a higher conference registration fee than the commissioner, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee and that is sponsored, in whole or in part, by a utility regulated by the commission.

A related change would address the potential problem of ex parte communications or other improper interaction between commissioners and those with interests before the commission while in attendance at conferences, meals, or events. The bill further amends the standards of conduct statute to require commissioners to comply with the Florida Code of Judicial Conduct where relevant, where not in conflict with other applicable law (such as the public meetings law), and where not in conflict with the lawful duties of a commissioner (such as commissioner participation on relevant regulatory boards or appearing before governmental bodies). Included in the code are provisions that would require that commissioners must at all times avoid impropriety and the appearance of impropriety and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the PSC.

The bill also creates a penalty for those giving a prohibited gift, providing that, if, in the course of determining that a commissioner has accepted a prohibited gift, the Commission on Ethics determines the identity of the person who gave or provided the prohibited item to the commissioner, that person may not appear before the commission or otherwise represent anyone before the commission for a period of two years.

3. Ex parte

As discussed above, the bill supplements ex parte prohibitions by applying the Code of Judicial Conduct, including requirements that commissioners must at all times avoid impropriety and the appearance of impropriety and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the PSC.

In section 5, the bill amends s. 350.042, F.S., the ex parte statute, to create a penalty for the person involved in an ex parte with a commissioner. The penalty is the same as that created for giving a prohibited gift. If, in the course of determining that a commissioner has violated the ex parte statute, the Commission on Ethics determines the identity of the person who participated in the ex parte communication, that person may not appear before the commission or otherwise represent anyone before the commission for a period of two years.

B. Public Counsel

Section 8 of the bill amends s. 350.061, F.S., to conform to the appointment of the Public Counsel by the new joint committee and to codify the independence of the Public Counsel.

Section 9 of the bill makes additional conforming changes, to s. 350.0614, F.S., relating to appointment of Public Counsel.

C. Public Service Commission Nominating Council

Section 3 of the bill amends s. 350.031, F.S., to authorize the Public Service Commission Nominating Council to spend up to \$10,000 to advertise vacancies on the council or the commission and to make conforming changes relating to making its nominations to the joint committee for appointment of commissioners.

D. Effective date

Section 11 provides that the bill takes effect on October 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The authority for the Public Service Commission Nominating Council to spend up to \$10,000 to advertise vacancies will result in more expenditures from the Public Service Regulatory Trust Fund, the source of the nominating council's expense money. The provisions on discipline of commissioners by the new joint Committee on Public Service Commission Oversight will require hearings in the event of such a disciplinary proceeding, which may result in additional legislative expenses depending on the timing of the hearings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
