

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 and Public Utilities Committee

BILL: CS/SB 2212

INTRODUCER: Communications & Public Utilities Committee and Communications & Public Utilities Committee

SUBJECT: Public Service Commission

DATE: March 19, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	_____	_____	EE	_____
3.	_____	_____	GA	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill removes the Joint Committee on Public Service Commission Oversight from the process of appointment of Public Service Commission commissioners, reverting to the previous process whereby the Public Service Commission Nominating Council makes its recommendations to the Governor. The bill changes the membership and method of appointment of the Nominating Council, expanding the number of Legislator members and making all members appointed by the Legislature's presiding officers. The bill also provides that presiding officers select the Nominating Council Chair.

The bill amends the statute creating the Joint Committee on Public Service Committee Oversight, deleting the authority and duties relating to the appointment of Public Service Commission commissioners. It retains provisions for the Committee to appoint the Public Counsel, re-naming the Committee the Joint Committee on Public Counsel Oversight.

Finally, the bill addresses concerns arising during the last round of appointments.

The bill substantially amends the following sections of the Florida Statutes: 350.012, 350.031, 350.061, and 350.0614.

II. Present Situation:

The current process for appointment of Public Service Commission (PSC) commissioners is a three-step process, set out in section 350.031, F.S. First, the Florida Public Service Commission Nominating Council (Nominating Council) receives all applications to fill a vacancy on the PSC, reviews these applications and selects applicants to interview, then conducts interviews and selects six applicants per vacancy to recommend to the Joint Committee on Public Service Commission Oversight (Committee). The Committee interviews these applicants and recommends three per vacancy to the Governor. The Governor interviews these three and selects one person to appoint, subject to Senate confirmation.

This process was created in 2005. Prior to this, there was no Committee and the Nominating Council made its recommendations directly to the Governor.

The 2005 changes were made subsequent to a study of Chapter 350 by the staff of the Senate Committee on Communications and Public Utilities. During the course of the study, staff found that there was a broad public opinion that the processes for appointment and discipline of PSC commissioners were insufficient to hold the PSC commissioners accountable for their actions. The underlying rationale appeared to be that with the Nominating Council, the Governor, and the Senate all involved in making or confirming appointments, and the Commission on Ethics and the Governor involved in discipline, no one person or entity had sufficient authority over or responsibility for PSC commissioners to be able to hold them accountable for their actions. To remedy this, staff recommended that the Legislature accept responsibility for PSC commissioners, who are legislative employees under both statute and case law. The report and the resulting bill proposed removing the Governor from both the appointment and the discipline processes, replacing the Governor with the proposed Joint Committee on Public Service Commission Oversight. As the bill went through the legislative process, it was amended to the provisions of current law.

During the 2007-2008 interim, staff reviewed the current appointment statutes and process. (Interim Project Report 2008-108, Review Process for Selection of Members of the Public Service Commission.) As set forth in this report, staff found that there is no meaningful increase in legislative oversight or interaction with the PSC applicants or commissioners, and no increased responsibility for actions of PSC commissioners. Individual legislators benefit from being a part of the selection process, however, legislators also participate as members of the nominating council, so this benefit can be had at that level. Staff concluded that there is no discernable benefit to the joint committee participation in the selection process.

There is, however, an apparent detriment. The statutory changes to the PSC commissioner selection process took effect on June 2, 2005. Staff of the Nominating Council provided the following information as to the number of applicants for vacancies since that date and for a similar number of vacancies before that date.

Year	Number of vacancies	Number of applicants
2003	2	118
2004	1	51
2005	3 (including one resignation)	131
2006	2	38
2007	2 (resignations)	66

In the two selection processes which were completed in full under the new selection process (the 2005 selection process was begun and the applications were filed before the new law took effect), the number of applications has decreased significantly. Given that nothing else about the selection process has changed, it appears that the new selection process, with its additional step of the Joint Committee, including the additional burdens of travel and another interview, is having a chilling effect on the number of applications.

The report recommended restoring the previous appointment process. As the Joint Committee also has the function of appointing the Public Counsel, it would be retained, but modified, to make this appointment.

The bill embodies the recommendations of the report.

III. Effect of Proposed Changes:

Section 1 amends s. 350.012, F.S., to delete the authority and duties of the Joint Committee on Public Service Committee Oversight relating to the appointment of PSC commissioners. It retains provisions for the Committee to appoint the Public Counsel. It re-names the Committee the Joint Committee on Public Counsel Oversight.

Section 2 amends s. 350.061, F.S., to remove the Joint Committee on Public Service Commission Oversight from the process of appointment of PSC commissioners, reverting to the previous process whereby the Nominating Council makes its recommendations to the Governor. It changes the membership and method of appointment of the Nominating Council. Currently the council has nine members, appointed as follows: three members are appointed by the Speaker of the House, including one Representative; three members are appointed by the President of the Senate, including one Senator; and these six members choose the remaining three members. So the totals are two legislators, four non-legislators appointed by legislative officers, and three non-legislators appointed by these initial six members. The bill expands the total membership from nine to 12, appointed as follows: six members appointed by the Speaker, including three Representatives and six members appointed by the President, including three Senators, for a total of six legislators and six non-legislators, all appointed by legislative officers. Currently, the Nominating Council members select the Chair. The bill provides that the Chair is to be selected by the legislative presiding officers, the President making the selection in even-numbered years and the Speaker in odd-numbered years. As the Nominating Council reverts to making its recommendations directly to the Governor, the bill provides that it is to select no fewer than three persons for each vacancy, not the current six per vacancy.

The section also addresses concerns arising during the last round of appointments. It provides that the Governor's 30-day period to make an appointment is 30 consecutive calendar days,

ensuring that the provision is not interpreted differently from the accepted interpretation. The bill amends the current language “If the Senate refuses to confirm or rejects the Governor’s appointment . . .” to conform to s. 114.05, F.S., the general statute on confirmations, which uses the terms “refuses to confirm” or “fails to consider.”

Finally, the bill creates a new subsection authorizing recall of an appointment under specified circumstances as follows. When a Governor makes an appointment and that appointment has not been confirmed by the Senate before the appointing Governor’s term ends, a successor Governor may recall the appointment. The successor must make the recall within 30 days after taking office and must make a replacement appointment prior to the first day of the next regular session. The appointment must be made from the list provided to the previous Governor by the council. Such an appointment is subject to confirmation by the Senate at the next regular session following the creation of the vacancy to which the appointments are being made. If the replacement appointment is not timely made, or if the appointment is not confirmed by the Senate for any reason, the council, by majority vote, shall appoint, within 30 days after the Legislature adjourns Sine Die, one person from the applicants previously nominated to the Governor to fill the vacancy, with this appointee subject to confirmation by the Senate during the next regular session following the appointment.

Sections 3 and 4 make technical, conforming changes.

Section 5 provides that the bill takes effect upon becoming a law.

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:

There is an inconsistency in the new language relating to the nominating council process and the new language relating to recall. The new nominating council language requires that the council submit to the Governor a list of “no fewer than three” persons for each vacancy. The new language on recall states that when a successor Governor makes a recall and replacement appointment, the new appointment is to be made from “the list of three applicants” provided by the nominating council. This should be corrected by deleting the word “three” from the recall provision.

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 Communications & Public Utilities on 3/19/08:

The committee substitute provides detail on the process by which a Governor may recall a prior Governor’s appointment to the PSC.

B. Amendments:

None.