

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 Committee on Appropriations

BILL: CS/CS/SB 288

INTRODUCER: Communications, Energy, and Public Utilities Committee; Communications, Energy, and Public Utilities Committee; and Senator Latvala

SUBJECT: Utilities Regulation

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 288:

- Creates a process by which an electric utility may seek to recover nuclear asset recovery costs by issuing bonds to obtain funding to pay those costs, with the bonds paid through charging and collecting a nuclear asset recovery charge, and that dedicated revenue stream is used to securitize the bonds to obtain a lower interest rate;
- Creates a term limit of three consecutive terms for PSC commissioners appointed after July 1, 2015;
- Requires the Florida Public Service Commission (PSC or commission) to meet in utilities' service territories and to stream all meetings live;
- Requires a person who lobbies the Florida Public Service Commission Nominating Council to register as a legislative lobbyist;
- Requires each PSC commissioner to complete annual ethics training;
- Expands the existing ex parte prohibition to all meetings and educational conferences;
- If the Public Counsel participated as a party in the relevant PSC proceeding as a party and is not a party to a settlement agreement, prohibits submission of the settlement agreement to the PSC and prohibits the PSC from approving the settlement agreement;
- Prohibits imposing a higher rate for increased electricity use which is due solely to an extended billing period;

- Establishes a limitation on the total deposit that may be demanded from an electricity customer;
- Requires each utility to assist customers in getting the most advantageous rate;
- Requires the commission to approve all tariffs and tariff changes; and
- Requires that money received for demand-side renewable energy be used for that purpose.

The fiscal impact of the bill is estimated by the PSC to be \$228,580 relating to meetings held in each of the service territories around the state, as well as providing a live streaming of each meeting. The Regulatory Trust Fund that supports the PSC does not have sufficient revenues to support this cost on a recurring basis. The PSC also could have additional costs for each commissioner to complete annual ethics training and for proceedings on a petition related to nuclear asset-recovery charges and the issuance of nuclear asset-recovery bonds by a utility, which are indeterminate.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

In recent months, a number of complaints have arisen against regulated electric utilities and involving the PSC. The following is both general background information and background information specific to individual complaints.

Florida Public Service Commission

Appointment

The Florida Public Service Commission (PSC or commission) is a five-member body that has economic regulation authority over electric and water utilities that meet specified criteria. The members are appointed to four-year terms.¹ Appointment is a three-step process:

- Applicants are interviewed by the Florida Public Service Commission Nominating Council, which must nominate to the Governor no fewer than three persons for each vacancy;
- The Governor selects one of the nominated applicants for appointment to each vacant position; and
- Each appointee is then subject to confirmation by the Senate.²

The Florida Public Service Commission Nominating Council (council) is a 12-member panel with:

- Six members appointed by and serving at the pleasure of the President of the Senate, including three members of the Senate, one of whom must be a member of the minority party, and
- Six members appointed by and serving at the pleasure of the Speaker of the House of Representatives, including three members of the House of Representatives, one of whom must be a member of the minority party.

¹ Section 350.01, F.S.

² Section 350.031, F.S.

Council members have four-year terms, except that legislator members serve two-year terms concurrent with the two-year elected terms of House members. Council meetings are subject to public records and public meetings law.

PSC Jurisdiction

With electric utilities, the commission has economic regulation authority over each “public utility,” which is defined to mean every person or legal entity supplying electricity to or for the public within this state, but to expressly exclude both a rural electric cooperative and a municipality or any agency thereof.³

For water and wastewater utilities, the statutes grant the commission exclusive jurisdiction over each utility with respect to its authority, service, and rates.⁴ However, after 10 continuous years under the jurisdiction of the commission, a county can opt-out of commission jurisdiction by resolution or ordinance, in which case the county regulates the rates of all utilities within its boundaries.⁵ The commission has exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or non-jurisdictional, except for utility systems that are subject to, and remain subject to, interlocal utility agreements in effect as of January 1, 1991, that create a single governmental authority to regulate the utility systems whose service transverses county boundaries. The commission has jurisdiction in 37 counties and counties have jurisdiction in 30 counties.⁶ Jurisdiction is divided as listed in the following table.

Jurisdictional Counties (37)	Non-Jurisdictional Counties (30)
Alachua	Baker
Bradford	Bay
Brevard	Calhoun
Broward	Citrus
Charlotte	Collier
Clay	Columbia
Duval	Dade
Escambia	Desoto
Franklin	Dixie
Gadsden	Flagler
Gulf	Gilchrist
Hardee	Glades
Highlands	Hamilton
Jackson	Hendry
Lake	Hernando
Lee	Hillsborough
Levy	Holmes
Manatee	Indian River

³ Section 366.02(1), F.S.

⁴ Section 367.011, F.S.

⁵ Section 367.171, F.S.

⁶ <http://www.psc.state.fl.us/utilities/waterwastewater/wawtextchart.pdf>

Jurisdictional Counties (37)	Non-Jurisdictional Counties (30)
Marion	Jefferson
Martin	Lafayette
Monroe	Leon
Nassau	Liberty
Okaloosa	Madison
Okeechobee	Santa Rosa
Orange	Sarasota
Osceola	Suwanee
Palm Beach	Taylor
Pasco	Union
Pinellas	Wakulla
Polk	Walton
Putnam	
Seminole	
St. Johns	
St. Lucie	
Sumter	
Volusia	
Washington	

PSC Commissioner Standards of Conduct

1. Generally

Section 350.041, F.S., provides the statutory standards of conduct for PSC commissioners, which prohibit them from:

- Accepting anything from any public utility regulated by the commission or any business entity that has specified relationships with such a public utility, with exceptions for attendance at conferences and associated meals and events in accordance with specified conditions;
- Accepting any form of employment with or engaging in any business activity with any public utility regulated by the commission or any business entity that has specified relationships with such a public utility;
- Having any financial interest, other than shares in a mutual fund, in any public utility regulated by the commission or any business entity that has specified relationships with such a public utility;
- Accepting anything from a party in a proceeding currently pending before the commission;
- Serving in specified capacities with any political party;
- Making any public comment regarding the merits of any proceeding pending before the commission;
- Conducting himself or herself in an unprofessional manner at any time during the performance of his or her official duties; and
- Soliciting anything of value, directly or indirectly, from any public utility regulated by the commission or any business entity that has specified relationships with such a public utility or from any party appearing in a proceeding considered by the commission in the last two years.

Additionally, the statute requires each commissioner to avoid impropriety in all of his or her activities and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission. The standards contain no training requirements.

The Commission on Ethics is to accept and investigate any alleged violations of these standards and to provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations.

2. Ex Parte Communications

Section 350.042, F.S., provides for ex parte communications involving commissioners.⁷ The statute prohibits a commissioner from initiating or considering ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a rulemaking proceeding, a declaratory statement proceeding, workshops, or internal affairs meetings. It also 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. These provisions do not apply to commission staff.

The section does not apply to 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.

The Commission on Ethics is to investigate sworn complaints of violations of this section. If the Commission on Ethics finds that there has been a violation by a PSC commissioner, it is to provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations.

Public Counsel and Settlement Agreements

Section 350.0611, F.S., provides the duties and powers of the Public Counsel. The duty is to provide legal representation for the people of the state in proceedings before the commission and in proceedings before counties that have jurisdiction over water and wastewater utilities, and the powers are those necessary to carry out this duty, including the power:

- To recommend to the commission or the counties, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission or the counties and urge therein any position which he or she deems to be in the public interest; and
- In any proceeding in which he or she has participated as a party, to seek review of any determination, finding, or order of the commission or the counties, or of any hearing examiner designated by the commission or the counties, in the name of the state or its citizens.

⁷ In this context, an ex parte communication is a communication between a commissioner and a party or other interested person, including a person's attorney that was neither on the record nor on reasonable prior notice to all parties and that relates to the merits of a proceeding.

The question of whether the commission is authorized to approve a non-unanimous settlement agreement over Public Counsel's objection was recently determined by the Florida Supreme Court.⁸

The case resulted from an application by Florida Power & Light (FPL) for a rate increase which was filed with the commission on March 19, 2012. The Office of Public Counsel (OPC) and others intervened in the case opposing the rate increase. Shortly thereafter, FPL negotiated a settlement with the Florida Industrial Power Users Group (FIPUG), South Florida Hospital and Healthcare Association (SFHHA), and Federal Executive Agencies (FEA). In July, FPL first presented OPC with the negotiated settlement.

On August 15, 2012, the signatories to the settlement agreement – FPL, FEA, FIPUG, and SFHHA – filed joint motions to suspend the procedural schedule and approve the settlement agreement. The OPC filed motions to suspend the hearing schedule and to consider the settlement agreement on the merits. The commission denied the requests and proceeded with the hearing as scheduled, holding full evidentiary hearings on August 20–24 and August 27–31, 2012.

On August 30, 2012, during the hearing, the commission announced on the record that the hearing would reconvene on September 27, 2012, to discuss the proposed settlement agreement. At the September 27, 2012, hearing, the commission determined that the proposed settlement agreement raised five new disputed issues of material fact supplemental to the disputed issues presented in the initial petition and scheduled a hearing to take additional testimony limited to the five new disputed issues of fact for November 19–21, 2012.

The formal hearing reconvened on November 19, 2012, and concluded on November 20, 2012. On December 13, 2012, the commission held a special agenda conference to rule upon the merits of the proposed settlement agreement. After the commission voiced its concern with some items, the commission recessed to give all the parties an opportunity to engage in further settlement negotiations. When presented with the modified settlement agreement, the commission found that it satisfied all of the commission's concerns, that it established fair, just, and reasonable rates, and that it was in the public interest. The final order on January 14, 2013, memorialized this finding and incorporated the approved settlement.

The OPC appealed the commission's decision, arguing that the commission erred by approving a non-unanimous negotiated settlement agreement over OPC's objection. More specifically, OPC argued that:

- Section 350.0611, F.S., which sets forth OPC's powers, is not an exhaustive list.
- Chapter 366, F.S., which provides for PSC regulation of electric utilities, provides that it is to be liberally construed for the accomplishment of protecting the public welfare.
- The OPC must be treated differently from other intervenors as it has a unique status created by the statutes and recognized by the court in its statement in *Mayo* that "special conditions pertain in cases where public counsel has intervened. This is a consequence of the statutory nexus between the file and suspend procedures and the role prescribed for public counsel in

⁸ *Citizens of the State of Florida vs. Florida Public Service Commission*, 146 So.3d 1143 (Fla. 2014).

rate regulation. The public counsel was authorized to represent the citizens of the State of Florida in rate proceedings of this type. That office was created with the realization that the citizens of the state cannot adequately represent themselves in utility matters, and that the rate-setting function of the commission is best performed when those who will pay utility rates are represented in an adversary proceeding by counsel at least as skilled as counsel for the utility company.”⁹

- “[U]nless the Court reverses the Final Order, the effect will be to marginalize the participation of ‘the public’s advocate’ as the petitioning utility could bypass [the] OPC’s opposition through the expedient of offering a revenue concession to a willing intervenor.”¹⁰

The court agreed that the statutory list of the OPC’s powers is not meant to be an exhaustive list and that the statutes on regulation of electric utilities are to be liberally construed for the accomplishment of protecting the public welfare. However, “related statutory provisions must be read together to achieve a consistent whole”¹¹ and “further, ‘[w]here possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.’”¹²

The PSC is an arm of the legislative branch and is to perform its duties independently.¹³ Additionally, the commission has exclusive jurisdiction to fix fair, just, and reasonable rates of electric utilities.¹⁴ Thus, the plain language of the statutes clearly provides that the commission independently determines rates of public utilities subject to the statutory requirements and this authority is not conditioned on the OPC’s approval or absence of the OPC’s objections.¹⁵ Further, adoption of OPC’s argument that its powers include the ability to preclude the commission from approving a settlement agreement over the OPC’s objection would render the statutory language in chapters 350 and 366 inconsistent.¹⁶

As to settlement agreements, the statutes provide for informal disposition of the rate proceeding by stipulation, agreed settlement, or consent order “[u]nless precluded by law.”¹⁷ Chapters 350 and 366, pertaining to the commission and public utilities respectively, do not prohibit the commission from approving a negotiated settlement to resolve a rate-making proceeding.¹⁸ Also, in *Jaber*,¹⁹ this court held that the commission’s approval of a non-unanimous settlement agreement did not violate intervenor’s due process rights because “the record shows that the appellant presented arguments in opposition to the settlement during the agenda conference” in

⁹ *Citizens v. Mayo*, 333 So.2d 1, 6-7 (Fla. 1976).

¹⁰ *Citizens of the State of Florida vs. Florida Public Service Commission*, at 1153.

¹¹ *Citizens of the State of Florida vs. Florida Public Service Commission*, at 1151, citing *Raymond James Fin. Serv., Inc. v. Phillips*, 126 So.3d 186, 191 (Fla. 2013) (quoting *Heart of Adoptions, Inc. v. J.A.*, 963 So.2d 189, 199 (Fla. 2007)).

¹² *Id.*

¹³ *Citizens of the State of Florida vs. Florida Public Service Commission*, at 1150, citing section 350.001, Florida Statutes, *Pub. Serv. Comm’n v. Bryson*, 569 So.2d 1253, 1254 (Fla. 1990) (noting that “the legislature granted the [Commission] exclusive jurisdiction over matters respecting the rates and service of public utilities.”); *Chiles v. Pub. Serv. Comm’n Nominating Council*, 573 So.2d 829, 832 (Fla. 1991) (“[R]ate-making by the [Commission] is a legislative function.”).

¹⁴ *Id.*, citing sections 366.04(1) and 366.06(1), F.S.

¹⁵ *Id.*

¹⁶ *Id.*, at 1151.

¹⁷ *Id.*, at 1150, citing section 120.57(4), Florida Statutes (2012).

¹⁸ *Id.*

¹⁹ *South Florida Hospital and Healthcare Ass’n v. Jaber*, 887 So.2d 1210, 1212 (Fla. 2004).

which the appellant was allowed thirty minutes to present its views in opposition to the settlement agreement.²⁰ Thus, the Commission is not clearly precluded by statute or case law from approving non-unanimous settlements.²¹

OPC argued that *Mayo* recognized that it has special status and that special conditions pertain in cases where it has intervened, status that will be marginalized if the Final Order is not reversed. The court found these arguments to be without merit.²² Ultimately, the commission's actions are conditioned by statute (rates set must be fair, just, and reasonable) and its actions are subject to judicial review – the commission cannot simply accept any settlement agreement devoid of record support as in the public interest.²³ Moreover, none of the actions taken by the commission in this case will preclude the OPC from fully representing the public's interest in future cases because the OPC was able to “urge therein any position which he or she deem[ed] to be in the public interest” in this rate-making proceeding.²⁴ Finally, the fact situation of *Mayo* was completely different and the holding was not intended to extend to the factual circumstances present here.²⁵ In *Mayo*, the OPC was unable to cross-examine Gulf Power witnesses or present any direct evidence contradictory to the data supplied by Gulf Power because it indicated it was not prepared due to the commission's notice of hearing specifying such facets of the hearing would be held at a later date.²⁶ As a result, the commission issued an order granting Gulf Power a rate increase without the OPC ever being provided an opportunity to introduce evidence.²⁷ Here, the OPC fully represented citizens in ten days of hearings regarding FPL's petition for a rate increase and also fully participated in hearings regarding the proposed settlement agreement by submitting prefiled testimony, participating in discovery, presenting evidence in opposition to the settlement agreement, and filing post-hearing briefs.²⁸ Thus, the OPC was not precluded from zealously representing citizens, but was provided multiple opportunities to urge the public's position on FPL's petition and subsequent settlement agreement.²⁹

Electric Utilities

1. *Extended Billing Period and Tiered Rates*

Public utilities are allowed to use tiered billing, in which a higher rate is charged for higher levels of use, as a way to encourage conservation. They also are allowed to vary their billing period from the standard month-long period. Recently a utility adjusted its billing period for one billing cycle “as part of an ongoing process started in May 2013 to streamline the company’s routes for meter-reading throughout central and northern Florida.”³⁰ As a result of the extended billing period, some customers’ total usage for the extended billing period increased such that a

²⁰ *Citizens of the State of Florida vs. Florida Public Service Commission*, at 1150.

²¹ *Id.*

²² *Id.*, at 1153.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*, at 1151.

²⁶ *Id.*, at 1152

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Jim Turner, *Duke Energy called to explain billing change*, Tallahassee Democrat, August 25, 2014, <http://www.tallahassee.com/story/news/politics/2014/08/25/duke-energy-called-explain-billing-change/14594563/>

tiered rate was applicable, even though their average daily use did not increase during that period. After many complaints, the utility agreed to refund all increased charges.³¹

2. *Public Utility Deposits*

Section 366.05, F.S., provides for the powers of the PSC including the power to prescribe fair and reasonable rates and charges. Based in part on this authority, the commission has adopted a rule on customer deposits.³² As to the amount of the deposit, the rule requires each public utility's tariff to contain the utility's specific criteria for determining the amount of initial deposit. After a customer has had continuous service for a period of 23 months, has established a satisfactory payment record, and has not done any of a list of actions or non-actions which disqualify it for a refund, the utility must:

- Refund a residential customer's deposits, and
- At its option, either refund or pay the higher rate of interest³³ for nonresidential deposits.

The rule also allows for an increase in the deposit amount:

(3) New or additional deposits. *A utility may require, upon reasonable written notice of not less than thirty (30) days, a new deposit, where previously waived or returned, or additional deposit, in order to secure payment of current bills.* Such request shall be separate and apart from any bill for service and shall explain the reason for such new or additional deposit, *provided, however, that the total amount of the required deposit shall not exceed an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice.* In the event the customer has had service less than twelve months, then the utility shall base its new or additional deposit upon the average actual monthly usage available.

The phrase “an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice” is ambiguous; however, it has consistently been interpreted and implemented to mean that the total amount of the deposit required by the utility may not exceed twice the average bill for the immediately preceding twelve months.³⁴

³¹ Ivan Penn, *Duke Energy refunds \$1.7 million to customers because of meter issue*, Tampa Bay Times, September 10, 2014, <http://www.tampabay.com/news/business/energy/duke-energy-refunds-17-million-to-customers-because-of-meter-issue/2197029>

³² Rule 25-6.097, F.A.C.

³³ This higher interest rate is three percent instead of the usual two percent. In all cases the interest is simple interest, not compounded.

³⁴ See, e.g., *Pantry Pride Enterprises, Inc. v. Florida Power & Light Company*, 1982 Fla. PUC LEXIS 607, Florida Public Service Commission (June 4, 1982); *In re: Complaint of Sears, Roebuck and Company against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint*, 2006 Fla. PUC LEXIS 241 Florida Public Service Commission (May 9, 2006); *In re: Complaint of Kmart Corporation against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint*, 2006 Fla. PUC LEXIS 242 Florida Public Service Commission (May 9, 2006); and *In re: Complaint of Frederick Smallakoff against Progress Energy Florida, Inc. concerning alleged improper billing*, 2013 Fla. PUC LEXIS 70 Florida Public Service Commission (March 13, 2013).

Recently there have been complaints that a utility was demanding deposit increases in excess of the rules.³⁵

3. Most Advantageous Rate

Utilities have different customer classes and a variety of rates applicable within each class based on usage amounts and patterns. Recently there were complaints that a utility was billing some customers using rates that were inappropriately high.³⁶

Florida Energy Efficiency and Conservation Act

Sections 366.80-366.83 and 403.519, F.S., are the “Florida Energy Efficiency and Conservation Act.” Section 366.82, F.S., provides for setting efficiency and conservation goals and establishing plans and programs to meet the overall goals. This section was amended in 2008 to require the commission to adopt appropriate goals for increasing the development of demand-side renewable energy systems. The term “demand-side renewable energy” means a system located on a customer’s premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer’s electricity requirements provided such system does not exceed 2 megawatts.

To implement this requirement, the PSC created a five-year solar pilot project, and each year the utilities collected money for these purposes. At the most recent goal-setting hearings, the utilities proposed ending the project early, and there was concern about what they might do with remaining funds.

III. Effect of Proposed Changes:

Florida Public Service Commission – Meetings

Section 1 amends s. 350.01, F.S., which establishes the Florida Public Service Commission (PSC or commission), provides for terms of commissioners, and provides for commission proceedings. The bill limits a commissioner appointed after July 1, 2015, to serving not more than three consecutive terms.

The bill requires that the commission hold at least one public customer service meeting per year in the service territory of each public utility regulated by the commission which supplies electricity. Additionally, it must hold a public customer service meeting in the service territory of each water or wastewater utility that is subject to regulation under chapter 367, F.S., if at least 10 percent of the customers of that utility file a written request. The meeting must be held within a reasonable time after receipt of the request.

³⁵ Mitch Perry, *Pinellas Republican state lawmakers say the gloves are off regarding Duke Energy and the PSC*, Creative Loafing Tampa Bay, September 30, 2014, <http://cltampa.com/politicalanimal/archives/2014/09/30/pinellas-republican-state-lawmakers-say-the-gloves-are-off-regarding-duke-energy-and-the-psc#.VNEFL00cTJJ>

³⁶ Mike Deeson, *Duke bills small businesses, churches at higher rate*, WTSP News, October 8, 2014, <http://www.wtsp.com/story/news/investigations/2014/10/07/duke-energy--billing-customers/16866407/>

Finally, the bill requires that specified meetings be streamed live on the Internet, with a recorded copy of the meeting available afterward on the commission's web page. This requirement applies to:

- Each meeting, including an internal affairs meeting, workshop, hearing, or proceeding that is attended by two or more commissioners, and
- Each meeting, workshop, hearing, or proceeding at which a decision is made which concerns the rights or obligations of any person.

Florida Public Service Commission – Appointment

Section 2 amends s. 350.031, F.S., which creates the Florida Public Service Commission Nominating Council and provides its duties and procedures. The bill recognizes that the purpose of the council is to select nominees to be appointed to an arm of the legislative branch of government and requires a person who lobbies a member of the council, whether a legislator or nonlegislator, to register as a legislative lobbyist pursuant to s. 11.045, F.S., and comply with the requirements of that section.

This will require the person to:

- Make a separate registration each principal represented;
- Include a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal which identifies the principal's main business;
- State the extent of any direct business association or partnership with any current member of the Legislature;
- Preserve for a period of four years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation;
- Through his or her lobbying firm, file a compensation report for each calendar quarter during any portion of which the person was registered to represent a principal;
- Refrain from making, directly or indirectly, any expenditure to the benefit of any council member; and
- Be subject to a prohibition against knowingly failing to disclose any material fact required by this section or rules, or knowingly providing false information on any report required by this section or rules, with a violation of the prohibition a noncriminal infraction punishable by a fine not to exceed \$5,000.

PSC Commissioner Standards of Conduct – Generally

Section 3 amends s. 350.041, F.S., on commissioners' standards of conduct to require that beginning January 1, 2016, each commissioner must annually complete four hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution on ethics in government, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

PSC Commissioner Standards of Conduct – Ex Parte Communications

Section 4 amends s 350.042, F.S., which provides for ex parte communications involving commissioners. The statute currently prohibits a commissioner from initiating or considering ex parte communications concerning any proceeding other than a rulemaking proceeding, a declaratory statement proceeding, workshops, or internal affairs meetings, and 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. The bill specifies that the prohibition applies to a proceeding under ss. 120.569 or 120.57 (proceedings in which a party has a substantial affected interest involved) and expands the current 90-day language to 180 days.

The bill recognizes the value of having commissioners attend educational programs, conferences, and meetings of an association of regulatory agencies, and provides requirements for attendance and participation in such meetings that are intended to avoid a violation of the ex parte prohibition. While participating in these meetings, a commissioner must refrain from commenting on or discussing the subject matter of any proceeding covered by the prohibition and must use reasonable care to ensure that the content of a meeting in which the commissioner participates is not designed to address or create a forum to influence the commissioner on the subject matter of any such proceeding.

The bill requires the Governor to remove from office any commissioner found by the Commission on Ethics to have willfully and knowingly violated this section.

Public Counsel and Settlement Agreements

Section 5 amends s. 350.0611, F.S., on powers and duties of the Public Counsel. The bill prohibits submission of a settlement agreement to the PSC, and prohibits the PSC from approving a settlement agreement, if the Public Counsel participated as a party in the relevant PSC proceeding as a party and is not a party to the settlement.

This appears to be in reaction to the *Citizens of the State of Florida, etc., v. Florida Public Service Commission* case discussed in the Present Situation section above. Read in isolation, this section could be taken to codify the OPC's arguments in that case. However, part of the Florida Supreme Court's reasoning in that case was that:

- The PSC is an arm of the legislative branch and is to perform its duties independently; that the commission has exclusive jurisdiction to fix electric utilities' rates; and thus, the plain language of the statutes clearly provides that the commission independently determines rates of public utilities and this authority is not conditioned on the OPC's approval or absence of the OPC's objections; and
- The statutes must be interpreted and applied, to the extent possible, with consistency, in harmony, and to give full effect to all, and that it was not possible to apply OPC's argument consistently and with harmony with the PSC's statutory sole authority to independently perform its duties.

Because the bill does change the PSC's independent, exclusive authority and would continue this statutory inconsistency, the bill must intend something else.

The reasonable interpretation seems to be that if the OPC does not agree to a settlement agreement, the PSC must proceed as if there were no proposed settlement agreement, holding full evidentiary hearings, hearing pleadings that designate all relief sought, and hearing evidence to substantiate that each item of that relief meets the relevant statutory requirements. This would ensure that all of the OPC's concerns are adequately addressed, thereby better protecting the citizens of the State of Florida, while maintaining the PSC's independent authority and the full, consistent, harmonious effect of each statute.

Electric Utilities – Extended Billing Period and Tiered Rates, Deposits, and Most Advantageous Rate

Section 6 amends s. 366.05, F.S., which provides for the powers of the PSC, including the power to prescribe fair and reasonable rates and charges. The bill adds prohibitions and limitations relating to these rates and charges:

- If the commission grants a public utility the authorizes both to charge tiered rates based upon levels of usage and to vary the billing period, the utility may not charge a customer a higher rate because of an increase in usage attributable to an extension of the billing period.
- Notwithstanding any commission rule to the contrary, a utility may not charge or receive a deposit in excess of the following amounts:
 - For an existing customer, the total deposit cannot exceed the total charges for two months of average actual usage, calculated by adding the monthly charges from the 12-month period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by two.³⁷
 - For a new customer, the amount may not exceed two months of projected charges, calculated using the process specified in subparagraph one. Once a new customer has had continuous service for a 12-month period, the amount of the deposit shall be recalculated, using actual usage data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount due or the utility returning any overcharge.
- If a utility has more than one rate for any customer class, it must notify each customer in that class of the available rates and explain how the rate is charged to the customer. If a customer contacts the utility seeking assistance in selecting the most advantageous rate, the utility must provide good faith assistance to the customer. The customer is responsible for charges for service calculated under the selected rate.
- New tariffs and changes to an existing tariff, other than an administrative change that does not substantially change the meaning or operation of the tariff, must be approved by vote of the commission.

Florida Energy Efficiency and Conservation Act

Section 7 amends s. 366.82, F.S., to require that money received by a utility for implementation of measures to encourage development of demand-side renewable energy systems be used solely for that purpose.

³⁷ This appears to codify current PSC practice.

Nuclear Asset-Recovery Bonds

Section 8 creates s. 366.95, F.S., which is based on s. 366.8260, F.S., which was enacted following the severe tropical storm seasons of 2004 and 2005, to create a new financing mechanism, referred to as securitization, by which investor-owned electric utilities could petition the PSC for issuance of a financing order authorizing the utility to issue bonds through a separate legal entity. Under s. 366.8260, F.S., a financing order establishes a nonbypassable charge to the utility's customers to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. This securitized revenue stream would allow the utilities access to low-cost financing to cover storm recovery costs and replenish depleted storm reserve funds. The reduced interest rates would result in savings to the utilities ratepayers. This mechanism has been used only once.³⁸

The bill authorizes an electric utility to recover “nuclear asset recovery costs”³⁹ by issuing bonds to obtain funding to pay those costs. The bonds would be paid through charging and collecting a “nuclear asset recovery charge”⁴⁰ from the utility's customers. The “financing costs”⁴¹ would be added to the charge. The right to bill and collect the authorized charges and to have all resulting

³⁸ Docket No. 060038-EI, Florida Public Service Commission.

³⁹ The bill defines “nuclear asset recovery costs” as pretax costs that an electric utility has incurred or expects to incur which are caused by, associated with, or remain as a result of the early retirement or abandonment of a nuclear generating asset unit that generated electricity and is located in this state where such early retirement or abandonment is deemed to be reasonable and prudent by the commission through a final order approving a settlement or other final order issued by the commission before July 1, 2017, and where the pretax costs to be securitized exceed \$750 million at the time of the filing of the petition. Such pretax costs, where determined appropriate by the commission, include, but are not limited to, the capitalized cost of the retired or abandoned nuclear generating asset unit, other applicable capital and operating costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds and previously stipulated write-downs or write-offs, if any, and the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements. Costs eligible or claimed for recovery pursuant to s. 366.93 are not eligible for securitization under this section unless they were in the electric utility's rate base and were included in base rates before retirement or abandonment.

⁴⁰ A “nuclear asset recovery charge” is the charge authorized by the commission to repay nuclear asset recovery costs and financing costs. It is imposed on and part of all customer bills as a separate, nonbypassable charge.

⁴¹ The term “financing costs” includes:

- Interest and acquisition, defeasance, or redemption premiums that are payable on nuclear asset recovery bonds;
- Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the bonds;
- Any other cost related to issuing, supporting, repaying, refunding, and servicing the bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of the bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;
- Any taxes and license fees imposed on the revenues generated from the collection of the nuclear asset recovery charge;
- Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including but not limited to, regulatory assessment fees, in any such case whether paid, payable, or accrued; and
- Any costs that are incurred by the commission for any outside consultants or counsel.

revenues constitutes “nuclear asset recovery property.”⁴² A utility may transfer the nuclear asset recovery property to an assignee.⁴³

More specifically, an electric utility would petition the PSC for a financing order. In the petition, the utility must:

- Describe the total nuclear asset recovery costs;
- Indicate whether the utility proposes to finance all or a portion of the nuclear asset recovery costs using securitized bonds, and if only a portion of the total costs will be recovered through bonds, identify that portion;
- Estimate the financing costs;
- Estimate the nuclear asset recovery charges necessary to recover the nuclear asset recovery costs and financing costs and the period for recovery of such costs;
- Estimate any projected cost savings, based on current market conditions, or demonstrate how the issuance of the securitized bonds and the imposition of nuclear asset recovery charges would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs from customers;
- Demonstrate that securitization has a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts compared to traditional cost recovery; and
- File with the petition direct testimony supporting the petition.

Within seven days after the filing of a petition, the PSC must publish a case schedule which will permit the commission to make a decision no later than 120 days after the date the petition is filed. No later than 135 days after the date the petition is filed, the commission must issue either a financing order or an order rejecting the petition. The commission must issue a financing order authorizing financing of reasonable and prudent nuclear asset recovery costs and financing costs if it finds that the issuance of the nuclear asset recovery bonds will have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs.

⁴² The term “nuclear asset recovery property” means:

- All rights and interests of an electric utility or successor or assignee under a financing order, including the right to impose, bill, collect, and receive nuclear asset recovery charges as authorized in the financing order and to obtain periodic adjustments to such charges as provided in the financing order; and
- All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

⁴³ “Assignee” is defined to mean any entity, including, but not limited to, a corporation, limited liability company, partnership or limited partnership, public authority, trust, financing entity, or other legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to nuclear asset recovery property. The term also includes any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to nuclear asset recovery property. Subparagraph 366.95(5)(a)3. provides that all or any portion of nuclear asset recovery property may be transferred, sold, conveyed, or assigned to a successor or assignee, that is wholly owned, directly or indirectly, by the electric utility, created for the limited purpose of acquiring, owning, or administering nuclear asset recovery property or issuing nuclear asset recovery bonds. This appears to limit the initial transfer of the nuclear asset recovery property to a subsidiary or affiliate company.

A financing order issued by the commission must:

- Specify the amount of nuclear asset recovery costs to be financed using securitized bonds, describe and estimate the amount of financing costs which may be recovered through nuclear asset recovery charges, and specify the period over which such costs may be recovered;
- Determine if the proposed structuring, expected pricing, and financing costs have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs, and provide detailed findings of fact addressing cost-effectiveness and associated rate impacts upon retail customers and retail customer classes;
- Provide that, for a specified period, the nuclear asset recovery charges authorized in the financing order shall be nonbypassable and must be paid by all existing and future customers receiving transmission or distribution service from the electric utility or its successors or assignees, even if the customer elects to purchase electricity from an alternative electric supplier including following a fundamental change in regulation of public utilities in the state;
- Include a formula-based true-up mechanism for making expeditious periodic adjustments in the nuclear asset recovery charges that are necessary to correct for any overcollection or undercollection of the charges;
- Specify the nuclear asset recovery property that is, or will be, created in favor of the electric utility or its successors or assignees and that will be used to pay or secure the nuclear asset recovery bonds;
- Specify the degree of flexibility to be afforded to the utility in establishing the terms and conditions of the bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs;
- Provide that nuclear asset recovery charges must be allocated to the customer classes using the criteria set out in s. 366.06(1), F.S.,⁴⁴ in the manner in which these costs or their equivalent were allocated in the cost-of-service study approved in connection with the electric utility's last rate case. If the electric utility's last rate case was resolved by a settlement agreement, the cost-of-service methodology adopted in the settlement agreement is to be used;
- Provide that, after the final terms of an issuance of nuclear asset recovery bonds have been established and prior to the issuance of nuclear asset recovery bonds, the electric utility must determine the resulting initial nuclear asset recovery charge in accordance with the financing order and the initial nuclear asset recovery charge is final and effective upon the issuance of the securitized bonds without further commission action so long as the charge is consistent with the financing order; and
- Include any other conditions that the PSC considers appropriate and that are authorized by this section.

If the commission issues a financing order and bonds are issued, the electric utility or its assignee must file with the commission at least biannually a petition or a letter applying the formula-based true-up mechanism and, based on estimates of consumption for each rate class and other factors,

⁴⁴ This statute states that in fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

requesting administrative approval to make necessary adjustments. Review of the request is limited to determining whether there is any error in the application of the formula-based mechanism relating to the amount of any overcollection or undercollection or in the amount of an adjustment.

Within 120 days after the issuance of nuclear asset recovery bonds, the electric utility must file with the PSC information on the actual costs of the bond issuance. The PSC must review the information to determine if the costs incurred in the issuance of the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and the terms of the financing order. The commission may disallow any incremental issuance costs in excess of the lowest overall costs by requiring the utility to make a credit to the capacity cost recovery clause in an amount equal to the excess of actual issuance costs incurred, and paid for out of bond proceeds, and the lowest overall issuance costs as determined by the commission. The commission may not make adjustments to the nuclear asset recovery charges for any excess issuance costs. The apparent effect of this is that while the amount of the charges remains the same, the ratepayers get a refund through the credit to the capacity cost recovery clause, which reduces the amount that ratepayers must pay.

Subsequent to the earlier of the transfer of nuclear asset recovery property to an assignee or the issuance of nuclear asset recovery bonds, a financing order is irrevocable and the commission may not, other than the true-up process, amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust nuclear asset recovery charges.

After the issuance of a financing order, the electric utility retains sole discretion regarding whether to assign, sell, or otherwise transfer nuclear asset recovery property or to cause nuclear asset recovery bonds to be issued. If the electric utility decides not to cause bonds to be issued the electric utility may not recover financing costs from ratepayers.

Within 30 days after the commission issues a financing order or another final order, an adversely affected party may petition for judicial review in the Florida Supreme Court. The Court must hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

A financing order remains in effect and all nuclear asset recovery property continues to exist until the nuclear asset recovery bonds have been paid in full and all financing costs have been recovered in full. A financing order remains in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, or merger, or sale of the electric utility or its successors or assignees.

An electric utility that has issued nuclear asset recovery bonds must disclose on its bills that portion of the charges on the bill which represents nuclear asset recovery charges and, if the nuclear asset recovery property has been transferred to an assignee, must include a statement that the assignee is the owner of the rights to the nuclear asset recovery charges and that the electric utility is acting as a collection agent for the assignee. The applicable tariff also must indicate the nuclear asset recovery charge and the ownership of that charge.

If an electric utility defaults on any payment of nuclear asset recovery charges, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, must order the sequestration and payment of the revenues arising from the nuclear asset recovery property.

Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the nuclear asset recovery property.

A valid, enforceable, and attached security interest is perfected against third parties as of the date of filing of a financing statement in the Florida Secured Transaction Registry and thereafter is a continuously perfected lien. The security interest in the nuclear asset recovery property and all proceeds of the nuclear asset recovery property, whether billed, accrued, or collected, and whether deposited into a deposit account and however evidenced, has priority and take precedence over any subsequent judicial or other lien creditor.

If a default or termination occurs under the terms of the nuclear asset recovery bonds, the financing parties⁴⁵ or their representatives may foreclose on or otherwise enforce their lien and security interest in any nuclear asset recovery property as if they were a secured party under Article 9 of the Uniform Commercial Code; and a court may order that amounts arising from nuclear asset recovery property be transferred to a separate account for the financing parties' benefit. On application by or on behalf of the financing parties to a circuit court of this state, the court must order the sequestration and payment to the financing parties of revenues arising from the nuclear asset recovery property.

The bill sets out a "state pledge" that the state will not:

- Alter the provisions which make the nuclear asset recovery charges irrevocable, binding, and nonbypassable charges;
- Take or permit any action that impairs or would impair the value of nuclear asset recovery property or revises authorized nuclear asset recovery costs; or
- Except as allowed under this section, reduce, alter, or impair nuclear asset recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and other financing parties until all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the nuclear asset recovery bonds have been paid and performed in full.

If an electric utility violates this section or a financing order, it is subject to penalties under s. 366.095, F.S.,⁴⁶ and to any other penalties or remedies that the commission determines are

⁴⁵ "Financing Party" means any and all of the following; holders of Nuclear Asset Recovery Bonds and trustees, collateral agents, any party under an Ancillary Agreement, or any other persons acting for the benefit of holders of nuclear asset recovery bonds.

⁴⁶ This statute authorizes the commission to impose upon a utility that is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission. Each day that such refusal or

necessary. If the commission orders a penalty or a remedy for a violation, the monetary penalty or remedy and the costs of defending against the proposed penalty or remedy may not be recovered from the ratepayers.

Technical Matters and Effective Date

Sections 9, 10, and 11 reenact s. 403.537, F.S., on determination of need for transmission lines and s. 403.9422, F.S., on determination of need for natural gas transmission pipelines, for the purpose of incorporating the amendments made by this act to s. 350.01, F.S., and reenact s. 350.043, F.S., on enforcement and interpretation of ethics statutes, for the purpose of incorporating the amendments made by this act to ss. 350.031, 350.041, and 350.042, F.S.

Section 12 provides an effective date of July 1, 2015.

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:

Under CS/CS/SB 288, public utilities' ratepayers:

- Will save on costs of early retirement of a nuclear power plant through implementation of the bond securitization provisions;
- Will be protected against imposition of higher, tiered rates in situations where total usage over the extended billing cycle was high enough for imposition of the tiered rate, but the average daily usage during that period did not increase;
- Will be better protected against imposition of deposits in excess of the amount currently allowed by rule, two months' average, actual usage; and
- When they have to choose among multiple potentially-applicable rates, will be better able to obtain the most advantageous rate.

violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien.

Individuals that lobby the Florida Public Service Commission Nominating Council will incur costs to register as a legislative lobbyist.

C. Government Sector Impact:

The Public Service Commission (PSC) will incur costs estimated by the PSC to be \$228,580 to provide meeting in utilities service territories and to stream all of its meetings live. The Regulatory Trust Fund that supports the operations of the PSC does not have sufficient revenues to support an appropriation for that amount on a recurring basis. The PSC also could have additional costs for each commissioner to complete annual ethics training and for proceedings on a petition related to nuclear asset-recovery charges and the issuance of nuclear asset-recovery bonds by a utility, which are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 350.01, 350.031, 350.041, 350.042, 350.0611, 366.05, and 366.82.

This bill creates section 366.95 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes, for the purpose of incorporating amendments made to other statutes: 403.537, 403.9422, and 350.043.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS/SB 288 by Communications, Energy, and Public Utilities on April 7, 2015:

- Creates a term limit of three consecutive terms for PSC Commissioners appointed after July 1, 2015; and
- Creates a process by which an electric utility may seek to recover nuclear asset recovery costs by issuing bonds to obtain funding to pay those costs, with the bonds paid through charging and collecting a nuclear asset recovery charge, and that dedicated revenue stream is used to securitize the bonds to obtain a lower interest rate.

CS/SB 288 by Communications, Energy, and Public Utilities on February 17, 2015:
Specifies that the ex parte prohibition applies only to proceedings under ss. 120.569 and 120.57, F.S. (those in which a party has a substantial affected interest);

- Decreases the time period between a communication and when a proceeding is initiated from one year to 180 days;
- Applies the prohibition to educational programs and conferences, and providing additional requirements as to a commissioner's communications during these events;
- Provides that for the Governor to remove a commissioner from office for an ex parte violation, the ex parte communication must be done willfully and knowingly;
- Creates an exemption to the requirement that all changes to tariffs be approved by a vote of the commission to allow an administrative change that does not substantially change the meaning or operation of the tariff without approval.

B. Amendments:

None.