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# **ENERGY & UTILITIES POLICY COMMITTEE**

**Wednesday, March 17, 2010**

**2:15 PM – 5:00 PM**

**Morris Hall**

# **MEETING PACKET**

**Larry Cretul**  
**Speaker**

**Stephen Precourt**  
**Chair**



# **The Florida House of Representatives**

**General Government Policy Council**

**Energy & Utilities Policy Committee**

**Larry Cretul**  
**Speaker**

**Stephen L. Precourt**  
**Chair**

## **AGENDA**

March 17, 2010

2:15 p.m. – 5:00 p.m.

Morris Hall (17 House Office Building)

Opening Remarks by Chair Precourt

Consideration of the following bills:

HB 163 - Prepaid Wireless Telecommunications Service  
Representative Gibbons

HB 235 - Lifeline Telecommunications Service  
Representative A. Williams

Consideration of the following Proposed Committee Bill:

PCB EUP 10-03 – Property Assessed Clean Energy

Workshop on the following:

PCB EUP 10-04 - Public Service Commission Reform

Discussion of Economic Incentives and Energy Initiatives

Rob Vickers, Executive Director, Florida Energy & Climate Commission  
David Lewis, Advanced Green Technologies

Closing Remarks by Chair Precourt

Adjournment





## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Wireless Emergency Communications Act established a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposed a fee, capped at \$ .50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services. As of March 31, 2008, all 67 counties reported capability to receive a call back number and location provided for the cellular caller from the service provider.

Section 365.171(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol, but is not currently imposed on prepaid wireless services.

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the E911 Board (Board) is to make disbursements from the E911 Trust Fund to county governments and wireless providers according to s. 365.173, F.S. The Board has the authority to adjust the level of the fee, within the \$.50 cap, once annually.

In 2006, the Board was required to evaluate the 911 system revenues and services costs to determine the date that the wireless E911 fee could be reduced to a level that still funds all counties' E911 costs, service provider costs, and Board administration costs. In its report, the Board concluded that there were insufficient fee revenues collected to cover all county and service provider E911 costs.

In its report, the Board also recommended that the Legislature consider changing the provisions relating to prepaid calling services so that fees are imposed on users in a fair and consistent manner. At that time, E911 fees for prepaid wireless service were remitted based upon each prepaid wireless telephone associated with this state, for each wireless service customer that had a sufficient positive balance as of the last day of each month. Recognizing that direct billing may not be possible, the law provided that the surcharge amount, or an equivalent number of minutes, may be reduced from the prepaid wireless subscriber's account.

In 2007, the Legislature suspended collection of E911 fees on prepaid wireless service until July 1, 2009, and required the board to conduct a study on the collection of E911 fees on the sale of prepaid wireless service. The resulting report concluded that it is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis. The report deemed two potential collection methods to be tentatively feasible: the Best Practice Menu Flat Fee Collection Method and the Best Practice Statewide Point of Sale Flat Fee Collection Method.

The Best Practice Menu Flat Fee Collection Method (Menu Collection Method) collects prepaid wireless service E911 fees from end users on a monthly basis. The Menu Collection Method allows for a service provider's selection of one collection method from two provided options. Under the first option, the E911 fee is calculated by dividing the total earned prepaid revenue received by the service provider within the monthly 911 reporting period by \$50.00 and then multiplying that number by the amount of the state 911 charge of \$.50 per month. The second option would calculate the fee by multiplying the amount of the state 911 charge for each active prepaid account of the service provider.

The Best Practice Statewide Point of Sale Flat Fee Collection Method (Point of Sale Collection Method) collects prepaid wireless service E911 fees at the point of sale on each transaction involving sales of Florida-based prepaid wireless service by assessing a \$.25 flat fee sales tax surcharge over and beyond sales taxes otherwise due at the point of sale.

### **Effect of Proposed Changes**

The bill imposes a prepaid wireless E911 fee on "prepaid wireless telecommunications service." The bill defines "prepaid wireless telecommunications service" as "a wireless service that allows a caller to dial 911 to access the 911 system," and further specifies that a "prepaid wireless telecommunications service" must meet the requirements of a "prepaid calling arrangement" under s. 212.05(1)(e)1.(I), F.S.

Retail purchases of prepaid wireless telecommunications services from a seller occurring in Florida would be assessed the prepaid wireless E911 fee at the rate of 1% of the amount of the transaction. A retail transaction occurs if it is made in person at a business location in Florida. Retail transactions not occurring in person may be treated as occurring in Florida if the customer's shipping address is in Florida or, if no item is shipped, based on the customer's address or the location associated with the customer's mobile telephone number.

The prepaid E911 fee would not apply to a sale of a prepaid wireless telecommunications service that is not a retail transaction. A sale for resale is not a sale of a prepaid wireless telecommunications service, and would not be subject to the E911 fee. The bill requires DOR to establish procedures for a seller to document that a sale of a prepaid wireless telecommunications service is not a retail sale. The procedures must substantially coincide with sales for resale documentation procedures in s. 212.186, F.S.

The prepaid wireless E911 fee would be collected by the seller from the consumer. The seller would deduct and retain 3 percent of the fees collected, and remit the remaining fees collected to DOR, pursuant to the tax regulations of s. 212.11, F.S. For these purposes, fees collected include any charges the seller is deemed to have collected when the amount is not separately stated on an invoice or similar document. The bill requires DOR to establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the tax imposed under Chapter 212, F.S.

DOR would retain up to 2 percent of the prepaid wireless E911 funds remitted to it for administering the collection and remittance of the prepaid wireless E911 fees. DOR must remit the remaining prepaid wireless E911 fees to the E911 board within 30 days after receipt. Disclosure of the fee to the consumer is required, which may be accomplished by separately stating it on an invoice or receipt. The bill provides that the amount of the fee collected from the seller is not subject to tax regardless of whether such amount is separately stated on an invoice, receipt, or similar document.

Changes to the E911 fee set by the E911 board would result in a proportional increase or reduction in the prepaid wireless E911 fee. The adjusted rate of prepaid wireless E911 fee would be determined by dividing the amount of the E911 fee by \$50. For example, if the E911 fee decreases from \$.50 to \$.40, the prepaid wireless rate would be decreased to 0.8% (\$.40/\$50 = 0.008). The effective date of a change to the prepaid wireless E911 fee is the same as the effective date of the change to the E911 fee or, if later, the first day of the first calendar month to occur at least 60 days after the enactment of the change or notification of a change to the E911 fee. The bill requires DOR to provide at least 30 days notice of a rate change by posting the rate change on its public website. The audit and appeal procedures from s. 212.13, F.S., would apply to the prepaid wireless E911 fees.

Providers and sellers of prepaid wireless telecommunications services would not be liable for damages to any person in connection with the provision of 911 or E911 services. The bill prohibits local governments from levying a prepaid wireless E911 fee or any additional fee on providers or sellers of prepaid wireless telecommunications services for the provision of E911 service.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 365.172, F.S., relating to the emergency communications number "E911" to establish a prepaid wireless E911 fee.

**Section 2.** Amends s. 365.173, F.S., relating to the Emergency Communications Number E911 System, Fund, to conform cross-references.

**Section 3.** Provides an effective date of July 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The Department of Management Services (DMS) estimates total revenues collected from the prepaid wireless E911 fee to be \$5-11 million in FY10-11, \$6-12 million in FY11-12, and \$7-13 million in FY12-13. After 3 percent of these revenues are retained by sellers of prepaid wireless service, the Department of Revenue would retain up to 2% of the remaining funds. After that, the remaining funds would be submitted to the E911 Board (which retains 1% to cover administration costs) to administer and fund the E911 system.

**2. Expenditures:**

The Department of Revenue (DOR) estimates that total expenditures to implement the bill would be \$258,600 in FY09-10, and \$114,285 in FY10-11. Of these amounts, the DOR estimates \$60,000 in recurring expenses.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

Revenues from collection of the prepaid wireless E911 fee would be distributed by the Board to counties to cover authorized E911 system costs. The percentage of funds distributed to counties will depend upon whether the fees are placed in the "wireless category" (67% to counties) or "non-wireless category" (97% to counties) of the E911 System Fund established in s. 365.173, F.S. This is not specified in the bill.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will likely impose costs on retail sellers of prepaid wireless telecommunications services to collect and account for the prepaid wireless E911 fee.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The DOR reports that the bill does not specify a fund in which the revenues from the prepaid wireless E911 fee must be deposited.

The DOR reports that the effective date of July 1, 2010, will not allow sufficient time for DOR to prepare to implement the bill. The DOR suggests an effective date of January 1, 2011.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**



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COUNCIL/COMMITTEE ACTION

ADOPTED                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED       \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION   \_\_\_ (Y/N)  
FAILED TO ADOPT           \_\_\_ (Y/N)  
WITHDRAWN                 \_\_\_ (Y/N)  
OTHER                      \_\_\_\_\_

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1 Council/Committee hearing bill: Energy & Utilities Policy  
2 Committee

3 Representative Gibbons offered the following:  
4

5       **Amendment (with title amendment)**

6       Remove everything after the enacting clause and insert:

7       Section 1. Paragraphs (b), (k), (v), and (hh) of  
8 subsection (3), subsection (4), paragraph (a) of subsection (5),  
9 and subsection (8) of section 365.172, Florida Statutes, are  
10 amended, subsections (9) through (14) are renumbered as  
11 subsections (10) through (15), respectively, and a new  
12 subsection (9) is added to that section, to read:

13       365.172 Emergency communications number "E911."—

14       (3) DEFINITIONS.—Only as used in this section and ss.

15 365.171, 365.173, and 365.174, the term:

16       (b) "Authorized expenditures" means expenditures of the  
17 fee, as specified in subsection (10) ~~(9)~~.

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18 (k) "Fee" means the E911 fee authorized and imposed under  
19 subsection (8) and the prepaid wireless E911 fee authorized and  
20 imposed under subsection (9).

21 (v) "Prepaid wireless telecommunications service calling  
22 arrangements" means a wireless service that allows a caller to  
23 dial 911 to access the 911 system, that is a prepaid calling  
24 arrangement as defined in s. 212.05(1)(e)1.a.(I), and that must  
25 be paid for in advance and sold in predetermined units or  
26 dollars that decline with use in a known amount ~~has the same~~  
27 ~~meaning as defined in s. 212.05(1)(e).~~

28 (hh) "Wireless service" means "commercial mobile radio  
29 service" as provided under ss. 3(27) and 332(d) of the Federal  
30 Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and  
31 the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-  
32 66, August 10, 1993, 107 Stat. 312. The term includes service  
33 provided by any wireless real-time two-way wire communication  
34 device, including radio-telephone communications used in  
35 cellular telephone service; personal communications service; or  
36 the functional or competitive equivalent of a radio-telephone  
37 communications line used in cellular telephone service, a  
38 personal communications service, or a network radio access line.  
39 The term does not include wireless ~~providers that offer mainly~~  
40 ~~dispatch service in a more localized, noncellular configuration;~~  
41 ~~data-only service providers offering only data,~~ one-way, or  
42 stored-voice services on an interconnected basis; ~~providers of~~  
43 air-to-ground services; or public coast stations.

44 (4) POWERS AND DUTIES OF THE OFFICE.—The office shall  
45 oversee the administration of the fee authorized and imposed on

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46 subscribers of voice communications services under subsection  
47 (8) and shall receive and manage funds transferred by the  
48 Department of Revenue from the fee authorized and imposed on  
49 prepaid wireless telecommunications service under subsection  
50 (9).

51 (5) THE E911 BOARD.—

52 (a) The E911 Board is established to administer, with  
53 oversight by the office, the fee imposed under subsection (8),  
54 including receiving revenues derived from the fee and receiving  
55 revenues transferred by the Department of Revenue from the fee  
56 imposed under subsection (9); distributing portions of the  
57 revenues to wireless providers, counties, and the office;  
58 accounting for receipts, distributions, and income derived by  
59 the funds maintained in the fund; and providing annual reports  
60 to the Governor and the Legislature for submission by the office  
61 on amounts collected and expended, the purposes for which  
62 expenditures have been made, and the status of E911 service in  
63 this state. In order to advise and assist the office in carrying  
64 out the purposes of this section, the board, which shall have  
65 the power of a body corporate, has the powers enumerated in  
66 subsection (6).

67 (8) E911 FEE.—

68 (a) Each voice communications services provider shall  
69 collect the fee described in this subsection. The fee shall not  
70 be assessed on any pay telephone in the state. This subsection  
71 and the fee imposed under this subsection do not apply to  
72 prepaid wireless telecommunications service. Each provider, as  
73 part of its monthly billing process, shall bill the fee as

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74 follows: ~~The fee shall not be assessed on any pay telephone in~~  
75 ~~the state.~~

76 1. Each local exchange carrier shall bill the fee to the  
77 local exchange subscribers on a service-identifier basis, up to  
78 a maximum of 25 access lines per account bill rendered.

79 2. Except in the case of prepaid wireless  
80 telecommunications service, each wireless provider shall bill  
81 the fee to a subscriber on a per-service-identifier basis for  
82 service identifiers whose primary place of use is within this  
83 state. ~~Before July 1, 2009, the fee shall not be assessed on or~~  
84 ~~collected from a provider with respect to an end user's service~~  
85 ~~if that end user's service is a prepaid calling arrangement that~~  
86 ~~is subject to s. 212.05(1)(e).~~

87 a. ~~The board shall conduct a study to determine whether it~~  
88 ~~is feasible to collect E911 fees from the sale of prepaid~~  
89 ~~wireless service. If, based on the findings of the study, the~~  
90 ~~board determines that a fee should not be collected from the~~  
91 ~~sale of prepaid wireless service, it shall report its findings~~  
92 ~~and recommendation to the Governor, the President of the Senate,~~  
93 ~~and the Speaker of the House of Representatives by December 31,~~  
94 ~~2008. If the board determines that a fee should be collected~~  
95 ~~from the sale of prepaid wireless service, the board shall~~  
96 ~~collect the fee beginning July 1, 2009.~~

97 b. ~~For purposes of this section, the term:~~

98 (I) ~~"Prepaid wireless service" means the right to access~~  
99 ~~telecommunications services that must be paid for in advance and~~  
100 ~~is sold in predetermined units or dollars enabling the~~

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101 ~~originator to make calls such that the number of units or~~  
102 ~~dollars declines with use in a known amount.~~

103 ~~(II) "Prepaid wireless service providers" includes those~~  
104 ~~persons who sell prepaid wireless service regardless of its~~  
105 ~~form, either as a retailer or reseller.~~

106 ~~e. The study must include an evaluation of methods by~~  
107 ~~which E911 fees may be collected from end users and purchasers~~  
108 ~~of prepaid wireless service on an equitable, efficient,~~  
109 ~~competitively neutral, and nondiscriminatory basis and must~~  
110 ~~consider whether the collection of fees on prepaid wireless~~  
111 ~~service would constitute an efficient use of public funds given~~  
112 ~~the technological and practical considerations of collecting the~~  
113 ~~fee based on the varying methodologies prepaid wireless service~~  
114 ~~providers and their agents use in marketing prepaid wireless~~  
115 ~~service.~~

116 ~~d. The study must include a review and evaluation of the~~  
117 ~~collection of E911 fees on prepaid wireless service at the point~~  
118 ~~of sale within the state. This evaluation must be consistent~~  
119 ~~with the collection principles of end user charges such as those~~  
120 ~~in s. 212.05(1)(c).~~

121 ~~e. No later than 90 days after this section becomes law,~~  
122 ~~the board shall require all prepaid wireless service providers,~~  
123 ~~including resellers, to provide the board with information that~~  
124 ~~the board determines is necessary to discharge its duties under~~  
125 ~~this section, including information necessary for its~~  
126 ~~recommendation, such as total retail and reseller prepaid~~  
127 ~~wireless service sales.~~

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128 ~~f. All subscriber information provided by a prepaid~~  
129 ~~wireless service provider in response to a request from the~~  
130 ~~board while conducting this study is subject to s. 365.174.~~

131 ~~g. The study shall be conducted by an entity competent and~~  
132 ~~knowledgeable in matters of state taxation policy if the board~~  
133 ~~does not possess that expertise. The study must be paid from the~~  
134 ~~moneys distributed to the board for administrative purposes~~  
135 ~~under s. 365.173(2)(f) but may not exceed \$250,000.~~

136 3. Except in the case of prepaid wireless  
137 telecommunications service, all voice communications services  
138 providers not addressed under subparagraphs 1. and 2. shall bill  
139 the fee on a per-service-identifier basis for service  
140 identifiers whose primary place of use is within the state up to  
141 a maximum of 25 service identifiers for each account bill  
142 rendered.

143 4. The provider may list the fee as a separate entry on  
144 each bill, in which case the fee must be identified as a fee for  
145 E911 services. A provider shall remit the fee to the board only  
146 if the fee is paid by the subscriber. If a provider receives a  
147 partial payment for a monthly bill from a subscriber, the amount  
148 received shall first be applied to the payment due the provider  
149 for providing voice communications service.

150 (b) A provider is not obligated to take any legal action  
151 to enforce collection of the fees for which any subscriber is  
152 billed. A county subscribing to 911 service remains liable to  
153 the provider delivering the 911 service or equipment for any 911  
154 service, equipment, operation, or maintenance charge owed by the  
155 county to the provider.

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156 (c) For purposes of this section, the state and local  
157 governments are not subscribers.

158 (d) Each provider may retain 1 percent of the amount of  
159 the fees collected as reimbursement for the administrative costs  
160 incurred by the provider to bill, collect, and remit the fee.  
161 The remainder shall be delivered to the board and deposited by  
162 the board into the fund. The board shall distribute the  
163 remainder pursuant to s. 365.173.

164 (e) Effective September 1, 2007, voice communications  
165 services providers billing the fee to subscribers shall deliver  
166 revenues from the fee to the board within 60 days after the end  
167 of the month in which the fee was billed, together with a  
168 monthly report of the number of service identifiers in each  
169 county. Each wireless provider and other applicable provider  
170 identified in subparagraph (a)3. shall report the number of  
171 service identifiers for subscribers whose place of primary use  
172 is in each county. All provider subscriber information provided  
173 to the board is subject to s. 365.174. If a provider chooses to  
174 remit any fee amounts to the board before they are paid by the  
175 subscribers, a provider may apply to the board for a refund of,  
176 or may take a credit for, any such fees remitted to the board  
177 which are not collected by the provider within 6 months  
178 following the month in which the fees are charged off for  
179 federal income tax purposes as bad debt.

180 (f) The rate of the fee shall be set by the board after  
181 considering the factors set forth in paragraphs (h) and (i), but  
182 may not exceed 50 cents per month per each service identifier.  
183 The fee shall apply uniformly and be imposed throughout the

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184 state, except for those counties that, before July 1, 2007, had  
185 adopted an ordinance or resolution establishing a fee less than  
186 50 cents per month per access line. In those counties the fee  
187 established by ordinance may be changed only to the uniform  
188 statewide rate no sooner than 30 days after notification is made  
189 by the county's board of county commissioners to the board.

190 (g) It is the intent of the Legislature that all revenue  
191 from the fee be used as specified in s. 365.173(2)(a)-(i).

192 (h) No later than November 1, 2007, the board may adjust  
193 the allocation percentages for distribution of the fund as  
194 provided in s. 365.173. When setting the percentages and  
195 contemplating any adjustments to the fee, the board shall  
196 consider the following:

197 1. The revenues currently allocated for wireless service  
198 provider costs for implementing E911 service and projected costs  
199 for implementing E911 service, including recurring costs for  
200 Phase I and Phase II and the effect of new technologies;

201 2. The appropriate level of funding needed to fund the  
202 rural grant program provided for in s. 365.173(2)(g); and

203 3. The need to fund statewide, regional, and county grants  
204 in accordance with sub-subparagraph (6)(a)3.b.

205 (i) The board may adjust the allocation percentages or  
206 adjust the amount of the fee, or both, if necessary to ensure  
207 full cost recovery or prevent overrecovery of costs incurred in  
208 the provision of E911 service, including costs incurred or  
209 projected to be incurred to comply with the order. Any new  
210 allocation percentages or reduced or increased fee may not be  
211 adjusted for 1 year. The fee may not exceed 50 cents per month



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212 per each service identifier. The board-established fee, and any  
213 board adjustment of the fee, shall be uniform throughout the  
214 state, except for the counties identified in paragraph (f). No  
215 less than 90 days before the effective date of any adjustment to  
216 the fee, the board shall provide written notice of the adjusted  
217 fee amount and effective date to each voice communications  
218 services provider from which the board is then receiving the  
219 fee.

220 (j) State and local taxes do not apply to the fee.

221 (k) A local government may not levy the fee or any  
222 additional fee on providers or subscribers for the provision of  
223 E911 service.

224 (l) For purposes of this section, the definitions  
225 contained in s. 202.11 and the provisions of s. 202.155 apply in  
226 the same manner and to the same extent as the definitions and  
227 provisions apply to the taxes levied under chapter 202 on mobile  
228 communications services.

229 (9) PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.-

230 (a) As used in this subsection, the term:

231 1. "Consumer" means a person who purchases prepaid  
232 wireless telecommunications service in a retail sale.

233 2. "Prepaid wireless E911 fee" means the fee that is  
234 required to be collected by a seller from a consumer in the  
235 amount established under paragraph (b).

236 3. "Provider" means a person who provides prepaid wireless  
237 telecommunications service pursuant to a license issued by the  
238 Federal Communications Commission.

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239 4. "Retail transaction" means the purchase of prepaid  
240 wireless telecommunications service from a seller for any  
241 purpose other than resale.

242 5. "Seller" means a person who sells prepaid wireless  
243 telecommunications service to another person.

244 (b)1.a. There is imposed a prepaid wireless E911 fee at a  
245 rate of 1 percent of each retail transaction occurring in this  
246 state.

247 b. The prepaid wireless E911 fee imposed under sub-  
248 paragraph a. shall be increased or reduced, as applicable,  
249 upon any change to the E911 fee imposed under subsection (8).  
250 The adjusted rate shall be determined by dividing the amount of  
251 the charge imposed under subsection (8) by \$50. Such increase or  
252 reduction shall be effective on the effective date of the change  
253 to the E911 fee or, if later, the first day of the first  
254 calendar month to occur at least 60 days after the enactment of  
255 such change or notification of a change in the E911 fee as  
256 provided in paragraph (8)(f). The Department of Revenue shall  
257 provide not less than 30 days' notice of such increase or  
258 reduction on its public website.

259 c. For purposes of this subsection, a retail transaction  
260 that is effected in person by a consumer at a business location  
261 of the seller shall be treated as occurring in this state if  
262 that business location is in this state, and any other retail  
263 transaction shall be treated as occurring in this state if the  
264 retail transaction is treated as occurring in this state under  
265 s. 212.05(1)(e)1.a.(II).

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266 d. If prepaid wireless telecommunications service is sold  
267 along with one or more products or services for a single,  
268 nonitemized price, the percentage specified in sub-subparagraph  
269 a. shall apply to the entire nonitemized price unless the seller  
270 elects to apply such percentage to:

271 (I) The dollar amount of the prepaid wireless  
272 telecommunications service, if such dollar amount is disclosed  
273 to the customer; or

274 (II) The portion of the price that is attributable to the  
275 prepaid wireless telecommunications service, if the seller can  
276 identify such portion by reasonable and verifiable standards  
277 from the seller's books and records that are kept in the regular  
278 course of business for other purposes, including, but not  
279 limited to, nontax purposes. However, if a minimal amount of  
280 prepaid wireless telecommunications service is sold along with a  
281 prepaid wireless device for a single, nonitemized price, the  
282 seller may elect not to apply the percentage specified in sub-  
283 subparagraph a. to such transaction. For purposes of this sub-  
284 sub-subparagraph, an amount of service denominated as 10 minutes  
285 or less or \$5 or less is minimal.

286 2. The prepaid wireless E911 fee is the liability of the  
287 consumer and not the seller or any provider.

288 3. The prepaid wireless E911 fee shall be collected by the  
289 seller from the consumer with respect to each retail transaction  
290 occurring in this state. The amount of the fee shall be  
291 separately stated on an invoice, receipt, or other similar  
292 document that is provided to the consumer by the seller or shall  
293 otherwise be disclosed to the consumer.

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294       4. The Department of Revenue shall establish procedures  
295 for a seller of prepaid wireless telecommunications service to  
296 document that a sale is not a retail transaction, which  
297 procedures shall substantially coincide with the procedures for  
298 documenting a sale for resale transaction under s. 212.186.

299       5.a. The seller shall remit to the Department of Revenue  
300 all prepaid wireless E911 fees collected under this subsection,  
301 including all such charges that the seller is deemed to have  
302 collected when the amount of the charge was not separately  
303 stated on an invoice, receipt, or other similar document  
304 provided to the consumer by the seller, except that the seller  
305 shall deduct and retain 3 percent of the fees collected.

306       b. The seller shall remit the fees collected to the  
307 Department of Revenue at the times and in the manner provided  
308 under s. 212.11. The Department of Revenue shall establish  
309 registration and payment procedures that substantially coincide  
310 with the registration and payment procedures that apply to the  
311 tax imposed under chapter 212.

312       c. The audit and appeal procedures applicable under s.  
313 212.13 apply to prepaid wireless E911 fees.

314       6. The Department of Revenue shall retain up to 2 percent  
315 of the funds remitted under this subsection to reimburse its  
316 direct costs of administering the collection and remittance of  
317 prepaid wireless E911 fees. Thereafter, the department shall  
318 transfer all remaining funds remitted under this subsection to  
319 the E911 Board within 30 days after receipt for use as provided  
320 in subsection (5).

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321 7. The amount of the prepaid wireless E911 fee that is  
322 collected by a seller from a consumer, regardless of whether  
323 such amount is separately stated on an invoice, receipt, or  
324 similar document provided to the consumer by the seller, shall  
325 not be included in the base for measuring any tax; fee,  
326 surcharge, or other charge that is imposed by this state, any  
327 political subdivision of this state, or any governmental agency.

328 8. A local government may not levy the fee or any  
329 additional fee on providers or sellers of prepaid wireless  
330 telecommunications service for the provision of E911 service.

331 9.a. Notwithstanding subsections (3), (5), and (7), a  
332 seller that qualifies for a quarterly, semiannual, or annual  
333 filing pursuant to s. 212.11(1)(c) shall be governed by the  
334 provisions in this subparagraph.

335 b. The seller may file and remit prepaid wireless E911  
336 fees to the department annually under procedures developed by  
337 the department.

338 c. The seller may retain 25 percent of all prepaid  
339 wireless E911 fees collected during the first 12 months after  
340 July 1, 2010, to offset costs incurred from collecting and  
341 remitting such fees.

342 d. The seller may, in lieu of collecting the prepaid  
343 wireless E911 fee from the customer and separately stating such  
344 fee on the invoice, receipt, or other similar document provided  
345 to the customer, elect to absorb the fee and become solely  
346 liable for remitting such fee to the department.

347 (c)1. A provider or seller of prepaid wireless  
348 telecommunications service shall not be liable for damages to

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349 any person resulting from or incurred in connection with the  
350 provision of, or failure to provide, 911 or E911 service or for  
351 identifying, or failing to identify, the telephone number,  
352 address, location, or name associated with any person or device  
353 that is accessing or attempting to access 911 or E911 service.

354 2. A provider or seller of prepaid wireless  
355 telecommunications service shall not be liable for damages to  
356 any person resulting from or incurred in connection with the  
357 provision of any assistance provided by legal process to any  
358 investigative or law enforcement officer of the United States,  
359 this or any other state, or any political subdivision of this or  
360 any other state in connection with any investigation or other  
361 law enforcement activity by such investigative or law  
362 enforcement officer.

363 Section 2. Paragraphs (a), (b), and (c) of subsection (2)  
364 of section 365.173, Florida Statutes, are amended to read:

365 365.173 Emergency Communications Number E911 System Fund.—

366 (2) As determined by the board pursuant to s.  
367 365.172(8)(h), and subject to any modifications approved by the  
368 board pursuant to s. 365.172(6)(a)3. or (8)(i), the moneys in  
369 the fund shall be distributed and used only as follows:

370 (a) Sixty-seven percent of the moneys in the wireless  
371 category shall be distributed each month to counties, based on  
372 the total number of service identifiers in each county, and  
373 shall be used exclusively for payment of:

374 1. Authorized expenditures, as specified in s.

375 365.172(10)(9).

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376 2. Costs to comply with the requirements for E911 service  
377 contained in the order and any future rules related to the  
378 order.

379 (b) Ninety-seven percent of the moneys in the nonwireless  
380 category shall be distributed each month to counties based on  
381 the total number of service identifiers in each county and shall  
382 be used exclusively for payment of authorized expenditures, as  
383 specified in s. 365.172(10)~~(9)~~.

384 (c) Any county that receives funds under paragraphs (a)  
385 and (b) shall establish a fund to be used exclusively for the  
386 receipt and expenditure of the revenues collected under  
387 paragraphs (a) and (b). All fees placed in the fund and any  
388 interest accrued shall be used solely for costs described in  
389 subparagraphs (a)1. and 2. The money collected and interest  
390 earned in this fund shall be appropriated for these purposes by  
391 the county commissioners and incorporated into the annual county  
392 budget. The fund shall be included within the financial audit  
393 performed in accordance with s. 218.39. A county may carry  
394 forward up to 20 percent of the total funds disbursed to the  
395 county by the board during a calendar year for expenditures for  
396 capital outlay, capital improvements, or equipment replacement,  
397 if such expenditures are made for the purposes specified in  
398 subparagraphs (a)1. and 2.; however, the 20-percent limitation  
399 does not apply to funds disbursed to a county under s.  
400 365.172(6)(a)3., and a county may carry forward any percentage  
401 of the funds, except that any grant provided shall continue to  
402 be subject to any condition imposed by the board. In order to  
403 prevent an excess recovery of costs incurred in providing E911

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404 service, a county that receives funds greater than the  
405 permissible E911 costs described in s. 365.172(10)~~(9)~~, including  
406 the 20 percent carryforward allowance, must return the excess  
407 funds to the E911 board to be allocated under s. 365.172(6)(a).

408

409 The Legislature recognizes that the fee authorized under s.  
410 365.172 may not necessarily provide the total funding required  
411 for establishing or providing the E911 service. It is the intent  
412 of the Legislature that all revenue from the fee be used as  
413 specified in this subsection.

414 Section 3. This act shall take effect July 1, 2010.

415

416

417

-----  
**T I T L E A M E N D M E N T**

418  
419 Remove the entire title and insert:

420 A bill to be entitled

421 An act relating to prepaid wireless telecommunications  
422 service; amending s. 365.172, F.S.; revising the  
423 definition of the term "fee"; removing the definition of  
424 the term "prepaid calling arrangements" and defining the  
425 term "prepaid wireless telecommunications service";  
426 redefining the term "wireless service"; revising powers  
427 and duties of the Technology Program within the  
428 Department of Management Services and the E911 Board to  
429 include receiving and managing funds received from a fee  
430 imposed on prepaid wireless telecommunications service;  
431 providing that provisions for an E911 fee do not apply to



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432 such prepaid service; removing provisions for a study of  
433 the feasibility of collecting a fee for such service;  
434 providing definitions; imposing a prepaid wireless E911  
435 fee on each retail transaction in this state for prepaid  
436 wireless telecommunications service; providing for  
437 adjustment of the fee when the E911 fee is changed;  
438 requiring the Department of Revenue to notify the public  
439 of any adjustment to the fee; providing for described  
440 retail transactions to be treated as occurring in this  
441 state; providing that the fee is a liability of the  
442 consumer; providing for collection of the fee by the  
443 seller from the consumer; providing for a statement of  
444 the fee to be made by the seller to the consumer;  
445 directing the department to establish procedures for a  
446 seller to document that a sale is not a retail  
447 transaction; providing for the seller to retain a certain  
448 amount of the fees collected and remit the remaining  
449 funds to the department pursuant to specified provisions;  
450 directing the department to establish registration and  
451 payment procedures; providing for audit and appeal  
452 procedures; providing for application of the fee to the  
453 entire nonitemized price under certain circumstances;  
454 providing for distribution and use of the fees collected;  
455 providing that the fee shall not be included in the base  
456 for measuring any tax, fee, surcharge, or other charge by  
457 the state or any governmental agency; prohibiting a local  
458 governmental agency from levying the fee or an additional  
459 fee on providers and sellers of prepaid wireless

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

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460 | telecommunication service for the provision of E911  
461 | service; providing for the filing of prepaid wireless  
462 | E911 fees collected by the seller; limiting providers'  
463 | and sellers' liability for damages in connection with  
464 | provision of 911 or E911 service; limiting providers' and  
465 | sellers' liability for damages for providing assistance  
466 | to an investigative or law enforcement officer; amending  
467 | s. 365.173, F.S.; conforming cross-references; providing  
468 | an effective date.

1                                   A bill to be entitled  
 2       An act relating to prepaid wireless telecommunications  
 3       service; amending s. 365.172, F.S.; revising the  
 4       definition of the term "fee"; removing the definition of  
 5       the term "prepaid calling arrangements" and defining the  
 6       term "prepaid wireless telecommunications service";  
 7       revising powers and duties of the Technology Program  
 8       within the Department of Management Services and the E911  
 9       Board to include receiving and managing funds received  
 10      from a fee imposed on prepaid wireless telecommunications  
 11      service; providing that provisions for an E911 fee do not  
 12      apply to such prepaid service; removing provisions for a  
 13      study of the feasibility of collecting a fee for such  
 14      service; providing definitions; imposing a prepaid  
 15      wireless E911 fee on each retail transaction in this state  
 16      for prepaid wireless telecommunications service; providing  
 17      for adjustment of the fee when the E911 fee is changed;  
 18      requiring the Department of Revenue to notify the public  
 19      of any adjustment to the fee; providing for described  
 20      retail transactions to be treated as occurring in this  
 21      state; providing that the fee is a liability of the  
 22      consumer; providing for collection of the fee by the  
 23      seller from the consumer; providing for a statement of the  
 24      fee to be made by the seller to the consumer; directing  
 25      the department to establish procedures for a seller to  
 26      document that a sale is not a retail transaction;  
 27      providing for the seller to retain a certain amount of the  
 28      fees collected and remit the remaining funds to the

29 department pursuant to specified provisions; directing the  
 30 department to establish registration and payment  
 31 procedures; providing for audit and appeal procedures;  
 32 providing for distribution and use of the fees collected;  
 33 providing that the fee shall not be included in the base  
 34 for measuring any tax, fee, surcharge, or other charge by  
 35 the state or any governmental agency; prohibiting a local  
 36 governmental agency from levying the fee or an additional  
 37 fee on providers and sellers of prepaid wireless  
 38 telecommunication service for the provision of E911  
 39 service; limiting providers' and sellers' liability for  
 40 damages in connection with provision of 911 or E911  
 41 service; limiting providers' and sellers' liability for  
 42 damages for providing assistance to an investigative or  
 43 law enforcement officer; amending s. 365.173, F.S.;  
 44 conforming cross-references; providing an effective date.

45

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

47

48 Section 1. Paragraphs (b), (k), and (v) of subsection (3),  
 49 subsection (4), paragraph (a) of subsection (5), and subsection  
 50 (8) of section 365.172, Florida Statutes, are amended,  
 51 subsections (9) through (14) are renumbered as subsections (10)  
 52 through (15), respectively, and a new subsection (9) is added to  
 53 that section, to read:

54

365.172 Emergency communications number "E911."--

55

(3) DEFINITIONS.--Only as used in this section and ss.

56

365.171, 365.173, and 365.174, the term:

57 (b) "Authorized expenditures" means expenditures of the  
 58 fee, as specified in subsection (10) ~~(9)~~.

59 (k) "Fee" means the E911 fee authorized and imposed under  
 60 subsection (8) and the prepaid wireless E911 fee authorized and  
 61 imposed under subsection (9).

62 (v) "Prepaid wireless telecommunications service calling  
 63 arrangements" means a wireless service that allows a caller to  
 64 dial 911 to access the 911 system, which service must be paid  
 65 for in advance and is sold in predetermined units or dollars of  
 66 which the number declines with use in a known amount ~~has the~~  
 67 ~~same meaning as defined in s. 212.05(1)(e)~~.

68 (4) POWERS AND DUTIES OF THE OFFICE.--The office shall  
 69 oversee the administration of the fee authorized and imposed on  
 70 subscribers of voice communications services under subsection  
 71 (8) and shall receive and manage funds transferred by the  
 72 Department of Revenue from the fee authorized and imposed on  
 73 prepaid wireless telecommunications service under subsection  
 74 (9).

75 (5) THE E911 BOARD.--

76 (a) The E911 Board is established to administer, with  
 77 oversight by the office, the fee imposed under subsection (8),  
 78 including receiving revenues derived from the fee and receiving  
 79 revenues transferred by the Department of Revenue from the fee  
 80 imposed under subsection (9); distributing portions of the  
 81 revenues to wireless providers, counties, and the office;  
 82 accounting for receipts, distributions, and income derived by  
 83 the funds maintained in the fund; and providing annual reports  
 84 to the Governor and the Legislature for submission by the office

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85 on amounts collected and expended, the purposes for which  
 86 expenditures have been made, and the status of E911 service in  
 87 this state. In order to advise and assist the office in carrying  
 88 out the purposes of this section, the board, which shall have  
 89 the power of a body corporate, has the powers enumerated in  
 90 subsection (6).

91 (8) E911 FEE.--

92 (a) Each voice communications services provider shall  
 93 collect the fee described in this subsection. The fee shall not  
 94 be assessed on any pay telephone in the state. This subsection  
 95 and the fee imposed under this subsection do not apply to  
 96 prepaid wireless telecommunications service. Each provider, as  
 97 part of its monthly billing process, shall bill the fee as  
 98 follows: ~~The fee shall not be assessed on any pay telephone in~~  
 99 ~~the state.~~

100 1. Each local exchange carrier shall bill the fee to the  
 101 local exchange subscribers on a service-identifier basis, up to  
 102 a maximum of 25 access lines per account bill rendered.

103 2. Except in the case of prepaid wireless  
 104 telecommunications service, each wireless provider shall bill  
 105 the fee to a subscriber on a per-service-identifier basis for  
 106 service identifiers whose primary place of use is within this  
 107 state. ~~Before July 1, 2009, the fee shall not be assessed on or~~  
 108 ~~collected from a provider with respect to an end user's service~~  
 109 ~~if that end user's service is a prepaid calling arrangement that~~  
 110 ~~is subject to s. 212.05(1)(e).~~

111 ~~a. The board shall conduct a study to determine whether it~~  
 112 ~~is feasible to collect E911 fees from the sale of prepaid~~

113 ~~wireless service. If, based on the findings of the study, the~~  
114 ~~board determines that a fee should not be collected from the~~  
115 ~~sale of prepaid wireless service, it shall report its findings~~  
116 ~~and recommendation to the Governor, the President of the Senate,~~  
117 ~~and the Speaker of the House of Representatives by December 31,~~  
118 ~~2008. If the board determines that a fee should be collected~~  
119 ~~from the sale of prepaid wireless service, the board shall~~  
120 ~~collect the fee beginning July 1, 2009.~~

121 ~~b. For purposes of this section, the term:~~

122 ~~(I) "Prepaid wireless service" means the right to access~~  
123 ~~telecommunications services that must be paid for in advance and~~  
124 ~~is sold in predetermined units or dollars enabling the~~  
125 ~~originator to make calls such that the number of units or~~  
126 ~~dollars declines with use in a known amount.~~

127 ~~(II) "Prepaid wireless service providers" includes those~~  
128 ~~persons who sell prepaid wireless service regardless of its~~  
129 ~~form, either as a retailer or reseller.~~

130 ~~c. The study must include an evaluation of methods by~~  
131 ~~which E911 fees may be collected from end users and purchasers~~  
132 ~~of prepaid wireless service on an equitable, efficient,~~  
133 ~~competitively neutral, and nondiscriminatory basis and must~~  
134 ~~consider whether the collection of fees on prepaid wireless~~  
135 ~~service would constitute an efficient use of public funds given~~  
136 ~~the technological and practical considerations of collecting the~~  
137 ~~fee based on the varying methodologies prepaid wireless service~~  
138 ~~providers and their agents use in marketing prepaid wireless~~  
139 ~~service.~~

140 ~~d. The study must include a review and evaluation of the~~  
 141 ~~collection of E911 fees on prepaid wireless service at the point~~  
 142 ~~of sale within the state. This evaluation must be consistent~~  
 143 ~~with the collection principles of end user charges such as those~~  
 144 ~~in s. 212.05(1)(e).~~

145 ~~e. No later than 90 days after this section becomes law,~~  
 146 ~~the board shall require all prepaid wireless service providers,~~  
 147 ~~including resellers, to provide the board with information that~~  
 148 ~~the board determines is necessary to discharge its duties under~~  
 149 ~~this section, including information necessary for its~~  
 150 ~~recommendation, such as total retail and reseller prepaid~~  
 151 ~~wireless service sales.~~

152 ~~f. All subscriber information provided by a prepaid~~  
 153 ~~wireless service provider in response to a request from the~~  
 154 ~~board while conducting this study is subject to s. 365.174.~~

155 ~~g. The study shall be conducted by an entity competent and~~  
 156 ~~knowledgeable in matters of state taxation policy if the board~~  
 157 ~~does not possess that expertise. The study must be paid from the~~  
 158 ~~moneys distributed to the board for administrative purposes~~  
 159 ~~under s. 365.173(2)(f) but may not exceed \$250,000.~~

160 3. Except in the case of prepaid wireless  
 161 telecommunications service, all voice communications services  
 162 providers not addressed under subparagraphs 1. and 2. shall bill  
 163 the fee on a per-service-identifier basis for service  
 164 identifiers whose primary place of use is within the state up to  
 165 a maximum of 25 service identifiers for each account bill  
 166 rendered.



167        4. The provider may list the fee as a separate entry on  
 168 each bill, in which case the fee must be identified as a fee for  
 169 E911 services. A provider shall remit the fee to the board only  
 170 if the fee is paid by the subscriber. If a provider receives a  
 171 partial payment for a monthly bill from a subscriber, the amount  
 172 received shall first be applied to the payment due the provider  
 173 for providing voice communications service.

174        (b) A provider is not obligated to take any legal action  
 175 to enforce collection of the fees for which any subscriber is  
 176 billed. A county subscribing to 911 service remains liable to  
 177 the provider delivering the 911 service or equipment for any 911  
 178 service, equipment, operation, or maintenance charge owed by the  
 179 county to the provider.

180        (c) For purposes of this section, the state and local  
 181 governments are not subscribers.

182        (d) Each provider may retain 1 percent of the amount of  
 183 the fees collected as reimbursement for the administrative costs  
 184 incurred by the provider to bill, collect, and remit the fee.  
 185 The remainder shall be delivered to the board and deposited by  
 186 the board into the fund. The board shall distribute the  
 187 remainder pursuant to s. 365.173.

188        (e) Effective September 1, 2007, voice communications  
 189 services providers billing the fee to subscribers shall deliver  
 190 revenues from the fee to the board within 60 days after the end  
 191 of the month in which the fee was billed, together with a  
 192 monthly report of the number of service identifiers in each  
 193 county. Each wireless provider and other applicable provider  
 194 identified in subparagraph (a)3. shall report the number of

195 service identifiers for subscribers whose place of primary use  
 196 is in each county. All provider subscriber information provided  
 197 to the board is subject to s. 365.174. If a provider chooses to  
 198 remit any fee amounts to the board before they are paid by the  
 199 subscribers, a provider may apply to the board for a refund of,  
 200 or may take a credit for, any such fees remitted to the board  
 201 which are not collected by the provider within 6 months  
 202 following the month in which the fees are charged off for  
 203 federal income tax purposes as bad debt.

204 (f) The rate of the fee shall be set by the board after  
 205 considering the factors set forth in paragraphs (h) and (i), but  
 206 may not exceed 50 cents per month per each service identifier.  
 207 The fee shall apply uniformly and be imposed throughout the  
 208 state, except for those counties that, before July 1, 2007, had  
 209 adopted an ordinance or resolution establishing a fee less than  
 210 50 cents per month per access line. In those counties the fee  
 211 established by ordinance may be changed only to the uniform  
 212 statewide rate no sooner than 30 days after notification is made  
 213 by the county's board of county commissioners to the board.

214 (g) It is the intent of the Legislature that all revenue  
 215 from the fee be used as specified in s. 365.173(2)(a)-(i).

216 (h) No later than November 1, 2007, the board may adjust  
 217 the allocation percentages for distribution of the fund as  
 218 provided in s. 365.173. When setting the percentages and  
 219 contemplating any adjustments to the fee, the board shall  
 220 consider the following:

- 221 1. The revenues currently allocated for wireless service  
 222 provider costs for implementing E911 service and projected costs

223 for implementing E911 service, including recurring costs for  
 224 Phase I and Phase II and the effect of new technologies;

225 2. The appropriate level of funding needed to fund the  
 226 rural grant program provided for in s. 365.173(2)(g); and

227 3. The need to fund statewide, regional, and county grants  
 228 in accordance with sub-subparagraph (6)(a)3.b.

229 (i) The board may adjust the allocation percentages or  
 230 adjust the amount of the fee, or both, if necessary to ensure  
 231 full cost recovery or prevent overrecovery of costs incurred in  
 232 the provision of E911 service, including costs incurred or  
 233 projected to be incurred to comply with the order. Any new  
 234 allocation percentages or reduced or increased fee may not be  
 235 adjusted for 1 year. The fee may not exceed 50 cents per month  
 236 per each service identifier. The board-established fee, and any  
 237 board adjustment of the fee, shall be uniform throughout the  
 238 state, except for the counties identified in paragraph (f). No  
 239 less than 90 days before the effective date of any adjustment to  
 240 the fee, the board shall provide written notice of the adjusted  
 241 fee amount and effective date to each voice communications  
 242 services provider from which the board is then receiving the  
 243 fee.

244 (j) State and local taxes do not apply to the fee.

245 (k) A local government may not levy the fee or any  
 246 additional fee on providers or subscribers for the provision of  
 247 E911 service.

248 (l) For purposes of this section, the definitions  
 249 contained in s. 202.11 and the provisions of s. 202.155 apply in  
 250 the same manner and to the same extent as the definitions and

251 provisions apply to the taxes levied under chapter 202 on mobile  
 252 communications services.

253 (9) PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.--

254 (a) As used in this subsection, the term:

255 1. "Consumer" means a person who purchases prepaid  
 256 wireless telecommunications service in a retail sale.

257 2. "Prepaid wireless E911 fee" means the fee that is  
 258 required to be collected by a seller from a consumer in the  
 259 amount established under paragraph (b).

260 3. "Provider" means a person who provides prepaid wireless  
 261 telecommunications service pursuant to a license issued by the  
 262 Federal Communications Commission.

263 4. "Retail transaction" means the purchase of prepaid  
 264 wireless telecommunications service from a seller for any  
 265 purpose other than resale.

266 5. "Seller" means a person who sells prepaid wireless  
 267 telecommunications service to another person.

268 6. "Wireless telecommunications service" means commercial  
 269 mobile radio service as defined by 47 C.F.R. s. 20.3, as  
 270 amended.

271 (b)1.a. There is imposed a prepaid wireless E911 fee at a  
 272 rate of 1 percent of each retail transaction occurring in this  
 273 state.

274 b. The prepaid wireless E911 fee imposed under sub-  
 275 subparagraph a. shall be increased or reduced, as applicable,  
 276 upon any change to the E911 fee imposed under subsection (8).  
 277 The adjusted rate shall be determined by dividing the amount of  
 278 the charge imposed under subsection (8) by \$50. Such increase or

279 reduction shall be effective on the effective date of the change  
 280 to the E911 fee or, if later, the first day of the first  
 281 calendar month to occur at least 60 days after the enactment of  
 282 such change or notification of a change in the E911 fee as  
 283 provided in paragraph (8) (f). The Department of Revenue shall  
 284 provide not less than 30 days' notice of such increase or  
 285 reduction on its public website.

286 c. For purposes of this subsection, a retail transaction  
 287 that is effected in person by a consumer at a business location  
 288 of the seller shall be treated as occurring in this state if  
 289 that business location is in this state, and any other retail  
 290 transaction shall be treated as occurring in this state if the  
 291 retail transaction is treated as occurring in this state under  
 292 s. 212.05(1) (e) 1.a. (II).

293 2. The prepaid wireless E911 fee is the liability of the  
 294 consumer and not the seller or any provider.

295 3. The prepaid wireless E911 fee shall be collected by the  
 296 seller from the consumer with respect to each retail transaction  
 297 occurring in this state. The amount of the fee shall be  
 298 separately stated on an invoice, receipt, or other similar  
 299 document that is provided to the consumer by the seller or shall  
 300 otherwise be disclosed to the consumer.

301 4. The Department of Revenue shall establish procedures  
 302 for a seller of prepaid wireless telecommunications service to  
 303 document that a sale is not a retail transaction, which  
 304 procedures shall substantially coincide with the procedures for  
 305 documenting a sale for resale transaction under s. 212.186.

306 5.a. The seller shall remit to the Department of Revenue  
 307 all prepaid wireless E911 fees collected under this subsection,  
 308 including all such charges that the seller is deemed to have  
 309 collected when the amount of the charge was not separately  
 310 stated on an invoice, receipt, or other similar document  
 311 provided to the consumer by the seller, except that the seller  
 312 shall deduct and retain 3 percent of the fees collected.

313 b. The seller shall remit the fees collected to the  
 314 Department of Revenue at the times and in the manner provided  
 315 under s. 212.11. The Department of Revenue shall establish  
 316 registration and payment procedures that substantially coincide  
 317 with the registration and payment procedures that apply to the  
 318 tax imposed under chapter 212.

319 c. The audit and appeal procedures applicable under s.  
 320 212.13 apply to prepaid wireless E911 fees.

321 6. The Department of Revenue shall retain up to 2 percent  
 322 of the funds remitted under this subsection to reimburse its  
 323 direct costs of administering the collection and remittance of  
 324 prepaid wireless E911 fees. Thereafter, the department shall  
 325 transfer all remaining funds remitted under this subsection to  
 326 the E911 Board within 30 days after receipt for use as provided  
 327 in subsection (5).

328 7. The amount of the prepaid wireless E911 fee that is  
 329 collected by a seller from a consumer, regardless of whether  
 330 such amount is separately stated on an invoice, receipt, or  
 331 similar document provided to the consumer by the seller, shall  
 332 not be included in the base for measuring any tax, fee,

333 surcharge, or other charge that is imposed by this state, any  
 334 political subdivision of this state, or any governmental agency.

335 8. A local government may not levy the fee or any  
 336 additional fee on providers or sellers of prepaid wireless  
 337 telecommunications service for the provision of E911 service.

338 (c)1. A provider or seller of prepaid wireless  
 339 telecommunications service shall not be liable for damages to  
 340 any person resulting from or incurred in connection with the  
 341 provision of, or failure to provide, 911 or E911 service or for  
 342 identifying, or failing to identify, the telephone number,  
 343 address, location, or name associated with any person or device  
 344 that is accessing or attempting to access 911 or E911 service.

345 2. A provider or seller of prepaid wireless  
 346 telecommunications service shall not be liable for damages to  
 347 any person resulting from or incurred in connection with the  
 348 provision of any assistance provided by legal process to any  
 349 investigative or law enforcement officer of the United States,  
 350 this or any other state, or any political subdivision of this or  
 351 any other state in connection with any investigation or other  
 352 law enforcement activity by such investigative or law  
 353 enforcement officer.

354 Section 2. Paragraphs (a), (b), and (c) of subsection (2)  
 355 of section 365.173, Florida Statutes, are amended to read:

356 365.173 Emergency Communications Number E911 System  
 357 Fund.--

358 (2) As determined by the board pursuant to s.  
 359 365.172(8)(h), and subject to any modifications approved by the

360 board pursuant to s. 365.172(6)(a)3. or (8)(i), the moneys in  
 361 the fund shall be distributed and used only as follows:

362 (a) Sixty-seven percent of the moneys in the wireless  
 363 category shall be distributed each month to counties, based on  
 364 the total number of service identifiers in each county, and  
 365 shall be used exclusively for payment of:

366 1. Authorized expenditures, as specified in s.  
 367 365.172(10)(9).

368 2. Costs to comply with the requirements for E911 service  
 369 contained in the order and any future rules related to the  
 370 order.

371 (b) Ninety-seven percent of the moneys in the nonwireless  
 372 category shall be distributed each month to counties based on  
 373 the total number of service identifiers in each county and shall  
 374 be used exclusively for payment of authorized expenditures, as  
 375 specified in s. 365.172(10)(9).

376 (c) Any county that receives funds under paragraphs (a)  
 377 and (b) shall establish a fund to be used exclusively for the  
 378 receipt and expenditure of the revenues collected under  
 379 paragraphs (a) and (b). All fees placed in the fund and any  
 380 interest accrued shall be used solely for costs described in  
 381 subparagraphs (a)1. and 2. The money collected and interest  
 382 earned in this fund shall be appropriated for these purposes by  
 383 the county commissioners and incorporated into the annual county  
 384 budget. The fund shall be included within the financial audit  
 385 performed in accordance with s. 218.39. A county may carry  
 386 forward up to 20 percent of the total funds disbursed to the  
 387 county by the board during a calendar year for expenditures for



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2010

388 capital outlay, capital improvements, or equipment replacement,  
 389 if such expenditures are made for the purposes specified in  
 390 subparagraphs (a)1. and 2.; however, the 20-percent limitation  
 391 does not apply to funds disbursed to a county under s.  
 392 365.172(6)(a)3., and a county may carry forward any percentage  
 393 of the funds, except that any grant provided shall continue to  
 394 be subject to any condition imposed by the board. In order to  
 395 prevent an excess recovery of costs incurred in providing E911  
 396 service, a county that receives funds greater than the  
 397 permissible E911 costs described in s. 365.172(10)(~~9~~), including  
 398 the 20 percent carryforward allowance, must return the excess  
 399 funds to the E911 board to be allocated under s. 365.172(6)(a).

400

401 The Legislature recognizes that the fee authorized under s.  
 402 365.172 may not necessarily provide the total funding required  
 403 for establishing or providing the E911 service. It is the intent  
 404 of the Legislature that all revenue from the fee be used as  
 405 specified in this subsection.

406

Section 3. This act shall take effect July 1, 2010.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 235 Lifeline Telecommunications Service  
**SPONSOR(S):** Williams and others  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Energy & Utilities Policy Committee		Keating <i>CK</i>	Collins <i>JSC</i>
2) Governmental Affairs Policy Committee			
3) General Government Policy Council			
4)			
5)			

**SUMMARY ANALYSIS**

Lifeline Assistance is a program under the federal Universal Service Fund that provides credits against the cost of basic local telecommunications service or other lifeline assistance plans to qualifying low-income customers to encourage those customers to subscribe to telephone service. Carriers that are designated as eligible telecommunications carriers (ETCs) are eligible to participate in and receive benefits from the federal Universal Service Fund. Currently, according to the PSC, 21 companies in Florida have been designated as ETCs and participate in the Lifeline program. Another 14 applications for ETC status are pending. All ETCs in Florida that are local exchange telecommunications companies with more than 1 million access lines must provide Lifeline services to qualifying customers or potential customers if the customer's income is 150 percent or less of the federal poverty income guidelines (the "income eligibility test").

The bill amends s. 364.10(3), F.S., to authorize commercial mobile radio service (CMRS) providers designated as eligible telecommunications carriers (ETCs) to utilize an income eligibility test to qualify customers for the Lifeline program. The bill also authorizes the Department of Children and Family Services (DCF), the Department of Education (DOE), the Public Service Commission (PSC), and the Office of Public Counsel (OPC) to exchange sufficient information with appropriate ETCs, such as a person's name, date of birth, service address, and telephone number, so that the carriers can identify and enroll an eligible person in the Lifeline and Link-Up programs. The bill provides that this information will remain confidential pursuant to s. 364.107, F.S., and may only be used for purposes of determining eligibility and enrollment in Lifeline.

The bill extends until December 31, 2010, the deadline for development of procedures by DCF, DOE, PSC, and telecommunications companies to promote Lifeline participation. The bill amends the requirement for development of such procedures to specify that the telecommunications companies participating in development of these procedures are those that are "designated eligible telecommunications carriers" providing Lifeline services.

The bill also extends until December 31, 2010, the deadline for the PSC, DCF, and OPC to enter into a memorandum of understanding (MOU) to establish their respective duties in establishing an automatic enrollment process for Lifeline. The bill requires that these agencies enter into an MOU with each ETC offering Lifeline and Link-Up services.

The PSC reports that it can meet the requirements of the bill at existing staffing levels with no fiscal impact. The DCF estimates first-year, non-recurring implementation costs of \$61,456 primarily for system programming. The DCF also indicates that an undetermined workload will be required to enter into separate MOUs with each eligible telecommunications carrier.

The effective date of the bill is July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Lifeline Assistance is a program under the federal Universal Service Fund that provides credits against the cost of basic local telecommunications service or other lifeline assistance plans to qualifying low-income customers to encourage those customers to subscribe to telephone service. Carriers that are designated as eligible telecommunications carriers (ETCs) are eligible to participate in and receive benefits from the federal Universal Service Fund. Either the Federal Communications Commission (FCC) or the Florida Public Service Commission (PSC) designates a telecommunication carrier in Florida as an ETC using the definition provided in the FCC's universal service rules.<sup>1</sup>

Currently, according to the PSC, 21 companies in Florida have been designated as ETCs and participate in the Lifeline program. Another 14 applications for ETC status are pending. All ETCs in Florida that are local exchange telecommunications companies with more than 1 million access lines must provide Lifeline services to qualifying customers or potential customers if the customer's income is 150 percent or less of the federal poverty income guidelines (the "income eligibility test").<sup>2</sup>

Under federal law, commercial mobile radio service (CMRS) providers may be designated as ETCs if they comply with state requirements.<sup>3</sup> The FCC designated the wireless carriers Sprint-Nextel and ALLTEL Communications as ETCs. In approving these designations, the FCC noted that ETCs must comply with state requirements in states that have Lifeline programs. Subsequently, the PSC found that it had authority to consider applications by CMRS providers to be designated as ETCs.<sup>4</sup>

Section 364.10(3)(h), F.S., requires each state agency providing benefits to persons eligible for Lifeline to develop procedures to promote Lifeline participation in cooperation with the Department of Children and Family Services (DCF), the Department of Education (DOE), the PSC, and telecommunications companies providing Lifeline services. This subsection required that these procedures be developed by December 31, 2007. In addition, this subsection required that, by the same date, the PSC, DCF, and the Office of Public Counsel (OPC) enter into a memorandum of understanding (MOU) to establish the respective duties of each entity to establish an automatic enrollment process for Lifeline services.

<sup>1</sup> Subsections 54.201(b) and (c), CFR.

<sup>2</sup> Section 364.10(2), F.S.

<sup>3</sup> FCC Nextel Order, DA 04-2667, adopted August 25, 2004, footnote 30; FCC ALLTEL Order, DA 04-3046, adopted September 24, 2004, footnote 29; FCC Sprint Order, DA 04-3617, adopted November 18, 2004, footnote 27.

<sup>4</sup> Order No. PSC-07-0288-PAA-TP, issued April 3, 2007.

## Effect of Proposed Changes

The bill amends section 364.10(3), F.S., to authorize CMRS providers designated as ETCs to utilize the income eligibility test to qualify customers for the Lifeline program. The bill also authorizes DCF, DOE, PSC, and OPC to exchange sufficient information with appropriate ETCs, such as a person's name, date of birth, service address, and telephone number, so that the carriers can identify and enroll an eligible person in the Lifeline and Link-Up programs.<sup>5</sup> The bill provides that this information will remain confidential pursuant to s. 364.107, F.S., and may only be used for purposes of determining eligibility and enrollment in the Lifeline and Link-Up programs.

The bill extends until December 31, 2010, the deadline for development of procedures by DCF, DOE, PSC, and telecommunications companies to promote Lifeline participation. The bill amends the requirement for development of such procedures to specify that the telecommunications companies participating in development of these procedures are those that are "designated eligible telecommunications carriers" providing Lifeline services.<sup>6</sup>

The bill also extends until December 31, 2010, the deadline for the PSC, DCF, and OPC to enter into an MOU to establish their respective duties in establishing an automatic enrollment process for the Lifeline and Link-Up programs. The bill amends the requirement for development of an MOU to specify that these agencies enter into an MOU with each ETC offering Lifeline and Link-Up services. The PSC notes that it does not currently enter into MOUs with private entities.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 364.10, F.S., related to the provision of Lifeline service.

**Section 2.** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The PSC reports that it can meet the requirements of the bill at existing staffing levels with no fiscal impact. The DCF estimates first-year, non-recurring implementation costs of \$61,456 primarily for system programming. The DCF also indicates that an undetermined workload will be required to enter into separate MOUs with each eligible telecommunications carrier.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

<sup>5</sup> Link-Up America is a program which helps income-eligible customers initiate telephone service, whereas Lifeline Assistance provides discounts on basic monthly services for qualified telephone subscribers.

<sup>6</sup> As defined in s. 364.02(14), F.S., the term "telecommunications company" specifically excludes CMRS providers. If the intent of the bill is to include CMRS providers in the development of procedures to promote Lifeline participation, the phrase "telecommunications providers" could be deleted from s. 364.10(h)1., F.S.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The PSC reports that the bill should make it easier for eligible citizens to acquire wireless service. It is unclear whether increased use of Lifeline will increase direct private sector costs, costs to utilities, competition, private enterprise, or the employment markets. It is clear that demand for this program has grown rapidly in recent years, as the PSC reports that subscribership grew 236% from June 2008 to June 2009.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill amends the requirement for development of procedures to promote Lifeline participation to include "telecommunications companies designated eligible telecommunications carriers" providing Lifeline services. As defined in s. 364.02(14), F.S., the term "telecommunications company" specifically excludes CMRS providers. If the intent of the bill is to include CMRS providers in the development of procedures to promote Lifeline participation, the phrase "telecommunications providers" could be deleted.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED       \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION   \_\_\_ (Y/N)  
FAILED TO ADOPT           \_\_\_ (Y/N)  
WITHDRAWN                 \_\_\_ (Y/N)  
OTHER                       \_\_\_\_\_

1 Council/Committee hearing bill: Energy & Utilities Policy  
2 Committee  
3 Representative Williams, A. offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (h) of subsection (3) of section 364.10, Florida Statutes, are amended to read:

364.10 Undue advantage to person or locality prohibited; Lifeline service.-

(3)(a) Each local exchange telecommunications company that has more than 1 million access lines and that is designated as an eligible telecommunications carrier shall, and any commercial mobile radio service provider designated as an eligible telecommunications carrier pursuant to 47 U.S.C. s. 214(e) may, upon filing a notice of election to do so with the commission, provide Lifeline service to any otherwise eligible customer or potential customer who meets an income eligibility test at 150 percent or less of the federal poverty income guidelines for

Amendment No.

20 Lifeline customers. Such a test for eligibility must augment,  
21 rather than replace, the eligibility standards established by  
22 federal law and based on participation in certain low-income  
23 assistance programs. Each intrastate interexchange  
24 telecommunications company shall file or publish a schedule  
25 providing at a minimum the intrastate interexchange  
26 telecommunications carrier's current Lifeline benefits and  
27 exemptions to Lifeline customers who meet the income eligibility  
28 test set forth in this subsection. The Office of Public Counsel  
29 shall certify and maintain claims submitted by a customer for  
30 eligibility under the income test authorized by this subsection.

31 (h)1. By December 31, 2010 ~~2007~~, each state agency that  
32 provides benefits to persons eligible for Lifeline service shall  
33 undertake, in cooperation with the Department of Children and  
34 Family Services, the Department of Education, the commission,  
35 the Office of Public Counsel, and telecommunications companies  
36 designated eligible telecommunications carriers providing  
37 Lifeline services, the development of procedures to promote  
38 Lifeline participation. The departments, the commission, and the  
39 Office of Public Counsel may exchange sufficient information  
40 with the appropriate eligible telecommunications carriers and  
41 any commercial mobile radio service provider electing to provide  
42 Lifeline service under paragraph (a), such as a person's name,  
43 date of birth, service address, and telephone number, so that  
44 the carriers can identify and enroll an eligible person in the  
45 Lifeline and Link-Up programs. The information remains  
46 confidential pursuant to s. 364.107 and may only be used for



Amendment No.

47 | purposes of determining eligibility and enrollment in the  
48 | Lifeline and Link-Up programs.

49 |         2. If any state agency determines that a person is  
50 | eligible for Lifeline services, the agency shall immediately  
51 | forward the information to the commission to ensure that the  
52 | person is automatically enrolled in the program with the  
53 | appropriate eligible telecommunications carrier. The state  
54 | agency shall include an option for an eligible customer to  
55 | choose not to subscribe to the Lifeline service. The Public  
56 | Service Commission and the Department of Children and Family  
57 | Services shall, no later than December 31, 2007, adopt rules  
58 | creating procedures to automatically enroll eligible customers  
59 | in Lifeline service.

60 |         3. By December 31, 2010, the commission, the Department of  
61 | Children and Family Services, ~~and~~ the Office of Public Counsel,  
62 | and each eligible telecommunications carrier offering Lifeline  
63 | and Link-Up services shall convene a Lifeline Workgroup to  
64 | discuss how the eligible subscriber information in subparagraph  
65 | 1. will be shared, the obligations of each party with respect to  
66 | the use of that information, and the procedures to be  
67 | implemented to verify eligibility in these programs shall enter  
68 | into a memorandum of understanding establishing the respective  
69 | duties of the commission, the department, and the public counsel  
70 | with respect to the automatic enrollment procedures no later  
71 | than December 31, 2007.

72 |         Section 2. This act shall take effect July 1, 2010.

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Amendment No.

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**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

A bill to be entitled

An act relating to Lifeline telecommunications service;  
amending s. 364.10, F.S.; authorizing any commercial  
mobile radio service provider designated as an eligible  
telecommunications carrier to offer Lifeline services;  
authorizing the Department of Children and Family  
Services, the Department of Education, the Public Service  
Commission, and the Office of Public Counsel to exchange  
certain information with eligible telecommunications  
carriers and certain commercial mobile radio service  
providers so the carriers and providers can identify and  
enroll an eligible person in the Lifeline and Link-Up  
programs; maintaining confidentiality of the information;  
requiring that the commission, the Department of Children  
and Family Services, the Office of Public Counsel, and  
each eligible telecommunications carrier convene a  
Lifeline Workgroup by a specified date; providing an  
effective date.

1                                   A bill to be entitled  
 2           An act relating to Lifeline telecommunications service;  
 3           amending s. 364.10, F.S.; authorizing any commercial  
 4           mobile radio service provider designated as an eligible  
 5           telecommunications carrier to offer Lifeline services;  
 6           authorizing the Department of Children and Family  
 7           Services, the Department of Education, the Public Service  
 8           Commission, and the Office of Public Counsel to exchange  
 9           certain information with eligible telecommunications  
 10          carriers so the carriers can identify and enroll an  
 11          eligible person in the Lifeline and Link-Up programs;  
 12          maintaining confidentiality of the information; providing  
 13          an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Paragraphs (a) and (h) of subsection (3) of  
 18           section 364.10, Florida Statutes, are amended to read:

19           364.10 Undue advantage to person or locality prohibited;  
 20           Lifeline service.--

21           (3) (a) Each local exchange telecommunications company that  
 22           has more than 1 million access lines and that is designated as  
 23           an eligible telecommunications carrier shall, and any commercial  
 24           mobile radio service provider designated as an eligible  
 25           telecommunications carrier may, upon filing a notice of election  
 26           to do so with the commission, provide Lifeline service to any  
 27           otherwise eligible customer or potential customer who meets an  
 28           income eligibility test at 150 percent or less of the federal

29 poverty income guidelines for Lifeline customers. Such a test  
30 for eligibility must augment, rather than replace, the  
31 eligibility standards established by federal law and based on  
32 participation in certain low-income assistance programs. Each  
33 intrastate interexchange telecommunications company shall file  
34 or publish a schedule providing at a minimum the intrastate  
35 interexchange telecommunications carrier's current Lifeline  
36 benefits and exemptions to Lifeline customers who meet the  
37 income eligibility test set forth in this subsection. The Office  
38 of Public Counsel shall certify and maintain claims submitted by  
39 a customer for eligibility under the income test authorized by  
40 this subsection.

41 (h)1. By December 31, ~~2010~~ 2007, each state agency that  
42 provides benefits to persons eligible for Lifeline service shall  
43 undertake, in cooperation with the Department of Children and  
44 Family Services, the Department of Education, the commission,  
45 the Office of Public Counsel, and telecommunications companies  
46 designated eligible telecommunications carriers providing  
47 Lifeline services, the development of procedures to promote  
48 Lifeline participation. The departments, the commission, and the  
49 Office of the Public Counsel may exchange sufficient information  
50 with the appropriate eligible telecommunications carriers, such  
51 as a person's name, date of birth, service address, and  
52 telephone number, so that the carriers can identify and enroll  
53 an eligible person in the Lifeline and Link-Up programs. The  
54 information remains confidential pursuant to s. 364.107 and may  
55 only be used for purposes of determining eligibility and  
56 enrollment in the Lifeline and Link-Up programs.

57 |           2. If any state agency determines that a person is  
 58 | eligible for Lifeline services, the agency shall immediately  
 59 | forward the information to the commission to ensure that the  
 60 | person is automatically enrolled in the program with the  
 61 | appropriate eligible telecommunications carrier. The state  
 62 | agency shall include an option for an eligible customer to  
 63 | choose not to subscribe to the Lifeline service. The Public  
 64 | Service Commission and the Department of Children and Family  
 65 | Services shall, no later than December 31, 2007, adopt rules  
 66 | creating procedures to automatically enroll eligible customers  
 67 | in Lifeline service.

68 |           3. By December 31, 2010, the commission, the Department of  
 69 | Children and Family Services, ~~and~~ the Office of Public Counsel,  
 70 | and each eligible telecommunications carrier offering Lifeline  
 71 | and Link-Up services, shall enter into a memorandum of  
 72 | understanding establishing their ~~the~~ respective duties ~~of the~~  
 73 | ~~commission, the department, and the public counsel~~ with respect  
 74 | to the automatic enrollment procedures ~~no later than December~~  
 75 | ~~31, 2007.~~

76 |           Section 2. This act shall take effect July 1, 2010.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB EUP 10-03 Property Assessed Clean Energy (PACE)  
**SPONSOR(S):** Energy & Utilities Policy Committee  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** None.

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Energy & Utilities Policy Committee		Whittier <i>SW</i>	Collins <i>JC</i>
1)				
2)				
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4)				
5)				

**SUMMARY ANALYSIS**

The Property Assessed Clean Energy (PACE) Program is a model that has recently become popular as an innovative way for local governments to encourage their property owners to reduce energy consumption and increase energy efficiency. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and the local government provides the upfront funding for the project through proceeds of a revenue bond issuance, which is repaid through an assessment on participating property owners' tax bills.

There are no provisions in the Florida Statutes expressly providing for a program whereby local governments issue bonds to finance energy projects for property owners and repay the bonds through special assessments on participating property owner's property tax bills.

The bill creates s. 163.08, F.S., providing supplemental authority to local governments regarding qualified improvements to real property. The bill provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. The qualifying improvement must be affixed to an existing building or facility that is part of the property and if the work requires a license, it must be performed by a properly certified or registered contractor. The program does not cover projects in buildings or facilities under new construction. Qualifying improvements<sup>1</sup> include energy conservation and efficiency improvements; renewable energy improvements; and wind resistance improvements. The bill provides that, at least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. The bill provides that, "No provision in any agreement between a mortgagee or other lienholder and a property owner or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section, shall be or construed as enforceable." However, the bill clarifies that the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

The bill authorizes a local government to: partner with one or more local governments for the purpose of providing and financing qualifying improvements; levy a non-ad valorem assessment to fund a qualifying improvement; incur debt to provide financing for qualifying improvements; and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment, a municipal or county lien, or through any other lawful method.

The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under this section and that the section is additional and supplemental to county and municipal home rule authority.

The bill provides authority for a local government to adopt a model program, but does not mandate the amount to expend on the program.

<sup>1</sup> These improvements are expanded upon in the Effect of Proposed Changes section of the analysis.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb03.EUP.doc  
 DATE: 3/15/2010

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Property Assessed Clean Energy (PACE) Programs**

The Property Assessed Clean Energy (PACE) Program is a model that has recently become popular as an innovative way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency. According to [Pacenow.org](http://Pacenow.org), "PACE is a program designed to allow property owners to install small-scale renewable energy systems and make energy efficiency improvements to their buildings and pay for the cost over its functional life (e.g., 20 years for solar PV) through an on-going assessment on property tax bills." Participation in the program is voluntary. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and the local government provides the upfront funding for the project through proceeds of a revenue bond issuance, which is repaid through an assessment on participating property owners' tax bills. A lien could be placed on the property in the event that the loan is not timely repaid. If the property is sold prior to the end of the repayment period, the new owner takes over the remaining special assessment payments as part of the property's annual tax bill.<sup>2</sup>

Many states require legislation to authorize local governments to adopt PACE programs. According to Vote Solar, however, currently there are proposals in over 18 states<sup>3</sup> for PACE enabling legislation, and 16 states have PACE enabling legislation in place.<sup>4</sup>

Currently, there are no provisions in the Florida Statutes expressly providing for a program whereby local governments issue bonds to finance energy projects for property owners and repay the bonds through special assessments on participating property owner's property tax bills. However, under existing county and municipal home rule authority, counties and cities may already have the basic authority to implement a PACE or similar program. Special districts, on the other hand, only have those powers granted to them by law.

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<sup>2</sup> Vote Solar website: [www.votesolar.org](http://www.votesolar.org).

<sup>3</sup> Ibid.

<sup>4</sup> California, Colorado, Illinois, Louisiana, Maryland, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Vermont, Virginia, and Wisconsin.



## Local Governments

### *Counties*<sup>5</sup>

The following information was obtained from The Local Government Formation Manual 2009-2010, produced by the Military & Local Affairs Policy Committee, House of Representatives.

In Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level.<sup>6</sup> Article VIII, section 1 of the State Constitution contains provisions specifically related to the county form of government in Florida, and requires the state to be divided by law into political subdivisions called "counties." The Florida Constitution recognizes two types of county government in Florida: 1) counties that are not operating under a county charter and 2) counties that are operating under a county charter. Article VIII, sections 1(f) and (g) of the State Constitution, respectively provide as follows:

**Non-Charter Government:** Counties not operating under county charters shall have such powers of self-government as is provided by general and/or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

**Charter Government:** Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

Section 125.01, Florida Statutes, outlines the powers and duties of chartered and non-chartered counties. This section provides that the county commission shall have the power to carry on county government to the extent not inconsistent with general or special law. Specific to this bill, county government authority includes the power to:

- Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.
- Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates and other obligations of indebtedness. This power must be exercised according to general law. A referendum is not required for the levy by a county of ad valorem taxes for county purposes or for the providing of municipal services within any municipal service taxing unit.
- Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.
- Enforce the Florida Building Code and adopt and enforce local technical amendments.
- Perform any other acts which are in the common interest of the people of the county and are not inconsistent with law.

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<sup>5</sup> *The Local Government Formation Manual 2009-2010*, House Military & Local Affairs Policy Committee, pp. 6-10.

<sup>6</sup> *Ibid.*, p. 17.

The governing body of a county also has the power to establish, and subsequently merge or abolish, dependent special districts that include both incorporated and unincorporated areas. Inclusion of an incorporated area is subject to the approval of the governing body of the affected incorporated area. Municipal services and facilities may be provided from funds derived from service charges, special assessments or taxes within the district.

### ***Municipal Governments***<sup>7</sup>

**The following information was obtained from The Local Government Formation Manual 2009-2010, produced by the Military & Local Affairs Policy Committee, House of Representatives.**

As noted above, in Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level. Municipalities were created to perform additional functions and provide additional services for the particular benefit of the population within the municipality.

A municipality is a local government entity located within a county and created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. A municipality is constitutionally and statutorily granted all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services. A municipality may exercise any power for municipal purposes except as otherwise provided by general or special law. Although a municipality may enact local ordinances to govern municipal affairs, the power to tax can be granted only by general law.

Article VIII, section 2 of the State Constitution authorizes the Legislature to establish or abolish municipalities or amend their charters by general or special law. The Constitution grants municipalities all governmental, corporate and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Municipalities may exercise any power for municipal purposes except as otherwise provided by general or special law. Each municipal legislative body must be elected by qualified voters.

The Municipal Home Rule Powers Act acknowledges that the State Constitution grants municipalities governmental, corporate and proprietary power necessary to conduct municipal government, functions and services, and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by general or special law.

### ***Special Districts***<sup>8</sup>

**The following information was obtained from The Local Government Formation Manual 2009-2010, produced by the Military & Local Affairs Policy Committee, House of Representatives.**

Special district governments are special purpose government units that exist as separate entities, have substantial fiscal independence and have administrative independence from general purpose governments.

In Florida, special districts perform a wide variety of functions and are typically funded through ad valorem taxes, special assessments, user fees or impact fees. The Uniform Special District Accountability Act found in chapter 189, F.S., generally governs the creation and operations of special districts; however, other general laws may more specifically govern the operations of certain special districts. As of October 29, 2009, there were 616 active dependent special districts and 1,003 active independent special districts in Florida.<sup>9</sup>

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<sup>7</sup> Ibid. pp. 17-20.

<sup>8</sup> Ibid., pp. 76-87.

<sup>9</sup> Ibid., p. 76.

Special district governments provide specific services that are not being supplied by existing general-purpose governments. Most of these entities perform a single function, but, in some instances, their enabling legislation allows them to provide several, usually related, types of services.

A "special district" is defined in s. 189.403(1), F.S., as a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance or by rule of the Governor and Cabinet." A special district has only those powers expressly provided by, or which can be reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.

### **Special Assessments**

Special assessments are a home rule revenue source that may be used by a local government to fund certain services and construct and maintain capital facilities. As established by Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax, which is levied for the general benefit of residents and property rather than for a specific benefit to property.

The applied legal test used to evaluate whether or not a special benefit is conferred on property by the provision of a service is if there is a logical relationship between the provided service and the benefit to property. This test defines the line between those services that can be funded by special assessments versus those failing to satisfy the special benefit test. Examples of services that possess this logical relationship to property and can be funded wholly or partially by special assessments include solid waste collection and disposal, stormwater management, and fire rescue. Once the service or capital facility satisfies the special benefit test, the assessment must be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement.

The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments for county and municipal governments. Special districts derive their authority to levy special assessments through general law or special act.

### **Non-Ad Valorem Assessments**

Chapter 197, F.S., governs tax collections, sales and liens. "Non-ad valorem assessment" is defined in s. 197.3632, F.S., as "only those assessments that are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution." Section 4(a), Art. X of the State Constitution provides, in pertinent part, "There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon...."

Section 197.3632(3)(a), F.S., requires local governments electing to use the uniform method of collecting assessments for the first time to adopt a resolution at a public hearing prior to January 1, or March 1 if the property appraiser and tax collector agree. The resolution must state the need of the levy and include a legal description of the property subject to the levy. In addition, the local government must publish notice of its intent to use the uniform method for collecting such assessment.

Section 197.3632(4)(a), F.S., requires a local government to adopt a non-ad valorem assessment roll at a public hearing held between January 1 and September 15 if:

- The non-ad valorem assessment is levied for the first time;
- The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
- The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
- There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

Section 197.3632(4)(b), F.S., requires that at least 20 days prior to the public hearing, the local government must notice the hearing by mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice must be sent to each person owning property subject to the assessment and must include the following information:

- The purpose of the assessment;
- The total amount to be levied against each parcel;
- The unit of measurement to be applied against each parcel to determine the assessment;
- The number of such units contained within each parcel;
- The total revenue the local government will collect by the assessment;
- A statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title;
- A statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and
- The date, time, and place of the hearing.

However, notice by mail is not required if notice by mail is otherwise required by general or special law governing the taxing authority and the notice is served at least 30 days prior to the authority's public hearing. The published notice must contain at least the following information:

- The name of the local governing board;
- A geographic depiction of the property subject to the assessment;
- The proposed schedule of the assessment;
- The fact that the assessment will be collected by the tax collector; and
- A statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

Section 197.3632(4)(c), F.S., provides that at the public hearing, the local governing board is required to receive written objections and hear testimony from all interested persons. If the local governing board adopts the non-ad valorem assessment roll, it must specify the unit of measurement for the assessment and the amount of the assessment. The board may adjust the assessment of the application of the assessment to any affected property based on the benefit which the board will provide or has provided to the property with the revenue generated by the assessment.

### **Renewable Energy and Wind Resistance Property Tax Constitutional Amendment**

In the November 2008 general election, Florida's voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission (Amendment #3). This amendment added the following language to Article VII, Section 4 (Taxation; assessments):

- (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:
  - (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

During the 2009 Legislative Session, the House passed CS/HB 7113, a committee bill, which implemented the constitutional provision regarding the assessed value of real property. The bill died in Senate Messages.

The bill provided that, when determining the assessed value of real property used for residential purposes, for both new and existing construction, the property appraiser may not consider the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
  - Improving the strength of the roof deck attachment.
  - Creating a secondary water barrier to prevent water intrusion.
  - Installing hurricane-resistant shingles.
  - Installing gable-end bracing.
  - Reinforcing roof-to-wall connections.
  - Installing storm shutters.
  - Installing impact-resistant glazing.
  - Installing hurricane-resistant doors.
- The installation and operation of a renewable energy source device, which means any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
  - Solar energy collectors, photovoltaic modules, and inverters.
  - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
  - Rockbeds.
  - Thermostats and other control devices.
  - Heat exchange devices.
  - Pumps and fans.
  - Roof ponds.
  - Freestanding thermal containers.
  - Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
  - Windmills and wind turbines.
  - Wind-driven generators.
  - Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
  - Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

### **Hurricane Mitigation Discounts and Premium Credits**

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed. To facilitate insurer compliance with the windstorm mitigation discounts required by statute, the Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, titled Development of Loss Relativities for Wind Resistive Features of

Residential Structures, was completed in 2002. The study's mathematical results, termed "wind loss relativities", were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property.<sup>10</sup>

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.<sup>11</sup> In 2006, the Legislature amended the mitigation discount law (s. 627.0629(1)(a), F.S.) to require the Office of Insurance Regulation (OIR) to reevaluate the mitigation discounts and require insurers to give full actuarial value for them.<sup>12</sup> Thus, the OIR amended the mitigation discount administrative rule to require insurers to provide mitigation discounts in an amount equal to 100 percent of the mitigation discount amount as determined by the loss relativities in the 2002 study done by Applied Research Associates, Inc.<sup>13</sup> In 2008, the OIR obtained a new study to evaluate the appropriate mitigation discount amounts, however, the OIR has not changed the mitigation discount amounts or mitigation discount administrative rule due to the results of the 2008 study.

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010. The form must be signed by a hurricane mitigation inspector certified by the My Safe Florida Home Program; a building code inspector; a general, building, or residential contractor; a professional engineer meeting specified criteria; a professional architect; or any other individual or entity acceptable to the insurance company. A form certified by the DFS must also be accepted by the insurer.

### **Effect of Proposed Changes**

The bill creates s. 163.08, F.S., providing supplemental authority regarding improvements to real property.

Section 163.08(1), F.S., provides legislative purpose and intent, noting that in 2008, the Legislature declared it the public policy of the state to play a leading role in promoting energy conservation, energy security, and reduction of greenhouse gases. The 2008 Legislature amended the energy goal of the State Comprehensive Plan to require energy requirement reductions through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. It also provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction.<sup>14</sup> Also in 2008, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.<sup>15</sup>

The bill finds that improved properties not using energy conservation strategies contribute to the burden affecting all improved property from fossil fuel energy production; likewise, the bill finds that all improved properties not protected from wind damage by wind resistance improvements contribute to

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<sup>10</sup> The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents and loss of use.

<sup>11</sup> In an Informational Memorandum issued on January 23, 2003, the OIR notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of a 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.

<sup>12</sup> Section 14, Ch. 2006-12, L.O.F.

<sup>13</sup> The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification. To date, no insurer has used an alternate wind mitigation discount study to set mitigation discounts.

<sup>14</sup> Chapter 2008-227, L.O.F.

<sup>15</sup> Chapter 2008-191, L.O.F.

the burden affecting all improved property resulting from potential wind damage. Improved properties that have been retrofitted with energy-related or wind resistance qualified improvements, receive the special benefit of reducing the property's burden from energy consumption or potential wind damage. Further, the bill declares that the installation and operation of qualifying improvements benefits the affected properties, in addition to fulfilling the goals of the state's energy and hurricane mitigation policies. The bill states that it is a compelling state interest to make qualifying improvements more affordable and enable property owners, on a voluntary basis, to finance such improvements with local government assistance. It states that the actions authorized under this act are reasonable and necessary to achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

The bill defines "local government" as "a county, a municipality, or a special district."

The bill defines a "qualifying improvement" as including any of the following:

- "Energy conservation and efficiency improvement," which means a measure to reduce consumption, through conservation or more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including but not limited to:
  - Air sealing;
  - Installation of insulation;
  - Installation of energy efficient heating, cooling, or ventilation systems;
  - Building modifications to increase the use of daylighting, replacement of windows, installation of energy controls or energy recovery systems; and
  - Installation of efficient lighting equipment, provided that, to be covered by an agreement with a property owner and financed under this act, such improvement must be affixed to a building or facility that is part of the property.
  
- "Renewable energy improvement," which means the installation of any system whereby electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources:
  - Hydrogen;
  - Solar energy;
  - Geothermal energy;
  - Bioenergy; and
  - Wind energy.
  
- "Wind resistance improvement," which includes, but is not limited to:
  - Improving the strength of the roof deck attachment;
  - Creating a secondary water barrier to prevent water intrusion;
  - Installing wind-resistant shingles;
  - Installing gable-end bracing;
  - Reinforcing roof-to-wall connections;
  - Installing storm shutters; and
  - Installing opening protections.

The bill provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. The qualifying improvement must be affixed to an existing building or facility that is part of the property and if the work requires a license, it must be performed by

a properly certified or registered contractor.<sup>16</sup> The program does not cover projects in buildings or facilities under new construction.

At least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. The bill provides that, "No provision in any agreement between a mortgagee or other lienholder and a property owner or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section, shall be or construed as enforceable." However, the bill clarifies that the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

Without the consent of the mortgage holder or loan servicer, the total amount of any non-ad valorem assessment or municipal or county lien for a property cannot exceed 20 percent of the just value of the property, as determined by the county property appraiser. However, if an energy conservation and efficiency or a renewable energy qualifying improvement has been supported by an energy audit, the amount financed does not have to be limited to 20 percent if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the assessment or lien. A local government is authorized to adopt alternate parameters to conform to local needs and conditions following a public hearing and the finding of the need for the changes.

The bill authorizes a local government to do the following when implementing a qualifying improvement financing program:

- Partner with one or more local governments for the purpose of providing and financing qualifying improvements.
- Allow a qualifying improvement program to be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.
- Levy a non-ad valorem assessment to fund a qualifying improvement.
- Incur debt (bonds or loans) to provide financing for qualifying improvements, payable from revenues received from the improved property or any other available lawful revenue source.
- Collect costs incurred from financing qualifying improvements through a non-ad valorem assessment, a municipal or county lien, or through any other lawful method.

Prior to entering into a financing agreement, a local government is required to "reasonably determine" that:

- All property taxes and any other assessments levied on the property tax bill are paid and have not been delinquent for the past three years or the property owner's period of ownership, whichever is less;
- There are no involuntary liens on the property;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the past three years or the property owner's period of ownership, whichever is less; and
- The property owner is current on all mortgage debt on the property.

If utilizing a non-ad-valorem assessment to finance the qualifying improvement, the local government must follow the uniform method for the levy, collection, and enforcement of non-ad valorem assessments, enumerated in s. 197.3632, F.S. This section requires a resolution by the local government, public hearings, published notices in the newspaper, and individual mail notices to property owners informing them of the assessment and their right to attend a public hearing. Under current law, the special assessment process must be initiated prior to January 1 of each year. The bill provides exceptions to the adoption provided in s. 197.3632, F.S., allowing the process to start on or before August 15, if the property appraiser, tax collector, and local government agree. This will allow local governments to begin the necessary special assessment process this calendar year.



If the local government is financing the qualifying improvement through a surcharge on a utility bill in the form of a municipal lien, the bill authorizes the utility provider to discontinue the delivery of the utility service in the event of nonpayment. However, the financing agreement must include the terms and costs of the discontinuance.

The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under this section and that the section is additional and supplemental to county and municipal home rule authority.

**B. SECTION DIRECTORY:**

**Section 1.** Creates s. 163.08, F.S., providing for supplemental authority for local governments regarding improvements to real property. See Effect of Proposed Changes.

**Section 2.** Provides that the act shall take effect upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Indeterminate. See Fiscal Comments.

2. Expenditures:

Indeterminate. See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive effect on the private sector. Being able to secure up-front capital for qualifying improvements at lower interest rates and for a long repayment period, increases the likelihood that property owners will take advantage of the program, which will stimulate the local economy.

**D. FISCAL COMMENTS:**

The bill provides authority for a local government to adopt a model program, but does not mandate the manner in which each local government that chooses to participate structures the program. Therefore, the level of funding for the program is left to the discretion of the local government.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

## 2. Other:

The bill provides, in s. 163.08(13), F.S., that, "No provision in any agreement between a mortgagee or other lienholder and a property owner or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section, shall be or construed as enforceable."

Article I, Section 10, of the Florida Constitution provides, in relevant part, "No...law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws which retroactively burden or alter contractual relations. In re *Advisory Opinion to the Governor*, 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities District v. Volusia County*, 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto-Owners Ins. Co.*, 363 So.2d 1077 (Fla. 1978).

Not all contractual impairments warrant overturning an otherwise valid law. Contract rights are clearly subject to the state's power of taxation. *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974). Also, the state has some ability to modify contractual remedies without transgressing the Contract Clause. *Ruhl v. Perry*, 390 So.2d 353 (Fla. 1980). In *Brooks v. Watchtower Bible and Tract Society of Florida, Inc.*, 706 So.2d 85 (Fla. 4th DCA 1998), the Fourth District Court of Appeal found that a referendum on the sale of city property did not impermissibly impair an existing contract between the city and a prospective purchaser.

State statutes which impair contractual obligations are measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced. *Yellow Cab Co. of Dade County v. Dade County*, 412 So.2d 395 (Fla. 3d DCA 1982). The court, in *Pomponio v. Cladrige of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980), enumerated several factors it might weigh when making such determinations:

1. Whether the law was enacted to deal with a broad economic or social problem;
2. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
3. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

The bill provides, in s. 163.08(1)(c), F.S., that the "Legislature hereby determines that the actions authorized under this act, including the financing therein of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments or charges, are reasonable and necessary to serve and achieve a compelling state interest, and are necessary for the prosperity and welfare of the state and its property owners and inhabitants."

## B. RULE-MAKING AUTHORITY:

This does not require rule-making authority on the state level.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Amendment No.1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Council/Committee hearing PCB: Energy & Utilities Policy  
2 Committee

3 Representative Precourt offered the following:

4

5 **Amendment**

6 Remove line 240 and insert:

7 Section 2. This act will take effect upon becoming law.

BILL ORIGINAL YEAR

1 A bill to be entitled  
 2 An act relating to energy and wind damage resistance  
 3 improvements to real property; creating s. 163.08, F.S.,  
 4 providing for supplemental authority to local governments  
 5 regarding improvements to real property; providing  
 6 legislative purpose and intent; defining "local  
 7 government" and "qualifying improvement"; authorizing a  
 8 local government to levy a non-ad valorem assessment to  
 9 fund a qualifying improvement; authorizing a property  
 10 owner to enter into a financing agreement with a local  
 11 government to finance a qualifying improvement;  
 12 authorizing a local government to collect for such purpose  
 13 through a non-ad valorem assessment, pursuant to s.  
 14 197.3632, a municipal or county lien, or through any other  
 15 lawful method; providing exceptions; providing for  
 16 discontinuance of utility service in the event of  
 17 nonpayment if the financing agreement provides for  
 18 repayment through a utility bill; authorizing a local  
 19 government to partner with one or more local governments  
 20 for the purpose of providing and financing qualifying  
 21 improvements; authorizing, on behalf of and at the  
 22 discretion of the local government, a qualifying  
 23 improvement program to be administered by a for-profit  
 24 entity or a not-for-profit organization; authorizing a  
 25 local government to incur debt payable from revenues  
 26 received from the improved property; directing a local  
 27 government to determine past payment delinquencies and  
 28 involuntary liens on the property; requiring that a

BILL ORIGINAL YEAR

29 qualifying improvement be affixed to an existing building  
 30 or facility on the property and be performed by a properly  
 31 certified or registered contractor, pursuant to Parts I  
 32 and II of ch. 489, F.S.; providing for a limit of 20  
 33 percent of the just value of the property for a non-ad  
 34 valorem assessment or municipal or county lean; providing  
 35 for exceptions; prohibiting acceleration of a mortgage  
 36 under certain circumstances; providing for statutory  
 37 construction regarding a local government's authority;  
 38 providing an effective date.

39

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

41

42 Section 1. Section 163.08, Florida Statutes, is created to  
 43 read:

44 163.08 Supplemental authority regarding improvements to  
 45 real property.--

46 (1) Statement of legislative purpose and intent.--

47 (a) In chapter 2008-227, Laws of Florida, the Legislature  
 48 amended the energy goal of the State Comprehensive Plan to  
 49 provide, in part, that Florida shall reduce its energy  
 50 requirements through enhanced conservation and efficiency  
 51 measures in all end-use sectors and shall reduce atmospheric  
 52 carbon dioxide by promoting an increased use of renewable energy  
 53 resources. The Act also declared it the public policy of the  
 54 State of Florida to play a leading role in developing and  
 55 instituting energy management programs aimed at promoting energy  
 56 conservation, energy security, and reduction of greenhouse

BILL ORIGINAL YEAR

57 gases. In addition to establishing policies to promote the use  
 58 of renewable energy, the Legislature provided for a schedule of  
 59 increases in energy performance of buildings subject to the  
 60 Florida Energy Efficiency Code for Building Construction. In  
 61 chapter 2008-191, Laws of Florida, the Legislature adopted new  
 62 energy conservation and greenhouse gas reduction comprehensive  
 63 planning requirements for local governments. In the General  
 64 Election of 2008, the Florida voters approved a constitutional  
 65 amendment authorizing the Legislature, by general law, to  
 66 prohibit consideration of any change or improvement made for the  
 67 purpose of improving the property's resistance to wind damage or  
 68 the installation of a renewable energy source device in the  
 69 determination of the assessed value of real property used for  
 70 residential purposes.

71 (b) All energy consuming improved properties not using  
 72 energy conservation strategies contribute to the burden  
 73 affecting all improved property resulting from fossil fuel  
 74 energy production. Improved property that has been retrofitted  
 75 with energy-related qualifying improvements receives the special  
 76 benefit of alleviating the property's burden from energy  
 77 consumption. All improved properties not protected from wind  
 78 damage by wind resistance improvements contribute to the burden  
 79 affecting all improved property resulting from potential wind  
 80 damage. Improved property that has been retrofitted with wind  
 81 resistance qualifying improvements receives the special benefit  
 82 of reducing the property's burden from potential wind damage.  
 83 Further, the installation and operation of qualifying  
 84 improvements not only benefit the affected properties for which

BILL ORIGINAL YEAR

85 the improvements are made, but also assist in fulfilling the  
 86 goals of the state's energy and hurricane mitigation policies.  
 87 To make qualifying improvements more affordable and assist  
 88 property owners who wish to undertake them, there is a  
 89 compelling state interest in enabling property owners, on a  
 90 voluntary basis, to finance such improvements with local  
 91 government assistance.

92 (c) The Legislature hereby determines that the actions  
 93 authorized under this act, including the financing therein of  
 94 qualifying improvements through the execution of financing  
 95 agreements and the related imposition of voluntary assessments  
 96 or charges, are reasonable and necessary to serve and achieve a  
 97 compelling state interest, and are necessary for the prosperity  
 98 and welfare of the state and its property owners and  
 99 inhabitants.

100 (2) For purposes of this section:

101 (a) "Local government" means a county, a municipality, or  
 102 a special district.

103 (b) "Qualifying improvement" includes any of the  
 104 following:

105 1. "Energy conservation and efficiency improvement" means  
 106 a measure to reduce consumption, through conservation or more  
 107 efficient use, of electricity, natural gas, propane, or other  
 108 forms of energy on the property, including but not limited to  
 109 air sealing, installation of insulation, installation of energy  
 110 efficient heating, cooling, or ventilation systems, building  
 111 modifications to increase the use of daylighting, replacement of  
 112 windows, installation of energy controls or energy recovery

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113 systems, and installation of efficient lighting equipment,  
 114 provided that, to be covered by an agreement with a property  
 115 owner and financed under this act, such improvement must be  
 116 affixed to a building or facility that is part of the property.

117 2. "Renewable energy improvement" means the installation  
 118 of any system whereby electrical, mechanical, or thermal energy  
 119 is produced from a method that uses one or more of the following  
 120 fuels or energy sources: hydrogen, solar energy, geothermal  
 121 energy, bioenergy, and wind energy.

122 3. "Wind resistance improvement" includes, but is not  
 123 limited to:

124 a. Improving the strength of the roof deck attachment;

125 b. Creating a secondary water barrier to prevent water  
 126 intrusion;

127 c. Installing wind-resistant shingles;

128 d. Installing gable-end bracing;

129 e. Reinforcing roof-to-wall connections;

130 f. Installing storm shutters; or

131 g. Installing opening protections.

132 (3) A local government may levy a non-ad valorem  
 133 assessment to fund a qualifying improvement.

134 (4) Subject to local government ordinance or resolution, a  
 135 property owner may apply to the local government for funding to  
 136 finance a qualifying improvement and enter into a financing  
 137 agreement with the local government. Costs incurred by the  
 138 local government for such purpose may be collected as a non-ad  
 139 valorem assessment, a municipal or county lien, or may be  
 140 collected pursuant to any other lawful method.



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141 (a) A non-ad valorem assessment shall be collected  
 142 pursuant s. 197.3632; provided, however, that the notice and  
 143 adoption requirements of s. 197.3632(4) shall not apply in the  
 144 instance where the provisions of this section are used and  
 145 complied with, and the initial resolution, publication of  
 146 notice, and mailed notices to the property appraiser, tax  
 147 collector, and Department of Revenue required by s.  
 148 197.3632(3)(a) may be provided on or before August 15 in  
 149 conjunction with any non-ad valorem assessment authorized by  
 150 this act, if the property appraiser, tax collector and local  
 151 government agree.

152 (b) In the event the financing agreement provides for  
 153 repayment through a surcharge on a utility or other municipal  
 154 service bill in the form of a municipal lien, the utility  
 155 provider may discontinue the delivery of all utility service in  
 156 the event of nonpayment of the surcharge; provided, however,  
 157 that the financing agreement must set forth the terms and costs  
 158 of such discontinuance, including the period of time after which  
 159 discontinuance will be imposed.

160 (5) Pursuant to this chapter or as otherwise provided by  
 161 law or pursuant to its home rule power, a local government may  
 162 partner with one or more local governments for the purpose of  
 163 providing and financing qualifying improvements.

164 (6) A qualifying improvement program may be administered  
 165 by a for-profit entity or a not-for-profit organization on  
 166 behalf of and at the discretion of the local government.

167 (7) A local government may incur debt for the purpose of  
 168 providing such improvements, payable from revenues received from

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169 the improved property, or any other available revenue source as  
 170 authorized by law.

171 (8) A local government may enter into a financing  
 172 agreement only with the record owner of the affected property.

173 (9) Prior to entering into a financing agreement, the  
 174 local government shall reasonably determine that all property  
 175 taxes and any other assessments levied on the same bill as  
 176 property taxes are paid and have not been delinquent for the  
 177 past three (3) years or the property owner's period of  
 178 ownership, whichever is less; that there are no involuntary  
 179 liens such as construction liens on the property; that no  
 180 notices of default or other evidence of property-based debt  
 181 delinquency have been recorded during the past three (3) years  
 182 or the property owner's period of ownership, whichever is less;  
 183 and that the property owner is then current on all mortgage debt  
 184 on the property.

185 (10) A qualifying improvement shall be affixed to an  
 186 existing building or facility that is part of the property and  
 187 shall constitute an improvement to the building or facility or a  
 188 fixture thereto. An agreement between a local government and a  
 189 qualifying property owner may not cover projects in buildings or  
 190 facilities under new construction, or construction for which a  
 191 certificate of occupancy or similar evidence of substantial  
 192 completion of new construction or improvement has not been  
 193 issued.

194 (11) Any work requiring a license under any applicable law  
 195 to make a qualifying improvement shall be performed by a  
 196 contractor properly certified or registered pursuant to chapter

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197 489, Part I and Part II.  
 198 (12) Without the consent of the holders or loan servicers  
 199 of any mortgage encumbering or otherwise secured by the  
 200 property, the total amount of any non-ad valorem assessment or  
 201 municipal or county lien for a property under this act shall not  
 202 exceed 20 percent of the just value of the property as  
 203 determined by the county property appraiser.  
 204 (a) Notwithstanding the foregoing, a non-ad valorem  
 205 assessment or municipal or county lien for a qualifying  
 206 improvement defined in subsection (2)(b) 1. or 2. that is  
 207 supported by an energy audit shall not be subject to the limits  
 208 in this subsection, if the audit demonstrates the annual energy  
 209 savings from the qualified improvement equals or exceeds the  
 210 annual repayment amount of the non-ad valorem assessment or  
 211 municipal or county lien.  
 212 (b) A local government may adopt alternate parameters to  
 213 those specified in this subsection to conform to local needs and  
 214 conditions, following a public hearing and the finding of the  
 215 need for such changes due to the local needs and conditions.  
 216 (13) At least thirty (30) days prior to entering into a  
 217 financing agreement, the property owner shall provide to the  
 218 holders or loan servicers of any existing mortgages encumbering  
 219 or otherwise secured by the property notice of their intent to  
 220 enter into a financing agreement together with the maximum  
 221 principle amount to be financed and the maximum annual  
 222 assessment necessary to repay same. No provision in any  
 223 agreement between a mortgagee or other lienholder and a property  
 224 owner or otherwise now or hereafter binding upon a property

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225 owner, which allows for acceleration of payment of the mortgage,  
 226 note or lien or other unilateral modification solely as a result  
 227 of entering into a financing agreement as provided for in this  
 228 section, shall be or construed as enforceable. This subsection  
 229 shall not limit the authority of the holder or loan servicer to  
 230 increase the required monthly escrow by an amount necessary to  
 231 annually pay the qualifying improvement assessment.

232 (14) No provision in any agreement between a local  
 233 government and a public or private power or energy provider, or  
 234 other utility provider, shall be construed to or be enforceable  
 235 to limit or prohibit any local government from exercising its  
 236 authority under this section.

237 (15) This section shall be construed to be additional and  
 238 supplemental to county and municipal home rule authority and not  
 239 in derogation thereof or a limitation thereon.

240 Section 2. This act shall take effect July 1, 2010.



# PCB EUP 10-04 – PUBLIC SERVICE COMMISSION REFORM

## Energy & Utilities Policy Committee

### SUMMARY

#### Structural Separation of Public Service Commission

The bill separates the Public Service Commission into two entities: the Public Service Commission and the Office of Regulatory Staff.

#### 1. Office of Regulatory Staff (ORS)

##### Structure

- Created as an office within the Legislature **(Section 15)**
- Headed by an executive director that is:
  - Appointed for a 6-year term by the Committee on Public Service Commission Oversight, subject to confirmation by majority vote of each chamber **(Section 17)**
  - Subject to higher minimum qualifications than commissioners and to all applicable commissioner standards of conduct **(Section 17)**
- Includes clerical, technical, and professional staff that the executive director deems reasonably necessary to perform the office's duties ("advocacy staff") **(Section 16)**
- Subject to public records law **(Section 2)**
- Funded through existing Florida Public Service Regulatory Trust Fund **(Section 20)**

##### Power & Duties

- Represents the public interest with respect to all matters within the jurisdiction of the commission **(Sections 15, 18)**
  - ❖ "Public interest" is defined as a balancing of consumer concerns, preservation of financial integrity of regulated utilities their ability to provide reliable and affordable service, and promotion of fair competition in telecommunications markets. **(Section 15)**
- Participates as a party of record in all commission proceedings (unless the executive director determines that not participating in a proceeding will not adversely affect the public interest) **(Sections 15, 18)**
  - ❖ ORS may offer positions only in the form and manner in which any other party may offer positions. **(Section 15)**
  - ❖ ORS may petition the commission to initiate a proceeding. **(Section 18)**
- Performs specific duties including: **(Section 18)**
  - Review and investigate rates and service of public utilities and regulated companies

- Inspect, audit, and examine such entities regarding matters within the commission’s jurisdiction
- Investigate complaints with respect to matters within the commission’s jurisdiction
- Assist customers in the informal resolution of complaints
- Make studies with respect to standards, regulations, practices, or service of public utilities and regulated companies
- Provide legal representation of the public interest before courts and agencies concerning matter within the commission’s jurisdiction
- Educate the public on matters within the commission’s jurisdiction
- Conduct staff-assisted rate cases for small water & wastewater utilities **(Section 44)**
- Authorized to request judicial review of commission orders and decisions **(Section 18)**
- Authorized to access books and records and perform investigations and inspections **(Sections 19, 21, 26, 27, 29, 33, 38, 39, 49, 50, 53, 60)**

## 2. Public Service Commission (Commission or PSC)

### Structure

- Comprised of five commissioners and clerical, technical, and professional staff (“advisory staff”) **(Section 13)**

### Powers & Duties

- Maintains existing jurisdiction but may not initiate proceedings on its own motion **(Sections 25, 28, 30, 31, 34, 35, 36, 37, 40, 43, 45, 46, 47, 48, 54, 55, 56, 58, 59, 63, 64, 65)**
- Performs decision-making functions
- Prohibited from establishing or implementing any regulatory policy that is contrary to, or is an expansion of, authority granted to it by the Legislature **(Section 4)**
- Advisory staff: **(Section 6)**
  - May not appear as a party in PSC proceedings
  - May not provide testimony or cross-examine witnesses in PSC proceedings
  - May not conduct formal or informal discovery in PSC proceedings
  - May not inspect, audit, or examine regulated entities
- Commissioners shall not supervise, direct , or control anyone in the Office of Regulatory Staff (discussed below), but the Commission may request that the Office of Regulatory Staff: **(Sections 6, 16, 18)**
  - Provide information and reports on any matter within or incidental to the commission’s jurisdiction
  - Assist in the preparation of reports that the commission is required by law to produce
  - Conduct inspections, audits, and examinations of regulated entities

### **Minimum Qualifications, Training Requirements, and Commissioner Terms**

The bill creates specific minimum qualifications for commissioners:

- Baccalaureate or more advanced degree from an accredited institution; and
- Minimum of 10 years of professional experience, or 6 years of professional experience for persons with an advanced degree, in one or more of the following:
  - Energy or electric industry issues;
  - Telecommunications issues
  - Water and sewer industry issues;
  - Finance
  - Economics
  - Accounting
  - Engineering
  - Law **(Sections 8, 10)**

The bill requires initial and continuing training for commissioners:

- Comprehensive study course for new commissioners before voting on any matter
- Minimum 10 hours (annual) of relevant continuing professional education
- Annual ethics training **(Section 10)**

The bill establishes staggered 6-year terms for commissioners, subject to mid-term reconfirmation by the Legislature. **(Section 5)**

### **Standards of Conduct for Commissioners and the Executive Director of ORS**

The bill expands the current standards of conduct for commissioners to apply the substance of several provisions of the Code of Judicial Conduct:

- The chair, or the presiding commissioner in the chair's absence, shall require order and decorum in commission proceedings.
- Commissioners shall be patient, dignified, and courteous to those persons with whom the commissioner deals in an official capacity.
- Commissioners shall perform official duties without bias or prejudice.
- Commissioners shall not make pledges, promises, or commitments that are inconsistent with the impartial performance of the commissioner's official duties.
- Commissioners shall not be swayed by partisan interests, public clamor, or fear of criticism. **(Section 11)**

The bill includes the following statement of intent, which is similar in substance to Canon 1 of the Code of Judicial Conduct:

- "Professional, impartial, and honorable commissioners are indispensable to the effective performance of the commission's duties. A commissioner shall maintain high standards of conduct and shall personally observe those standards so that the integrity and impartiality of the commission may be preserved." **(Section 11; also see Section 4)**



The bill applies certain provisions of the commissioner standards of conduct to the executive director of the Office of Regulatory Staff. **(Section 17)**

### **Ex Parte Communications**

The bill provides:

- Ex parte communications are defined as any communication that:
  - If written or in electronic format, is not served on all parties to a proceeding, and
  - If oral, is made without adequate notice to the parties and without an opportunity for the parties to be present and heard. **(Section 12)**
- Ex parte communications regarding certain procedural matters are authorized provided that:
  - The commissioner or commission employee reasonably believes that no party will gain a procedural or tactical advantage, and
  - Parties are notified and provided an opportunity to respond. **(Section 12)**
- Ex parte communications are prohibited in the following types of cases:
  - Pending proposed agency action proceedings
  - Pending formal hearings
  - Matters that an individual knows will be filed within 180 days. **(Section 12)**
- Advocacy staff is separated from advisory staff and commissioners to ensure that staff is not used as a conduit for ex parte communications (see above).
- A maximum \$5,000 civil penalty may be imposed on any individual that fails to report a prohibited ex parte communication. **(Section 12)**

### **Committee on Public Service Commission Oversight**

The bill renames the Committee on Public Counsel Oversight as the Committee on Public Service Commission Oversight and provides it the powers to:

- Appoint the executive director of the Office of Regulatory Staff, subject to confirmation by Legislature **(Section 7)**
- Oversee and approve commissioner training **(Sections 7, 10)**
- Oversee the budget of the Office of Regulatory Staff **(Sections 7, 16)**

### **Prohibited Influence on Public Service Commissioners**

The bill prohibits the Governor and certain legislative members with a role in the nomination, appointment, or reconfirmation of commissioners from attempting to sway the independent judgment of the commission by bringing pressure to bear upon a commissioner or commission employee through that person's role in the selection process. The Commission on Ethics will receive and investigate complaints. **(Section 9)**

### *Post-Employment Restrictions*

The bill:

- Applies post-employment restrictions to the ORS Executive Director that are the same as those restrictions on PSC commissioners
- Applies post-employment restrictions to the ORS staff that are the same as those restrictions on commission staff **(Section 14)**

The bill does not expand the current post-employment restrictions that apply to commissioners or their staff.

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A bill to be entitled  
An act relating to the Public Service Commission;  
providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (8) of  
section 112.324, Florida Statutes, are amended to read:

112.324 Procedures on complaints of violations; public  
records and meeting exemptions.—

(8) If, in cases pertaining to complaints other than  
complaints against impeachable officers or members of the  
Legislature, upon completion of a full and final investigation  
by the commission, the commission finds that there has been a  
violation of this part or of s. 8, Art. II of the State  
Constitution, it shall be the duty of the commission to report  
its findings and recommend appropriate action to the proper  
disciplinary official or body as follows, and such official or  
body shall have the power to invoke the penalty provisions of  
this part, including the power to order the appropriate  
elections official to remove a candidate from the ballot for a  
violation of s. 112.3145 or s. 8(a) and (i), Art. II of the  
State Constitution:

(a) The President of the Senate and the Speaker of the  
House of Representatives, jointly, in any case concerning the  
Public Counsel, members of the Public Service Commission, the  
executive director of the Office of Regulatory Staff, members of  
the Public Service Commission Nominating Council, the Auditor

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28 General, the director of the Office of Program Policy Analysis  
 29 and Government Accountability, or members of the Legislative  
 30 Committee on Intergovernmental Relations.

31 (c) The President of the Senate, in any case concerning an  
 32 employee of the Senate; the Speaker of the House of  
 33 Representatives, in any case concerning an employee of the House  
 34 of Representatives; or the President and the Speaker, jointly,  
 35 in any case concerning an employee of a committee of the  
 36 Legislature whose members are appointed solely by the President  
 37 and the Speaker or in any case concerning an employee of the  
 38 Public Counsel, Public Service Commission, Office of Regulatory  
 39 Staff, Auditor General, Office of Program Policy Analysis and  
 40 Government Accountability, or Legislative Committee on  
 41 Intergovernmental Relations.

42 Section 2. Subsection (2) of section 119.011, Florida  
 43 Statutes, is amended to read:

44 119.011 Definitions.—As used in this chapter, the term:

45 (2) "Agency" means any state, county, district, authority,  
 46 or municipal officer, department, division, board, bureau,  
 47 commission, or other separate unit of government created or  
 48 established by law including, for the purposes of this chapter,  
 49 the Commission on Ethics, the Public Service Commission, the  
 50 Office of Regulatory Staff, and the Office of Public Counsel,  
 51 and any other public or private agency, person, partnership,  
 52 corporation, or business entity acting on behalf of any public  
 53 agency.

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54 Section 3. Subsection (2) of section 186.801, Florida  
55 Statutes, is amended to read:

56 186.801 Ten-year site plans.—

57 (2) Within 9 months after the receipt of the proposed  
58 plan, the commission shall request assistance from the Office of  
59 Regulatory Staff to make a preliminary study of such plan and  
60 shall classify the plan ~~it~~ as "suitable" or "unsuitable." The  
61 commission may suggest alternatives to the plan. All findings of  
62 the commission shall be made available to the Department of  
63 Environmental Protection for its consideration at any subsequent  
64 electrical power plant site certification proceedings. It is  
65 recognized that 10-year site plans submitted by an electric  
66 utility are tentative information for planning purposes only and  
67 may be amended at any time at the discretion of the utility upon  
68 written notification to the commission. A complete application  
69 for certification of an electrical power plant site under  
70 chapter 403, when such site is not designated in the current 10-  
71 year site plan of the applicant, shall constitute an amendment  
72 to the 10-year site plan. In its preliminary study of each 10-  
73 year site plan, the commission shall consider such plan as a  
74 planning document and shall review:

- 75 (a) The need, including the need as determined by the  
76 commission, for electrical power in the area to be served.
- 77 (b) The effect on fuel diversity within the state.
- 78 (c) The anticipated environmental impact of each proposed  
79 electrical power plant site.
- 80 (d) Possible alternatives to the proposed plan.

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81 (e) The views of appropriate local, state, and federal  
 82 agencies, including the views of the appropriate water  
 83 management district as to the availability of water and its  
 84 recommendation as to the use by the proposed plant of salt water  
 85 or fresh water for cooling purposes.

86 (f) The extent to which the plan is consistent with the  
 87 state comprehensive plan.

88 (g) The plan with respect to the information of the state  
 89 on energy availability and consumption.

90 Note.—Former ss. 403.505, 23.0191.

91 Section 4. Section 350.001, Florida Statutes, is amended  
 92 to read:

93 350.001 Legislative intent.—

94 (1) The Florida Public Service Commission has been and  
 95 shall continue to be an arm of the legislative branch of  
 96 government. In the exercise of its jurisdiction, the commission  
 97 shall neither establish nor implement any regulatory policy that  
 98 is contrary to, or is an expansion of, the authority granted to  
 99 it by the Legislature.

100 (2) The Public Service Commission and its staff shall  
 101 perform their ~~its~~ duties independently, impartially,  
 102 professionally, honorably, and without undue influence from any  
 103 person.

104 (3) It is the desire of the Legislature that the Governor  
 105 participate in the appointment process of commissioners to the  
 106 Public Service Commission. The Legislature accordingly delegates  
 107 to the Governor a limited authority with respect to the Public

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108 Service Commission by authorizing him or her to participate in  
 109 the selection of members only in the manner prescribed by s.  
 110 350.031.

111 Section 5. Subsections (1) and (2) of section 350.01,  
 112 Florida Statutes, are amended to read:

113 350.01 Florida Public Service Commission; terms of  
 114 commissioners; vacancies; election and duties of chair; quorum;  
 115 proceedings.—

116 (1) The Florida Public Service Commission shall consist of  
 117 five commissioners appointed pursuant to this chapter ~~s.~~  
 118 ~~350.031~~.

119 (2)(a) Each commissioner serving on July 1, 2010 ~~1978~~,  
 120 shall ~~be permitted to~~ remain in office until the completion of  
 121 his or her current term. Upon the expiration of the term, a  
 122 successor shall be appointed in the manner prescribed by this  
 123 chapter ~~s. 350.031~~ for a 6-year ~~4-year~~ term, except that the  
 124 terms of the initial members appointed under this act shall be  
 125 as follows:

126 1. The vacancies ~~vacancy~~ created by the present terms ~~term~~  
 127 ending in January 2011, ~~1981~~, shall be filled by appointment for  
 128 a 3-year term and a 4-year term, respectively, and for 6-year ~~4-~~  
 129 ~~year~~ terms thereafter; ~~and~~

130 2. The vacancy ~~vacancies~~ created by the ~~two~~ present term  
 131 ~~terms~~ ending in January 2013, ~~1979~~, shall be filled by  
 132 appointment for a 3-year term and for 6-year ~~4-year~~ terms  
 133 thereafter; ~~and-~~

134 3. The vacancies created by the present terms ending in

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135 January 2014 shall be filled by appointment for a 3-year term  
 136 and a 4-year term, respectively, and for 6-year terms  
 137 thereafter.

138  
 139 When filling the vacancies created by the present terms ending  
 140 in January 2011, pursuant to subparagraph 1., the appointing  
 141 authority shall have the discretion to determine which vacancy  
 142 will be filled by appointment for a 3-year term and which  
 143 vacancy will be filled by appointment for a 4-year term. When  
 144 filling the vacancies created by the present terms ending in  
 145 January 2014, pursuant to subparagraph 3., the appointing  
 146 authority shall have the discretion to determine which vacancy  
 147 will be filled by appointment for a 3-year term and which  
 148 vacancy will be filled by appointment for a 4-year term.

149 (b) Each term shall begin on January 2 of the year the  
 150 term commences and shall end on January 1 of the year the term  
 151 concludes. ~~Two additional commissioners shall be appointed in~~  
 152 ~~the manner prescribed by s. 350.031 for 4-year terms beginning~~  
 153 ~~the first Tuesday after the first Monday in January, 1979, and~~  
 154 ~~successors shall be appointed for 4-year terms thereafter with~~  
 155 ~~each term beginning on January 2 of the year the term commences~~  
 156 ~~and ending 4 years later on January 1.~~

157 (c) Vacancies on the commission shall be filled for the  
 158 unexpired portion of the term in the same manner as original  
 159 appointments to the commission.

160 (d) Each commissioner appointed to a 6-year term or  
 161 appointed to fill a vacancy to complete the unexpired portion of



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162 a 6-year term with more than 4 years of the term remaining,  
 163 shall be subject to reconfirmation by the Legislature during the  
 164 regular session immediately following the completion of one-half  
 165 of the commissioner's term.

166 Section 6. Section 350.011, Florida Statutes, is amended  
 167 to read:

168 350.011 Florida Public Service Commission; jurisdiction;  
 169 powers and duties.—

170 (1) The state regulatory agency heretofore known as the  
 171 Florida Railroad and Public Utilities Commission or Florida  
 172 Public Utilities Commission shall be known and hereafter called  
 173 Florida Public Service Commission, and all rights, powers,  
 174 duties, responsibilities, jurisdiction, and judicial powers now  
 175 vested in said Railroad and Public Utilities Commission or said  
 176 Florida Public Utilities Commission and the commissioners  
 177 thereof are vested in the Florida Public Service Commission and  
 178 the commissioners thereof.

179 (2) The commissioners of the Florida Public Service  
 180 Commission shall not supervise, direct, or control any person  
 181 whose services are employed by the Office of Regulatory Staff  
 182 created pursuant to s. 350.071.

183 (3) Notwithstanding any other provision of law, the  
 184 commission shall not inspect, audit, or examine any entity  
 185 subject to the jurisdiction of the commission pursuant to any  
 186 provision of law, as these functions are the sole responsibility  
 187 of the Office of Regulatory Staff.

188 (4) The commission staff shall not appear as a party in

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189 commission proceedings and shall not offer testimony on issues  
 190 before the commission. The commission staff shall not conduct  
 191 discovery, either informally or pursuant to the Florida Rules of  
 192 Civil Procedure, in any proposed agency action proceeding or any  
 193 proceeding under s. 120.569 or s. 120.57 in which the  
 194 substantial interests of a party are determined by the  
 195 commission.

196 Section 7. Subsections (1) and (2) of section 350.012,  
 197 Florida Statutes, are amended to read:

198 350.012 Committee on Public Service Commission ~~Counsel~~  
 199 Oversight; creation; membership; powers and duties.—

200 (1) There is created a standing joint committee of the  
 201 Legislature, designated the Committee on Public Service  
 202 Commission ~~Counsel~~ Oversight, and composed of 12 members  
 203 appointed as follows: six members of the Senate appointed by the  
 204 President of the Senate, two of whom must be members of the  
 205 minority party; and six members of the House of Representatives  
 206 appointed by the Speaker of the House of Representatives, two of  
 207 whom must be members of the minority party. The terms of members  
 208 shall be for 2 years and shall run from the organization of one  
 209 Legislature to the organization of the next Legislature. The  
 210 President shall appoint the chair of the committee in even-  
 211 numbered years and the vice chair in odd-numbered years, and the  
 212 Speaker of the House of Representatives shall appoint the chair  
 213 of the committee in odd-numbered years and the vice chair in  
 214 even-numbered years, from among the committee membership.  
 215 Vacancies shall be filled in the same manner as the original

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216 appointment. Members shall serve without additional  
 217 compensation, but shall be reimbursed for expenses.

218 (2) The committee shall:

219 (a) Appoint an executive director of the Office of  
 220 Regulatory Staff, subject to confirmation by the Legislature, as  
 221 provided by general law;

222 (b) Appoint ~~appoint~~ a Public Counsel as provided by  
 223 general law; and

224 (c) Perform such other duties as required by general law.

225 Section 8. Subsections (1) and (5) of section 350.031,  
 226 Florida Statutes, are amended to read:

227 350.031 Florida Public Service Commission Nominating  
 228 Council.—

229 (1)(a) There is created a Florida Public Service  
 230 Commission Nominating Council consisting of 12 members. At least  
 231 one member of the council must be 60 years of age or older. Six  
 232 members, including three members of the House of  
 233 Representatives, one of whom shall be a member of the minority  
 234 party, shall be appointed by and serve at the pleasure of the  
 235 Speaker of the House of Representatives. Six members, including  
 236 three members of the Senate, one of whom shall be a member of  
 237 the minority party, shall be appointed by and serve at the  
 238 pleasure of the President of the Senate.

239 (b) All terms shall be for 4 years except those members of  
 240 the House and Senate, who shall serve 2-year terms concurrent  
 241 with the 2-year elected terms of House members. ~~All terms of the~~  
 242 ~~members of the Public Service Commission Nominating Council~~

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243 ~~existing on June 30, 2008, shall terminate upon the effective~~  
 244 ~~date of this act; however, such members may serve an additional~~  
 245 ~~term if reappointed by the Speaker of the House of~~  
 246 ~~Representatives or the President of the Senate.~~ To establish  
 247 staggered terms, appointments of members shall be made for  
 248 initial terms to begin on July 1, 2008, with each appointing  
 249 officer to appoint three legislator members, one of whom shall  
 250 be a member of the minority party, to terms through the  
 251 remainder of the 2-year elected terms of House members; one  
 252 nonlegislator member to a 6-month term; one nonlegislator member  
 253 to an 18-month term; and one nonlegislator member to a 42-month  
 254 term. Thereafter, the terms of the nonlegislator members of the  
 255 Public Service Commission Nominating Council shall begin on  
 256 January 2 of the year the term commences and end 4 years later  
 257 on January 1.

258 (c) The President of the Senate shall appoint the chair of  
 259 the council in even-numbered years and the vice chair in odd-  
 260 numbered years, and the Speaker of the House of Representatives  
 261 shall appoint the chair of the council in odd-numbered years and  
 262 the vice chair in even-numbered years, from among the council  
 263 membership.

264 (d) Vacancies on the council shall be filled for the  
 265 unexpired portion of the term in the same manner as original  
 266 appointments to the council. A member may not be reappointed to  
 267 the council, except for a member of the House of Representatives  
 268 or the Senate who may be appointed to two 2-year terms, ~~members~~  
 269 ~~who are reappointed pursuant to paragraph (b),~~ or a person who

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270 is appointed to fill the remaining portion of an unexpired term.

271 (5) A person may not be nominated ~~to the Governor~~ for  
 272 appointment to the Public Service Commission until the council  
 273 has determined that the person satisfies the qualifications set  
 274 forth in s. 350.04(2) ~~is competent and knowledgeable in one or~~  
 275 ~~more fields, which shall include, but not be limited to: public~~  
 276 ~~affairs, law, economics, accounting, engineering, finance,~~  
 277 ~~natural resource conservation, energy, or another field~~  
 278 ~~substantially related to the duties and functions of the~~  
 279 ~~commission.~~ The commission shall fairly represent the ~~above-~~  
 280 ~~stated~~ fields identified in s. 350.04(2). Recommendations of the  
 281 council shall be nonpartisan.

282 Section 9. Section 350.035, Florida Statutes, is created  
 283 to read:

284 350.035 Prohibited influence on commissioners.-  
 285 Neither the Governor, the President of the Senate, the Speaker  
 286 of the House of Representatives, any member of the Committee on  
 287 Public Service Commission Oversight, nor any member of the  
 288 Public Service Commission Nominating Council shall attempt to  
 289 sway the independent judgment of the commission by bringing  
 290 pressure to bear upon a commissioner or commission employee  
 291 through that person's role in the nomination, appointment, or  
 292 reconfirmation of commissioners. It is the duty of the  
 293 Commission on Ethics to receive and investigate sworn complaints  
 294 of violations of this section pursuant to the procedures  
 295 contained in ss. 112.322-112.3241.

296 Section 10. Section 350.04, Florida Statutes, is amended

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297 to read:

298 350.04 Qualifications of commissioners; training and  
 299 continuing education.—

300 (1) A commissioner may not, at the time of appointment or  
 301 during his or her term of office:

302 (a)~~(1)~~ Have any financial interest, other than ownership  
 303 of shares in a mutual fund, in any business entity which, either  
 304 directly or indirectly, owns or controls any public utility  
 305 regulated by the commission, in any public utility regulated by  
 306 the commission, or in any business entity which, either directly  
 307 or indirectly, is an affiliate or subsidiary of any public  
 308 utility regulated by the commission.

309 (b)~~(2)~~ Be employed by or engaged in any business activity  
 310 with any business entity which, either directly or indirectly,  
 311 owns or controls any public utility regulated by the commission,  
 312 by any public utility regulated by the commission, or by any  
 313 business entity which, either directly or indirectly, is an  
 314 affiliate or subsidiary of any public utility regulated by the  
 315 commission.

316 (2) Each person recommended for appointment to the Public  
 317 Service Commission by the Public Service Commission Nominating  
 318 Council must:

319 (a) Have earned a baccalaureate or more advanced degree  
 320 from an institution of higher learning accredited by a regional  
 321 or national accrediting body; and

322 (b) Possess a minimum of 10 years of professional  
 323 experience, or a minimum of 6 years of professional experience

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324 if the person has earned an advanced degree, in one or more of  
 325 the following:

- 326 1. Energy or electric industry issues;
- 327 2. Telecommunications issues;
- 328 3. Water and sewer industry issues;
- 329 4. Finance;
- 330 5. Economics;
- 331 6. Accounting;
- 332 7. Engineering; or
- 333 8. Law.

334 (3) Before voting on any matter before the Public Service  
 335 Commission, each person appointed to the commission after July  
 336 1, 2010, shall complete a comprehensive course of study,  
 337 developed by the executive director and general counsel of the  
 338 Office of Regulatory Staff and approved by the Committee on  
 339 Public Service Commission Oversight, that addresses the  
 340 substantive matters within the jurisdiction of the commission,  
 341 administrative law applicable to commission proceedings, and  
 342 standards of conduct applicable to commissioners. Thereafter,  
 343 each commissioner must complete annually no less than 10 hours  
 344 of continuing professional education directly related to  
 345 substantive matters within the jurisdiction of the commission.

346 (4) No less than once every 12 months, each commissioner,  
 347 commission employee, and staff of the Office of Regulatory Staff  
 348 shall receive training, in a form developed by the executive  
 349 director and general counsel of the Office of Regulatory Staff,  
 350 that addresses the standards of conduct applicable to

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351 commissioners, their staff, and staff of the Office of  
 352 Regulatory Staff.

353 (5) The executive director of the Office of Regulatory  
 354 Staff shall certify the office's compliance with the training  
 355 requirements imposed by this section, the chair of the Public  
 356 Service Commission shall certify the commission's compliance  
 357 with these requirements, and each commissioner shall certify his  
 358 or her individual compliance with the continuing professional  
 359 education requirements of subsection (3). Each certification of  
 360 compliance shall be provided to the Committee on Public Service  
 361 Commission Oversight.

362 Section 11. Section 350.041, Florida Statutes, is amended  
 363 to read:

364 350.041 Commissioners; standards of conduct.—

365 (1) STATEMENT OF INTENT.—

366 (a) Professional, impartial, and honorable commissioners  
 367 are indispensable to the effective performance of the  
 368 commission's duties. A commissioner shall maintain high  
 369 standards of conduct and shall personally observe those  
 370 standards so that the integrity and impartiality of the  
 371 commission may be preserved. The standards of conduct provided  
 372 in this section should be construed and applied to further that  
 373 objective.

374 (b) In addition to the provisions of part III of chapter  
 375 112, which are applicable to public service commissioners by  
 376 virtue of their being public officers and full-time employees of  
 377 the legislative branch of government, the conduct of public



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378 service commissioners shall be governed by the standards of  
 379 conduct provided in this section. Nothing shall prohibit the  
 380 standards of conduct from being more restrictive than part III  
 381 of chapter 112. Further, this section shall not be construed to  
 382 contravene the restrictions of part III of chapter 112. In the  
 383 event of a conflict between this section and part III of chapter  
 384 112, the more restrictive provision shall apply.

385 (2) STANDARDS OF CONDUCT.—

386 (a) A commissioner may not accept anything from any  
 387 business entity which, either directly or indirectly, owns or  
 388 controls any public utility regulated by the commission, from  
 389 any public utility regulated by the commission, or from any  
 390 business entity which, either directly or indirectly, is an  
 391 affiliate or subsidiary of any public utility regulated by the  
 392 commission. A commissioner may attend conferences and associated  
 393 meals and events that are generally available to all conference  
 394 participants without payment of any fees in addition to the  
 395 conference fee. Additionally, while attending a conference, a  
 396 commissioner may attend meetings, meals, or events that are not  
 397 sponsored, in whole or in part, by any representative of any  
 398 public utility regulated by the commission and that are limited  
 399 to commissioners only, committee members, or speakers if the  
 400 commissioner is a member of a committee of the association of  
 401 regulatory agencies that organized the conference or is a  
 402 speaker at the conference. It is not a violation of this  
 403 paragraph for a commissioner to attend a conference for which  
 404 conference participants who are employed by a utility regulated

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405 by the commission have paid a higher conference registration fee  
 406 than the commissioner, or to attend a meal or event that is  
 407 generally available to all conference participants without  
 408 payment of any fees in addition to the conference fee and that  
 409 is sponsored, in whole or in part, by a utility regulated by the  
 410 commission. If, during the course of an investigation by the  
 411 Commission on Ethics into an alleged violation of this  
 412 paragraph, allegations are made as to the identity of the person  
 413 giving or providing the prohibited gift, that person must be  
 414 given notice and an opportunity to participate in the  
 415 investigation and relevant proceedings to present a defense. If  
 416 the Commission on Ethics determines that the person gave or  
 417 provided a prohibited gift, the person may not appear before the  
 418 commission or otherwise represent anyone before the commission  
 419 for a period of 2 years.

420 (b) A commissioner may not accept any form of employment  
 421 with or engage in any business activity with any business entity  
 422 which, either directly or indirectly, owns or controls any  
 423 public utility regulated by the commission, any public utility  
 424 regulated by the commission, or any business entity which,  
 425 either directly or indirectly, is an affiliate or subsidiary of  
 426 any public utility regulated by the commission.

427 (c) A commissioner may not have any financial interest,  
 428 other than shares in a mutual fund, in any public utility  
 429 regulated by the commission, in any business entity which,  
 430 either directly or indirectly, owns or controls any public  
 431 utility regulated by the commission, or in any business entity

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432 | which, either directly or indirectly, is an affiliate or  
 433 | subsidiary of any public utility regulated by the commission. If  
 434 | a commissioner acquires any financial interest prohibited by  
 435 | this section during his or her term of office as a result of  
 436 | events or actions beyond the commissioner's control, he or she  
 437 | shall immediately sell such financial interest or place such  
 438 | financial interest in a blind trust at a financial institution.  
 439 | A commissioner may not attempt to influence, or exercise any  
 440 | control over, decisions regarding the blind trust.

441 |       (d) A commissioner may not accept anything from a party in  
 442 | a proceeding currently pending before the commission. If, during  
 443 | the course of an investigation by the Commission on Ethics into  
 444 | an alleged violation of this paragraph, allegations are made as  
 445 | to the identity of the person giving or providing the prohibited  
 446 | gift, that person must be given notice and an opportunity to  
 447 | participate in the investigation and relevant proceedings to  
 448 | present a defense. If the Commission on Ethics determines that  
 449 | the person gave or provided a prohibited gift, the person may  
 450 | not appear before the commission or otherwise represent anyone  
 451 | before the commission for a period of 2 years.

452 |       (e) A commissioner may not serve as the representative of  
 453 | any political party or on any executive committee or other  
 454 | governing body of a political party; serve as an executive  
 455 | officer or employee of any political party, committee,  
 456 | organization, or association; receive remuneration for  
 457 | activities on behalf of any candidate for public office; engage  
 458 | on behalf of any candidate for public office in the solicitation

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459 of votes or other activities on behalf of such candidacy; or  
 460 become a candidate for election to any public office without  
 461 first resigning from office.

462 (f) A commissioner, during his or her term of office, may  
 463 not make any public comment regarding the merits of any  
 464 proceeding under ss. 120.569 and 120.57 currently pending before  
 465 the commission.

466 (g) A commissioner may not conduct himself or herself in  
 467 an unprofessional manner at any time during the performance of  
 468 his or her official duties.

469 (h) The chair shall require order and decorum in  
 470 proceedings before the commission. In the absence of the chair,  
 471 the commissioner presiding over a commission proceeding shall  
 472 require order and decorum in the proceeding.

473 (i) A commissioner shall be patient, dignified, and  
 474 courteous to litigants, other commissioners, witnesses, lawyers,  
 475 commission staff, staff of the Office of Regulatory Staff, and  
 476 others with whom the commissioner deals in an official capacity.

477 (j) A commissioner shall perform his or her official  
 478 duties without bias or prejudice. A commissioner shall not, in  
 479 the performance of his or her official duties, by words or  
 480 conduct manifest bias or prejudice.

481 (k) A commissioner shall not, with respect to parties or  
 482 classes of parties, cases, controversies, or issues likely to  
 483 come before the commission, make pledges, promises, or  
 484 commitments that are inconsistent with the impartial performance  
 485 of the commissioner's official duties.

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486           (1) A commissioner shall not be swayed by partisan  
 487 interests, public clamor, or fear of criticism.

488           (m)-(h) A commissioner must avoid impropriety in all of his  
 489 or her activities and must act at all times in a manner that  
 490 promotes public confidence in the integrity and impartiality of  
 491 the commission.

492           (n)-(i) A commissioner may not directly or indirectly,  
 493 through staff or other means, solicit anything of value from any  
 494 public utility regulated by the commission, or from any business  
 495 entity that, whether directly or indirectly, is an affiliate or  
 496 subsidiary of any public utility regulated by the commission, or  
 497 from any party appearing in a proceeding considered by the  
 498 commission in the last 2 years.

499           (3) (a) The Commission on Ethics shall accept and  
 500 investigate any alleged violations of this section pursuant to  
 501 the procedures contained in ss. 112.322-112.3241.

502           (b) The Commission on Ethics shall provide the Governor  
 503 and the Florida Public Service Commission Nominating Council  
 504 with a report of its findings and recommendations with respect  
 505 to alleged violations by a public service commissioner. The  
 506 Governor is authorized to enforce these ~~the~~ findings and  
 507 recommendations ~~of the Commission on Ethics~~, pursuant to part  
 508 III of chapter 112.

509           (c) The Commission on Ethics shall provide the  
 510 disciplinary officials or bodies specified in part III of  
 511 chapter 112 with a report of its findings and recommendations  
 512 with respect to alleged violations of the specific provisions of

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513 | this section that, pursuant to s. 350.073, are applicable to the  
 514 | executive director of the Office of Regulatory Staff.

515 | (d) A public service commissioner, a commission employee,  
 516 | the executive director of the Office of Regulatory Staff, or a  
 517 | member of the Florida Public Service Commission Nominating  
 518 | Council may request an advisory opinion from the Commission on  
 519 | Ethics, pursuant to s. 112.322(3)(a), regarding the standards of  
 520 | conduct or prohibitions set forth in this section and ss.  
 521 | 350.031, 350.04, and 350.042.

522 | Section 12. Section 350.042, Florida Statutes, is amended  
 523 | to read:

524 | 350.042 Ex parte communications.—

525 | (1) Each A commissioner and employee of the commission  
 526 | shall should accord to every person who is a party to or is  
 527 | registered with the commission as an interested person in a  
 528 | proposed agency action proceeding, or who is a party to a  
 529 | proceeding under s. 120.565, s. 120.569, or s. 120.57, legally  
 530 | interested in a proceeding, or the person's lawyer, full right  
 531 | to be heard according to law, and, except as authorized by law,  
 532 | shall not neither initiate, solicit, or ~~not~~ consider ex parte  
 533 | communications concerning the merits, threat, or offer of reward  
 534 | in any a pending proposed agency action proceeding or a  
 535 | proceeding under s. 120.565, s. 120.569, or s. 120.57 other than  
 536 | a proceeding under s. 120.54 or s. 120.565, workshops, or  
 537 | internal affairs meetings. No individual shall discuss ex parte  
 538 | with a commissioner the merits of any issue that he or she knows  
 539 | will be filed with the commission within 180 ~~90~~ days. ~~The~~

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540 ~~provisions of this subsection shall not apply to commission~~  
 541 ~~staff.~~

542 (a) For purposes of this section, an "ex parte  
 543 communication" is any communication that, if written or in  
 544 electronic format, is not served on all parties to a proceeding,  
 545 and, if oral, is made without adequate notice to the parties and  
 546 without an opportunity for the parties to be present and heard.

547 (b) Where circumstances require, ex parte communications  
 548 concerning scheduling, administrative purposes, or emergencies  
 549 that do not deal with substantive matters or issues on the  
 550 merits are authorized, provided:

551 1. The commissioner or commission employee reasonably  
 552 believes that no party will gain a procedural or tactical  
 553 advantage as a result of the ex parte communication; and

554 2. The commissioner or commission employee makes provision  
 555 promptly to notify all parties of the substance of the ex parte  
 556 communication and, where possible, allows an opportunity to  
 557 respond.

558 (2) The provisions of this section shall not prohibit an  
 559 individual residential ratepayer from communicating with a  
 560 commissioner or commission employee, provided that the ratepayer  
 561 is representing only himself or herself, without compensation.

562 (3) This section shall not apply to oral communications or  
 563 discussions in scheduled and noticed open public meetings of  
 564 educational programs or of a conference or other meeting of an  
 565 association of regulatory agencies.

566 (4) If a commissioner or commission employee knowingly

567 receives an ex parte communication prohibited by this section  
568 ~~relative to a proceeding other than as set forth in subsection~~  
569 ~~(1)~~, to which he or she is assigned, he or she must place on the  
570 record of the proceeding copies of all written communications  
571 received, all written responses to the communications, and a  
572 memorandum stating the substance of all oral communications  
573 received and all oral responses made, and shall give written  
574 notice to all parties to the communication that such matters  
575 have been placed on the record. Any party to the proceeding who  
576 desires to respond to the ~~an ex parte~~ communication may do so.  
577 The response must be received by the commission within 10 days  
578 after receiving notice that the ~~ex parte~~ communication has been  
579 placed on the record. The commissioner may, if he or she deems  
580 it necessary to eliminate the effect of an ex parte  
581 communication received by him or her, withdraw from the  
582 proceeding, in which case the chair shall substitute another  
583 commissioner for the proceeding.

584 (5) Any individual who makes an ex parte communication  
585 prohibited by this section shall submit to the commission a  
586 written statement describing the nature of such communication,  
587 to include the name of the person making the communication, the  
588 name of each ~~the~~ commissioner or commission employee  
589 ~~commissioners~~ receiving the communication, copies of all written  
590 communications made, all written responses to such  
591 communications, and a memorandum stating the substance of all  
592 oral communications received and all oral responses made. The  
593 commission shall place on the record of a proceeding all such



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594 | communications.

595 |       (6) Any commissioner or commission employee who knowingly  
 596 | fails to place on the record any ex parte ~~such~~ communications  
 597 | prohibited by this section, in violation of this ~~the~~ section,  
 598 | within 15 days after ~~of~~ the date of the ~~such~~ communication is  
 599 | subject to removal or dismissal and may be assessed a civil  
 600 | penalty not to exceed \$5,000. Any individual who knowingly fails  
 601 | to comply with subsection (5) may be assessed a civil penalty  
 602 | not to exceed \$5,000.

603 |       (7)(a) It is ~~shall be~~ the duty of the Commission on Ethics  
 604 | to receive and investigate sworn complaints of violations of  
 605 | this section pursuant to the procedures contained in ss.  
 606 | 112.322-112.3241.

607 |       (b) If the Commission on Ethics finds that there has been  
 608 | a violation of this section by a public service commissioner or  
 609 | commission employee, it shall provide the Governor and the  
 610 | Florida Public Service Commission Nominating Council with a  
 611 | report of its findings and recommendations. The Governor is  
 612 | authorized to enforce the findings and recommendations of the  
 613 | Commission on Ethics, pursuant to part III of chapter 112.

614 |       (c) If a commissioner, commission employee, or other  
 615 | individual fails or refuses to pay the Commission on Ethics any  
 616 | civil penalties assessed pursuant to ~~the provisions of~~ this  
 617 | section, the Commission on Ethics may bring an action in any  
 618 | circuit court to enforce the ~~such~~ penalty.

619 |       (d) If, during the course of an investigation by the  
 620 | Commission on Ethics into an alleged violation of this section,

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621 | allegations are made as to the identity of the person who  
 622 | participated in the ex parte communication, that person must be  
 623 | given notice and an opportunity to participate in the  
 624 | investigation and relevant proceedings to present a defense. If  
 625 | the Commission on Ethics determines that the person participated  
 626 | in the ex parte communication, the person may not appear before  
 627 | the commission or otherwise represent anyone before the  
 628 | commission for a period of 2 years.

629 |         Section 13. Subsections (1), (2), and (3) of section  
 630 | 350.06, Florida Statutes, are amended to read:

631 |             350.06 Place of meeting; expenditures; employment of  
 632 | personnel; records availability and fees.-

633 |             (1) The offices of the said commissioners shall be in the  
 634 | vicinity of Tallahassee, but the commissioners may hold sessions  
 635 | anywhere in the state at their discretion.

636 |             (2) All sums of money authorized to be paid on account of  
 637 | the said commissioners shall be paid out of the State Treasury  
 638 | only on the order of the Chief Financial Officer.

639 |             (3) The commissioners may employ clerical, technical, and  
 640 | professional personnel reasonably necessary for the performance  
 641 | of its their duties, except for those responsibilities and  
 642 | functions reserved to the Office of Regulatory Staff, and may  
 643 | also employ one or more persons capable of stenographic court  
 644 | reporting, to be known as the official reporters of the  
 645 | commission.

646 |         Section 14. Section 350.0605, Florida Statutes, is amended  
 647 | to read:

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648 350.0605 Former commissioners; executive directors; and  
649 employees of the commission or Office of Regulatory Staff;  
650 representation of clients before commission.-

651 (1) Any former commissioner of the Public Service  
652 Commission or former executive director of the Office of  
653 Regulatory Staff is prohibited from appearing before the  
654 commission representing any client or any industry regulated by  
655 the Public Service Commission for a period of 2 years following  
656 termination of service as a commissioner or executive director  
657 ~~on the commission.~~

658 (2) Any former employee of the commission or the Office of  
659 Regulatory Staff is prohibited from appearing before the  
660 commission representing any client regulated by the Public  
661 Service Commission on any matter which was pending at the time  
662 of termination and in which such former employee had  
663 participated.

664 (3) For a period of 2 years following termination of  
665 service as a commissioner or executive director ~~on the~~  
666 ~~commission~~, a former commissioner of the Public Service  
667 Commission or former executive director of the Office of  
668 Regulatory Staff ~~member~~ may not accept employment by or  
669 compensation from a business entity which, directly or  
670 indirectly, owns or controls a public utility regulated by the  
671 commission, from a public utility regulated by the commission,  
672 from a business entity which, directly or indirectly, is an  
673 affiliate or subsidiary of a public utility regulated by the  
674 commission or is an actual business competitor of a local

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675 exchange company or public utility regulated by the commission  
 676 and is otherwise exempt from regulation by the commission under  
 677 ss. 364.02(14) and 366.02(1), or from a business entity or trade  
 678 association that has been a party to a commission proceeding  
 679 within the 2 years preceding the member's termination of service  
 680 on the commission. This subsection applies only to members of  
 681 the Florida Public Service Commission who are appointed or  
 682 reappointed after May 10, 1993.

683 Section 15. Section 350.071, Florida Statutes, is created  
 684 to read:

685 350.071 Office of Regulatory Staff; creation; purpose;  
 686 party status.-

687 (1) The Office of Regulatory Staff is hereby created  
 688 within the legislative branch of government within the intent  
 689 expressed in chapter 216. The office shall perform its duties  
 690 independently.

691 (2) The office shall be considered a party of record in  
 692 all proceedings before the Public Service Commission, but the  
 693 office may choose not to participate in a proceeding if the  
 694 executive director determines that the public interest will not  
 695 be adversely affected as a result. All tariffs, initial  
 696 pleadings, complaints, and notices of appeal filed with the  
 697 commission shall be served upon the office. The commission shall  
 698 notify the office of the initiation of any rulemaking  
 699 proceeding, workshop, or any other proceeding that the  
 700 commission is authorized by law to initiate.

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701           (3) The office shall represent the public interest of  
 702 Florida. For purposes of ss. 350.071 through 350.075, "public  
 703 interest" means a balancing of the following:

704           (a) Concerns of the using and consuming public, regardless  
 705 of customer class, with respect to services provided by any  
 706 company subject to the jurisdiction of the commission pursuant  
 707 to any provision of law;

708           (b) Preservation of the financial integrity of the state's  
 709 regulated public utilities and continued investment in and  
 710 maintenance of facilities in order to provide reliable and  
 711 affordable utility services; and

712           (c) Promotion of fair competition in telecommunications  
 713 markets.

714           (4) The Office of Regulatory Staff shall be subject to the  
 715 same provisions governing ex parte communications that apply to  
 716 any other party to a commission proceeding. Any recommendation  
 717 of the Office of Regulatory Staff shall be provided to the  
 718 commission in a form, forum, and manner as may lawfully be  
 719 provided by any other party.

720           Section 16. Section 350.072, Florida Statutes, is created  
 721 to read:

722           350.072 Office of Regulatory Staff; employees;  
 723 supervision; budget; location; procedures governing  
 724 administration and operations.—

725           (1) The Office of Regulatory Staff shall consist of the  
 726 executive director and any clerical, technical, and professional  
 727 personnel that the executive director deems to be reasonably

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728 necessary for the performance of the duties of the office. The  
 729 executive director is authorized to employ expert witnesses and  
 730 other professional expertise that the executive director deems  
 731 to be reasonably necessary to assist the office in the  
 732 performance of its duties.

733 (2) The executive director shall employ and set the  
 734 compensation for all personnel of the Office of Regulatory Staff  
 735 and shall be responsible for the supervision and direction of  
 736 all such personnel.

737 (3) Neither the executive director nor any employee of the  
 738 Office of Regulatory Staff shall be subject to the supervision,  
 739 direction, or control of the commission or the chairman, any  
 740 member, or any employee of the commission.

741 (4) The executive director shall be responsible for  
 742 preparing the budget for the Office of Regulatory Staff and  
 743 shall submit the budget to the Committee on Public Service  
 744 Commission Oversight.

745 (5) The Office of Regulatory Staff shall maintain offices  
 746 in Leon County at a place convenient to the offices of the  
 747 commission that will enable the Office of Regulatory Staff to  
 748 efficiently perform its functions and duties.

749 (6) The Office of Regulatory Staff shall establish  
 750 procedures governing its internal administration and operations.

751 Section 17. Section 350.073, Florida Statutes, is created  
 752 to read:

753           350.073 Executive Director; appointment; term of office;  
 754 vacancies; qualifications; salary; oath of office; standards of  
 755 conduct—

756           (1) (a) The Committee on Public Service Commission  
 757 Oversight shall appoint the executive director of the Office of  
 758 Regulatory Staff by majority vote of the committee, subject to  
 759 confirmation by a majority vote of both the Senate and the House  
 760 of Representatives.

761           (b) Until such time as each chamber confirms the  
 762 appointment of the executive director, the appointee shall  
 763 perform the functions of the office as provided by law.

764           (c) The reappointment of an executive director is subject  
 765 to confirmation by a majority vote of both the Senate and the  
 766 House of Representatives.

767           (d) The appointment of an executive director may be  
 768 terminated at any time by a majority vote of both the Senate and  
 769 the House of Representatives.

770           (2) (a) The term of the executive director shall be 6  
 771 years, and the initial term of office shall begin January 2,  
 772 2011. The Committee on Public Service Commission Oversight shall  
 773 appoint the executive director no less than 60 days prior to the  
 774 first day of the term to which he or she is appointed.

775           (b) In case of a vacancy in the office of executive  
 776 director for any reason prior to expiration of the term of  
 777 office, the Committee on Public Service Commission Oversight  
 778 shall appoint a new executive director in the same manner as the  
 779 original appointment. The committee may appoint an interim

780 executive director to serve until such time as a new executive  
 781 director is appointed.

782 (2) A person may not be appointed as executive director  
 783 until the committee determines that the person satisfies the  
 784 criteria set forth in s. 350.04(1) and (2)(a) and possesses a  
 785 minimum of 12 years of professional experience in one or more of  
 786 the fields identified in s. 350.04(2)(b).

787 (3) The salary of the executive director shall be set by  
 788 the committee.

789 (4) The executive director shall take and subscribe to the  
 790 oath of office required of state officers by the State  
 791 Constitution.

792 (5) In addition to the provisions of part III of Chapter  
 793 112, applicable to the executive director by virtue of being a  
 794 public officer and full-time employee of the legislative branch  
 795 of government, the executive director shall be subject to the  
 796 standards of conduct applicable to commissioners pursuant to  
 797 paragraphs (2)(a), (b), (c), (d), (e), (g), (l), and (n) of s.  
 798 350.041. In the event of a conflict between this section and  
 799 part III of Chapter 112, the more restrictive provision shall  
 800 apply.

801 Section 18. Section 350.074, Florida Statutes, is created  
 802 to read:

803 350.074 Office of Regulatory Staff; duties.—

804 (1) The Office of Regulatory Staff shall represent the  
 805 public interest with respect to matters within the jurisdiction  
 806 of the commission and, when considered necessary and in the



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807 public interest by the executive director, shall petition the  
 808 commission to initiate proceedings on matters within its  
 809 jurisdiction. The office shall:

810 (a) When considered necessary and in the public interest  
 811 by the executive director, review and investigate the rates  
 812 charged or proposed to be charged, and the service furnished or  
 813 proposed to be furnished, by any public utility or regulated  
 814 company;

815 (b) When considered necessary and in the public interest  
 816 by the executive director, inspect, audit, and examine public  
 817 utilities and regulated companies regarding matters within the  
 818 jurisdiction of the commission;

819 (c) Represent the public interest in commission  
 820 proceedings, hearings, rulemakings, and other regulatory  
 821 matters;

822 (d) Investigate complaints made in connection with matters  
 823 under the jurisdiction of the commission, including those  
 824 complaints that are directed to the commission or commissioners;

825 (e) Assist customers in the informal resolution of  
 826 complaints regarding the rates or service of public utilities  
 827 and regulated companies or regarding any other matter within the  
 828 jurisdiction of the commission;

829 (f) Make studies to the commission with respect to  
 830 standards, regulations, practices, or service of any public  
 831 utility or regulated company.

832 (g) When considered necessary and in the public interest  
 833 by the executive director, provide legal representation of the

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834 public interest before other state agencies, federal agencies,  
 835 and state and federal courts in connection with matters under  
 836 the jurisdiction of the commission, including proceedings that  
 837 could affect the rates or service of any public utility or  
 838 regulated company.

839 (h) When considered necessary and in the public interest  
 840 by the executive director, educate the public on matters within  
 841 the jurisdiction of the commission which are of special interest  
 842 to consumers.

843 (2) Provided that the commission may not require the  
 844 office to participate as a party, sponsor witnesses, or provide  
 845 testimony in any proceeding, the commission may request in  
 846 writing or at any duly noticed public meeting that the Office of  
 847 Regulatory Staff:

848 (a) Provide information and reports on any matter subject  
 849 to the commission's jurisdiction and matters incidental to the  
 850 jurisdiction of the commission;

851 (b) Assist in the preparation of any report that the  
 852 commission is required by law to produce; or

853 (c) Conduct inspections, audits, or examinations of public  
 854 utilities and regulated companies regarding matters within the  
 855 jurisdiction of the commission.

856 (3) Decisions relating to whether, when, or how to  
 857 initiate, continue, participate, or intervene in proceedings are  
 858 in the sole discretion of the executive director, except for  
 859 those matters that are specified by order of a court of  
 860 competent jurisdiction.

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861           (4) The Office of Regulatory Staff is considered to have  
 862 an interest sufficient to maintain actions for judicial review  
 863 of commission orders or decisions and may, as of right and in a  
 864 manner prescribed by law, intervene or otherwise participate in  
 865 any civil proceeding which involves the review or enforcement of  
 866 commission action that the executive director determines may  
 867 substantially affect the public interest.

868           (5) The Office of Regulatory Staff shall provide to the  
 869 Legislature an annual report of its activities.

870           Section 19. Section 350.075, Florida Statutes, is created  
 871 to read:

872           350.075 Office of Regulatory Staff; access to records.-  
 873 The Office of Regulatory Staff shall have the authority to  
 874 access or require the production of books, records, and  
 875 information pursuant to ss. 364.183, 366.093, and 367.156 and  
 876 shall have the authority to access or require production of any  
 877 other records as provided by law.

878           Section 20. Subsections (1), (2), and (6) of section  
 879 350.113, Florida Statutes, are amended to read:

880           350.113 Florida Public Service Regulatory Trust Fund;  
 881 moneys to be deposited therein.-

882           (1) There is hereby created in the State Treasury a  
 883 special fund to be designated as the "Florida Public Service  
 884 Regulatory Trust Fund" which shall be used in the operation of  
 885 the commission and the Office of Regulatory Staff in the  
 886 performance of the various functions and duties required of  
 887 these entities ~~it~~ by law.

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888 (2) All fees, licenses, and other charges collected by the  
 889 commission shall be deposited in the State Treasury to the  
 890 credit of the Florida Public Service Regulatory Trust Fund to be  
 891 used in the operation of the commission and the Office of  
 892 Regulatory Staff as authorized by the Legislature; however,  
 893 penalties and interest assessed and collected by the commission  
 894 shall not be deposited in the trust fund but shall be deposited  
 895 in the General Revenue Fund. The Florida Public Service  
 896 Regulatory Trust Fund shall be subject to the service charge  
 897 imposed pursuant to chapter 215.

898 (6) All moneys in the Florida Public Service Regulatory  
 899 Trust Fund shall be for the use of the commission and the Office  
 900 of Regulatory Staff in the performance of its functions and  
 901 duties as provided by law, subject to the fiscal and budgetary  
 902 provisions of general law.

903 Section 21. Subsections (1) and (2) of section 350.117,  
 904 Florida Statutes, are amended to read:

905 350.117 Reports; audits.—

906 (1) The commission and the office may require such regular  
 907 or emergency reports, including, but not limited to, financial  
 908 reports, as the commission or the office deems necessary to  
 909 fulfill its obligations under the law. A copy of any report  
 910 provided to the commission must be provided to the Office of  
 911 Regulatory Staff.

912 (2) The commission may request that the Office of  
 913 Regulatory Staff perform management and operation audits of any  
 914 regulated company. The commission may consider the results of

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915 such audits in establishing rates; however, the company shall  
 916 not be denied due process as a result of the use of any such  
 917 management or operation audit.

918 Section 22. Section 350.121, Florida Statutes, is  
 919 repealed.

920 Section 23. Section 364.016, Florida Statutes, is amended  
 921 to read:

922 364.016 Travel costs.—The office ~~commission~~ has the  
 923 authority to assess a telecommunications company for reasonable  
 924 travel costs associated with reviewing the records of the  
 925 telecommunications company and its affiliates when such records  
 926 are kept out of state. The telecommunications company may bring  
 927 the records back into the state for review.

928 Section 24. Subsections (11), (12), (13), (14), (15), and  
 929 (16) of section 364.02, Florida Statutes, are renumbered as  
 930 subsections (12), (13), (14), (15), (16), and (17),  
 931 respectively, and subsection (11) is added to that section, to  
 932 read:

933 364.02 Definitions.—As used in this chapter, the term:  
 934 (11) "Office" means the Office of Regulatory Staff.

935 Section 25. Section 364.15, Florida Statutes, is amended  
 936 to read:

937 364.15 Compelling repairs, improvements, changes,  
 938 additions, or extensions.—Whenever the commission finds, ~~on its~~  
 939 ~~own motion or~~ upon petition or complaint, that repairs or  
 940 improvements to, or changes in, any telecommunications facility  
 941 ought reasonably to be made, or that any additions or extensions

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942 | should reasonably be made to any telecommunications facility, in  
 943 | order to promote the security or convenience of the public or  
 944 | employees or in order to secure adequate service or facilities  
 945 | for basic local telecommunications services consistent with the  
 946 | requirements set forth in this chapter, the commission shall  
 947 | make and serve an order directing that such repairs,  
 948 | improvements, changes, additions, or extensions be made in the  
 949 | manner to be specified in the order. This section authorizes the  
 950 | commission to impose only those requirements that it is  
 951 | otherwise authorized to impose under this chapter.

952 |       Section 26. Subsections (1) and (2) of section 364.183,  
 953 | Florida Statutes, are amended to read:

954 |       364.183 Access to company records.—

955 |       (1) The commission and the office shall have access to all  
 956 | records of a telecommunications company that are reasonably  
 957 | necessary for the disposition of matters within the commission's  
 958 | jurisdiction. The commission and the office shall also have  
 959 | access to those records of a local exchange telecommunications  
 960 | company's affiliated companies, including its parent company,  
 961 | that are reasonably necessary for the disposition of any matter  
 962 | concerning an affiliated transaction or a claim of  
 963 | anticompetitive behavior including claims of cross-subsidization  
 964 | and predatory pricing. Both the commission and the office may  
 965 | require a telecommunications company to file records, reports or  
 966 | other data directly related to matters within the commission's  
 967 | jurisdiction in the form specified in the request ~~by the~~  
 968 | ~~commission~~ and may require such company to retain such

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969 information for a designated period of time. Upon request of the  
 970 company or other person, any records received by the commission  
 971 or the office which are claimed by the company or other person  
 972 to be proprietary confidential business information shall be  
 973 kept confidential and shall be exempt from s. 119.07(1) and s.  
 974 24(a), Art. I of the State Constitution. The authority of the  
 975 commission to access records pursuant to this section is granted  
 976 subject to the limitations set forth in s. 350.011(3) and (4).

977 (2) Discovery in any docket or proceeding before the  
 978 commission shall be in the manner provided for in Rule 1.280 of  
 979 the Florida Rules of Civil Procedure. Upon a showing by a  
 980 company or other person and a finding by the commission that  
 981 discovery will require the disclosure of proprietary  
 982 confidential business information, the commission shall issue an  
 983 appropriate protective order designating the manner for handling  
 984 such information during the course of the proceeding and for  
 985 protecting such information from disclosure outside the  
 986 proceeding. Such proprietary confidential business information  
 987 shall be exempt from s. 119.07(1). Any records provided pursuant  
 988 to a discovery request for which proprietary confidential  
 989 business information status is requested shall be treated by the  
 990 commission, the Office of Regulatory Staff, ~~and~~ the Office of  
 991 the Public Counsel, and any other party subject to the public  
 992 records law as confidential and shall be exempt from s.  
 993 119.07(1), pending a formal ruling on such request by the  
 994 commission or the return of the records to the person providing  
 995 the records. Any record which has been determined to be

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996 proprietary confidential business information and is not entered  
 997 into the official record of the proceeding shall be returned to  
 998 the person providing the record within 60 days after the final  
 999 order, unless the final order is appealed. If the final order is  
 1000 appealed, any such record shall be returned within 30 days after  
 1001 the decision on appeal. The commission shall adopt the necessary  
 1002 rules to implement this subsection.

1003 Section 27. Section 364.185, Florida Statutes, is amended  
 1004 to read:

1005 364.185 Investigations and inspections; power of office  
 1006 ~~commission~~.—The office ~~commission~~ or its duly authorized  
 1007 representatives may during all reasonable hours enter upon any  
 1008 premises occupied by any telecommunications company and may set  
 1009 up and use thereon all necessary apparatus and appliances for  
 1010 the purpose of making investigations, inspections, examinations,  
 1011 and tests and exercising any power conferred by this chapter or  
 1012 Chapter 350; however, the telecommunications company shall be  
 1013 notified of and be represented at the making of such  
 1014 investigations, inspections, examinations, and tests. The  
 1015 requirement to provide prior notification and representation  
 1016 shall not be applicable to the onsite field inspection of  
 1017 equipment used to provide telecommunications services to the  
 1018 transient public, including the facilities of call aggregators.

1019 Section 28. Subsection (4) of section 364.335, Florida  
 1020 Statutes, is amended to read:

1021 364.335 Application for certificate.—

1022 (2) If the commission grants the requested certificate,



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1023 any person who would be substantially affected by the requested  
 1024 certification may, within 21 days after the granting of such  
 1025 certificate, file a written objection requesting a proceeding  
 1026 pursuant to ss. 120.569 and 120.57. The commission may, upon  
 1027 petition of the office ~~on its own motion~~, institute a proceeding  
 1028 under ss. 120.569 and 120.57 to determine whether the grant of  
 1029 such certificate is in the public interest. The commission shall  
 1030 order such proceeding conducted in or near the territory applied  
 1031 for, if feasible. If any person requests a public hearing on the  
 1032 application, such hearing shall, if feasible, be held in or near  
 1033 the territory applied for, and the transcript of the public  
 1034 hearing and any material submitted at or prior to the hearing  
 1035 shall be considered part of the record of the application and  
 1036 any proceeding related to the application.

1037 (4) Except as provided in s. 364.33, revocation,  
 1038 suspension, transfer, or amendment of a certificate shall be  
 1039 subject to the provisions of this section; except that, when the  
 1040 commission ~~initiates the action~~ institutes a proceeding upon  
 1041 petition of the office, the commission shall furnish notice to  
 1042 the appropriate local government and to the Public Counsel.

1043 Section 29. Subsection (10) of section 364.3376, Florida  
 1044 Statutes, is amended to read:

1045 364.3376 Operator services.—

1046 (10) The office ~~commission~~ shall conduct an effective  
 1047 program of random, no-notice compliance investigations of the  
 1048 operator services providers and call aggregators operating  
 1049 within the state. When the office ~~commission~~ finds a blocking

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1050 violation, it shall notify the commission and provide  
 1051 information to assist the commission in determining ~~determine~~  
 1052 whether the blocking is the responsibility of the call  
 1053 aggregator or the operator services provider. The commission and  
 1054 may fine the responsible party in accordance with s. 364.285.  
 1055 Upon the failure of the responsible party to correct a violation  
 1056 within a mandatory time limit established by the commission or  
 1057 upon a proven pattern of intentional blocking, the commission  
 1058 shall order the discontinuance of the call aggregator's  
 1059 telephone service or revoke the operator services provider's  
 1060 certificate, as applicable.

1061 Section 30. Subsection (3) of section 364.3381, Florida  
 1062 Statutes, is amended to read:

1063 364.3381 Cross-subsidization.—

1064 (3) The commission shall have continuing oversight  
 1065 jurisdiction over cross-subsidization, predatory pricing, or  
 1066 other similar anticompetitive behavior and may investigate, upon  
 1067 petition or complaint ~~or on its own motion~~, allegations of such  
 1068 practices.

1069 Section 31. Section 364.37, Florida Statutes, is amended  
 1070 to read:

1071 364.37 Controversy concerning territory to be served;  
 1072 powers of commission.—If any person in constructing or extending  
 1073 his or her telecommunications facility unreasonably interferes  
 1074 or is about to unreasonably interfere with any  
 1075 telecommunications facility or service of any other person, or  
 1076 if a controversy arises between any two or more persons with

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1077 | respect to the territory professed to be served by each, the  
 1078 | commission, ~~on its own initiative or~~ upon petition of the office  
 1079 | or ~~on~~ complaint of any person claiming to be adversely affected,  
 1080 | may make such order and prescribe such terms and conditions with  
 1081 | respect thereto as are just and reasonable.

1082 | Section 32. Subsection (4) is added to section 366.02,  
 1083 | Florida Statutes, to read:

1084 | 366.02 Definitions.—As used in this chapter:

1085 | (4) "Office" means the Office of Regulatory Staff.

1086 | Section 33. Subsections (9) and (11) of section 366.05,  
 1087 | Florida Statutes, are amended to read:

1088 | 366.05 Powers.—

1089 | (6) The commission or the office, if designated by the  
 1090 | commission to conduct testing, may purchase materials,  
 1091 | apparatus, and standard measuring instruments for such  
 1092 | examination and tests.

1093 | (9) Both the commission and the office may require the  
 1094 | filing of reports and other data by a public utility or its  
 1095 | affiliated companies, including its parent company, regarding  
 1096 | transactions, or allocations of common costs, among the utility  
 1097 | and such affiliated companies. Both the commission and the  
 1098 | office may also require such reports or other data necessary to  
 1099 | ensure that a utility's ratepayers do not subsidize nonutility  
 1100 | activities. The authority of the commission to access records  
 1101 | pursuant to this subsection is granted subject to the  
 1102 | limitations set forth in s. 350.011(3) and (4).

1103 | (11) The office ~~commission~~ has the authority to assess a

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1104 public utility for reasonable travel costs associated with  
 1105 reviewing the records of the public utility and its affiliates  
 1106 when such records are kept out of state. The public utility may  
 1107 bring the records back into the state for review.

1108 Section 34. Subsections (2) and (3) of section 366.06,  
 1109 Florida Statutes, are amended to read:

1110 366.06 Rates; procedure for fixing and changing.—

1111 (2) Whenever the commission finds, upon request made ~~or~~  
 1112 ~~upon its own motion~~, that the rates demanded, charged, or  
 1113 collected by any public utility for public utility service, or  
 1114 that the rules, regulations, or practices of any public utility  
 1115 affecting such rates, are unjust, unreasonable, unjustly  
 1116 discriminatory, or in violation of law; that such rates are  
 1117 insufficient to yield reasonable compensation for the services  
 1118 rendered; that such rates yield excessive compensation for  
 1119 services rendered; or that such service is inadequate or cannot  
 1120 be obtained, the commission shall order and hold a public  
 1121 hearing, giving notice to the public and to the public utility,  
 1122 and shall thereafter determine just and reasonable rates to be  
 1123 thereafter charged for such service and promulgate rules and  
 1124 regulations affecting equipment, facilities, and service to be  
 1125 thereafter installed, furnished, and used.

1126 (3) Pending a final order by the commission in any rate  
 1127 proceeding under this section, the commission may withhold  
 1128 consent to the operation of all or any portion of the new rate  
 1129 schedules, delivering to the utility requesting such increase,  
 1130 within 60 days, a reason or written statement of good cause for

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1131 withholding its consent. Such consent shall not be withheld for  
 1132 a period longer than 8 months from the date of filing the new  
 1133 schedules. The new rates or any portion not consented to shall  
 1134 go into effect under bond or corporate undertaking at the end of  
 1135 such period, but the commission shall, by order, require such  
 1136 public utility to keep accurate account in detail of all amounts  
 1137 received by reason of such increase, specifying by whom and in  
 1138 whose behalf such amounts were paid and, upon completion of  
 1139 hearing and final decision in such proceeding, shall by further  
 1140 order require such public utility to refund with interest at a  
 1141 fair rate, to be determined by the commission in such manner as  
 1142 it may direct, such portion of the increased rate or charge as  
 1143 by its decision shall be found not justified. Any portion of  
 1144 such refund not thus refunded to patrons or customers of the  
 1145 public utility shall be refunded or disposed of by the public  
 1146 utility as the commission may direct; however, no such funds  
 1147 shall accrue to the benefit of the public utility. The  
 1148 commission shall take final commission action in the docket and  
 1149 enter its final order within 12 months of the commencement date  
 1150 for final agency action. As used in this subsection, the  
 1151 "commencement date for final agency action" means the date upon  
 1152 which it has been determined by the commission or its designee  
 1153 that the utility has filed with the clerk the minimum filing  
 1154 requirements as established by rule of the commission. Within 30  
 1155 days after receipt of the application, rate request, or other  
 1156 written document for which the commencement date for final  
 1157 agency action is to be established, the commission or its

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1158 designee shall either determine the commencement date for final  
 1159 agency action or issue a statement of deficiencies to the  
 1160 applicant, specifically listing why said applicant has failed to  
 1161 meet the minimum filing requirements. Such statement of  
 1162 deficiencies shall be binding upon the commission to the extent  
 1163 that, once the deficiencies in the statement are satisfied, the  
 1164 commencement date for final agency action shall be promptly  
 1165 established as provided herein. Thereafter, within 15 days after  
 1166 the applicant indicates to the commission that it believes that  
 1167 it has met the minimum filing requirements, the commission or  
 1168 its designee shall either determine the commencement date for  
 1169 final agency action or specifically enumerate in writing why the  
 1170 requirements have not been met, in which case this procedure  
 1171 shall be repeated until the commencement date for final agency  
 1172 action is established. When the commission initiates a  
 1173 proceeding upon a request made by a person other than the  
 1174 utility, the commencement date for final agency action shall be  
 1175 the date upon which the order initiating the proceeding is  
 1176 issued.

1177 Section 35. Section 366.07, Florida Statutes, is amended  
 1178 to read:

1179 366.07 Rates; adjustment.—Whenever the commission, after  
 1180 public hearing either upon petition of the office ~~its own motion~~  
 1181 or upon complaint, shall find the rates, rentals, charges or  
 1182 classifications, or any of them, proposed, demanded, observed,  
 1183 charged or collected by any public utility for any service, or  
 1184 in connection therewith, or the rules, regulations,

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1185 measurements, practices or contracts, or any of them, relating  
 1186 thereto, are unjust, unreasonable, insufficient, excessive, or  
 1187 unjustly discriminatory or preferential, or in anywise in  
 1188 violation of law, or any service is inadequate or cannot be  
 1189 obtained, the commission shall determine and by order fix the  
 1190 fair and reasonable rates, rentals, charges or classifications,  
 1191 and reasonable rules, regulations, measurements, practices,  
 1192 contracts or service, to be imposed, observed, furnished or  
 1193 followed in the future.

1194 Section 36. Subsections (1) and (3) of section 366.071,  
 1195 Florida Statutes, are amended to read:

1196 366.071 Interim rates; procedure.—

1197 (1) The commission may, during any proceeding for a change  
 1198 of rates, ~~upon its own motion, or~~ upon petition from any party,  
 1199 or by a tariff filing of a public utility, authorize the  
 1200 collection of interim rates until the effective date of the  
 1201 final order. Such interim rates may be based upon a test period  
 1202 different from the test period used in the request for permanent  
 1203 rate relief. To establish a prima facie entitlement for interim  
 1204 relief, ~~the commission,~~ the petitioning party, or the public  
 1205 utility shall demonstrate that the public utility is earning  
 1206 outside the range of reasonableness on rate of return calculated  
 1207 in accordance with subsection (5).

1208 (3) In granting such relief, the commission may, in an  
 1209 expedited hearing but within 60 days of the commencement of the  
 1210 proceeding, upon petition ~~or upon its own motion,~~ preclude the  
 1211 recovery of any extraordinary or imprudently incurred

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1212 expenditures or, for good cause shown, increase the amount of  
 1213 the bond or corporate undertaking.

1214 Section 37. Subsection (1) of section 366.076, Florida  
 1215 Statutes, is amended to read:

1216 366.076 Limited proceedings; rules on subsequent  
 1217 adjustments.—

1218 (1) Upon petition ~~or its own motion~~, the commission may  
 1219 conduct a limited proceeding to consider and act upon any matter  
 1220 within its jurisdiction, including any matter the resolution of  
 1221 which requires a public utility to adjust its rates to consist  
 1222 with the provisions of this chapter. The commission shall  
 1223 determine the issues to be considered during such a proceeding  
 1224 and may grant or deny any request to expand the scope of the  
 1225 proceeding to include other matters.

1226 Section 38. Section 366.08, Florida Statutes, is amended  
 1227 to read:

1228 366.08 Investigations, inspections; power of office  
 1229 ~~commission.~~—The office ~~commission~~ or its duly authorized  
 1230 representatives may during all reasonable hours enter upon any  
 1231 premises occupied by any public utility and may set up and use  
 1232 thereon all necessary apparatus and appliances for the purpose  
 1233 of making investigations, inspections, examinations and tests  
 1234 and exercising any power conferred by this chapter or Chapter  
 1235 350; provided, such public utility shall have the right to be  
 1236 notified of and be represented at the making of such  
 1237 investigations, inspections, examinations and tests.



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1238 Section 39. Subsections (1) and (2) of section 366.093,  
 1239 Florida Statutes, are amended to read:  
 1240 366.093 Public utility records; confidentiality.—  
 1241 (1) The commission and the office shall ~~continue to~~ have  
 1242 reasonable access to all public utility records and records of  
 1243 the utility's affiliated companies, including its parent  
 1244 company, regarding transactions or cost allocations among the  
 1245 utility and such affiliated companies, and such records  
 1246 necessary to ensure that a utility's ratepayers do not subsidize  
 1247 nonutility activities. Upon request of the public utility or  
 1248 other person, any records received by the commission or the  
 1249 office which are shown and found by the commission to be  
 1250 proprietary confidential business information shall be kept  
 1251 confidential and shall be exempt from s. 119.07(1). The  
 1252 authority of the commission to access records pursuant to this  
 1253 section is granted subject to the limitations set forth in s.  
 1254 350.011(3) and (4).  
 1255 (2) Discovery in any docket or proceeding before the  
 1256 commission shall be in the manner provided for in Rule 1.280 of  
 1257 the Florida Rules of Civil Procedure. Information which affects  
 1258 a utility's rates or cost of service shall be considered  
 1259 relevant for purposes of discovery in any docket or proceeding  
 1260 where the utility's rates or cost of service are at issue. The  
 1261 commission shall determine whether information requested in  
 1262 discovery affects a utility's rates or cost of service. Upon a  
 1263 showing by a utility or other person and a finding by the  
 1264 commission that discovery will require the disclosure of

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1265 proprietary confidential business information, the commission  
 1266 shall issue appropriate protective orders designating the manner  
 1267 for handling such information during the course of the  
 1268 proceeding and for protecting such information from disclosure  
 1269 outside the proceeding. Such proprietary confidential business  
 1270 information shall be exempt from s. 119.07(1). Any records  
 1271 provided pursuant to a discovery request for which proprietary  
 1272 confidential business information status is requested shall be  
 1273 treated by the commission, the Office of Regulatory Staff, and  
 1274 the office of the Public Counsel, and any other party subject to  
 1275 the public records law as confidential and shall be exempt from  
 1276 s. 119.07(1), pending a formal ruling on such request by the  
 1277 commission or the return of the records to the person providing  
 1278 the records. Any record which has been determined to be  
 1279 proprietary confidential business information and is not entered  
 1280 into the official record of the proceeding must be returned to  
 1281 the person providing the record within 60 days after the final  
 1282 order, unless the final order is appealed. If the final order is  
 1283 appealed, any such record must be returned within 30 days after  
 1284 the decision on appeal. The commission shall adopt the necessary  
 1285 rules to implement this provision.

1286 Section 40. Subsections (6) and (7) of section 366.82,  
 1287 Florida Statutes, are amended to read:

1288 366.82 Definition; goals; plans; programs; annual reports;  
 1289 energy audits.—

1290 (6) The commission may change the goals upon a showing of  
 1291 ~~for~~ reasonable cause. The time period to review the goals,

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1292 | however, shall not exceed 5 years. After the programs and plans  
 1293 | to meet those goals are completed, the commission shall  
 1294 | determine what further goals, programs, or plans are warranted  
 1295 | and adopt them.

1296 |       (7) Following adoption of goals pursuant to subsections  
 1297 | (2) and (3), the commission shall require each utility to  
 1298 | develop plans and programs to meet the overall goals within its  
 1299 | service area. Upon petition, the commission may require  
 1300 | modifications or additions to a utility's plans and programs at  
 1301 | any time it is shown to be in the public interest consistent  
 1302 | with this act. In approving plans and programs for cost  
 1303 | recovery, the commission shall have the flexibility to modify or  
 1304 | deny plans or programs that would have an undue impact on the  
 1305 | costs passed on to customers. If any plan or program includes  
 1306 | loans, collection of loans, or similar banking functions by a  
 1307 | utility and the plan is approved by the commission, the utility  
 1308 | shall perform such functions, notwithstanding any other  
 1309 | provision of the law. However, no utility shall be required to  
 1310 | loan its funds for the purpose of purchasing or otherwise  
 1311 | acquiring conservation measures or devices, but nothing herein  
 1312 | shall prohibit or impair the administration or implementation of  
 1313 | a utility plan as submitted by a utility and approved by the  
 1314 | commission under this subsection. If the commission disapproves  
 1315 | a plan, it shall specify the reasons for disapproval, and the  
 1316 | utility whose plan is disapproved shall resubmit its modified  
 1317 | plan within 30 days. Prior approval by the commission shall be  
 1318 | required to modify or discontinue a plan, or part thereof, which

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1319 has been approved. If any utility has not implemented its  
 1320 programs and is not substantially in compliance with the  
 1321 provisions of its approved plan at any time, the commission  
 1322 shall adopt programs required for that utility to achieve the  
 1323 overall goals. Utility programs may include variations in rate  
 1324 design, load control, cogeneration, residential energy  
 1325 conservation subsidy, or any other measure within the  
 1326 jurisdiction of the commission which the commission finds likely  
 1327 to be effective; this provision shall not be construed to  
 1328 preclude these measures in any plan or program.

1329 Section 41. Subsections (9), (10), (11), (12), and (13) of  
 1330 section 367.021, Florida Statutes, are renumbered as subsections  
 1331 (10), (11), (12), (13), and (14), respectively, and subsection  
 1332 (9) is added to that section, to read:

1333 367.021 Definitions.—As used in this chapter, the  
 1334 following words or terms shall have the meanings indicated:

1335 (9) "Office" means the Office of Regulatory Staff.

1336 Section 42. Paragraphs (a) and (c) of subsection (1),  
 1337 paragraph (a) of subsection (2), and subsections (4) and (6) of  
 1338 section 367.045, Florida Statutes, are amended to read:

1339 367.045 Certificate of authorization; application and  
 1340 amendment procedures.—

1341 (1) When a utility applies for an initial certificate of  
 1342 authorization from the commission, it shall:

1343 (a) Provide notice of the actual application filed by mail  
 1344 or personal delivery to the governing body of the county or city  
 1345 affected, ~~to~~ the Public Counsel, the office, ~~to~~ the commission,

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1346 and ~~to~~ such other persons and in such other manner as may be  
1347 prescribed by commission rule;

1348 (2) A utility may not delete or extend its service outside  
1349 the area described in its certificate of authorization until it  
1350 has obtained an amended certificate of authorization from the  
1351 commission. When a utility applies for an amended certificate of  
1352 authorization from the commission, it shall:

1353 (a) Provide notice of the actual application filed by mail  
1354 or personal delivery to the governing body of the county or  
1355 municipality affected, ~~to~~ the Public Counsel, the office, ~~to~~ the  
1356 commission, and ~~to~~ such other persons and in such other manner  
1357 as may be prescribed by commission rule;

1358 (4) If, within 30 days after the last day that notice was  
1359 mailed or published by the applicant, whichever is later, the  
1360 commission receives from the Public Counsel, the office, a  
1361 governmental authority, or a utility or consumer who would be  
1362 substantially affected by the requested certification or  
1363 amendment a written objection requesting a proceeding pursuant  
1364 to ss. 120.569 and 120.57, the commission shall order such  
1365 proceeding conducted in or near the area for which application  
1366 is made, if feasible. Notwithstanding the ability to object on  
1367 any other ground, a county or municipality has standing to  
1368 object on the ground that the issuance or amendment of the  
1369 certificate of authorization violates established local  
1370 comprehensive plans developed pursuant to ss. 163.3161-163.3211.  
1371 If a consumer, utility, or governmental authority or the office  
1372 or Public Counsel requests a public hearing on the application,

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1373 such hearing must, if feasible, be held in or near the area for  
 1374 which application is made; and the transcript of such hearing  
 1375 and any material submitted at or before the hearing must be  
 1376 considered as part of the record of the application and any  
 1377 proceeding related thereto.

1378 (6) The revocation, suspension, transfer, or amendment of  
 1379 a certificate of authorization is subject to the provisions of  
 1380 this section. The commission shall give 30 days' notice before  
 1381 it initiates any such action upon petition of the office.

1382 Section 43. Paragraph (a) of subsection (2) and paragraph  
 1383 (a) of subsection (4) of section 367.081, Florida Statutes, is  
 1384 amended to read:

1385 367.081 Rates; procedure for fixing and changing.-

1386 (2)(a)1. The commission shall, ~~either upon request or upon~~  
 1387 ~~its own motion,~~ fix rates which are just, reasonable,  
 1388 compensatory, and not unfairly discriminatory. In every such  
 1389 proceeding, the commission shall consider the value and quality  
 1390 of the service and the cost of providing the service, which  
 1391 shall include, but not be limited to, debt interest; the  
 1392 requirements of the utility for working capital; maintenance,  
 1393 depreciation, tax, and operating expenses incurred in the  
 1394 operation of all property used and useful in the public service;  
 1395 and a fair return on the investment of the utility in property  
 1396 used and useful in the public service. However, the commission  
 1397 shall not allow the inclusion of contributions-in-aid-of-  
 1398 construction in the rate base of any utility during a rate  
 1399 proceeding, nor shall the commission impute prospective future

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1400 contributions-in-aid-of-construction against the utility's  
 1401 investment in property used and useful in the public service;  
 1402 and accumulated depreciation on such contributions-in-aid-of-  
 1403 construction shall not be used to reduce the rate base, nor  
 1404 shall depreciation on such contributed assets be considered a  
 1405 cost of providing utility service.

1406 2. For purposes of such proceedings, the commission shall  
 1407 consider utility property, including land acquired or facilities  
 1408 constructed or to be constructed within a reasonable time in the  
 1409 future, not to exceed 24 months after the end of the historic  
 1410 base year used to set final rates unless a longer period is  
 1411 approved by the commission, to be used and useful in the public  
 1412 service, if:

1413 a. Such property is needed to serve current customers;

1414 b. Such property is needed to serve customers 5 years  
 1415 after the end of the test year used in the commission's final  
 1416 order on a rate request as provided in subsection (6) at a  
 1417 growth rate for equivalent residential connections not to exceed  
 1418 5 percent per year; or

1419 c. Such property is needed to serve customers more than 5  
 1420 full years after the end of the test year used in the  
 1421 commission's final order on a rate request as provided in  
 1422 subsection (6) only to the extent that the utility presents  
 1423 clear and convincing evidence to justify such consideration.

1424

1425 Notwithstanding the provisions of this paragraph, the commission  
 1426 shall approve rates for service which allow a utility to recover

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1427 | from customers the full amount of environmental compliance  
 1428 | costs. Such rates may not include charges for allowances for  
 1429 | funds prudently invested or similar charges. For purposes of  
 1430 | this requirement, the term "environmental compliance costs"  
 1431 | includes all reasonable expenses and fair return on any prudent  
 1432 | investment incurred by a utility in complying with the  
 1433 | requirements or conditions contained in any permitting,  
 1434 | enforcement, or similar decisions of the United States  
 1435 | Environmental Protection Agency, the Department of Environmental  
 1436 | Protection, a water management district, or any other  
 1437 | governmental entity with similar regulatory jurisdiction.

1438 |       (4) (a) On or before March 31 of each year, the commission  
 1439 | by order shall establish a price increase or decrease index for  
 1440 | major categories of operating costs incurred by utilities  
 1441 | subject to its jurisdiction reflecting the percentage of  
 1442 | increase or decrease in such costs from the most recent 12-month  
 1443 | historical data available. The commission by rule shall  
 1444 | establish the procedure to be used in determining such indices  
 1445 | and a procedure by which a utility, without further action by  
 1446 | the commission, or the commission upon petition of the office ~~on~~  
 1447 | ~~its own motion~~, may implement an increase or decrease in its  
 1448 | rates based upon the application of the indices to the amount of  
 1449 | the major categories of operating costs incurred by the utility  
 1450 | during the immediately preceding calendar year, except to the  
 1451 | extent of any disallowances or adjustments for those expenses of  
 1452 | that utility in its most recent rate proceeding before the  
 1453 | commission. The rules shall provide that, upon a finding of good



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1454 cause, including inadequate service, the commission may order a  
 1455 utility to refrain from implementing a rate increase hereunder  
 1456 unless implemented under a bond or corporate undertaking in the  
 1457 same manner as interim rates may be implemented under s.  
 1458 367.082. A utility may not use this procedure between the  
 1459 official filing date of the rate proceeding and 1 year  
 1460 thereafter, unless the case is completed or terminated at an  
 1461 earlier date. A utility may not use this procedure to increase  
 1462 any operating cost for which an adjustment has been or could be  
 1463 made under paragraph (b), or to increase its rates by  
 1464 application of a price index other than the most recent price  
 1465 index authorized by the commission at the time of filing.

1466 Section 44. Subsections (1), (2), (4), (6), (8), and (10)  
 1467 of section 367.0814, Florida Statutes, are amended to read:

1468 367.0814 Office of Regulatory Staff assistance in changing  
 1469 rates and charges; interim rates.—

1470 (1) The commission may establish rules by which a water or  
 1471 wastewater utility whose gross annual revenues are \$250,000 or  
 1472 less may request and obtain ~~staff~~ assistance from the Office of  
 1473 Regulatory Staff for the purpose of changing its rates and  
 1474 charges. A utility may request such ~~staff~~ assistance by filing  
 1475 an application with the commission. The gross annual revenue  
 1476 level shall be adjusted on July 1, 2013, and every 5 years  
 1477 thereafter, based on the most recent cumulative 5 years of the  
 1478 price index established by the commission pursuant to s.  
 1479 367.081(4)(a).

1480 (2) The official date of filing is established as 30 days

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1481 after official acceptance by the office ~~commission~~ of the  
 1482 application. If a utility does not remit a fee, as provided by  
 1483 s. 367.145, within 30 days after acceptance, the commission may  
 1484 deny the application. The commission has 15 months after the  
 1485 official date of filing within which to issue a final order.

1486 (4) The commission may, upon petition from the office or  
 1487 ~~its own motion, or upon petition~~ from the regulated utility,  
 1488 authorize the collection of interim rates until the effective  
 1489 date of the final order. Such interim rates may be based upon a  
 1490 test period different from the test period used in the request  
 1491 for permanent rate relief. To establish interim relief, there  
 1492 must be a demonstration that the operation and maintenance  
 1493 expenses exceed the revenues of the regulated utility, and  
 1494 interim rates shall not exceed the level necessary to cover  
 1495 operation and maintenance expenses as defined by the Uniform  
 1496 System of Accounts for Class C Water and Wastewater Utilities  
 1497 (1996) of the National Association of Regulatory Utility  
 1498 Commissioners.

1499 (6) The utility, in requesting ~~staff~~ assistance from the  
 1500 office, shall agree to accept the final rates and charges  
 1501 approved by the commission unless the final rates and charges  
 1502 produce less revenue than the existing rates and charges.

1503 (8) If a utility becomes exempt from commission regulation  
 1504 or jurisdiction during the pendency of a ~~staff-assisted~~  
 1505 case conducted pursuant to this section, the request for rate  
 1506 relief is deemed to have been withdrawn. Interim rates, if  
 1507 previously approved, shall become final. Temporary rates, if

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1508 | previously approved, must be discontinued, and any money  
 1509 | collected pursuant to the temporary rates, or the difference  
 1510 | between temporary and interim rates, if previously approved,  
 1511 | must be refunded to the customers of the utility with interest.

1512 |         (10) The commission shall submit to the President of the  
 1513 | Senate and the Speaker of the House of Representatives by  
 1514 | January 1, 2013, and every 5 years thereafter, a report of the  
 1515 | status of proceedings conducted under this section, including  
 1516 | the number of utilities eligible to request ~~staff~~ assistance  
 1517 | from the office, the number of proceedings conducted annually  
 1518 | for the most recent 5-year period, the associated impact on  
 1519 | commission and office resources, and any other information the  
 1520 | commission deems appropriate. The commission shall request from  
 1521 | the office any information necessary to complete this report.

1522 |         Section 45. Subsection (6) of section 367.0817, Florida  
 1523 | Statutes, is amended to read:

1524 |         367.0817 Reuse projects.—

1525 |         (6) After the reuse project is placed in service, the  
 1526 | commission, by upon petition ~~or on its own motion~~, may initiate  
 1527 | a proceeding to true-up the costs of the reuse project and the  
 1528 | resulting rates.

1529 |         Section 46. Subsections (1) and (3) of section 367.082,  
 1530 | Florida Statutes, are amended to read:

1531 |         367.082 Interim rates; procedure.—

1532 |         (1) The commission may, during any proceeding for a change  
 1533 | of rates, ~~upon its own motion~~, upon petition from any party, or  
 1534 | by a tariff filing of a utility or a regulated company,

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1535 authorize the collection of interim rates until the effective  
 1536 date of the final order. Such interim rates may be based upon a  
 1537 test period different from the test period used in the request  
 1538 for permanent rate relief. Upon application by a utility, the  
 1539 commission may use the projected test-year rate base when  
 1540 determining the interim rates or revenues subject to refund. To  
 1541 establish a prima facie entitlement for interim relief, ~~the~~  
 1542 ~~commission,~~ the petitioning party, the utility, or the regulated  
 1543 company shall demonstrate that the utility or the regulated  
 1544 company is earning outside the range of reasonableness on rate  
 1545 of return calculated in accordance with subsection (5).

1546 (3) In granting such relief, the commission may, in an  
 1547 expedited hearing but within 60 days of the commencement of the  
 1548 proceeding, upon petition ~~or upon its own motion,~~ preclude the  
 1549 recovery of any extraordinary or imprudently incurred  
 1550 expenditures or, for good cause shown, increase the amount of  
 1551 the bond, escrow, letter of credit, or corporate undertaking.

1552 Section 47. Subsection (1) of section 367.0822, Florida  
 1553 Statutes, is amended to read:

1554 367.0822 Limited proceedings.—

1555 (1) Upon petition ~~or by its own motion,~~ the commission may  
 1556 conduct limited proceedings to consider, and act upon, any  
 1557 matter within its jurisdiction, including any matter the  
 1558 resolution of which requires a utility to adjust its rates. The  
 1559 commission shall determine the issues to be considered during  
 1560 such a proceeding and may grant or deny any request to expand  
 1561 the scope of the proceeding to include other related matters.

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1562 However, unless the issue of rate of return is specifically  
 1563 addressed in the limited proceeding, the commission shall not  
 1564 adjust rates if the effect of the adjustment would be to change  
 1565 the last authorized rate of return.

1566 Section 48. Section 367.083, Florida Statutes, is amended  
 1567 to read:

1568 367.083 Determination of official date of filing.—Within  
 1569 30 days after receipt of an application, rate request, or other  
 1570 written document for which an official date of filing is to be  
 1571 established, the commission or its designee shall either  
 1572 determine the official date of filing or issue a statement of  
 1573 deficiencies to the applicant, specifically listing why said  
 1574 applicant has failed to meet the minimum filing requirements.  
 1575 Such statement of deficiencies shall be binding upon the  
 1576 commission to the extent that, once the deficiencies in the  
 1577 statement are satisfied, the official date of filing shall be  
 1578 promptly established as provided herein. Thereafter, within 20  
 1579 days after the applicant indicates to the commission that it  
 1580 believes that it has met the minimum filing requirements, the  
 1581 commission or its designee shall either determine the official  
 1582 date of filing or issue another statement of deficiencies,  
 1583 specifically listing why the requirements have not been met, in  
 1584 which case this procedure shall be repeated until the applicant  
 1585 meets the minimum filing requirements and the official date of  
 1586 filing is established. When the commission initiates a  
 1587 proceeding upon request made by a person other than the utility,  
 1588 the official date of filing shall be the date upon which the

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1589 order initiating the proceeding is issued.

1590 Section 49. Subsection (1) of section 367.101, Florida  
1591 Statutes, is amended to read:

1592 367.101 Charges for service availability.—

1593 (1) The commission shall set just and reasonable charges  
1594 and conditions for service availability. The commission by rule  
1595 may set standards for and levels of service-availability charges  
1596 and service-availability conditions. Such charges and conditions  
1597 shall be just and reasonable. The commission shall, upon request  
1598 ~~or upon its own motion,~~ direct the office to investigate  
1599 agreements or proposals for charges and conditions for service  
1600 availability and report the results to the commission.

1601 Section 50. Paragraphs (i) and (k) of subsection (1) and  
1602 subsection (2) of section 367.121, Florida Statutes, are amended  
1603 to read:

1604 367.121 Powers of commission and office.—

1605 (1) In the exercise of its jurisdiction, the commission  
1606 shall have power:

1607 (i) To require the filing of reports and other data by a  
1608 public utility or its affiliated companies, including its parent  
1609 company, regarding transactions or allocations of common costs,  
1610 among the utility and such affiliated companies. The commission  
1611 may also require such reports or other data necessary to ensure  
1612 that a utility's ratepayers do not subsidize nonutility  
1613 activities. The authority of the commission to access records  
1614 pursuant to this paragraph is granted subject to the limitations  
1615 set forth in s. 350.011(3) and (4).

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1616 ~~(k) To assess a utility for reasonable travel costs~~  
 1617 ~~associated with reviewing the records of the utility and its~~  
 1618 ~~affiliates when such records are kept out of state. The utility~~  
 1619 ~~may bring the records back into the state for review.~~

1620 (2) (a) The office ~~commission~~ or its duly authorized  
 1621 representatives may, during all reasonable hours, enter upon any  
 1622 premises occupied by any utility and set up and use thereon any  
 1623 necessary apparatus and appliance for the purpose of making  
 1624 investigations, inspections, examinations, and tests and  
 1625 exercising any power conferred by this chapter. Such utility  
 1626 shall have the right to be notified of and be represented at the  
 1627 making of such investigations, inspections, examinations, and  
 1628 tests.

1629 (b) The office has the authority to assess a utility for  
 1630 reasonable travel costs associated with reviewing the records of  
 1631 the utility and its affiliates when such records are kept out of  
 1632 state. The utility may bring the records back into the state for  
 1633 review.

1634 Section 51. Subsections (3) and (4) of section 367.122,  
 1635 Florida Statutes, are amended to read:

1636 367.122 Examination and testing of meters.—

1637 (3) The commission shall establish reasonable fees to be  
 1638 paid for testing such meters on the request of the customers.  
 1639 Current utility customers or users may, at their discretion, pay  
 1640 the fee fixed by the commission at the time of the request or  
 1641 have the utility include the fee with their next regularly  
 1642 scheduled statement. However, the fee shall be paid by the

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1643 utility and repaid to the customer or user if the meter is found  
 1644 defective or incorrect to the disadvantage of the customer or  
 1645 user in excess of the degree or amount of tolerance customarily  
 1646 allowed for such meters, or as may be provided for in rules and  
 1647 regulations of the commission. No fee may be charged for any  
 1648 such testing done by the commission or its representatives. The  
 1649 commission may designate the office to conduct testing on its  
 1650 behalf.

1651 (4) The commission or the office, if designated by the  
 1652 commission to conduct testing, may purchase materials,  
 1653 apparatus, and standard measuring instruments for such  
 1654 examinations and tests.

1655 Section 52. Subsection (3) of section 367.145, Florida  
 1656 Statutes, is amended to read:

1657 367.145 Regulatory assessment and application fees.—

1658 (3) Fees collected by the commission pursuant to this  
 1659 section may only be used to cover the cost of the commission and  
 1660 the office in regulating water and wastewater systems. Fees  
 1661 collected by the commission pursuant to chapters 364 and 366 may  
 1662 not be used to pay the cost of regulating water and wastewater  
 1663 systems.

1664 Section 53. Subsections (1) and (2) of section 367.156,  
 1665 Florida Statutes, are amended to read:

1666 367.156 Public utility records; confidentiality.—

1667 (1) The commission and the office shall ~~continue to~~ have  
 1668 reasonable access to all utility records and records of  
 1669 affiliated companies, including its parent company, regarding



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1670 transactions or cost allocations among the utility and such  
 1671 affiliated companies, and such records necessary to ensure that  
 1672 a utility's ratepayers do not subsidize nonutility activities.  
 1673 Upon request of the utility or any other person, any records  
 1674 received by the commission or the office which are shown and  
 1675 found by the commission to be proprietary confidential business  
 1676 information shall be kept confidential and shall be exempt from  
 1677 s. 119.07(1). The authority of the commission to access records  
 1678 pursuant to this section is granted subject to the limitations  
 1679 set forth in s. 350.011(3) and (4).

1680 (2) Discovery in any docket or proceeding before the  
 1681 commission shall be in the manner provided for in Rule 1.280 of  
 1682 the Florida Rules of Civil Procedure. Information which affects  
 1683 a utility's rates or cost of service shall be considered  
 1684 relevant for purposes of discovery in any docket or proceeding  
 1685 where the utility's rates or cost of service are at issue. The  
 1686 commission shall determine whether information requested in  
 1687 discovery affects a utility's rates or cost of service. Upon  
 1688 showing by a utility or other person and a finding by the  
 1689 commission that discovery will require the disclosure of  
 1690 proprietary confidential business information, the commission  
 1691 shall issue appropriate protective orders designating the manner  
 1692 for handling such information during the course of the  
 1693 proceeding and for protecting such information from disclosure  
 1694 outside the proceeding. Such proprietary confidential business  
 1695 information shall be exempt from s. 119.07(1). Any records  
 1696 provided pursuant to a discovery request for which proprietary

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1697 confidential business information status is requested shall be  
 1698 treated by the commission, the Office of Regulatory Staff, and  
 1699 the office of the Public Counsel, and any other party subject to  
 1700 the public records act as confidential and shall be exempt from  
 1701 s. 119.07(1), pending a formal ruling on such request by the  
 1702 commission or the return of the records to the person providing  
 1703 the records. Any record which has been determined to be  
 1704 proprietary confidential business information and is not entered  
 1705 into the official record of the proceeding must be returned to  
 1706 the person providing the record within 60 days after the final  
 1707 order, unless the final order is appealed. If the final order is  
 1708 appealed, any such record must be returned within 30 days after  
 1709 the decision on appeal. The commission shall adopt the necessary  
 1710 rules to implement this provision.

1711 Section 54. Subsection (5) of section 367.171, Florida  
 1712 Statutes, is amended to read:

1713 367.171 Effectiveness of this chapter.—

1714 (5) When a utility becomes subject to regulation by a  
 1715 county, all cases in which the utility is a party then pending  
 1716 before the commission, or in any court by appeal from any order  
 1717 of the commission, shall remain within the jurisdiction of the  
 1718 commission or court until disposed of in accordance with the law  
 1719 in effect on the day such case was filed by any party with the  
 1720 commission or initiated by the commission upon the petition of  
 1721 any party, whether or not the parties or the subject of any such  
 1722 case relates to a utility in a county wherein this chapter no  
 1723 longer applies.

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1724 Section 55. Subsection (4) is added to section 368.05,  
 1725 Florida Statutes, to read:  
 1726 368.05 Commission jurisdiction; rules.—  
 1727 (4) The commission may not, on its own motion, initiate  
 1728 any proceeding under this part. The authority of the commission  
 1729 to access records pursuant to this section is granted subject to  
 1730 the limitations set forth in s. 350.011(3) and (4).

1731 Section 56. Subsections (2) and (3) of section 368.061,  
 1732 Florida Statutes, are amended to read:  
 1733 368.061 Penalty.—  
 1734 (2) Any such civil penalty may be compromised by the  
 1735 commissioners. In determining the amount of such penalty or the  
 1736 amount agreed upon in compromise, the appropriateness of such  
 1737 penalty to the size of the business of the person charged, the  
 1738 gravity of the violation, and the good faith of the person  
 1739 charged in attempting to achieve compliance after notification  
 1740 of a violation shall be considered. Each penalty shall be a lien  
 1741 upon the real and personal property of said persons and  
 1742 enforceable by the commission as statutory liens under chapter  
 1743 85, the proceeds of which shall be deposited in the general  
 1744 revenue fund of the state.

1745 (3) The ~~commissioners~~ may, upon petition ~~at their~~  
 1746 ~~discretion~~, cause to be instituted in any court of competent  
 1747 jurisdiction in this state proceedings for injunction against  
 1748 any person subject to the provisions of this part to compel the  
 1749 observance of the provisions of this part or any rule,  
 1750 regulation, or requirement of the commission made thereunder.

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1751 Section 57. Subsections (5) and (6) of section 368.103,  
 1752 Florida Statutes, are renumbered as subsections (6) and (7),  
 1753 respectively, and subsection (5) is added to that section, to  
 1754 read:

1755 368.103 Definitions.—As used in ss. 368.101–368.112, the  
 1756 term:

1757 (5) "Office" means the Office of Regulatory Staff.

1758 Section 58. Subsection (2) of section 368.106, Florida  
 1759 Statutes, is amended to read:

1760 368.106 Statement of intent to increase rates; major  
 1761 changes; hearing; suspension of rate schedules; determination of  
 1762 rate level.—

1763 (2) Except when a rate is deemed just and reasonable  
 1764 pursuant to s. 368.105(3), if there is filed with the commission  
 1765 an initial rate, or a change or modification in any rate in  
 1766 effect, the commission shall, on complaint by any person whose  
 1767 substantial interests are affected by the rate, or may, upon  
 1768 petition by the office ~~on its own motion~~, at any time before  
 1769 such rate would have taken effect, order a hearing pursuant to  
 1770 ss. 120.569 and 120.57 to determine whether the rate is just and  
 1771 reasonable.

1772 Section 59. Section 368.107, Florida Statutes, is amended  
 1773 to read:

1774 368.107 Unreasonable or violative existing rates and  
 1775 services.—If the commission, after reasonable notice and  
 1776 hearing, ~~on its own motion~~ upon petition by the office or  
 1777 written complaint by any person who has a substantial interest,

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1778 finds that any rate or service filed with the commission,  
 1779 including any rate filed pursuant to s. 368.105(3), whether or  
 1780 not being demanded, observed, charged, or collected by any  
 1781 natural gas transmission company for any service is unjust,  
 1782 unreasonable, or unduly discriminatory or preferential, or in  
 1783 any way in violation of any provision of law, the commission  
 1784 shall determine the just and reasonable rates, including maximum  
 1785 or minimum rates and services, to be thereafter observed and in  
 1786 force, and shall fix the same by order to be served on the  
 1787 natural gas transmission company. Those rates and services shall  
 1788 constitute the legal rates and services of the natural gas  
 1789 transmission company until changed as provided by ss. 368.101-  
 1790 368.112.

1791 Section 60. Subsections (1) and (2) of section 368.108,  
 1792 Florida Statutes, are amended to read:

1793 368.108 Confidentiality; discovery.-

1794 (1) The commission and the office shall ~~continue to~~ have  
 1795 reasonable access to all natural gas transmission company  
 1796 records and records of the natural gas transmission company's  
 1797 affiliated companies, including its parent company, regarding  
 1798 transactions or cost allocations among the natural gas  
 1799 transmission company and such affiliated companies, and such  
 1800 records necessary to ensure that a natural gas transmission  
 1801 company's ratepayers do not subsidize unregulated activities.  
 1802 Upon request of the natural gas transmission company or other  
 1803 person, any records received by the commission or the office  
 1804 which are shown and found by the commission to be proprietary

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1805 confidential business information shall be confidential and  
 1806 exempt from s. 119.07(1). The authority of the commission to  
 1807 access records pursuant to this section is granted subject to  
 1808 the limitations set forth in s. 350.011(3) and (4).

1809 (2) Discovery in any docket or proceeding before the  
 1810 commission shall be in the manner provided for in Rule 1.280 of  
 1811 the Florida Rules of Civil Procedure. Information which affects  
 1812 a natural gas transmission company's rates or cost of service  
 1813 shall be considered relevant for purposes of discovery in any  
 1814 docket or proceeding where the natural gas transmission  
 1815 company's rates or cost of service are at issue. The commission  
 1816 shall determine whether information requested in discovery  
 1817 affects a natural gas transmission company's rates or cost of  
 1818 service. Upon a showing by a natural gas transmission company or  
 1819 other person and a finding by the commission that discovery will  
 1820 require the disclosure of proprietary confidential business  
 1821 information, the commission shall issue appropriate protective  
 1822 orders designating the manner for handling such information  
 1823 during the course of the proceeding and for protecting such  
 1824 information from disclosure outside the proceeding. Such  
 1825 proprietary confidential business information shall be exempt  
 1826 from s. 119.07(1). Any records provided pursuant to a discovery  
 1827 request for which proprietary confidential business information  
 1828 status is requested shall be treated by the commission, the  
 1829 Office of Regulatory Staff, ~~and~~ the office of the Public  
 1830 Counsel, and any other party subject to the public records law  
 1831 as confidential and shall be exempt from s. 119.07(1) pending a

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1832 formal ruling on such request by the commission or the return of  
 1833 the records to the person providing the records. Any record  
 1834 which has been determined to be proprietary confidential  
 1835 business information and is not entered into the official record  
 1836 of the proceeding must be returned to the person providing the  
 1837 record within 60 days after the final order, unless the final  
 1838 order is appealed. If the final order is appealed, any such  
 1839 record must be returned within 30 days after the decision on  
 1840 appeal. The commission shall adopt the necessary rules to  
 1841 implement this provision.

1842 Section 61. Section 368.1085, Florida Statutes, is amended  
 1843 to read:

1844 368.1085 Travel costs.—The office ~~commission~~ has the  
 1845 authority to assess a natural gas transmission company for  
 1846 reasonable travel costs associated with reviewing the records of  
 1847 the natural gas transmission company and its affiliates when  
 1848 such records are kept out of state. The natural gas transmission  
 1849 company may bring the records back into the state for review.

1850 Section 62. Section 368.109, Florida Statutes, is amended  
 1851 to read:

1852 368.109 Regulatory assessment fees.—Each natural gas  
 1853 transmission company operating under ss. 368.101-368.112, for  
 1854 all or any part of the preceding 6-month period, shall pay to  
 1855 the commission, within 30 days following the end of each 6-month  
 1856 period, a fee that may not exceed 0.25 percent annually of its  
 1857 gross operating revenues derived from intrastate business  
 1858 excluding sales for resales to natural gas transmission

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1859 | companies, public utilities that supply gas, municipal gas  
 1860 | utilities, and gas districts. The fee shall, to the extent  
 1861 | practicable, be related to the cost of the commission and the  
 1862 | office in regulating such natural gas transmission companies.

1863 | Section 63. Subsection (1) of section 403.519, Florida  
 1864 | Statutes, is amended to read:

1865 | 403.519 Exclusive forum for determination of need.—

1866 | (1) On request by an applicant or upon petition by the  
 1867 | Office of Regulatory Staff ~~on its own motion~~, the commission  
 1868 | shall begin a proceeding to determine the need for an electrical  
 1869 | power plant subject to the Florida Electrical Power Plant Siting  
 1870 | Act.

1871 | Section 64. Paragraph (a) of subsection (1) of section  
 1872 | 403.537, Florida Statutes, is amended to read:

1873 | 403.537 Determination of need for transmission line;  
 1874 | powers and duties.—

1875 | (1)(a) Upon request by an applicant or upon petition by  
 1876 | the Office of Regulatory Staff ~~its own motion~~, the Florida  
 1877 | Public Service Commission shall schedule a public hearing, after  
 1878 | notice, to determine the need for a transmission line regulated  
 1879 | by the Florida Electric Transmission Line Siting Act, ss.

1880 | 403.52-403.5365. The notice shall be published at least 21 days  
 1881 | before the date set for the hearing and shall be published by  
 1882 | the applicant in at least one-quarter page size notice in  
 1883 | newspapers of general circulation, and by the commission in the  
 1884 | manner specified in chapter 120, by giving notice to counties  
 1885 | and regional planning councils in whose jurisdiction the



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1886 transmission line could be placed, and by giving notice to any  
 1887 persons who have requested to be placed on the mailing list of  
 1888 the commission for this purpose. Within 21 days after receipt of  
 1889 a request for determination by an applicant, the commission  
 1890 shall set a date for the hearing. The hearing shall be held  
 1891 pursuant to s. 350.01 within 45 days after the filing of the  
 1892 request, and a decision shall be rendered within 60 days after  
 1893 such filing.

1894 Section 65. Paragraph (a) of subsection (1) of section  
 1895 403.9422, Florida Statutes, is amended to read:

1896 403.9422 Determination of need for natural gas  
 1897 transmission pipeline; powers and duties.—

1898 (1)(a) Upon request by an applicant or upon petition by  
 1899 the Office of Regulatory Staff ~~its own motion~~, the commission  
 1900 shall schedule a public hearing, after notice, to determine the  
 1901 need for a natural gas transmission pipeline regulated by ss.  
 1902 403.9401-403.9425. Such notice shall be published at least 45  
 1903 days before the date set for the hearing and shall be published  
 1904 in at least one-quarter page size in newspapers of general  
 1905 circulation and in the Florida Administrative Weekly, by giving  
 1906 notice to counties and regional planning councils in whose  
 1907 jurisdiction the natural gas transmission pipeline could be  
 1908 placed, and by giving notice to any persons who have requested  
 1909 to be placed on the mailing list of the commission for this  
 1910 purpose. Within 21 days after receipt of a request for  
 1911 determination by an applicant, the commission shall set a date  
 1912 for the hearing. The hearing shall be held pursuant to s. 350.01

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1913 | within 75 days after the filing of the request, and a decision  
1914 | shall be rendered within 90 days after such filing.  
1915 |       Section 66. This act shall take effect October 1, 2010.

DRAFT





# Update on State Energy Incentive Programs

**Rob Vickers**

Florida Energy & Climate Commission



# Florida Sales Tax Program

From January 1, 2007, and ending December 31, 2010 the sale or use of the following equipment in the state of Florida is tax exempt.

	FY06-07	FY07-08	FY08-09	FY09-10
<b>Hydrogen (Vehicles)</b>				
Appropriation	\$2,000,000.00	\$2,000,000.00	\$2,000,000.00	\$2,000,000.00
Funds Expended	\$0.00	\$0.00	\$0.00	\$0.00
Balance	\$2,000,000.00	\$2,000,000.00	\$2,000,000.00	\$2,000,000.00
Percent of Funds Expended	0.00%	0.00%	0.00%	0.00%
<b>Hydrogen (Stationary Fuel Cells)</b>				
Appropriation	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
Funds Expended	\$0.00	\$0.00	\$219,004.98	\$235,176.90
Balance	\$1,000,000.00	\$1,000,000.00	\$658,944.91	\$764,823.10
Percent of Funds Expended	0.00%	0.00%	21.90%	23.52%
<b>Biodiesel &amp; Ethanol Infrastructure</b>				
Appropriation	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
Funds Expended	\$0.00	\$3,982.60	\$41,349.06	\$482,726.69
Balance	\$1,000,000.00	\$996,017.40	\$958,650.94	\$517,273.31
Percent of Funds Expended	0.00%	0.40%	4.13%	48.73%



# Infrastructure Investment Tax Credit Program

Provides a credit against either the corporate income tax or the franchise tax of 75% of all capital costs, operation and maintenance costs, and research and development costs.

	FY06-07	FY07-08	FY08-09	FY09-10
<b>Hydrogen (Vehicles)</b>				
Appropriation	\$3,000,000.00	\$3,000,000.00	\$3,000,000.00	\$3,000,000.00
Funds Expended	\$0.00	\$0.00	\$0.00	\$1,547,586.75
Balance	\$3,000,000.00	\$3,000,000.00	\$3,000,000.00	\$1,452,413.25
Percent of Funds Expended	0.00%	0.00%	0.00%	51.59%
<b>Hydrogen (Stationary Fuel Cells)</b>				
Appropriation	\$1,500,000.00	\$1,500,000.00	\$1,500,000.00	\$1,500,000.00
Funds Expended	\$0.00	\$0.00	\$1,500,000.00	\$1,500,000.00
Balance	\$1,500,000.00	\$1,500,000.00	\$0.00	\$0.00
Percent of Funds Expended	0.00%	0.00%	100.00%	100.00%
<b>Biodiesel &amp; Ethanol Infrastructure</b>				
Appropriation	\$6,500,000.00	\$6,500,000.00	\$6,500,000.00	\$6,500,000.00
Funds Expended	\$3,347,482.62	\$4,519,660.30	\$2,473,456.24	\$0.00
Balance	\$3,152,517.38	\$1,980,339.70	\$4,026,543.76	\$6,500,000.00
Percent of Funds Expended	51.50%	69.53%	38.05%	0.00%



# Solar Energy System Incentives

Any resident of Florida who purchases and installs a new solar energy system from July 1, 2006, through June 30, 2010, is eligible for a rebate on a portion of the purchase price of that solar energy system.

- Provides a \$4/per Watt rebate on PV systems with a max rebate amount
- \$20,000 for residential systems and \$100,000 for commercial systems;
- \$500 rebate for residential solar water heaters, a \$15 per 1,000 Btu up to a maximum of \$5,000 for commercial solar water heaters;
- \$100 rebate for solar pool heaters

	FY06-07	FY07-08	FY08-09	FY09-10
Appropriation	\$2,500,000.00	\$3,500,000.00	\$5,000,000.00	\$14,400,000.00
Funds Expended	\$2,500,000.00	\$3,500,000.00	\$5,000,000.00	\$14,400,000.00
Balance	\$0.00	\$0.00	\$0.00	\$0.00
Percent of Funds Expended	100.00%	100.00%	100.00%	100.00%

*Current backlog in approved solar rebates exceeds \$9.2 million as of September 2009*



# Renewable Energy & Energy-Efficient Technologies Grant

- Established to provide renewable energy matching grants for demonstration, commercialization, research and development projects relating to renewable energy technologies
- Designed to stimulate capital investment in the state and promote and enhance the statewide utilization of renewable energy technologies
- Eligible proposals were evaluated based on cost share percentage, economic development potential, energy efficiency and how the project fosters public awareness of renewable energy technologies

	FY06-07	FY07-08	FY08-09	FY09-10
Appropriation	\$15,000,000.00	\$12,500,000.00	\$15,000,000.00	\$0.00
Funds Committed	\$15,000,000.00	\$12,500,000.00	\$15,000,000.00	\$0.00
Funds Expended	\$6,880,995.61	\$1,458,730.21	\$1,048,187.08	\$0.00