



Energy & Utilities Policy Committee

MEETING PACKET

Wednesday, March 25, 2010

Morris Hall

2:45 PM – 6:00 PM

**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 25, 2010

2:45 p.m. – 6:00 p.m.

Morris Hall (17 House Office Building)

Opening Remarks by Chair Precourt

Consideration of the following bills:

HB 77 - Florida Energy & Climate Commission
Representative Gibbons

HB 151 - Assessment of Residential Real Property
Representative Frishe

HB 163 - Prepaid Wireless Telecommunications Service
Representative Gibbons

HB 1217 - Sale of Electricity
Representative Troutman

HB 1457 - Advance Clean Energy Development
Representative McBurney

Consideration of the following Proposed Committee Bill:

PCB EUP 10-04 - Reorganization of the Public Service Commission

Closing Remarks by Chair Precourt

Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 77 Florida Energy and Climate Commission
SPONSOR(S): Gibbons and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 90

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Energy & Utilities Policy Committee		Whittier <i>SW</i>	Collins <i>BC</i>
2) Military & Local Affairs Policy Committee			
3) Government Operations Appropriations Committee			
4) General Government Policy Council			
5)			

SUMMARY ANALYSIS

According to a January 2009 report by the Department of Community Affairs, in collaboration with the Florida Energy Affordability Coalition, the average American family spends 4 to 6 percent of their household income on energy, and low-income households spend a far larger percent. "The home energy burden for Florida's low-income households has significantly increased since 2002. For the poorest Floridians, those with incomes below 50% of the federal poverty level, the home energy burden has grown from 39% in 2002 to 51% in 2007."¹ The report identified several energy affordability concerns for Florida (see *Effect of Proposed Changes*).

The bill directs the Florida Energy and Climate Commission (Commission) to prepare a report, to be submitted to the President of the Senate and the Speaker of the House of Representatives, by December 1, 2010, that:

- Identifies methods of increasing energy-efficiency practices among low-income households, and, at a minimum, identifies energy efficiency programs currently offered to low-income households in the state by:
 - Community action agencies,
 - Community-based organizations, and
 - Utility companies.

It is also to identify similar programs offered to low-income households in other states.

- Determines the statewide impact of improving the level of energy efficiency of rental housing properties, including, but not limited to, the following:
 - The environmental benefits of the improvements, and
 - The potential fiscal impact on property tenants, owners, and landlords and the economy.

The commission is to consider the relative equity and economic efficiency of the cost share for such energy efficiency improvements.

- Provides recommendations to effect more energy efficiency practices among low-income household residents.

The bill does not appear to have a significant fiscal impact on state or local governments.

¹ DCA/FLEAC: Energy Affordability Proposals for Florida, January 2009, p. 3.

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

Florida Energy and Climate Commission

The Florida Energy and Climate Commission (FECC or commission) was created by the Legislature in 2008, through HB 7135 (s. 377.6015, F.S.), to provide a single entity that would develop, coordinate, and implement energy policies for the state. The bill combined a majority of the energy-area duties and responsibilities of the State Energy Office within the Department of Environmental Protection, and the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds for the administration of the Florida Energy Commission (a Legislative advisory body) into the FECC. The commission was placed in the Executive Office of the Governor.

In accordance with s. 377.6015, F.S., the commission is comprised of nine members, seven of which are appointed by the Governor for 3-year terms. The other two positions are to be appointed, one each, by the Commissioner of Agriculture and the Chief Financial Officer (CFO). The Governor is to select from three people nominated by the Florida Public Service Commission Nominating Council (Nominating Council) for each seat on the commission. In addition, the Commissioner of Agriculture and the CFO are each to select from three people nominated by the Nominating Council. The Governor is to select a chair from one of the nine people appointed to the commission.

The commission must meet at least six times a year and a commission member must be an expert in one or more of the following fields:

- Energy,
- Natural resource conservation,
- Economics,
- Engineering,
- Finance,
- Law,
- Transportation and land use,
- Consumer protection,
- State energy policy, or
- Another field which is substantially related to the duties and functions of the commission.

Low-Income Residential Energy Use

In 2008, the Florida Legislature directed the Department of Community Affairs (DCA) to develop a set of legislative proposals needed to address the affordability of home energy for low-income residential customers. CS/HB 697 (Chapter 2008-191, L.O.F.) directed DCA to work with the Florida Energy Affordability Coalition (FLEAC) and identify proposals that:

- Support customer health, safety, and well-being;
- Maximize available financial and energy-conservation assistance;
- Improve the quality of service to customers seeking assistance; and
- Educate customers to make informed decisions **regarding energy use and conservation.**²

The DCA and the FLEAC identified concerns associated with reviewing Florida's low-income household residents and energy affordability.³

The following information was obtained from the DCA/FLEAC report:⁴

1. *The energy affordability gap is growing among low and moderate income Floridians.*

One way to measure the economic impact of home energy burden is by calculating the difference between what low- and moderate-income households can afford to pay and their home energy bill, known as the home *energy affordability gap*. In dollars, these numbers are staggering. In 2002, Florida's home energy affordability gap was estimated to be \$876 million. In 2007, that gap rose to \$1.78 billion. On average, each low-income household in Florida received a home energy bill in 2007 that was \$999 *more* than the household could afford to pay.

2. *Low-income households spend a significantly larger percent of their income on home energy.*

While the average American family spends 4 to 6 percent of their household income on energy, low-income households spend a far larger percent. The home energy burden for Florida's low-income households has significantly increased since 2002. For the poorest Floridians, those with incomes below 50% of the federal poverty level, the home energy burden has grown from 39% in 2002 to 51% in 2007.

3. *Existing energy assistance does not adequately address Florida's energy affordability gap.*

The Low-Income Home Energy Assistance Program (LIHEAP) funded by U. S. Department of Health and Human Services (HHS) and administered by the DCA...is the single largest funding source for low-income energy bill payment assistance and weatherization in Florida. Historically, with the exception of the one-time influx of FFY 2009 funding as part of the economic stimulus package, funding has averaged between \$25 and \$30 million each year. *This provides assistance for only 3-5% of the 2.8 million potentially eligible households.*

4. *Low-income people disproportionately live in older, less energy efficient homes.*

Low-income people disproportionately live in older, energy inefficient homes. The up-front cost of increasing the efficiency of the home is usually beyond their means.

² DCA/FLEAC: Energy Affordability Proposals for Florida, January 2009, p. 1.

³ Their process began with a workshop on July 17, 2008, at which FLEAC participants identified and ranked more than 50 potential strategies to use in addressing the causes and consequences of unaffordable home energy. The DCA staff worked with a smaller FLEAC working group to consolidate and elaborate the identified priorities and a revised list of proposals was then submitted to the FLEAC for review and comment.

⁴ DCA/FLEAC: Energy Affordability Proposals for Florida, January 2009, pp. 3-5.

In addition, low-income households tend to be renters and have less control over the energy efficiency of their residences. There is little incentive for the landlord to cover the cost of energy efficiency improvements to the property.

5. Low-income households must make difficult and dangerous decisions to pay their utility bill.

High energy burdens among older, low-and moderate-income households, exposes them to the risks of going without adequate heating or cooling, frequently resulting in adverse health and safety outcomes, including premature death.

The 2005 National Energy Assistance Directors Association Survey of LIHEAP participants found that in order to pay their utility bill, respondents reported not filling prescriptions or going without food.

6. Often the low-income households are on a fixed income.

The households at the lowest income level are often on a fixed income from social security, disability or retirement. When energy prices escalate, their incomes do not keep pace. They have less flexibility in their budgets to address increases in energy costs.

7. Current energy deposits and penalties make the situation more challenging.

Although it is understandable why utility companies require deposits and late payment penalties, this ineffective policy exacerbates the difficulties faced by households who already cannot afford the home energy they need. In the long run, none of the parties involved, the customer, the utility company [n]or the social service agency are benefited.

8. Significant weather-related power outages illustrate the necessity of home energy.

A consistent source of home energy is essential to health and safety. Not only is energy used to heat and cool our homes, but also for preserving food and medicines, lighting security, operating medical devices, heating water and telecommunication.

9. Inability to pay utility bills often leads to housing instability.

Often when low-income households are unable to pay their utility bill, they move or become homeless. This is disruptive to the family, affects children's physical and mental health, as well as long-term behavioral, developmental and educational outcomes. Utility companies and landlords may be left with uncollectible bills. In this scenario, no one has been well served.

American Recovery and Reinvestment Act of 2009

Subsequent to the publishing of the Department of Community Affairs/FLEAC report, the U.S. Congress passed the American Recovery and Reinvestment Act (ARRA) of 2009, which included energy-related provisions that impact low-income households through the Weatherization Assistance Program.

The Weatherization Assistance Program in the Department of Community Affairs annually offers grant funds to community action agencies, local governments, Indian tribes, and non-profit agencies to provide specific program services for low-income families in Florida. The mission of the program is to reduce the monthly energy burden on low-income households by improving the energy efficiency of the home. Historically, this program has received \$1.8 to \$2 million annually through the U.S. Department of Energy. An additional \$3 to \$4 million per year is provided through the Low Income Home Energy Assistance Program.

As a result of the ARRA, the Florida Weatherization Assistance Program will receive approximately \$176 million during the three-year period of the ARRA funding. In response to this increase in funding, the Department of Community Affairs is working through their local provider agencies to increase their capacity and meet the elevated production goals in the ARRA.

Effect of Proposed Changes

The bill directs the Florida Energy and Climate Commission (Commission) to prepare a report, to be submitted to the President of the Senate and the Speaker of the House of Representatives, by December 1, 2010, that accomplishes the following:

- Identifies methods of increasing energy-efficiency practices among low-income households, and, at a minimum, identifies energy efficiency programs currently offered to low-income households in this state by the following:
 - Community action agencies,
 - Community-based organizations, and
 - Utility companies.

It is also to identify similar programs offered to low-income households in other states.

- Determines the statewide impact of improving the level of energy efficiency of rental housing properties, including but not limited to, the following:
 - The environmental benefits of the improvements, and
 - The potential fiscal impact on property tenants, owners, and landlords and the economy.

The commission is to consider the relative equity and economic efficiency of the cost share for such energy efficiency improvements.

- Provides recommendations to effect more energy efficiency practices among low-income household residents.

B. SECTION DIRECTORY:

Section 1. Requires the Florida Energy and Climate Commission to prepare a report on energy efficiency with respect to low-income households and rental housing properties.

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 FECC asserts that it may incur costs in preparing the report, depending upon the specifics of the study parameters and the methodology employed. The FECC anticipates, however, that it would not require an additional appropriation and that the report would be undertaken within existing revenues through a "prioritization process."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. The bill directs the FECC to prepare a report.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take 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:

None.

B. RULE-MAKING AUTHORITY:

None. No additional rule-making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 77 (2010)

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	_____	

1 Council/Committee hearing bill: Energy & Utilities Policy
2 Committee
3 Representative(s) Gibbons offered the following:

4

5 **Amendment**

6 Remove line 32 and insert:

7 Representatives by December 1, 2011.

1 A bill to be entitled
 2 An act relating to the Florida Energy and Climate
 3 Commission; requiring the commission to prepare a report
 4 on energy efficiency with respect to low-income households
 5 and rental housing properties to be submitted to the
 6 Legislature by a specified date; providing report
 7 requirements; providing an effective date.

8

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

10

11 Section 1. (1) The Florida Energy and Climate Commission
 12 shall prepare a report that:

13 (a) Identifies methods of increasing energy-efficiency
 14 practices among low-income households as described in ss.
 15 420.9071 and 421.03, Florida Statutes. The commission shall, at
 16 a minimum, identify energy-efficiency programs currently offered
 17 to low-income households by community action agencies,
 18 community-based organizations, and utility companies in this
 19 state and similar programs offered to low-income households in
 20 other states.

21 (b) Determines the statewide impact of improving the level
 22 of energy efficiency of rental housing properties, including,
 23 but not limited to, the environmental benefits of the
 24 improvements and the potential fiscal impact on property
 25 tenants, owners, and landlords and the economy. The commission
 26 shall consider the relative equity and economic efficiency of
 27 the cost share for such energy-efficiency improvements.

28 (c) Provides recommendations to effect more energy-

HB 77

2010

29 | efficiency practices among low-income household residents.

30 | (2) The commission shall submit the report to the
31 | President of the Senate and the Speaker of the House of
32 | Representatives by December 1, 2010.

33 | Section 2. This act shall take effect 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

Property Valuation

Article VII, s. 4 of the Florida Constitution, strictly limits the Legislature's authority to provide ad valorem tax exemptions or adjustments. This section provides that all property, with some exceptions, is to be assessed at "just value." Florida courts define "just value" as the estimated fair "market value" of the property. Current law requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

"Assessed value of property"¹ is a term used to describe the value placed on a parcel after application of the "Save Our Homes" assessment limitation² and the 10 percent cap on non-homestead property.³ In addition, "assessed value" is also the classified use value of agricultural or other special classes of property that are valued based on their current "classified" use rather than on market value.

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, the following language became Section 3(d), Article VII, of the Florida Constitution:⁴

By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

¹ Section 192.001(2), F.S.

² The popularly named "Save Our Homes" amendment to the State Constitution was approved by Florida's voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent of the assessment for the prior year. See Art. VII, Sec. 4(1), Florida Constitution.

³ On January 29, 2008, Florida's voters approved a constitutional amendment that made changes to the constitutional provisions dealing with property taxation. Some of the changes provided that the property tax assessment of certain non-homestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

⁴ Through SJR 15-E.

During the same year, the Legislature authorized a property tax exemption for real property on which a renewable energy source device⁵ is installed and is being operated. However, the exemption expired after 10 years, as provided in the constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

In December 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 (Chapter 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November, 2008 General Election the voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission.

The amendment added the following language to Article VII, Section 4, Florida Constitution (Taxation; assessments):

- (i) The legislature, by general law and subject to conditions specified therein, **may**⁶ 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.

The amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated. This repealed language had provided the constitutional basis for the legislation passed in 1980 and in 2008.

Although the constitutional provision on which the ad valorem tax exemption was based has been repealed, the language is still part of the Florida Statutes. On March 10, 2010, the House of Representatives passed HB 7005, repealing the obsolete language (ss. 196.175 and 196.012(14), F.S.).

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

⁵ See ss. 196.175 and 196.012(14), F.S.

⁶ This 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation.

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, entitled 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.⁷

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.⁸ 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.⁹ 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.¹⁰ 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 Department of Financial Services must also be accepted by the insurer.

Attempts to provide property tax incentives for improving structures' ability to withstand hurricanes began in 1999, with the introduction of two bills. SJR 124 would have authorized the Legislature to exempt, by general law, the value attributable to improvements made for purposes of disaster preparedness. In addition, SB 122 would have provided a statutory exemption for any increase in value attributable to the installation of shutters designed to protect the property against damage from hurricanes. Similar proposals were introduced in 2000 (SJR 138, HJR 1731), and in 2007 (SB 158). However, none of these bills introduced from 1999 to 2007 were passed by the Legislature.

Property Appraisals

Section 193.011, F.S., lists the following factors to be taken into consideration when determining just valuation:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

⁷ The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

⁸ 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.

⁹ Section 14, Chapter 2006-12, L.O.F.

¹⁰ 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.

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

2009 Senate Interim Report

During the 2009 interim, staff for the Senate Committee on Finance and Tax issued an interim report on the 2008 Constitutional Amendment and how the provision can be implemented.¹¹ This report included information about property tax incentives provided by other states¹² for installing renewable energy equipment or improving disaster resistance.

According to the report, the following states have enacted property tax incentives for renewable energy equipment:¹³

- California does not include construction or addition of an active solar energy system as new construction (through 2015-16);
- Colorado has a local option sales or property tax credit or rebate for a residential or commercial property owner who installs a renewable energy fixture on his or her property;
- Connecticut municipalities may exempt the value added by a solar heating or cooling system for 15 years after construction or the value of a renewable energy source installed for electricity for private residential use or addition of a passive solar hybrid system to a new or existing building;
- Illinois provides for special valuation for realty improvements equipped with solar energy heating or cooling systems;

¹¹ Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008, The Florida Senate, Committee on Finance and Tax, Interim Report 2010-116, October 2009.

¹² *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

¹³ This list does not include incentives for public utilities.

- Louisiana exempts equipment attached to any owner-occupied residential building or swimming pool as part of a solar energy system;
- Maryland exempts solar energy property, defined as equipment installed to: use solar energy to heat or cool a structure, generate electricity, or provide hot water for use in the structure;
- Massachusetts provides a 20 year exemption for solar or wind-powered devices used to heat or supply energy for taxable property;
- Minnesota exempts solar panels used to produce or store electricity;
- Nevada exempts the value added by a solar energy system or facility for production of electricity from recycled material or wind or geothermal devices;
- New Hampshire municipalities may exempt, with voter approval, realty with wind, solar, or wood-heating energy systems;
- New York provides a 15 year exemption for realty containing solar or wind energy systems constructed before January 1, 2011, but only to the extent of any increase in value due to the system;
- North Carolina exempts up to 80 percent of the appraised value of a solar energy electric system, and buildings equipped with solar heating or cooling systems are assessed as if they had conventional systems;
- North Dakota exempts solar, wind, and geothermal energy systems in locally assessed property;
- South Dakota provides property tax credits for a commercial or residential property owner who attaches or includes a renewable energy resource system, valued at no less than the cost of the system for residential property and 50 percent of the cost for commercial property. The credit applies for 6 years, decreasing in value for the last 3 years, and it may not be transferred to a new owner;
- Texas exempts the value of assessed property arising from the construction or installation of any solar or wind-powered energy device on the property primarily for onsite use;
- Virginia allows a local option exemption or partial exemption for solar energy equipment; and
- Wisconsin exempts solar and wind energy systems.

According to the report, the following states have enacted property tax incentives improvements dealing with disaster preparedness:

- California does consider the construction or installation in existing buildings of seismic retrofitting improvements or earthquake hazard mitigation technology as new construction, contingent upon the property owner filing required documents;
- California also provides that improvement or installation of a fire sprinkler system may not trigger a property tax increase;
- Oklahoma exempts a qualified storm shelter (tornado protection) that is installed or added as an improvement to real property; and

- Washington exempts the increase in value attributable to the installation of automatic sprinkler systems in nightclubs installed by December 31, 2009.

Review of Late-Filed Exemption Applications

Section 196.011(1), F.S., requires persons with legal title to real or personal property who are entitled to an exemption to apply on or before March 1 of each year.

Section 196.011(8), F.S., provides that an applicant who is qualified to receive an exemption, but who misses the filing deadline, may file an application for the exemption and file a petition with the value adjustment board (VAB) requesting that the exemption be granted. The petition must be filed no later than 25 days after the Truth in Millage (TRIM) notice is mailed by the property appraiser pursuant to ss. 194.011(1)¹⁴ and 200.069, F.S.¹⁵ Upon reviewing the petition, if the applicant is qualified to receive the exemption and demonstrates particular extenuating circumstances to warrant granting the exemption, the property appraiser may grant the exemption. If the property appraiser denies the exemption, the applicant may file a petition with the VAB.

Effect of the Proposed Changes

This bill provides 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 just value of 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.

¹⁴ Subsection (1) of s. 194.011, F.S., provides that each taxpayer who is subject to real or tangible personal ad valorem taxes shall be notified of the assessment of each taxable item of such property, as provided in s. 200.069, F.S.

¹⁵ Section 200.069, F.S., requires property appraisers to prepare and deliver a notice of proposed property taxes and non-ad valorem assessments to each taxpayer listed on the current year's assessment roll. This notice is commonly referred to as the TRIM notice, and is sent on behalf of all taxing authorities and local governing boards levying both ad valorem taxes and non-ad valorem assessments. In addition, s. 200.069, F.S., provides the specific elements and required content and format of the TRIM notice. DOR is responsible for reviewing TRIM notices to ensure compliance with statutory requirements.

- 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.

The bill provides that a parcel of residential property may not be assessed to change or improve its resistance to wind damage, or for the installation of a renewable energy source device unless an application is filed on or before March 1 of the first year the property owner claims the assessment.

The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may be reasonably be required to establish the just value of the renewable energy source devices, or changes or improvements made for the purpose of improving the property's resistance to wind damage.

Consistent with current law, this bill provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the TRIM notice.

If the property appraiser denies the exemption, the applicant may file a petition with the VAB, pursuant to s. 194.011(3), F.S. In these cases, the applicant must pay a non-refundable fee of \$15.00 upon filing the petition. Upon reviewing the petition, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances judged by the property appraiser or the VAB to warrant granting assessment under this section, the property appraiser shall calculate the assessment in accordance with the new section created by this bill (s. 193.624, F.S.).

The bill repeals the existing definition of renewable energy source device in s. 196.012(14), F.S., and repeals the obsolete exemption (s. 196.175, F.S.), based on the constitutional provision repealed by the voters in 2008. Several cross-references are amended.

B. SECTION DIRECTORY:

Section 1. Creates s. 193.624, F.S., relating to definitions and assessment of residential property.

Section 2. Amends s. 193.155, F.S., relating to homestead assessments.

Section 3. Amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

Section 4. Amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

Section 5. Amends s. 196.121, F.S., amending a cross-reference.

Section 6. Amends s. 196.1995, F.S., amending cross-references.

Section 7. Repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

Section 8. Provides an effective date of July 1, 2010, and first applies to assessments on January 1, 2011.

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:

For purposes of statewide school tax levies at current millage rates, the Revenue Estimating Conference (REC) has estimated that the provisions of this bill would reduce local government revenues by \$0.9 million in FY 2010-2011, and that these reductions would increase to \$23.9 million in FY 2014-2015.

For purposes of statewide non-school tax levies at current millage rates, the REC has estimated that the provisions of this bill would reduce local government revenues by \$1.2 million in FY 2010-2011, and that these reductions would increase to \$33.3 million in FY 2014-2015.

These reductions could result in lower expenditures and/or an increase in millage rates (in those jurisdictions where that capacity exists) to maintain current levels of property tax revenues.

2. Expenditures:

Property Appraisers may incur additional costs to implement the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in this bill may:

- Offer homebuilders and homebuyers incentives to construct or strengthen homes with improved wind resistance, or to equip homes with renewable energy source devices, if potential buyers begin to demand these features;
- Lead to a recurring tax benefit for homeowners;
- Result in lower insurance rates and energy costs for homeowners; and
- Encourage quicker adoption of building practices that take improved wind resistance into account.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate. The bill does not appear to qualify for an exemption. Therefore, the bill may require a 2/3ds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments Provided by Staff of the House Military & Local Affairs Policy Committee

The Pinellas County Property Appraiser's Office (PCPAO) is a proponent of this bill because it believes that the bill will ensure inclusion of the value of the qualified improvements related to just/market value, and will deduct the value of the qualified improvements from the assessed value. According to the PCPAO, "while determining the just/market value of those improvements will not be easy, this method will accomplish the goals of the amendment and allow us to maintain accurate market values." Also, the PCPAO supports this proposal because it places an obligation on the property owner to apply for this reduction in value and to provide information concerning the cost of the improvements.

In addition, the PCPAO states that the bill language indicates that the value of improvements made to protect against wind damage and the value of renewable energy source devices are to be excluded from "assessed value" rather than "just value" of real property. This language choice also permits the application of s. 193.011, F.S., for the establishment of "just value" without distorting the resulting market or just valuation by eliminating the contribution of storm shutters, other protections from wind damage, and renewable energy source devices from the determination of market or just value. Instead, the amended language opens the door to an implementation strategy that will allow the reduction of value attributed to the covered devices to be deducted from just value during the calculation of assessed value.

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	_____	

Council/Committee hearing bill: Energy & Utilities Policy
Committee

Representative Van Zant offered the following:

Amendment (with directory and title amendments)

Between lines 238 and 239, insert:

(7) The authority to grant exemptions under this section expires ~~will expire~~ 10 years after the date such authority was approved in an election, but such authority may be renewed for subsequent ~~another~~ 10-year periods if each 10-year renewal is approved ~~period~~ in a referendum called and held pursuant to this section.

D I R E C T O R Y A M E N D M E N T

Remove line 224 and insert:

Section 6. Subsections (6) and (7), paragraph (d) of subsection

Amendment No. 1

20
21
22
23
24
25
26
27
28

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

Remove lines 13-14 and insert:
conforming a cross-reference; amending s. 196.121, F.S.;
conforming a cross reference; amending s. 196.1995, F.S.;
authorizing counties and municipalities to extend economic
development ad valorem tax exemptions under certain
circumstances; conforming cross-references; repealing s.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

A bill to be entitled
 An act relating to the assessment of residential real property; creating s. 193.624, F.S.; providing definitions; prohibiting adding the value of certain improvements to the assessed value of certain real property; providing a limitation on the assessed value of certain real property; providing application; providing procedural requirements and limitations; requiring a nonrefundable filing fee; amending ss. 193.155 and 193.1554, F.S.; specifying additional exceptions to assessments of homestead and nonhomestead property at just value; amending s. 196.012, F.S.; deleting a definition; conforming a cross-reference; amending ss. 196.121 and 196.1995, F.S.; conforming cross-references; repealing s. 196.175, F.S., relating to the renewable energy source property tax exemption; providing application; providing an effective date.

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

Section 1. Section 193.624, Florida Statutes, is created to read:

- 193.624 Assessment of residential property.--
- (1) For the purposes of this section:
- (a) "Changes or improvements made for the purpose of improving a property's resistance to wind damage" means:
- 1. Improving the strength of the roof-deck attachment;

- 28 2. Creating a secondary water barrier to prevent water
- 29 intrusion;
- 30 3. Installing hurricane-resistant shingles;
- 31 4. Installing gable-end bracing;
- 32 5. Reinforcing roof-to-wall connections;
- 33 6. Installing storm shutters;
- 34 7. Installing impact-resistant glazing; or
- 35 8. Installing hurricane-resistant doors.

36 (b) "Renewable energy source device" means any of the
 37 following equipment that collects, transmits, stores, or uses
 38 solar energy, wind energy, or energy derived from geothermal
 39 deposits:

- 40 1. Solar energy collectors, photovoltaic modules, and
- 41 inverters.
- 42 2. Storage tanks and other storage systems, excluding
- 43 swimming pools used as storage tanks.
- 44 3. Rockbeds.
- 45 4. Thermostats and other control devices.
- 46 5. Heat exchange devices.
- 47 6. Pumps and fans.
- 48 7. Roof ponds.
- 49 8. Freestanding thermal containers.
- 50 9. Pipes, ducts, refrigerant handling systems, and other
- 51 equipment used to interconnect such systems; however, such
- 52 equipment does not include conventional backup systems of any
- 53 type.
- 54 10. Windmills and wind turbines.
- 55 11. Wind-driven generators.

56 12. Power conditioning and storage devices that use wind
 57 energy to generate electricity or mechanical forms of energy.

58 13. Pipes and other equipment used to transmit hot
 59 geothermal water to a dwelling or structure from a geothermal
 60 deposit.

61 (2) In determining the assessed value of real property
 62 used for residential purposes, the just value of changes or
 63 improvements made for the purpose of improving a property's
 64 resistance to wind damage and the just value of renewal energy
 65 source devices shall not be added to the assessed value as
 66 limited by s. 193.155 or s. 193.1554.

67 (3) The assessed value of real property used for
 68 residential purposes shall not exceed the total just value of
 69 the property minus the combined just values of changes or
 70 improvements made for the purpose of improving a property's
 71 resistance to wind damage and renewal energy source devices.

72 (4) This section applies to new and existing construction
 73 used for residential purposes.

74 (5) A parcel of residential property may not be assessed
 75 pursuant to this section unless an application is filed on or
 76 before March 1 of the first year the property owner claims the
 77 assessment reduction for renewable energy source devices or
 78 changes or improvements made for the purpose of improving the
 79 property's resistance to wind damage. The property appraiser may
 80 require the taxpayer or the taxpayer's representative to furnish
 81 the property appraiser such information as may reasonably be
 82 required to establish the just value of the renewable energy
 83 source devices or changes or improvements made for the purpose

84 | of improving the property's resistance to wind damage. Failure
 85 | to make timely application by March 1 shall constitute a waiver
 86 | of the property owner to have his or her assessment calculated
 87 | under this section. However, an applicant who fails to file an
 88 | application by March 1 may file a late application and may file,
 89 | pursuant to s. 194.011(3), a petition with the value adjustment
 90 | board requesting assessment under this section. The petition
 91 | must be filed on or before the 25th day after the mailing of the
 92 | notice by the property appraiser as provided in s. 194.011(1).
 93 | Notwithstanding s. 194.013, the applicant must pay a
 94 | nonrefundable fee of \$15 upon filing the petition. Upon
 95 | reviewing the petition, if the property is qualified to be
 96 | assessed under this section and the property owner demonstrates
 97 | particular extenuating circumstances judged by the property
 98 | appraiser or the value adjustment board to warrant granting
 99 | assessment under this section, the property appraiser shall
 100 | calculate the assessment in accordance with this section.

101 | Section 2. Paragraph (a) of subsection (4) of section
 102 | 193.155, Florida Statutes, is amended to read:

103 | 193.155 Homestead assessments.--Homestead property shall
 104 | be assessed at just value as of January 1, 1994. Property
 105 | receiving the homestead exemption after January 1, 1994, shall
 106 | be assessed at just value as of January 1 of the year in which
 107 | the property receives the exemption unless the provisions of
 108 | subsection (8) apply.

109 | (4)(a) Except as provided in paragraph (b) and s. 193.624,
 110 | changes, additions, or improvements to homestead property shall

HB 151

2010

111 be assessed at just value as of the first January 1 after the
 112 changes, additions, or improvements are substantially completed.

113 Section 3. Paragraph (a) of subsection (6) of section
 114 193.1554, Florida Statutes, is amended to read:

115 193.1554 Assessment of nonhomestead residential
 116 property.--

117 (6) (a) Except as provided in paragraph (b) and s. 193.624,
 118 changes, additions, or improvements to nonhomestead residential
 119 property shall be assessed at just value as of the first January
 120 1 after the changes, additions, or improvements are
 121 substantially completed.

122 Section 4. Subsections (14) through (20) of section
 123 196.012, Florida Statutes, are amended to read:

124 196.012 Definitions.--For the purpose of this chapter, the
 125 following terms are defined as follows, except where the context
 126 clearly indicates otherwise:

127 ~~(14) "Renewable energy source device" or "device" means~~
 128 ~~any of the following equipment which, when installed in~~
 129 ~~connection with a dwelling unit or other structure, collects,~~
 130 ~~transmits, stores, or uses solar energy, wind energy, or energy~~
 131 ~~derived from geothermal deposits:~~

132 ~~(a) Solar energy collectors.~~

133 ~~(b) Storage tanks and other storage systems, excluding~~
 134 ~~swimming pools used as storage tanks.~~

135 ~~(c) Rockbeds.~~

136 ~~(d) Thermostats and other control devices.~~

137 ~~(e) Heat exchange devices.~~

138 ~~(f) Pumps and fans.~~

- 139 ~~(g) Roof ponds.~~
- 140 ~~(h) Freestanding thermal containers.~~
- 141 ~~(i) Pipes, ducts, refrigerant handling systems, and other~~
- 142 ~~equipment used to interconnect such systems; however,~~
- 143 ~~conventional backup systems of any type are not included in this~~
- 144 ~~definition.~~
- 145 ~~(j) Windmills.~~
- 146 ~~(k) Wind-driven generators.~~
- 147 ~~(l) Power conditioning and storage devices that use wind~~
- 148 ~~energy to generate electricity or mechanical forms of energy.~~
- 149 ~~(m) Pipes and other equipment used to transmit hot~~
- 150 ~~geothermal water to a dwelling or structure from a geothermal~~
- 151 ~~deposit.~~
- 152 (14)~~(15)~~ "New business" means:
- 153 (a)1. A business establishing 10 or more jobs to employ 10
- 154 or more full-time employees in this state, which manufactures,
- 155 processes, compounds, fabricates, or produces for sale items of
- 156 tangible personal property at a fixed location and which
- 157 comprises an industrial or manufacturing plant;
- 158 2. A business establishing 25 or more jobs to employ 25 or
- 159 more full-time employees in this state, the sales factor of
- 160 which, as defined by s. 220.15(5), for the facility with respect
- 161 to which it requests an economic development ad valorem tax
- 162 exemption is less than 0.50 for each year the exemption is
- 163 claimed; or
- 164 3. An office space in this state owned and used by a
- 165 corporation newly domiciled in this state; provided such office
- 166 space houses 50 or more full-time employees of such corporation;

167 provided that such business or office first begins operation on
 168 a site clearly separate from any other commercial or industrial
 169 operation owned by the same business.

170 (b) Any business located in an enterprise zone or
 171 brownfield area that first begins operation on a site clearly
 172 separate from any other commercial or industrial operation owned
 173 by the same business.

174 (c) A business that is situated on property annexed into a
 175 municipality and that, at the time of the annexation, is
 176 receiving an economic development ad valorem tax exemption from
 177 the county under s. 196.1995.

178 (15)~~(16)~~ "Expansion of an existing business" means:

179 (a)1. A business establishing 10 or more jobs to employ 10
 180 or more full-time employees in this state, which manufactures,
 181 processes, compounds, fabricates, or produces for sale items of
 182 tangible personal property at a fixed location and which
 183 comprises an industrial or manufacturing plant; or

184 2. A business establishing 25 or more jobs to employ 25 or
 185 more full-time employees in this state, the sales factor of
 186 which, as defined by s. 220.15(5), for the facility with respect
 187 to which it requests an economic development ad valorem tax
 188 exemption is less than 0.50 for each year the exemption is
 189 claimed; provided that such business increases operations on a
 190 site colocated with a commercial or industrial operation owned
 191 by the same business, resulting in a net increase in employment
 192 of not less than 10 percent or an increase in productive output
 193 of not less than 10 percent.

194 (b) Any business located in an enterprise zone or
 195 brownfield area that increases operations on a site colocated
 196 with a commercial or industrial operation owned by the same
 197 business.

198 ~~(16)~~~~(17)~~ "Permanent resident" means a person who has
 199 established a permanent residence as defined in subsection (17)
 200 ~~(18)~~.

201 ~~(17)~~~~(18)~~ "Permanent residence" means that place where a
 202 person has his or her true, fixed, and permanent home and
 203 principal establishment to which, whenever absent, he or she has
 204 the intention of returning. A person may have only one permanent
 205 residence at a time; and, once a permanent residence is
 206 established in a foreign state or country, it is presumed to
 207 continue until the person shows that a change has occurred.

208 ~~(18)~~~~(19)~~ "Enterprise zone" means an area designated as an
 209 enterprise zone pursuant to s. 290.0065. This subsection expires
 210 on the date specified in s. 290.016 for the expiration of the
 211 Florida Enterprise Zone Act.

212 ~~(19)~~~~(20)~~ "Ex-servicemember" means any person who has
 213 served as a member of the United States Armed Forces on active
 214 duty or state active duty, a member of the Florida National
 215 Guard, or a member of the United States Reserve Forces.

216 Section 5. Subsection (2) of section 196.121, Florida
 217 Statutes, is amended to read:

218 196.121 Homestead exemptions; forms.--

219 (2) The forms shall require the taxpayer to furnish
 220 certain information to the property appraiser for the purpose of
 221 determining that the taxpayer is a permanent resident as defined

222 in s. 196.012(16)~~(17)~~. Such information may include, but need
 223 not be limited to, the factors enumerated in s. 196.015.

224 Section 6. Subsection (6), paragraph (d) of subsection
 225 (8), paragraph (d) of subsection (9), and paragraph (d) of
 226 subsection (10) of section 196.1995, Florida Statutes, are
 227 amended to read:

228 196.1995 Economic development ad valorem tax exemption.--

229 (6) With respect to a new business as defined by s.
 230 196.012(14)~~(15)~~(c), the municipality annexing the property on
 231 which the business is situated may grant an economic development
 232 ad valorem tax exemption under this section to that business for
 233 a period that will expire upon the expiration of the exemption
 234 granted by the county. If the county renews the exemption under
 235 subsection (7), the municipality may also extend its exemption.
 236 A municipal economic development ad valorem tax exemption
 237 granted under this subsection may not extend beyond the duration
 238 of the county exemption.

239 (8) Any person, firm, or corporation which desires an
 240 economic development ad valorem tax exemption shall, in the year
 241 the exemption is desired to take effect, file a written
 242 application on a form prescribed by the department with the
 243 board of county commissioners or the governing authority of the
 244 municipality, or both. The application shall request the
 245 adoption of an ordinance granting the applicant an exemption
 246 pursuant to this section and shall include the following
 247 information:

248 (d) Proof, to the satisfaction of the board of county
 249 commissioners or the governing authority of the municipality,

250 that the applicant is a new business or an expansion of an
 251 existing business, as defined in s. 196.012~~(15)~~ or ~~(16)~~; and
 252 (9) Before it takes action on the application, the board
 253 of county commissioners or the governing authority of the
 254 municipality shall deliver a copy of the application to the
 255 property appraiser of the county. After careful consideration,
 256 the property appraiser shall report the following information to
 257 the board of county commissioners or the governing authority of
 258 the municipality:

259 (d) A determination as to whether the property for which
 260 an exemption is requested is to be incorporated into a new
 261 business or the expansion of an existing business, as defined in
 262 s. 196.012~~(15)~~ or ~~(16)~~, or into neither, which determination the
 263 property appraiser shall also affix to the face of the
 264 application. Upon the request of the property appraiser, the
 265 department shall provide to him or her such information as it
 266 may have available to assist in making such determination.

267 (10) An ordinance granting an exemption under this section
 268 shall be adopted in the same manner as any other ordinance of
 269 the county or municipality and shall include the following:

270 (d) A finding that the business named in the ordinance
 271 meets the requirements of s. 196.012(14)~~(15)~~ or (15) ~~(16)~~.

272 Section 7. Section 196.175, Florida Statutes, is repealed.

273 Section 8. This act shall take effect July 1, 2010, and
 274 shall apply to assessments beginning January 1, 2011.

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

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(s) Carroll offered the following:
4

5 **Substitute Amendment to Strike-all Amendment () by**
6 **Representative Gibbons (with title amendment)**

7 Remove everything after the enacting clause and insert:
8 Section 1. Paragraph (a) of subsection (8) of section
9 365.172, Florida Statutes, is amended to read:

10 365.172 Emergency communications number "E911."--
11 (8) E911 FEE.--

12 (a) Each voice communications services provider shall
13 collect the fee described in this subsection. Each provider, as
14 part of its monthly billing process, shall bill the fee as
15 follows. The fee shall not be assessed on any pay telephone in
16 the state.

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

Amendment No.

20 2. Except in the case of prepaid wireless service, each
21 wireless provider shall bill the fee to a subscriber on a per-
22 service-identifier basis for service identifiers whose primary
23 place of use is within this state. Before July 1, 2013 ~~2009~~, the
24 fee shall not be assessed on or collected from a provider with
25 respect to an end user's service if that end user's service is a
26 prepaid calling arrangement that is subject to s. 212.05(1)(e).

27 a. ~~The board shall conduct a study to determine whether it~~
28 ~~is feasible to collect E911 fees from the sale of prepaid~~
29 ~~wireless service. If, based on the findings of the study, the~~
30 ~~board determines that a fee should not be collected from the~~
31 ~~sale of prepaid wireless service, it shall report its findings~~
32 ~~and recommendation to the Governor, the President of the Senate,~~
33 ~~and the Speaker of the House of Representatives by December 31,~~
34 ~~2008.~~ If the board determines that a fee should be collected
35 from the sale of prepaid wireless service, the board shall
36 collect the fee beginning July 1, 2013 ~~2009~~.

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

38
39 -----
40 **T I T L E A M E N D M E N T**

41 Remove the entire title and insert:

42 A bill to be entitled

43 An act relating to prepaid wireless telecommunications;
44 amending s.365.172, F.S.; removing provisions for a study
45 of the feasibility of collecting a fee for such service;
46 providing for a delayed assessment on or collection of a

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

47 fee for a prepaid calling arrangement; providing an
48 effective date.

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 Gibbons offered the following:

Amendment (with title amendment)

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:

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)~~.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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

Amendment No.

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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)(c).~~

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~~

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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 ~~c. 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)(e).~~

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.~~

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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.

Amendment No.

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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

Amendment No.

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.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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).

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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.

Amendment No.

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).

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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

Amendment No.

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).

Amendment No.

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

Amendment No.

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

418

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

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 163 (2010)

Amendment No.

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)

Amendment No.

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

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)(c).~~

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

HB 163

2010

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

HB 163

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 1217

Sale of Electricity

SPONSOR(S): Troutman

TIED BILLS:

IDEN./SIM. BILLS: SB 2168

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

SUMMARY ANALYSIS

The Florida Public Service Commission (PSC) regulates the rates and service of entities defined as "public utilities" under s. 366.02(1), F.S. This definition currently includes five investor-owned electric utilities in Florida and seven investor-owned natural gas distribution companies in Florida. The term does not include rural electric cooperatives or municipal electric utilities. Pursuant to s. 366.11, F.S., rural electric cooperatives and municipal electric utilities are specifically exempt from certain provisions applicable to investor-owned utilities, except as specified in statute.

The bill expands the definition of public utility in s. 366.02, F.S., to include separate legal entities created pursuant to an interlocal agreement under s. 163.01(15), F.S. The bill also amends s. 366.11, F.S., to specify that the provisions of Chapter 366, F.S., that grant the PSC authority to regulate the rates and service of investor-owned utilities will also apply to the sale of electricity by separate legal entities created pursuant to an interlocal agreement under s. 163.01(15), F.S. It appears that these two provisions grant the PSC full authority over the rates and service of such separate legal entities engaged in the sale of electricity or natural gas to or for the public. The bill may subject the Florida Municipal Power Agency to the PSC's jurisdiction over rates and service of public utilities.

The PSC estimates that the bill would result in recurring revenues to the commission of \$557,300, in FY10-11, FY11-12, and FY12-13. The PSC estimates that additional regulatory responsibilities under the bill would require a minimum of 2.5 FTEs and recurring expenditures of \$162,618 in FY10-11, FY11-12, and FY12-13, and non-recurring expenditures of \$9,693 for each of these fiscal years. It is unclear what impact the bill would have on local government expenditures as the impact will likely depend on the rates set by the PSC and the regulatory costs imposed.

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

The Florida Public Service Commission (PSC) regulates the rates and service of entities defined as public utilities under s. 366.02(1), F.S., which states:

“Public utility” means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term “public utility” does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas. (Emphasis added.)

This definition currently includes five investor-owned electric utilities in Florida and seven investor-owned natural gas distribution companies in Florida. The term does not include rural electric cooperatives or municipal electric utilities. Pursuant to s. 366.11, F.S., rural electric cooperatives and municipal electric utilities are specifically exempt from certain provisions applicable to investor-owned utilities, except as specified in statute.

Section 163.01, F.S., authorizes local government units to enter into interlocal agreements with each other for certain purposes. Section 163.01(15), F.S., specifies the powers granted to any public agency of the state which is an electric utility, or any separate legal entity created pursuant to s. 163.01, F.S., which consists only of electric utilities, and which exercises or proposes to exercise the powers granted by Part II of chapter 361, the Joint Power Act. The Florida Municipal Power Agency, created by interlocal agreement under s. 163.01, is an entity that would exercise powers under s. 163.01(15), F.S.

Effect of Proposed Changes

The bill expands the definition of public utility in s. 366.02, F.S., to include separate legal entities created pursuant to an interlocal agreement under s. 163.01(15), F.S. The bill also amends s. 366.11, F.S., to specify that the provisions of Chapter 366, F.S., that grant the PSC authority to regulate the rates and service of investor-owned utilities will also apply to the sale of electricity by separate legal entities created pursuant to an interlocal agreement under s. 163.01(15), F.S. It appears that these two provisions grant the PSC full authority over the rates and service of such separate legal entities engaged in the sale of electricity or natural gas to or for the public.

The Florida Municipal Power Agency (FMPA) was created pursuant to interlocal agreement in 1978, and its membership has expanded since then from five to fifteen municipal electric utilities. These members are required to purchase all of their energy and capacity requirements at wholesale from FMPA, as well as sell all of their electrical generation to FMPA. It appears that the bill would require that the PSC set the rates at which FMPA sells power to its members and set a rate of return for FMPA. In addition, it appears that the bill would subject FMPA's power purchases from its member utilities to the same oversight the PSC applies to purchases by investor-owned utilities. It appears that the bill would subject FMPA to the same requirements as the public utilities currently regulated by the PSC, including regular reporting of earnings and service reliability and participation in annual cost-recovery proceedings.

The PSC reports that the bill may also apply to the Orlando Utilities Commission and the City of St. Cloud, which operate under an interlocal agreement.

B. SECTION DIRECTORY:

Section 1. Amends s. 366.02, F.S., providing definitions for purposes of Chapter 366, F.S.

Section 2. Amends s. 366.11, F.S., relating to certain exemptions from PSC jurisdiction.

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 PSC estimates that, based on its standard rate for regulatory assessment fees and FMPA's 2009 revenues, it would receive recurring revenues of \$557,300, in FY10-11, FY11-12, and FY12-13.

2. Expenditures:

The PSC estimates that full rate regulation of a large wholesale supplier like FMPA would require a minimum of 2.5 FTEs, comprised of 1.5 additional regulatory analysts and 1 additional senior attorney. Based on these estimates, the PSC estimates recurring expenditures of \$162,618 in FY10-11, FY11-12, and FY12-13, and non-recurring expenditures of \$9,693 for each of these fiscal years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

It is unclear what impact the bill would have on local government expenditures. The impact will likely depend on the rates set by the PSC and the regulatory costs imposed. To the extent that FMPA or similarly situated legal entities created by interlocal agreement incur additional regulatory expenses, these expenses could be passed through to their constituent members.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unclear what impact the bill would have on the private sector, including ratepayers of municipal electric cooperatives that are members of FMPA or of other separate legal entities established by interlocal agreement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires a separate legal entity created by interlocal agreement to expend funds associated with the costs of regulation by the PSC, which expenditures would likely be passed on through wholesale rates to its constituent municipalities; however, it appears that an exemption applies because the bill appears to have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public utilities are defined in s. 366.02, F.S., as entities supplying electricity or gas to or for the public. The supply of electricity or natural gas "to or for the public" has not been interpreted to apply beyond retail transactions.¹ Because FMPA supplies electricity at wholesale, it is not clear if the bill will effectively place FMPA under the PSC's full ratesetting jurisdiction.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹ See *Lee County Electric Cooperative, Inc. v. Jacobs*, 820 So.2d 297 (Fla. 2002) (affirming the PSC's finding that it did not have jurisdiction over a rural electric cooperative's wholesale rate schedule established pursuant to contract).

HB 1217

2010

1 A bill to be entitled
 2 An act relating to the sale of electricity; amending s.
 3 366.02, F.S.; revising the definition of the term "public
 4 utility" to include specified separate legal entities
 5 created pursuant to the Florida Interlocal Cooperation Act
 6 of 1969; amending s. 366.11, F.S.; providing that
 7 provisions regulating public utilities apply to the sale
 8 of electricity by such separate legal entities; providing
 9 an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (1) of section 366.02, Florida
 14 Statutes, is amended to read:

15 366.02 Definitions.—As used in this chapter:

16 (1) "Public utility" means every person, corporation,
 17 partnership, association, separate legal entity created pursuant
 18 to s. 163.01(15), or other legal entity and their lessees,
 19 trustees, or receivers supplying electricity or gas (natural,
 20 manufactured, or similar gaseous substance) to or for the public
 21 within this state; but the term "public utility" does not
 22 include either a cooperative now or hereafter organized and
 23 existing under the Rural Electric Cooperative Law of the state;
 24 a municipality or any agency thereof; any dependent or
 25 independent special natural gas district; any natural gas
 26 transmission pipeline company making only sales or
 27 transportation delivery of natural gas at wholesale and to
 28 direct industrial consumers; any entity selling or arranging for

HB 1217

2010

29 sales of natural gas which neither owns nor operates natural gas
 30 transmission or distribution facilities within the state; or a
 31 person supplying liquefied petroleum gas, in either liquid or
 32 gaseous form, irrespective of the method of distribution or
 33 delivery, or owning or operating facilities beyond the outlet of
 34 a meter through which natural gas is supplied for compression
 35 and delivery into motor vehicle fuel tanks or other
 36 transportation containers, unless such person also supplies
 37 electricity or manufactured or natural gas.

38 Section 2. Subsection (1) of section 366.11, Florida
 39 Statutes, is amended to read:

40 366.11 Certain exemptions.—

41 (1) No provision of this chapter shall apply in any
 42 manner, other than as specified in ss. 366.04, 366.05(7) and
 43 (8), 366.051, 366.055, 366.093, 366.095, 366.14, 366.80-366.85,
 44 and 366.91, to utilities owned and operated by municipalities,
 45 whether within or without any municipality, or by cooperatives
 46 organized and existing under the Rural Electric Cooperative Law
 47 of the state, or to the sale of electricity, manufactured gas,
 48 or natural gas at wholesale by any public utility to, and the
 49 purchase by, any municipality or cooperative under and pursuant
 50 to any contracts now in effect or which may be entered into in
 51 the future, when such municipality or cooperative is engaged in
 52 the sale and distribution of electricity or manufactured or
 53 natural gas, or to the rates provided for in such contracts;
 54 however, this chapter applies to the sale of electricity by any
 55 separate legal entity created pursuant to s. 163.01(15).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1457 **Advanced Clean Energy Development Tax Credit**
SPONSOR(S): McBurney and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2578

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Energy & Utilities Policy Committee		Whittier <i>SMW</i>	Collins <i>BC</i>
2)	Economic Development Policy Committee			
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

Florida has been a leader in space exploration, and related technologies, since the late 1950s. After the successful Apollo program, NASA implemented the Space Shuttle program, which was designed to build and transport crew and supplies to the International Space Station and to service or repair the Hubble Space Telescope and other infrastructure. All (over 125) Space Shuttle launches have occurred at Kennedy Space Center in Florida. More than 40,000 jobs in the state are estimated to be attributable to the Kennedy Space Center's operations. The Space Shuttle program's retirement date of 2010 was announced several years ago, to be followed by the Constellation program, which was to initiate exploration of the "Moon, Mars, and Beyond." Last month, the federal government announced plans to eliminate the Constellation program and instead contract with commercial space launch companies to continue space research, transportation, and exploration activities. Much debate centers around the significant layoffs that will be required with the demise of the Space Shuttle program and the commercialization of the next program and how these two occurrences will negatively affect Florida's workforce, aerospace investments, and the state's economy, as a whole.

Significant efforts are being made to create and lure industries and space and related technology fields to the space coast. Several high-technology spinoffs are in the incubation stage and have made overtures to Florida indicating that if there are appealing tax incentives, they may be inclined to relocate to the state. Florida does not currently have an incentive program that specifically targets the "investigation of the latest processes and technologies to improve efficiency, reduce costs, and limit emissions from gas turbines during the production of energy."

The bill creates s. 220.194, F.S., regarding an advanced clean energy development corporate income tax credit. The bill provides that if a business is approved by Space Florida to receive an advanced clean energy tax credit pursuant to this section, it may apply the credit against the corporate income tax. "Advanced clean energy research and development" is defined as the "investigation of the latest processes and technologies designed to improve efficiency, reduce cost, and limit emissions from gas turbines during the production of energy." Space Florida may certify only one business to receive the credit. By December 1, 2010, the qualified applicant must execute and deliver a written agreement to Space Florida which includes a binding commitment to complete an advanced clean energy research and development project. Space Florida may revoke or modify its order certifying a business, and it may order the forfeiture of previously claimed tax credits or credits available to be taken.

To be eligible for certification, a business must meet five requirements:

- It must incur a liability of at least \$50 million to plan, design, and construct the facility.
- It must invest at least \$20 million on the facility by 2014.
- Expenditures for the project must be allotted to Florida vendors whenever feasible.
- New full-time equivalent employees hired to work on the project must receive a median hourly wage that is at least double the federal minimum wage.
- The business should attempt to enter into a sponsored research and development agreement for the term of the project that qualifies for exclusion from the property factor under s. 220.15(2)(c), F.S. (sponsored research contracts conducted in conjunction with and through a Florida university and certified as such to the Department of Revenue).

The bill affects the state's General Revenue Fund in the following way: the certified business is awarded a \$3 million tax credit annually for nine corporate tax years, plus an additional \$3 million credit in the year the application is approved and the agreement entered into, and an additional \$3 million credit in the year in which construction of the facility begins, totaling \$33 million in corporate tax credits over 9 years. Only \$6 million in credits may be claimed during any tax year.

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

STORAGE NAME: h1457.EUP.doc
DATE: 3/23/2010

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

Florida has been a leader in space exploration, and related technologies, since the late 1950s. After the successful Apollo program, NASA implemented the Space Shuttle program, which was designed to build and transport crew and supplies to the International Space Station and to service or repair the Hubble Space Telescope and other infrastructure. The Space Shuttle orbiters were the first U.S. spacecraft built to be reused and to return to Earth horizontally. On April 12, 1981, the first Space Shuttle orbiter to launch into lower earth's orbit was Columbia. Five orbiters capable of space flight were built: Atlantis, Challenger, Columbia, Discovery, and Endeavor. The Enterprise, a sixth orbiter, was built for suborbital test flights. With the tragic accidents destroying orbiters and crews of the Challenger in 1986 and the Columbia in 2003, there are only three orbiters still in commission. The final flight is scheduled for September 16, 2010, to be made by Discovery. All (over 125) Space Shuttle launches have occurred at Kennedy Space Center.¹

More than 40,000 jobs in the state are estimated to be attributable to the Kennedy Space Center's (KSC) operations.² The Space Shuttle program's retirement date of 2010 was announced several years ago, to be followed by the Constellation program, which was to initiate exploration of the "Moon, Mars, and Beyond." Last month, the federal government announced plans to eliminate the Constellation program and instead contract with commercial space launch companies to continue space research, transportation, and exploration activities. Much debate centers around the significant layoffs that will be required with the demise of the Space Shuttle program and the commercialization of the next program and how these two occurrences will negatively affect Florida's workforce, aerospace investments, and the state's economy, as a whole.

According to NASA's *Economic Impact of NASA In Florida, FY 2008*, "the money that NASA spends in Florida to support its space missions and other research activities represents an enormous injection into the economies of Brevard County, the larger Central Florida region and the State of Florida. These injections come in the form of wages to local residents and the purchase of goods and services from local businesses and organizations. In FY 2008, KSC and other NASA Centers injected \$1.93 billion into the Florida economy and \$1.80 billion into the Brevard County economy to support space program

¹ NASA's website: http://www.nasa.gov/mission_pages/shuttle/main/index.html.

² 2010 Senate Memorial 944, p. 1.

launch and landing operations at KSC.”³ Total direct spending in Brevard County was \$1.82 billion. Direct spending in other Central Florida counties and other counties in Florida totaled \$83 million and \$45 million, respectively.⁴

According to the Brevard Workforce Development Board, the Space Shuttle Program “employs a prime, sub-tier and related base support workforce level of approximately 2,000 civil servants and 9,160 shuttle-related employees” in the state. The majority of this workforce is located at or near the Kennedy Space Center. However, the total economic impact of the space shuttle program is statewide, and it has a specific shuttle-related supplier base of some 1,046 companies throughout the state.⁵

Space Florida has established ten industry clusters where they will focus their efforts for business development. Space Florida asserts that there are many ways to attract businesses to Florida and these efforts are being channeled to those industries that have the ability to use the skills of the aerospace workforce. Space Florida states that the “state’s best economic tool for attracting much of these future work opportunities is the strength and quality of its aerospace, shuttle-related workforce. With an aggressive range of economic development activities, Florida may be able to retain a significant share of the workers currently supporting the Shuttle program and stimulate new jobs in expanded business opportunities for the state.”⁶

Space Florida, is an “independent special district, a body politic and corporate, and a subdivision of the state,” whose mission is to foster the growth and development of a sustainable and world-leading aerospace industry in the state. Space Florida must promote aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs. In carrying out its duties and responsibilities, Space Florida must advise, coordinate, cooperate, and, when necessary, enter into memoranda of agreement with municipalities, counties, regional authorities, state agencies and organizations, appropriate federal agencies and organizations, and other interested persons and groups.⁷

Significant efforts are being made to create and lure industries and space and related technology fields to the space coast. Several high-technology spinoffs are in the incubation stage and have made overtures to Florida indicating that if there are appealing tax incentives, they may be inclined to relocate to the state. Florida does not currently have an incentive program that specifically targets the “investigation of the latest processes and technologies to improve efficiency, reduce costs, and limit emissions from gas turbines during the production of energy.”

Effects of Proposed Changes

The bill creates s. 220.194, F.S., regarding an advanced clean energy development corporate income tax credit. The bill provides that if a business is approved by Space Florida to receive an advanced clean energy tax credit pursuant to this section, it may apply the credit against the corporate income tax. The bill provides the following definitions for the section:

- **"Advanced clean energy research and development"** means the “investigation of the latest processes and technologies designed to improve efficiency, reduce cost, and limit emissions from gas turbines during the production of energy.”
- **"Advanced clean energy research and development project" or "the project"** means the “combination of facilities, equipment, technology, personnel, and partnerships brought together

³ Economic Impact of NASA In Florida, FY 2008, NASA, p. 6., found on the following NASA website: http://www.nasa.gov/centers/kennedy/pdf/318131main_economic-impact08.pdf.

⁴ Ibid., p. 7.

⁵ Aerospace Workforce Outlook Report, Brevard Workforce Development Board, Executive Summary, August 2007.

⁶ Aerospace Workforce Outlook Report – Phase III, Brevard Workforce Development Board, January 2010, p. 29.

⁷ Section 301.302, F.S.

to conduct advanced clean energy research and development so as to qualify a business to claim the tax credit provided under this section. A facility consists of a single building or structure, or a group of buildings or structures, which are under common ownership or control and located within the territory of the John F. Kennedy Space Center.”

- **"Business"** has the same meaning as provided in s. 220.03, F.S. ("Business" or "business firm" means any business entity authorized to do business in this state as defined in paragraph (e), and any bank or savings and loan association as defined in s. 220.62, F.S., subject to the tax imposed by the provisions of this chapter.)⁸ The term also includes an affiliated group of corporations that file a consolidated return in this state.
- **"Space Florida"** means the entity created under s. 331.302, F.S., to foster the growth and development of a sustainable and world-leading aerospace industry in this state.

Space Florida must make application forms and guidelines available by August 1, 2010, and must establish the application due date, which may not be later than September 1, 2010. A business may submit only one application and Space Florida may certify only one business to receive the credit. Applications must be reviewed in the order they are received, and one qualifying application shall be approved within 15 days after receipt. By December 1, 2010, the qualified applicant must execute and deliver a written agreement to Space Florida which includes a binding commitment to complete an advanced clean energy research and development project.

To be eligible for certification, a business must meet five requirements:

- It must incur a liability of at least \$50 million to plan, design, and construct the facility.
- It must invest at least \$20 million on the facility by 2014.
- Expenditures for the project must be allotted to Florida vendors whenever feasible.
- New full-time equivalent employees hired to work on the project must receive a median hourly wage that is at least double the federal minimum wage.
- The business should attempt to enter into a sponsored research and development agreement for the term of the project that qualifies for exclusion from the property factor under s. 220.15(2)(c), F.S. (sponsored research contracts conducted in conjunction with and through a Florida university and certified as such to the Department of Revenue).

The credit consists of three components:

- Upon approval of an application and the execution of a written agreement with Space Florida, including a binding commitment to complete an advanced clean energy research and development project, the certified business is awarded \$27 million in credits over a period of nine years which can be claimed \$3 million per year beginning with the year in which the agreement is executed.

⁸ Section 220.03(1)(e), F.S., provides that, "Corporation" includes all domestic corporations; foreign corporations qualified to do business in this state or actually doing business in this state; joint-stock companies; limited liability companies, under chapter 608; common-law declarations of trust, under chapter 609; corporations not for profit, under chapter 617; agricultural cooperative marketing associations, under chapter 618; professional service corporations, under chapter 621; foreign unincorporated associations, under chapter 622; private school corporations, under chapter 623; foreign corporations not for profit which are carrying on their activities in this state; and all other organizations, associations, legal entities, and artificial persons which are created by or pursuant to the statutes of this state, the United States, or any other state, territory, possession, or jurisdiction. The term "corporation" does not include proprietorships, even if using a fictitious name; partnerships of any type, as such; limited liability companies that are taxable as partnerships for federal income tax purposes; state or public fairs or expositions, under chapter 616; estates of decedents or incompetents; testamentary trusts; or private trusts.

- During the year in which the application for the project is approved and the written agreement with Space Florida is executed, the business may claim an additional tax credit of \$3 million.
- During the year in which construction of the project begins, the business may claim an additional tax credit of \$3 million.

No more than \$6 million in credit may be claimed in any tax year. Unused credit amounts are carried forward for up to 10 years. After 10 years from the time the credit became available for use, any unused credit expires.

Space Florida shall notify the Department of Revenue (DOR) of the taxpayer certified to receive this credit and shall provide annual recertifications of the taxpayer to the DOR. The certified business must attach Space Florida's most recent certification order to its corporate income tax return to claim the credit. A business that files on a consolidated basis under s. 220.131(1), F.S., may claim the credit on a consolidated return basis, up to the amount of tax imposed on the consolidated group.

Space Florida may revoke or modify its order certifying a business, and it may order the forfeiture of previously claimed tax credits or credits available to be taken. Space Florida must notify the DOR if this occurs. A business that is liable for unpaid taxes shall file an amended corporate income tax return and pay the tax and interest due within 60 days after Space Florida notifies the business that its credit has been forfeited or modified. Interest is imposed from the date the tax should have been paid had the credit not been claimed. A business that fails to pay the taxes or interest by the due date is subject to the penalties provided in s. 220.803, F.S. (negligence or fraud). The DOR may issue a notice of deficiency at any time within 3 years after the business claims a credit or receives a final order revoking or modifying the credits.

In addition to existing audit authority, the DOR may perform any financial or technical review or investigation, including examining the accounts, books, and records of the business, which is necessary to verify the proper application of credits taken and to ensure compliance with Chapter 220, F.S.

Space Florida and the DOR may adopt rules to administer s. 220.194, F.S., including rules for:

- Forms and procedures; and
- Requirements and basis for establishing entitlement to a credit and examination and audit procedures.

B. SECTION DIRECTORY:

Section 1. Creates s. 220.194, F.S., relating to an advanced clean energy development tax credit.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill affects the state's General Revenue Fund in the following way: the certified business is awarded a \$3 million tax credit annually for 9 corporate tax years, plus an additional \$3 million credit in the year the application is approved and the agreement entered into, and an additional \$3 million credit in the year in which construction of the facility begins, totaling \$33 million in corporate tax credits over 9 years. The maximum tax credit amount that may be claimed during any tax year is \$6 million. Unused credit amounts are carried forward for up to 10 years. After 10 years from the time the credit became available for use, any unused credit expires.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector impact of a tax credit for a business to promote research and development of gas turbine technology has not been determined. The bill does provide that in order to qualify for the tax credit, the applying business must guarantee that new F.T.E. employees hired to work on the project will receive a medial hourly wage that is at least 200% of the federal minimum wage and that expenditures for the project will be "allotted to Florida vendors whenever feasible."

D. FISCAL COMMENTS:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to Space Florida and the Department of Revenue to administer s. 220.194, F.S., including rules for:

- Forms and procedures; and
- Requirements and basis for establishing entitlement to a credit and examination and audit procedures.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue has indicated a concern about the following:

- Section 220.02(8), F.S., provides for the order in which credits are to be claimed, relative to other credits for which a taxpayer is eligible, and needs to be amended to reflect the order in which this credit is to be claimed relative to all other corporate income tax credits.

- When there is a credit provision in Chapter 220, F.S., there is generally a corresponding addition in s. 220.13, F.S., which prevents a taxpayer from receiving both a deduction and a credit for the same item. This bill does not provide for an addition that corresponds to the amount of the credit allowed, which will allow eligible taxpayers to receive a credit on their Florida return and a deduction on their Florida return for the same expenditures. Thus, a taxpayer can receive a tax benefit greater than the amount of credit provided.
- The Department may need authority to share information concerning this credit with Space Florida.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **1457**

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(s) McBurney offered the following:
4

5 **Amendment (with directory and title amendments)**

6 Delete line(s) 166 insert:
7

8 4. To enter into a sponsored
9
10

29 authorized tax credit; authorizing the Department of
 30 Revenue to issue a notice of deficiency to the certified
 31 business under certain circumstances; authorizing the
 32 Department of Revenue and Space Florida to adopt rules
 33 relating to the tax credit; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. Section 220.194, Florida Statutes, is created
 38 to read:

39 220.194 Advanced clean energy development tax credit.—

40 (1) DEFINITIONS.—As used in this section, the term:

41 (a) "Advanced clean energy research and development" means
 42 the investigation of the latest processes and technologies
 43 designed to improve efficiency, reduce cost, and limit emissions
 44 from gas turbines during the production of energy.

45 (b) "Advanced clean energy research and development
 46 project" or "the project" means the combination of facilities,
 47 equipment, technology, personnel, and partnerships brought
 48 together to conduct advanced clean energy research and
 49 development so as to qualify a business to claim the tax credit
 50 provided under this section. A facility consists of a single
 51 building or structure, or a group of buildings or structures,
 52 which are under common ownership or control and located within
 53 the territory of the John F. Kennedy Space Center.

54 (c) "Business" has the same meaning as provided in s.
 55 220.03. The term also includes an affiliated group of
 56 corporations that file a consolidated return in this state.

57 (d) "Space Florida" means the entity created under s.
 58 331.302 to foster the growth and development of a sustainable
 59 and world-leading aerospace industry in this state.

60 (2) TAX CREDIT.—

61 (a) A business that is approved by Space Florida to
 62 receive the advanced clean energy tax credit pursuant to this
 63 section may apply the credit against the tax imposed by this
 64 chapter.

65 (b) The credit consists of three components.

66 1. Upon approval of an application and the execution of a
 67 written agreement with Space Florida, including a binding
 68 commitment to complete an advanced clean energy research and
 69 development project, the certified business is awarded a credit
 70 in the amount of \$3 million annually, which may be claimed
 71 beginning with the corporate tax year of the business in which
 72 the agreement is executed and ending in the 8th corporate tax
 73 year thereafter, for a total credit amount of \$27 million.

74 2. During the tax year of the business in which the
 75 application for the project is approved and the written
 76 agreement with Space Florida is executed, the business may claim
 77 a tax credit in the amount of \$3 million.

78 3. During the tax year of the business in which
 79 construction begins on the facility for the project within the
 80 territory of the John F. Kennedy Space Center, the business may
 81 claim a tax credit in the amount of \$3 million.

82 (c) The maximum tax credit amount that may be claimed by
 83 the approved business during any tax year is \$6 million. If the
 84 business does not claim all of the credits for which it is

85 eligible in any tax year, the unused amount may be carried
 86 forward for a period not to exceed 10 years following the date
 87 that the credit became available to be claimed, after which time
 88 the credit amount expires and may not be used. The business may
 89 claim the carryover credit in a subsequent year when the tax
 90 imposed by this chapter exceeds the credit for such year after
 91 applying any other credits and unused credit carryovers listed
 92 in s. 220.02(8).

93 (d) A business that files a consolidated return in this
 94 state as a member of an affiliated group pursuant to s.
 95 220.131(1) may claim the credit on a consolidated return basis
 96 up to the amount of tax imposed on the consolidated group.

97 (3) APPLICATION PROCESS.—A business seeking to be eligible
 98 for the tax credit under this section must submit an application
 99 to Space Florida by the date established by Space Florida, which
 100 may not be later than September 1, 2010. Space Florida shall
 101 make application forms and guidelines available to applicants by
 102 August 1, 2010.

103 (a) Space Florida shall review applications in the order
 104 applications are received to determine whether an applicant is
 105 qualified to receive the credit and shall approve a qualifying
 106 application within 15 days after receipt. By December 1, 2010,
 107 the qualified applicant must execute and deliver a written
 108 agreement to Space Florida which includes a binding commitment
 109 to complete an advanced clean energy research and development
 110 project consistent with the requirements of this section. A
 111 business may submit only one complete application. Space Florida
 112 may not accept an incomplete or placeholder application. Space

113 Florida may certify only one applicant as eligible for the tax
 114 credits under this section.

115 (b) An application must contain:

116 1. Documentation determined necessary by the applicant or
 117 Space Florida demonstrating the applicant's ability to meet the
 118 requirements of paragraph (4) (b);

119 2. Any other information or documentation prescribed by
 120 Space Florida affirmatively demonstrating that the applicant
 121 qualifies for the credit; and

122 3. An affidavit certifying that the information contained
 123 in the application is correct.

124 (c) Upon execution of the agreement, Space Florida shall
 125 issue an order to the qualified applicant and the Department of
 126 Revenue certifying that the applicant is qualified for the tax
 127 credits under this section. Thereafter, Space Florida shall
 128 issue an annual recertification order to the business and the
 129 Department of Revenue. The certified business must attach Space
 130 Florida's most recent order to the tax return on which the
 131 credit is claimed.

132 (d) Upon execution of the agreement and for each year
 133 during which the business claims a credit on a return, the
 134 business shall submit documentation required by Space Florida
 135 demonstrating activity consistent with the representations in
 136 the application and the requirements set forth in paragraph
 137 (4) (b). The documentation must include an affidavit certifying
 138 that the documentation submitted is correct.

139 (e) Space Florida shall ensure that the amount of
 140 corporate income tax credits granted in this section does not

141 exceed the limits provided in this section.

142 (4) ELIGIBILITY REQUIREMENTS.—

143 (a) The credit authorized by this section is reserved for
 144 a business that creates an advanced clean energy research and
 145 development project, has entered into a written agreement with
 146 Space Florida, and is certified to be eligible for tax credits
 147 by Space Florida.

148 (b) Space Florida may not certify a business as eligible
 149 to receive a tax credit under this section unless it determines
 150 that the business's application affirmatively demonstrates that
 151 the applicant agrees:

152 1. To incur a liability of at least \$50 million to plan,
 153 design, and construct the advanced clean energy research
 154 facility.

155 2. To invest at least \$20 million on the facility by 2014.
 156 This investment includes the hard and soft costs customarily
 157 associated with the use or acquisition of a site, site design
 158 and preparation, and improvements to identified real property
 159 located within the territory of the John F. Kennedy Space
 160 Center, as well as the customary hard and soft costs associated
 161 with the lease or purchase of depreciable machinery and
 162 equipment, including attendant design services that are directly
 163 related to the project.

164 3. That expenditures for the project will be allotted to
 165 Florida vendors whenever feasible.

166 4. To make its best efforts to enter into a sponsored
 167 research and development agreement for the term of the project
 168 which qualifies for certification pursuant to s. 220.15(2)(c).

169 5. That new full-time equivalent employees hired to work
 170 on the project will receive a median hourly wage that is at
 171 least 200 percent of the federal minimum wage.

172 (5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF
 173 CREDITS.—

174 (a) In addition to its existing audit authority, the
 175 Department of Revenue may perform any financial or technical
 176 review or investigation, including examining the accounts,
 177 books, and records of the business, which is necessary to verify
 178 the proper application of credits taken in a tax return and to
 179 ensure compliance with this chapter.

180 (b) Space Florida may, by order, revoke or modify its
 181 order certifying a business as eligible for a tax credit under
 182 this section, and may also order the forfeiture of all or part
 183 of any previously claimed tax credits or credits available to be
 184 taken if, as the result of an audit, investigation, or
 185 examination, it is proven that information provided by the
 186 business in the application, or in a statement, representation,
 187 record, report, plan, or other document provided to Space
 188 Florida in an attempt to receive tax credits under this section,
 189 was false in a material respect at the time it was submitted and
 190 that a person acting on behalf of the business knew, or should
 191 have known, that the information submitted was false.

192 (c) Space Florida may, by order, revoke or modify its
 193 order certifying a business as eligible for a tax credit under
 194 this section, and may also order the forfeiture of previously
 195 claimed tax credits or credits available to be taken, if Space
 196 Florida determines that the business has not incurred

197 liabilities in the amounts or within the period specified in
 198 paragraph (4) (b). If actual expenditures are not made in the
 199 amounts or in the period specified in paragraph (4) (b), Space
 200 Florida may allow the business to provide adequate assurance
 201 that qualifying expenditures will be made within a reasonable
 202 time. Such adequate assurances require the business to provide
 203 proof of financial security to ensure repayment of any
 204 previously claimed tax credit. Until the qualifying expenditures
 205 are made, the business may not claim any tax credits under this
 206 section. The amount of any tax credits forfeited under this
 207 paragraph shall be an amount equal to such proportion as the
 208 required investment bears to the actual investment.

209 (d) Space Florida must immediately notify the Department
 210 of Revenue of any order affecting a previously authorized tax
 211 credit. A business that is liable for unpaid taxes shall file
 212 with the Department of Revenue an amended return or such other
 213 report as the Department of Revenue prescribes by rule. The
 214 business shall pay any required tax and interest within 60 days
 215 after Space Florida notifies the business that previously
 216 approved credits have been forfeited or modified. If the
 217 forfeiture or modification order is contested, the business
 218 shall file an amended return or other report within 30 days
 219 after the order revoking or forfeiting tax credits becomes
 220 final. A business that is liable for taxes avoided must pay the
 221 tax due plus interest at the rate established under s. 220.807,
 222 computed from the date that tax would have been due if the
 223 credit had not been taken. The taxes and interest are due at the
 224 time the amended return is filed. A business that fails to pay

225 | the taxes and interest by the due date is subject to the
 226 | penalties provided in s. 220.803.

227 | (e) The department may issue a notice of deficiency at any
 228 | time within 3 years after the business claims a credit or
 229 | receives a final order from Space Florida that previously
 230 | approved tax credits have been revoked or modified.

231 | (6) RULES.—Space Florida and the department may adopt
 232 | rules to administer this section, including rules relating to:

233 | (a) The forms and procedures required to apply for the
 234 | credit and to review applications.

235 | (b) The forms required to claim a tax credit under this
 236 | section, the requirements and basis for establishing an
 237 | entitlement to a credit, and examination and audit procedures
 238 | required to administer this section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EUP 10-04 Reorganization of the Public Service Commission
SPONSOR(S): Energy & Utilities Policy Committee
TIED BILLS: IDEN./SIM. BILLS:

Table with columns: DIRECTOR, REFERENCE, ACTION, ANALYST, STAFF. Row 1: Orig. Comm.: Energy & Utilities Policy Committee, Keating, Collins.

SUMMARY ANALYSIS

The Florida Public Service Commission (PSC) came under intense scrutiny in 2009 as a result of several allegations of unethical behavior. This string of allegations has cast the PSC in a negative light, heightened public distrust of the agency, and created uncertainty in Florida's regulatory environment.

The bill reorganizes the PSC into two structurally separate entities: the PSC, whose primary role will be to serve as an independent and impartial decision maker with the assistance of professional and technical advisory staff; and the Office of Regulatory Staff ("office") created within the Legislature, whose primary role is to employ the services of professional and technical staff to advocate for the public interest in proceedings before the PSC and proceedings related to matters within the PSC's jurisdiction.

The bill requires that each applicant for the PSC have a bachelor's degree, or a more advanced degree, from an accredited institution of higher learning, plus a commensurate amount of professional experience in one or more of eight specific fields related to the functions of the PSC.

The bill adapts certain provisions from the Code of Judicial Conduct as standards of conduct applicable to commissioners. The bill applies many of these standards to the executive director of the office.

The bill defines ex parte communications and prohibits commissioners and their advisory staff from engaging in ex parte communications concerning the merits or procedural aspects of proposed agency action proceedings and formal proceedings under ss. 120.565, 120.569, or 120.57, F.S.

The bill provides that persons involved in the selection of PSC commissioners, including the Governor and specified legislative members, shall not attempt to sway the independent judgment of the Commission by bringing pressure to bear upon a commissioner through that person's role in the selection or reconfirmation process.

The bill creates provisions that require each person offering testimony in a commission proceeding to disclose, at the time the testimony is offered, any financial or fiduciary relationship between the person and any party to the proceeding.

The bill will require an indeterminate expenditure of funds to establish the office and to modify systems and processes to reflect the new roles of the PSC and the office.

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

Role and Organization of the Florida Public Service Commission

The Florida Public Service Commission ("PSC" or "commission") is an arm of the legislative branch of government.¹ The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.² In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.³

On its website,⁴ the PSC provides the following overview of its role:

The work of the Florida Public Service Commission is a balancing act. The Commission must balance the needs of a utility and its shareholders with the needs of consumers. Traditionally, the Commission achieved this goal by establishing exclusive utility service territories, regulating the rates and profits of a utility, and placing an affirmative obligation on the utility to provide service to all who requested it. For electric and water customers in the state, many of the Commission's traditional methods for achieving the balance continue today. Legislative action during the 1995 session to open up the local telephone market to increased competition, however, calls for the Commission to facilitate entry of new firms into the local telephone market, while at the same time ensuring that neither the new entrant nor the incumbent local exchange company is unfairly

¹ Section 350.001, F.S.

² <http://www.psc.state.fl.us/about/overview.aspx#one>

³ *Ibid.* During 2009, the PSC regulated five investor-owned electric companies, seven investor-owned natural gas utilities, and more than 160 investor-owned water and/or wastewater utilities. The PSC also has competitive market oversight for more than 1,250 telecommunications companies in the state of Florida. While the PSC does not regulate the rates and service of publicly-owned, municipal or cooperative utilities, it does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations and planning, over 34 municipally-owned electric systems and 18 rural electric cooperatives. The PSC also has jurisdiction, with regard to territorial boundaries and safety, over 27 municipally-owned natural gas utilities and exercises safety authority over all electric and natural gas systems operating in the state.

⁴ *Ibid.*

advantaged or disadvantaged. Section 364.01(4), F.S., calls for the Commission to exercise its jurisdiction to encourage and promote competition. The Commission's role in the increasingly competitive telephone industry remains one of balance.

In performing this role, the PSC conducts proceedings ranging from workshops and rulemaking to informal "proposed agency action" proceedings and formal evidentiary hearings. Among state agencies in Florida, the PSC is unique with respect to the manner in which it handles formal evidentiary proceedings. Most state agencies refer contested matters to the Division of Administrative Hearings (DOAH) for formal evidentiary hearings and fact finding. Under this process, an administrative law judge (ALJ) is assigned to hear the case, with due regard to the expertise required for the matter.⁵ The agency may participate as a party.⁶ After hearing the evidence and arguments presented by the parties, the ALJ issues a recommended order containing findings of fact, conclusions of law, and recommended disposition of the case.⁷ The ALJ's findings of fact must be based "exclusively on the evidence of record and on matters officially recognized."⁸ Subject to certain requirements, the agency may reject or modify the ALJ's conclusions of law over which the agency has substantive jurisdiction. The agency has limited authority to modify or reject the ALJ's findings of fact.⁹ Although it is authorized to refer matters to DOAH for assignment to an ALJ,¹⁰ the PSC is unique in that it conducts most of its own formal evidentiary hearings. In these hearings, commissioners rule on procedural matters, establish evidence of record, weigh the record evidence, and apply the law to the facts of the case. Thus, in conducting formal hearings, *PSC commissioners essentially serve the role of administrative law judges*. Unlike ALJ's, however, commissioners have the authority to make the final findings of fact and conclusion of law. In proceedings at either DOAH or the PSC, parties and interested persons are prohibited from making ex parte communications with the decision maker concerning the merits of the proceeding.¹¹

The PSC is authorized to employ clerical, technical, and professional personnel reasonably necessary for the performance of its duties, including one or more court reporters.¹² In performing its role, the PSC has authority to access the books and records of regulated entities, including relevant books and records of affiliates,¹³ to require reports,¹⁴ to conduct inquiries,¹⁵ and to perform financial, management, and operations audits of regulated entities.¹⁶ The PSC is authorized to initiate certain types of proceedings within its jurisdiction.¹⁷ The PSC is funded

⁵ Section 120.569(2)(a), F.S. Pursuant to s. 120.65, F.S., administrative law judges must have been a member of The Florida Bar in good standing for the preceding 5 years.

⁶ *Id.*

⁷ Section 120.57(1)(k), F.S.

⁸ Section 120.57(1)(j), F.S. Pursuant to s. 120.57(1)(f), F.S., the record of a proceeding consists only of the following: all notices, pleadings, motions, and intermediate rulings; evidence admitted; those matters officially recognized; proffers of proof and objections and rulings thereon; proposed findings and exceptions; any decision, opinion, order, or report by the presiding officer; all staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records; all matters placed on the record after an ex parte communication; and the official transcript.

⁹ Section 120.57(1)(l), F.S.

¹⁰ Sections 350.125 and 120.569(2), F.S.

¹¹ Sections 120.66(1), F.S., and 350.042(1), F.S.

¹² Section 350.06, F.S.

¹³ See, e.g., ss. 364.183, 366.093, and 367.156, F.S.

¹⁴ See, e.g., s. 350.117, F.S.

¹⁵ Section 350.121, F.S. This authority has not been exercised by the PSC in almost 20 years.

¹⁶ Section 350.117, F.S.

¹⁷ See s. 364.15, F.S. (compelling repairs and improvements to telecommunications facilities); s. 364.335, F.S. (granting certificates to construct, operate, or control telecommunications facilities); s. 364.3381, F.S. (investigation of anticompetitive behavior); s. ss. 366.06, 366.07, 366.071, and 366.076, F.S. (setting rates for public utilities); s. 367.045, F.S. (amending, revoking, and suspending certificates of authorization to provide water or wastewater service); ss. 367.081, 367.082, 367.0822, 367.083, and 367.101, F.S. (setting rates for water and wastewater utilities); s. 367.0817, F.S. (relating to reuse projects); s. 368.061, F.S. (compelling compliance with gas safety laws); ss. 368.106 and 368.107, F.S. (approving rates for

primarily through regulatory assessment fees, imposed on regulated entities, that are deposited into the Florida Public Service Regulatory Trust Fund.¹⁸

As set forth in its most recent Statement of Agency Organization & Operations, the PSC carries out its work primarily through two offices: the Office of the Executive Director and the Office of the General Counsel.¹⁹

The Office of the Executive Director is responsible for directing, planning, and administering the overall activities of the commission staff with the exception of the Office of the General Counsel. The Executive Director, who is selected by the commission, consults with and advises the commissioners on regulatory, internal management, and budgetary matters and acts as an interagency liaison. Various divisions under the Office of Executive Director include those responsible for administration (including accounting, budgeting, human resources, purchasing, and facility management), clerk's duties (including maintaining case files and records and issuing orders and notices), information technology services, and public information (including serving as liaison to the public and media). In addition, the Office of Executive Director oversees the technical divisions involved directly in the substantive issues within the PSC's jurisdiction.

The Office of the General Counsel provides legal counsel to the commission on all matters under its jurisdiction. This office also supervises the procedural and legal aspects of all cases before the commission. In cases involving evidentiary hearings before the commission, the office is responsible for conducting discovery, presenting staff positions and testimony, and cross-examining other parties' witnesses. In conjunction with the appropriate technical staff, the office prepares recommendations to the commission and prepares written commission orders. The office is also responsible for defending commission orders on appeal, for defending commission rules challenged before the Division of Administrative Hearings, and for representing the commission before state and federal courts.

Prior to 1979, three commissioners were elected to the PSC in a statewide election. In 1978, the Legislature changed the commission to a five-member board,²⁰ with members appointed to staggered 4-year terms.²¹ This structure remains today. A Chair is selected by majority vote of the commissioners to serve a two-year term.²² The Chair is the chief administrative officer of the PSC, presiding at all hearings and conferences when present, setting PSC hearings, and performing those duties prescribed by law.²³

Public Service Commissioners – Appointment & Qualifications

Although the PSC is an arm of the legislative branch of government, the Legislature has delegated to the Governor a "limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members" in a specific manner²⁴; commissioners are appointed by the Governor from a slate of nominees selected by the Public

intrastate natural gas transmission pipelines); and ss. 403.519, 403.537, and 403.9422, F.S. (determining need for electrical power plants and transmission lines and natural gas transmission pipelines).

¹⁸ Section 350.113, F.S.

¹⁹ *Florida Public Service Commission, Statement of Agency Organization & Operations*, February 2010.

<http://www.psc.state.fl.us/home/files/SAOO.pdf>

²⁰ <http://www.psc.state.fl.us/about/overview.aspx#one>

²¹ Section 350.01, F.S.

²² *Id.*

²³ *Id.* See also, <http://www.psc.state.fl.us/about/overview.aspx#one>

²⁴ *Id.*

Service Commission Nominating Council²⁵ (PSC Nominating Council), and the Governor's appointments must be confirmed by the Senate.²⁶

Before nominating a person to the Governor for appointment, the PSC Nominating Council must determine that the person is competent and knowledgeable in one or more fields, including but not limited to: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or "another field substantially related to the duties and functions of the commission." The law requires that the commission fairly represent these fields.²⁷ Currently, commissioners are appointed at a salary of \$130,036 per year.²⁸

Public Service Commissioners – Standards of Conduct

The PSC is required to perform its duties independently.²⁹ Part III of Chapter 112, F.S., establishes a code of ethics for public officers and employees, which includes Public Service Commissioners. Generally, this code prohibits public officers, including commissioners, from soliciting or accepting anything of value to influence a vote or official action, using their official position to secure a special benefit, disclosing or using non-public information for personal benefit, soliciting gifts from lobbyists, and soliciting an honorarium from anyone or accepting an honorarium from a lobbyist. This code also establishes restrictions on public officers, including commissioners, from doing business with one's own agency, having outside employment or contractual relationships that conflict with public duties, representing any party before one's agency for compensation for two years after leaving office, and employing relatives in the agency. Finally, this code requires that public officers, including commissioners, disclose voting conflicts when a vote would result in a special private gain or loss, file quarterly reports for gifts over \$100 from persons not lobbyists or relatives, file quarterly reports for receipt of honorarium-related expenses from lobbyists, and disclose certain financial interests.

In addition to the provisions of part III of chapter 112, public service commissioners are subject to more stringent requirements in s. 350.041, F.S. In the event of a conflict between part III of chapter 112 and s. 350.041, F.S., the more restrictive provision applies.³⁰ Section 350.041, F.S., provides the following standards of conduct:

- A commissioner may not accept anything from a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not accept anything from a party in a proceeding currently pending before the commission.
- A commissioner may not accept any form of employment with, or engage in any business activity with, a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not have any financial interest in a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility), except for shares in a mutual fund.
- A commissioner may not serve as the representative of, or serve as an executive officer or employee of, a political party; campaign for any candidate for public office; or become a candidate for any public office without first resigning.
- A commissioner, during his or her term of office, may not make any public comment on the merits of a formal proceeding in which a person's substantial interests are determined.

²⁵ Pursuant to s. 350.031, F.S., the PSC Nominating Council consists of 12 members, with six appointed by the President of the Senate and six appointed by the Speaker of the House of Representatives. The President and the Speaker must each appoint three members from their own chamber, including one member from the minority party, and three nonmembers.

²⁶ Section 350.031, F.S.

²⁷ Section 350.031, F.S.

²⁸ http://www.flsenate.gov/data/pscnc/position_description.pdf

²⁹ Section 350.001, F.S.

³⁰ Section 350.041(1), F.S.

- A commissioner may not conduct himself or herself in an unprofessional manner during the performance of official duties.
- A commissioner must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.
- A Commissioner may not directly or indirectly, through staff or other means, solicit anything of value from a regulated public utility, an affiliate or subsidiary of the utility, or any party appearing in a proceeding considered by the Commission in the last 2 years.

Ex Parte Communications

Commissioners are prohibited from engaging in certain ex parte communications with persons who are “legally interested in a proceeding” before the commission.³¹ This prohibition applies only to communications concerning “the merits, threat, or offer of reward” in a proceeding, and thus does not include discussions on procedural issues.³² This prohibition does not preclude ex parte communications in all proceedings: rulemaking, declaratory statements, workshops, and internal affairs meetings are specifically excluded.³³ Thus, the prohibition applies to proceedings in which the substantial interests of a person are determined, including proposed agency action proceedings and formal hearings under ss. 120.569 and 120.57, F.S. This prohibition prohibits an individual from discussing ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days.³⁴ The prohibition does not apply to commission staff.³⁵ The law does not define ex parte communications.

If a commissioner receives a prohibited ex parte communication, he or she must: place on the record of the proceeding a copy of any written correspondence or a memo stating the substance of any oral communication; provide written notice to all parties to the proceeding; and provide all parties the opportunity to respond to the ex parte communication. The commissioner may choose to withdraw from the proceeding if he or she believes it is necessary to do so to eliminate the effect of having received the communication.³⁶ Any individual other than a commissioner that makes a prohibited ex parte communication must submit to the commission: a written statement describing the nature of the communication; copies of all written communications made and written responses received; and a memorandum stating the substance of all oral communications made and oral responses received. The commission must place this information on the record of the relevant proceeding.³⁷

The penalties for failing to timely place a prohibited ex parte communication on the record depend on the party involved. A commissioner who fails to place the communication on the record within 15 days is subject to removal and a civil penalty of up to \$5,000.³⁸ Any other person who participated in the communication faces a 2-year ban on practice before the PSC.³⁹

Post-Employment Restrictions on Public Service Commissioners and Staff

For the first two years after leaving office, a former commissioner may not appear before the PSC representing any client or industry regulated by the PSC.⁴⁰ Further, during those first two years, a former commissioner may not accept employment or compensation from a regulated

³¹ Section 350.042(1), F.S. The law does not define “ex parte communications” for purposes of this section. The law also does not define what persons are “legally interested in a proceeding.”

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Section 350.042(4), F.S.

³⁷ Section 350.042(5), F.S.

³⁸ Section 350.042(6), F.S.

³⁹ Section 350.042(7)(d), F.S.

⁴⁰ Section 350.0605, F.S.

public utility, related business entities, business competitors of local telephone companies, or any entity that was a party to a commission proceeding in the prior two years.⁴¹

A former PSC employee cannot appear before the commission on behalf of a regulated entity in any matter that the employee worked on and that was pending at the time the employee left.⁴² In addition, a former PSC employee cannot personally represent anyone before the commission for a period of two years after leaving the commission.⁴³

Committee on Public Counsel Oversight

In 2005, the Legislature created the Committee on Public Service Commission Oversight in s. 350.012, F.S. The committee, comprised of 12 members (6 Senate members appointed by the President of the Senate and 6 House members appointed by the Speaker of the House of Representatives), was created to appoint a public counsel and to screen persons nominated by the PSC Nominating Council for the Governor's consideration for appointment.⁴⁴

In 2008, the Legislature removed the committee's role in the commissioner selection process. The committee was renamed the Committee on Public Counsel Oversight.⁴⁵ Its only remaining duty is to appoint a Public Counsel.

Recent Issues Surrounding the Public Service Commission

The PSC came under intense scrutiny in 2009 as a result of several allegations of unethical behavior. Some of these allegations were formalized and investigated by various entities, including the Leon County State Attorney's Office, the Florida Department of Law Enforcement (FDLE), the Florida Commission on Ethics, and the PSC's Inspector General. Each of the formal allegations, and the resulting findings, are summarized below.

- In August 2009, a PSC staff member informed commissioners that he had attended a party at the home of a vice president of a regulated utility company and later resigned. An investigation by the PSC's Inspector General concluded that the employee's attendance at the party, "although not specifically prohibited by rule or law, constituted poor judgment and could create negative perceptions . . ." ⁴⁶
- In August 2009, FDLE, at the request of the State Attorney's Office, investigated a complaint from a PSC commissioner concerning the exchange of Blackberry personal identification numbers between some commissioners' aides and a utility company's representatives to determine whether these activities facilitated public records law violations or prohibited ex parte communications. After review of sworn testimony from various PSC commissioners and their aides and Blackberry messages retrieved from the PSC, the State Attorney's Office found that there did not appear to be any criminal activity facilitated by PSC commissioners or their staff which violated Florida statute. The FDLE report noted that the complainant presented no specific information that identified any criminal act.⁴⁷
- In 2009, a complaint was filed at the Commission on Ethics alleging a prohibited ex parte communication between a PSC commissioner and an attorney of a regulated utility company, facilitated by the commissioner's aide. The Florida Commission on Ethics dismissed the complaint after determining that the communication was not prohibited because it involved procedural matters.⁴⁸ A new complaint concerning the same event

⁴¹ *Id.*

⁴² *Id.*

⁴³ Section 112.313(9), F.S.

⁴⁴ Chapter 2005-132, L.O.F.

⁴⁵ Chapter 2008-227, L.O.F.

⁴⁶ *Memorandum re Review of SGA Director's attendance at FPL employee's social function* (OIG #09/10-15), September 2, 2009.

⁴⁷ Florida Department of Law Enforcement Investigative Report, Case No. EI-73-8488.

⁴⁸ <http://blogs.tampabay.com/buzz/2009/09/ethics-commission-dismisses-complaint-against-pscs-edgar.html>

was reportedly filed with the Commission on Ethics in 2010 but has not yet been resolved.⁴⁹ In addition, FDLE is reportedly reviewing information presented by the PSC to determine whether an inquiry would be appropriate.⁵⁰

Other allegations and suggestions of impropriety were made by commissioners at public meetings and by other sources through various media outlets, but none of these were formally made to, or investigated by, any entity charged with addressing such matters. Though none of the allegations have yet resulted in a finding that any PSC commissioner or staff member violated any ethical standard established by statute or PSC rule, this string of allegations has cast the PSC in a negative light and has heightened public distrust of the agency.

By letter to the Senate President, the Speaker of the House of Representatives, the Governor, and the Attorney General, dated September 28, 2009, Adora Obi Nweze, President of the Florida State Conference of Branches of the NAACP, requested that the Legislature and the Governor address these issues through "constructive investigation and open dialogue among all concerned parties" to develop "an updated code of conduct that provides all stakeholders with clarity and certainty." While supporting a review of the allegations made to date, the letter expressed the belief that "the impetus for making the allegations arise from interested parties on both sides who are trying to use the current ethics process as a tool to distract the Commission from the work at hand and perhaps make it impossible to render impartial decisions."

In addition, recent events surrounding the PSC have created uncertainty in Florida's regulatory environment. In October 2009, Moody's Investors Service, which provides credit ratings and research covering debt instruments and securities,⁵¹ issued the following statement:

Moody's Views Politicized Florida Rate Cases as Credit Negative

Moody's views the highly politicized atmosphere surrounding the base rate proceedings of Florida Power & Light Company (FPL, A1 Issuer Rating) and Progress Energy Florida, Inc. (PEF, A3 Issuer Rating) as negative to the credit quality of both utilities and an indication that the political and regulatory environment for investor-owned utilities in Florida may be deteriorating. These base rate increases were filed during a period of challenging economic conditions in the state, which has recently begun to lose population, contributing to weak sales volumes at both utilities. Rate relief that is insufficient to maintain cash flow coverage metrics at or close to historical levels could pressure the credit ratings of both utilities.

Over the last several weeks, the governor of Florida has become increasingly vocal in expressing his opposition to the utility rate requests, appointed two new commissioners to the Florida Public Service Commission (FPSC), and requested that the FPSC delay action on the rate cases until these new commissioners are in place in January. On October 5, one of the sitting commissioners that had been expected to vote on the pending rate cases resigned from the FPSC effective immediately, temporarily leaving the Commission with four sitting members. On October 6, the four remaining FPSC members unanimously denied FPL's petition of need for the construction of a new underground natural gas pipeline in Florida, indicating that FPL did not prove that the pipeline was the most cost-effective alternative and ordering the company to rebid the project.

Moody's views political intervention in the utility regulatory process as detrimental to credit quality, sometimes resulting in adverse rate case outcomes. In some cases, this has led to multi-notch credit rating downgrades of utilities in states

⁴⁹ <http://miamiherald.typepad.com/nakedpolitics/2010/01/new-ethics-complaint-filed-against-pscs-edgar.html>

⁵⁰ <http://www.tampabay.com/news/politics/stateroundup/psc-inspector-general-requests-fdle-investigation/1078578>

⁵¹ <http://v3.moody's.com/Pages/atc.aspx>

where this has occurred, most notably Illinois and Maryland in recent years. Moody's notes that such intervention is highly unusual for the state of Florida, which has traditionally been one of the more constructive utility regulatory jurisdictions in the nation, characterized by fair and balanced regulatory proceedings with little to no political interference or controversy.

Moreover, the turnover of commissioners at state utility regulatory bodies heightens the level of uncertainty surrounding utility rate proceedings because of the lack of an established track record, the limited experience of new commissioners, and the challenges that many new commissioners face in quickly coming up to speed on often complicated utility rate matters. The replacement of experienced and seasoned commissioners on the FPSC with newcomers well after the rate proceedings have begun and most hearings have been completed increases the possibility of a rate case outcome that is negative to utility credit quality.⁵²

On November 4, 2009, the Energy & Utilities Policy Committee of the Florida House of Representatives heard from its staff concerning the current standards of conduct, rules on ex parte communications, and other standards applicable to PSC commissioners and staff. The committee also took testimony from the executive director of the PSC concerning steps taken since the early 1990s to address concerns about ex parte communications, including the development of rules and ethics training, and the PSC's plans to address the recent events through a series of workshops. The committee also took testimony from the Public Counsel concerning its role in the PSC's proceedings and from the general counsel of the Office of Legislative Services concerning the selection process for commissioners. The committee also took testimony and written comments from Mr. David Honig, Special Counsel for Civil Rights for the Florida State Conference of Branches of the NAACP. While elaborating on suggestions made in the September 28 letter provided by his organization, as noted above, Mr. Honig made the following observation about these issues:

How do we avoid *ad hominem* attacks on individuals engaged in lawful conduct but conduct that is nonetheless "not liked" by interested parties or others? This last aspect is important – the toxic climate created by such allegations impedes morale at state agencies and discourages many of the best and brightest young people from considering careers in public service. I would venture to guess that there are bright accountants, economists, lawyers, and other subject-matter experts who have been deterred from seeking employment at the Florida PSC because of the vitriolic mudslinging that has characterized the agency over the last year.

On November 24, 2009, the PSC conducted a workshop seeking input from the public on how to enhance the integrity of the commission's regulatory processes. At the workshop, the Office of Public Counsel, the state's consumer advocate in proceedings before the PSC, presented various recommendations, including some "outside the box" suggestions "to improve both the perception and the integrity" of the commission's hearing process and "to restore the public trust and public confidence."⁵³ These suggestions included the concept of separating and keeping clear "lines of demarcation" between "trial staff" and the commission's "advisory staff." Under this proposal, the commission's trial staff would participate like any other party in a commission proceeding. The trial staff would submit positions on issues, present witnesses, cross-examine witnesses, and submit post-hearing briefs – with no more or less weight than that afforded to the briefs of any other party – for the commission to consider. The advisory staff would prepare legal and evidentiary analysis for the commissioners. Under this scheme, the trial staff would be subject to the same rules on ex parte communications as other parties, and the advisory

⁵² As presented as Moody's full report at <http://miamiherald.typepad.com/nakedpolitics/2009/10/investment-advisors-warn-of-pscs-politicized-atmosphere.html>

⁵³ Transcript, p.11, Undocketed Rule Development Workshop, Public Service Commission, November 24, 2009.

staff would be prohibited from engaging in ex parte communications.⁵⁴ The Office of Public Counsel also proposed that the commissioners themselves should be treated and should behave more like the judiciary branch, and that the PSC should look to the procedures that govern hearings at DOAH.^{55,56} The PSC also heard from Mr. Jon Moyle and the AARP concerning expansion of the current prohibitions on ex parte communications.⁵⁷

On February 17, 2009, the Energy & Utilities Policy Committee heard a Public Service Commission proposal that the Legislature: apply the Code of Judicial Conduct to commissioners; expand the prohibition on ex parte communications to more types of proceedings, persons, and matters; expand penalties for prohibited ex parte communications; and double the current amount of time that former commissioners and staff must wait before being permitted to represent regulated entities and certain other entities with interests in PSC proceedings.

Effect of Proposed Changes

Expanding on the suggestions presented by the Public Counsel at the PSC's November 24, 2009, workshop, PCB EUP 10-04 creates a clear separation between the commission's advisory staff and a separate advocacy staff and treats the latter like any other party to a commission proceeding. The bill reorganizes the PSC into two structurally separate entities: the Public Service Commission, whose primary role will be to serve as an independent and impartial decision maker with the assistance of professional and technical advisory staff; and the Office of Regulatory Staff ("office"), whose primary role is to employ the services of professional and technical staff to advocate for the public interest in proceedings before the PSC and proceedings related to matters within the PSC's jurisdiction. The bill establishes and distinguishes the decision-making and advocacy roles assigned to these two entities, allowing the PSC to satisfy the requirement that it perform its official duties without bias or prejudice, as set forth in the standards of conduct discussed below. The bill also expands the current prohibition on ex parte communications and adopts specific standards from the Code of Judicial Conduct.

Office of Regulatory Staff

The bill creates the Office of Regulatory Staff as an office within the legislative branch. The budget for the office would be included as part of the legislature's budget.⁵⁸ The bill states that the office shall be considered a party of record in all commission proceedings. The bill requires that all documents initiating a commission proceeding be provided to the office.

The bill provides that the office shall represent the public interest with respect to matters in the commission's jurisdiction, and it defines the public interest as a balancing of:

⁵⁴ *Id.*, at pp.12-17.

⁵⁵ *Id.*, at p. 8.

⁵⁶ According to information gathered by the Office of Public Counsel from 25 states that returned a survey, 11 of those states have created at least a functional separation between their public service commission's advisory staff and an advocacy staff. In 6 of those states, the separation is structural rather than just functional; separate organizations exist to serve the separate purposes. According to OPC's survey, these six include South Carolina, Iowa, Minnesota, Utah, Tennessee, and Indiana. In all of the states with some form of separation, the advocacy staff sponsors witnesses, conducts discovery, cross-examines witnesses, and takes positions and files briefs on the issues in PSC proceedings. In 10 of these states, the advocacy staff is prohibited from ex parte communications with commissioners and their advisory staff, and in all 11 states, advisory staff are prohibited from ex parte communications with parties. In all of these states, advocacy staff may communicate freely with other parties, as they are removed from their advisory roles and close relationship with commissioners.

⁵⁷ *Id.*

⁵⁸ Currently, although the PSC is an arm of the legislative branch, the PSC's budget is submitted separately and is not included as part of the Legislature's budget.

- Concerns of the using and consuming public, regardless of customer class, with respect to services provided by any company subject to the jurisdiction of the commission pursuant to any provision of law;
- Preservation of the financial integrity of the state's regulated public utilities and continued investment in and maintenance of facilities in order to provide reliable utility services at fair, just, and reasonable rates; and
- Promotion of fair competition in telecommunications markets.

The bill makes the office subject to the same requirements that other parties face with respect to ex parte communications with the commission and the manner in which it participates in proceedings, thus placing the office on the same legal footing as other parties advocating positions in PSC proceedings.

The bill provides for administration of the office through an executive director, who serves as the head of the office for the purposes of employing staff, setting compensation, supervising staff, and preparing a budget. The bill provides for the independence of the office from the supervision, direction, or control of the commission. The bill requires the office to maintain offices in Leon County at a place convenient to the offices of the PSC and to establish procedures governing its internal administration and operations.

The bill establishes a process for selecting the executive director of the office. The executive director will be appointed by majority vote of the Committee on Public Service Commission Oversight, discussed below, for a 4-year term beginning January 2, 2011. The committee also sets the executive director's salary. The committee's appointment is subject to confirmation by a majority vote of the Senate and the House of Representatives. The bill requires the appointee to perform the functions of the executive director until such time as he or she is confirmed. Reappointment or termination likewise requires a majority vote of both chambers. This process is almost identical to the process currently used to select the director of the Office of Program Policy Analysis and Government Accountability⁵⁹ and the Auditor General.⁶⁰ Currently, appointment or termination of the PSC's executive director requires a majority vote of the five appointed commissioners.

The bill requires that the executive director satisfy the minimum qualifications established for commissioners, discussed below, and have 12 years of professional experience in one or more of the fields that commissioners are required to have experience in. The bill also requires the executive director to take the oath required of state officers by the Constitution and subjects the executive director to all but one of the standards of conduct currently applicable to commissioners. This exception is a standard that requires commissioners to act at all times in a manner that promotes confidence in the integrity and impartiality of the commission. The bill also subjects the executive director to a new standard which requires that he or she not be swayed by partisan interests, public clamor, or fear of criticism.

The bill authorizes the office to petition the commission to initiate proceedings, if it believes it is necessary to do so to protect the public interest. It also removes the commission's authority to initiate several types of proceedings on its own motion, including rate cases and power plant need determination proceedings, and replaces it with the authority of the Office of Regulatory Staff to do so.⁶¹ The bill authorizes the office to request judicial review of commission orders and to participate in any civil proceeding that involves review or enforcement of commission action that the executive director determines may substantially affect the public interest.

The bill provides a specific list of the office's responsibilities, which include:

⁵⁹ Section 11.511, F.S.

⁶⁰ Section 11.42, F.S.

⁶¹ See footnote 17 for a list of the types of proceedings that the commission is currently authorized to initiate.

- Reviewing and investigating the rates charged or proposed to be charged, and the service furnished or proposed to be furnished, by any public utility or regulated company;
- Inspecting, auditing, and examining public utilities and regulated companies regarding matters within the PSC's jurisdiction;
- Investigating complaints made in connection with matters under the PSC's jurisdiction;
- Assisting consumers in the informal resolution of complaints regarding the rates or service of public utilities and regulated companies;
- Providing legal representation of the public interest before other state and federal agencies and courts; and
- Educating the public on matters within the PSC's jurisdiction that are of special interest to consumers.

The bill provides that the commission may request, either in writing or at a noticed public meeting, that the office provide information and reports on matters within the PSC's jurisdiction, assist in the preparation of reports that the commission is required by law to produce,⁶² and conduct audits, inspections, and examinations of public utilities and regulated companies. This will allow the commission to continue to utilize the auditing and information gathering capabilities of the regulatory staff, provided that the commission may not require the office to participate as a party, sponsor witnesses, or provide testimony in any proceeding. Further, the bill requires that the commission and the office establish a mutually acceptable procedure under which the office may elect not to participate in noncontroversial matters. The bill requires that the office provide an annual report to the legislature.

The bill authorizes the office to access or require production of books and records as provided by law and as specified in ss. 364.183, 366.093, and 367.156, F.S. In essence, the bill provides the office the same authority that the commission currently has to access books and records. The bill provides that records received by the office which are claimed to be confidential by the provider of the information (for purposes of Chapter 364, F.S.) or which are found by the commission to be confidential (for purposes of Chapters 366, 367, and 368, F.S.) shall be exempt from disclosure under Florida's public records laws. The bill also provides the office the authority to assess regulated entities for travel costs associated with reviewing records kept out of state.

The bill makes the Office of Regulatory Staff subject to the public records law in chapter 119, Florida Statutes. Further, the bill applies post-employment restrictions to the executive director that are identical to those currently imposed on commissioners, and applies post-employment restrictions to the staff of the office that are identical to those currently imposed on commission staff.

The bill provides that the office will be funded through the existing Florida Public Service Regulatory Trust Fund that currently funds the PSC and would continue to do so. This trust fund is currently funded primarily through regulatory assessment fees imposed on regulated entities.

Public Service Commission

While the bill does not change the commission's subject matter jurisdiction, it changes the commission's role in the process. The bill provides legislative intent that, in addition to performing its duties independently, the commission shall perform those duties impartially, professionally, honorably, and without undue influence from any person. Many of the remaining provisions in the bill related to the commission address this theme.

⁶² For example, the commission is required by statute to produce annual reports concerning the status of competition in telecommunications markets, the status of Lifeline and Link-Up programs, the status of energy conservation programs, and a handful of other reports related to matters within its jurisdiction.

The bill also provides that the commission, in exercising its jurisdiction, shall not establish or implement any policy that is contrary to or an expansion of the authority granted by the legislature. This language appears to restate but emphasize existing law with respect to the delegation of authority to an agency.

The bill makes several changes to the commission's role under the new structure. First, it specifies that the commissioners shall not supervise, direct, or control persons employed by the Office of Regulatory Staff. Second, it removes the auditing and inspection function from the commission and places it in the Office of Regulatory Staff. Third, it provides that the commission's staff may no longer appear as a party or testify in commission proceedings or conduct discovery. These changes reflect the transfer of any "advocacy" role to the Office of Regulatory Staff and more clearly establish the commission's role as an independent and impartial decision maker.

Public Service Commissioners – Appointment & Qualifications

The bill maintains the current process for selecting commissioners, though it adds new minimum qualifications. The bill also eliminates obsolete language concerning appointment of members to the Public Service Commission Nominating Council.

The bill requires that applicants for Public Service Commissioner meet certain qualifications before they can be nominated to the Governor for appointment. The bill requires that each applicant have a bachelor's degree, or a more advanced degree, from an accredited institution of higher learning. If the applicant has a bachelor's degree, he or she must also have at least 10 years of professional experience in one or more of eight specific fields. Those fields include: energy or electrical industry issues; telecommunications issues; water and sewer industry issues; finance; economics; accounting; engineering; or law. If the applicant has an advanced degree, he or she must have at least 6 years of professional experience in one or more of these fields.

The bill also provides initial and continuing training and education requirements for commissioners. The bill requires that a person appointed to the commission must complete a comprehensive study course before voting on any matter. This course would cover substantive matters within the commission's jurisdiction, relevant aspects of administrative law, and ethical standards of conduct. In addition, the bill requires annual ethics training for commissioners, their staff, and staff of the Office of Regulatory Staff. The bill requires the executive director and general counsel of the Office of Regulatory Staff, to develop these training courses, subject to approval of the Committee on Public Service Commission Oversight. The bill also requires that each commissioner complete at least 10 hours of continuing professional education each year related to substantive matters within the PSC's jurisdiction.

Public Service Commissioners – Standards of Conduct

The bill adopts new provisions into the standards of conduct applicable to commissioners. Specifically, the bill adds a statement of intent which provides:

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.

This provision is an adaptation of the first Canon of the Code of Judicial Conduct.⁶³

⁶³ The Code of Judicial Conduct is established and may be amended by the Florida Supreme Court. Accordingly, adoption of the code by reference and without specific guidelines for establishment of the code may constitute an unlawful delegation of legislative authority.

The bill adopts additional new standards, again adapted from the Code of Judicial Conduct, to reflect that they are being applied to Public Service Commissioners rather than members of the judicial branch. These standards provide:

- The chair, or the presiding commissioner in the chair's absence, shall require order and decorum in commission proceedings.
- A commissioner shall be patient, dignified, and courteous to litigants, other commissioners, witnesses, lawyers, commission staff, staff of the Office of Regulatory Staff, and others with whom the commissioner deals in an official capacity.
- A commissioner shall perform official duties without bias or prejudice.
- A commissioner shall not, with respect to parties or classes of parties, cases, controversies, or issues likely to come before the commission, make pledges, promises, or commitments that are inconsistent with the impartial performance of the commissioner's official duties.
- A commissioner shall not be swayed by partisan interests, public clamor, or fear of criticism.

Any alleged violation of these standards would continue to be accepted and investigated by the Commission on Ethics, with any findings and recommendations sent to the Governor and the PSC Nominating Council. The Governor would continue to have authority to enforce these findings.

Ex Parte Communications

The bill establishes a definition of ex parte communications as any communication that, if written or in electronic form, is not served on all parties to a proceeding or, if oral, is made without adequate notice to the parties and an opportunity for the parties to be present and heard.

The bill applies the prohibition on ex parte communications to both the commissioners and their advisory staff under the new structure. This provision is intended to ensure that the commission's advisory staff, who currently are not subject to statutory limits on ex parte communications, do not serve, intentionally or unintentionally, as a conduit for ex parte communications to commissioners.

The bill extends the prohibition on ex parte communications to cover both the merits and procedural issues in pending proposed agency action proceedings, formal hearing proceedings under ss. 120.569 and 120.57, F.S., and proceedings on declaratory statements under s. 120.565, F.S. With respect to certain procedural issues, the bill allows ex parte communications only if the commissioner or commission employee reasonably believes that no party will gain a procedural or tactical advantage and notifies other parties so that they have an opportunity to respond. This provision is adopted from the Code of Judicial Conduct applicable to judges.

The bill prohibits an individual from discussing ex parte with a commissioner the merits of any issue that the individual knows will be filed with the commission within 180 days. This provision doubles the time frame in the current prohibition on such communications.

The bill authorizes up to a \$5,000 civil penalty for individuals other than commissioners and commission staff who knowingly fail to comply with the ex parte laws. This is the same monetary penalty that commissioners and their staff are subject to.

Committee on Public Counsel Oversight

The bill renames the Committee on Public Counsel Oversight as the Committee on Public Service Commission Oversight and provides that the committee shall appoint an executive director of the office and perform the other duties added by the bill. These duties include

overseeing the development of commissioner training materials by the office and receiving the budget of the office.

Prohibited Influence on Commissioners

The bill creates a provision which states that neither the Governor, the House Speaker, the Senate President, nor any member of the Committee on PSC Oversight or the PSC Nominating Council shall attempt to sway the independent judgment of the commission by bringing pressure to bear upon a commissioner through that person's role in the selection or reconfirmation process. The bill authorizes the Commission on Ethics to investigate sworn complaints of violations.

Testimony in Commission Proceedings

The bill creates provisions that require each person offering testimony in a commission proceeding to disclose, at the time the testimony is offered, any financial or fiduciary relationship between the person and any party to the proceeding. The bill provides that a determination by the commission that a person has knowingly violated this requirement constitutes agency action upon which a hearing may be sought under Chapter 120, F.S.

Miscellaneous Provisions

The bill defines "office" as the Office of Regulatory Staff for purposes of Chapters 364, 366, 367, and 368, F.S.

The bill authorizes the office to perform certain functions currently performed by commission staff. These functions include: making a preliminary study of electric utilities' ten-year site plans under s. 186.801, F.S.; conducting compliance investigations of operator services under s. 364.3376, F.S.; conducting meter tests pursuant to ss. 366.05 and 367.122, F.S.; and conducting staff-assisted rate cases for eligible small water and wastewater utilities under s. 367.0814, F.S.

The bill specifies the proper disciplinary officials for purposes of receiving and enforcing findings by the Commission on Ethics against the executive director of the office and employees of the office.

The bill repeals s. 350.121, F.S., related to commission inquiries. It appears that this provision has not been used in almost 20 years and that the investigatory powers set forth in the provision are largely duplicative of the commission's authority to access records of regulated entities.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.324, F.S., relating to procedures on complaints of ethics violations.

Section 2. Amends s. 119.011, F.S., defining agencies subject to public records laws.

Section 3. Amends s. 186.801, F.S., relating to ten-year site plans.

Section 4. Amends s. 350.001, F.S., providing legislative intent with respect to the Florida Public Service Commission (PSC).

Section 5. Amends s. 350.011, F.S., relating to the power and duties of the PSC.

Section 6. Amends s. 350.012, F.S., renaming the Committee on Public Counsel Oversight as the Committee on Public Service Commission Oversight and establishing duties.

Section 7. Amends s. 350.031, F.S., relating to the Florida Public Service Commission Nominating Council.

Section 8. Creates s. 350.035, F.S., relating to prohibited influence on PSC commissioners.

Section 9. Amends s. 350.04, F.S., relating to qualifications, training, and continuing education of PSC commissioners.

Section 10. Amends s. 350.041, F.S., relating to PSC commissioner standards of conduct.

Section 11. Amends s. 350.042, F.S., relating to ex parte communications.

Section 12. Amends s. 350.06, F.S., relating to the PSC place of meeting, expenditures, and employment of personnel.

Section 13. Amends s. 350.0605, F.S., relating to post-employment restrictions for PSC commissioners and staff.

Section 14. Creates s. 350.071, F.S., relating to the creation, purpose, and party status of the Office of Regulatory Staff.

Section 15. Creates s. 350.072, F.S., relating to administration of the Office of Regulatory Staff.

Section 16. Creates s. 350.073, F.S., relating to the executive director of the Office of Regulatory Staff.

Section 17. Creates s. 350.074, F.S., relating to the duties of the Office of Regulatory Staff.

Section 18. Creates s. 350.075, F.S., relating to access to records by the Office of Regulatory Staff.

Section 19. Amends s. 350.113, F.S., relating to the Florida Public Service Regulatory Trust Fund.

Section 20. Amends s. 350.117, F.S., relating to reports and audits.

Section 21. Repeals s. 350.121, F.S., relating to commission inquiries.

Section 22. Creates s. 350.122, F.S., relating to disclosure of certain affiliations upon providing testimony before the commission.

Section 23. Amends s. 364.016, F.S., relating to travel costs.

Section 24. Amends s. 364.02, F.S., providing definitions for purposes of Chapter 364, F.S.

Section 25. Amends s. 364.15, F.S., relating to compelling repairs, improvements, changes, additions, or extensions of telecommunications facilities.

Section 26. Amends s. 364.183, F.S., relating to access to telecommunications company records.

Section 27. Amends s. 364.185, F.S., relating to investigations and inspections of telecommunications companies.

Section 28. Amends s. 364.335, F.S., relating to applications for certificates.

Section 29. Amends s. 364.3376, F.S., relating to operator services.

- Section 30.** Amends s. 364.3381, F.S., relating to cross-subsidization.
- Section 31.** Amends s. 364.37, F.S., relating to controversies surrounding territory to be served.
- Section 32.** Amends s. 366.02, F.S., providing definitions for purposes of Chapter 366, F.S.
- Section 33.** Amends s. 366.05, F.S., relating to the powers of the PSC.
- Section 34.** Amends s. 366.06, F.S., relating to the procedures for fixing and changing rates.
- Section 35.** Amends s. 366.07, F.S., relating to adjustment of rates.
- Section 36.** Amends s. 366.071, F.S., relating to interim rates procedures.
- Section 37.** Amends s. 366.076, F.S., relating to limited proceedings.
- Section 38.** Amends s. 366.08, F.S., relating to investigations and inspections of public utilities.
- Section 39.** Amends s. 366.093, F.S., relating to public utility records.
- Section 40.** Amends s. 366.82, F.S., relating to conservation goals for utilities.
- Section 41.** Amends s. 367.021, F.S., providing definitions for purposes of Chapter 367, F.S.
- Section 42.** Amends s. 367.045, F.S., relating to application procedures for certificates of authorization for water and wastewater utilities.
- Section 43.** Amends s. 367.081, F.S., relating to procedures for fixing and changing rates.
- Section 44.** Amends s. 367.0814, F.S., relating to staff-assisted rate cases.
- Section 45.** Amends s. 367.0817, F.S., relating to reuse projects.
- Section 46.** Amends s. 367.082, F.S., relating to interim rates procedures.
- Section 47.** Amends s. 367.0822, F.S., relating to limited proceedings.
- Section 48.** Amends s. 367.083, F.S., relating to determination of official date of filing of a rate proceeding.
- Section 49.** Amends s. 367.101, F.S., relating to charges for service availability.
- Section 50.** Amends s. 367.121, F.S., relating to power of the commission.
- Section 51.** Amends s. 367.122, F.S., relating to examination and testing of meters.
- Section 52.** Amends s. 367.145, F.S., relating to regulatory assessment and application fees.
- Section 53.** Amends s. 367.156, F.S., relating to public utility records.
- Section 54.** Amends s. 367.171, F.S., relating to effectiveness of Chapter 367, F.S.
- Section 55.** Amends s. 368.05, F.S., relating to commission jurisdiction and rules.
- Section 56.** Amends s. 368.061, F.S., relating to penalties.

- Section 57.** Amends s. 368.103, F.S., providing definitions.
- Section 58.** Amends s. 368.106, F.S., relating to changes in rates for intrastate natural gas transmission.
- Section 59.** Amends s. 368.107, F.S., relating to unreasonable or violative existing rates and services.
- Section 60.** Amends s. 368.108, F.S., relating to confidentiality and discovery.
- Section 61.** Amends s. 368.1085, F.S., relating to travel costs.
- Section 62.** Amends s. 368.109, F.S., relating to regulatory assessment fees.
- Section 63.** Amends s. 403.519, F.S., relating to electrical power plant need determinations.
- Section 64.** Amends s. 403.537, F.S., relating to transmission line need determinations.
- Section 65.** Amends s. 403.9422, F.S., relating to natural gas transmission pipeline need determinations.
- Section 66.** Amends s. 196.012, F.S., to conform cross-references.
- Section 67.** Amends s. 199.183, F.S., to conform cross-references.
- Section 68.** Amends s. 212.08, F.S., to conform cross-references.
- Section 69.** Amends s. 288.0655, F.S., to conform cross-references.
- Section 70.** Amends s. 290.007, F.S., to conform cross-references.
- Section 71.** Amends s. 364.602, F.S., to conform cross-references.
- Section 72.** Amends s. 489.103, F.S., to conform cross-references.
- Section 73.** Amends s. 624.105, F.S., to conform cross-references.
- Section 74.** Provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will require an indeterminate expenditure of funds to establish the Office of Regulatory Staff and to modify systems and processes to reflect the new roles of the PSC and the office. Whether the Florida Public Service Regulatory Trust Fund contains sufficient funds to cover all or a portion of these expenses is being reviewed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

None.

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 PCB: Energy & Utilities Policy
2 Committee
3 Representative(s) Precourt offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 213-933 and insert:

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

9 112.324 Procedures on complaints of violations; public
10 records and meeting exemptions.—

11 (8) If, in cases pertaining to complaints other than
12 complaints against impeachable officers or members of the
13 Legislature, upon completion of a full and final investigation
14 by the commission, the commission finds that there has been a
15 violation of this part or of s. 8, Art. II of the State
16 Constitution, it shall be the duty of the commission to report
17 its findings and recommend appropriate action to the proper
18 disciplinary official or body as follows, and such official or
19 body shall have the power to invoke the penalty provisions of

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB EUP 10-04 (2010)

Amendment No.

20 this part, including the power to order the appropriate
21 elections official to remove a candidate from the ballot for a
22 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the
23 State Constitution:

24 (a) The President of the Senate and the Speaker of the
25 House of Representatives, jointly, in any case concerning ~~the~~
26 ~~Public Counsel~~, members of the Public Service Commission,
27 members of the Public Service Commission Nominating Council, the
28 Auditor General, the director of the Office of Program Policy
29 Analysis and Government Accountability, or members of the
30 Legislative 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, Auditor General,
39 Office of Program Policy Analysis and Government Accountability,
40 or Legislative Committee on Intergovernmental Relations.

41 Section 2. Subsection (2) of section 186.801, Florida
42 Statutes, is amended to read:

43 186.801 Ten-year site plans.—

44 (2) Within 9 months after the receipt of the proposed
45 plan, the commission shall request assistance from the Office of
46 Regulatory Staff to make a preliminary study of such plan and
47 shall classify the plan ~~it~~ as "suitable" or "unsuitable." The

Amendment No.

48 commission may suggest alternatives to the plan. All findings of
49 the commission shall be made available to the Department of
50 Environmental Protection for its consideration at any subsequent
51 electrical power plant site certification proceedings. It is
52 recognized that 10-year site plans submitted by an electric
53 utility are tentative information for planning purposes only and
54 may be amended at any time at the discretion of the utility upon
55 written notification to the commission. A complete application
56 for certification of an electrical power plant site under
57 chapter 403, when such site is not designated in the current 10-
58 year site plan of the applicant, shall constitute an amendment
59 to the 10-year site plan. In its preliminary study of each 10-
60 year site plan, the commission shall consider such plan as a
61 planning document and shall review:

62 (a) The need, including the need as determined by the
63 commission, for electrical power in the area to be served.

64 (b) The effect on fuel diversity within the state.

65 (c) The anticipated environmental impact of each proposed
66 electrical power plant site.

67 (d) Possible alternatives to the proposed plan.

68 (e) The views of appropriate local, state, and federal
69 agencies, including the views of the appropriate water
70 management district as to the availability of water and its
71 recommendation as to the use by the proposed plant of salt water
72 or fresh water for cooling purposes.

73 (f) The extent to which the plan is consistent with the
74 state comprehensive plan.

Amendment No.

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

77 Section 3. Section 350.001, Florida Statutes, is amended
78 to read:

79 350.001 Legislative intent.—

80 (1) The Florida Public Service Commission has been and
81 shall continue to be an arm of the legislative branch of
82 government. In the exercise of its jurisdiction, the commission
83 shall neither establish nor implement any regulatory policy that
84 is contrary to, or is an expansion of, the authority granted to
85 it by the Legislature.

86 (2) The Public Service Commission and its staff shall
87 perform their ~~its~~ duties independently, impartially,
88 professionally, honorably, and without undue influence from any
89 person.

90 (3) It is the desire of the Legislature that the Governor
91 participate in the appointment process of commissioners to the
92 Public Service Commission. The Legislature accordingly delegates
93 to the Governor a limited authority with respect to the Public
94 Service Commission by authorizing him or her to participate in
95 the selection of members only in the manner prescribed by s.
96 350.031.

97 Section 4. Section 350.011, Florida Statutes, is amended
98 to read:

99 350.011 Florida Public Service Commission; jurisdiction;
100 powers and duties.—

101 (1) The state regulatory agency heretofore known as the
102 Florida Railroad and Public Utilities Commission or Florida

Amendment No.

103 Public Utilities Commission shall be known and hereafter called
104 Florida Public Service Commission, and all rights, powers,
105 duties, responsibilities, jurisdiction, and judicial powers now
106 vested in said Railroad and Public Utilities Commission or said
107 Florida Public Utilities Commission and the commissioners
108 thereof are vested in the Florida Public Service Commission and
109 the commissioners thereof.

110 (2) The commissioners of the Florida Public Service
111 Commission may not supervise, direct, or control any person
112 whose services are employed by the Office of Regulatory Staff
113 created under s. 350.071.

114 (3) Notwithstanding any other provision of law, the
115 commission may not inspect, audit, or examine any entity subject
116 to the jurisdiction of the commission pursuant to any provision
117 of law, as these functions are the sole responsibility of the
118 Office of Regulatory Staff.

119 (4) The commission staff may not appear as a party in
120 commission proceedings and shall not offer testimony on issues
121 before the commission. The commission staff shall not conduct
122 discovery, either informally or pursuant to the Florida Rules of
123 Civil Procedure, in any proposed agency action proceeding or any
124 proceeding under s. 120.569 or s. 120.57 in which the
125 substantial interests of a party are determined by the
126 commission.

127 Section 5. Section 350.012, Florida Statutes, is repealed.

128 Section 6. Paragraphs (b) and (d) of subsection (1) and
129 subsection (5) of section 350.031, Florida Statutes, are amended
130 to read:

Amendment No.

131 350.031 Florida Public Service Commission Nominating
132 Council.—

133 (1)

134 (b) All terms shall be for 4 years except those members of
135 the House and Senate, who shall serve 2-year terms concurrent
136 with the 2-year elected terms of House members. ~~All terms of the~~
137 ~~members of the Public Service Commission Nominating Council~~
138 ~~existing on June 30, 2008, shall terminate upon the effective~~
139 ~~date of this act; however, such members may serve an additional~~
140 ~~term if reappointed by the Speaker of the House of~~
141 ~~Representatives or the President of the Senate.~~ To establish
142 staggered terms, appointments of members shall be made for
143 initial terms to begin on July 1, 2008, with each appointing
144 officer to appoint three legislator members, one of whom shall
145 be a member of the minority party, to terms through the
146 remainder of the 2-year elected terms of House members; one
147 nonlegislator member to a 6-month term; one nonlegislator member
148 to an 18-month term; and one nonlegislator member to a 42-month
149 term. Thereafter, the terms of the nonlegislator members of the
150 Public Service Commission Nominating Council shall begin on
151 January 2 of the year the term commences and end 4 years later
152 on January 1.

153 (d) Vacancies on the council shall be filled for the
154 unexpired portion of the term in the same manner as original
155 appointments to the council. A member may not be reappointed to
156 the council, except for a member of the House of Representatives
157 or the Senate who may be appointed to two 2-year terms, ~~members~~

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB EUP 10-04 (2010)

Amendment No.

158 ~~who are reappointed pursuant to paragraph (b),~~ or a person who
159 is appointed to fill the remaining portion of an unexpired term.

160 (5) A person may not be nominated ~~to the Governor~~ for
161 appointment to the Public Service Commission until the council
162 has determined that the person satisfies the qualifications set
163 forth in s. 350.04(2) ~~is competent and knowledgeable in one or~~
164 ~~more fields, which shall include, but not be limited to: public~~
165 ~~affairs, law, economics, accounting, engineering, finance,~~
166 ~~natural resource conservation, energy, or another field~~
167 ~~substantially related to the duties and functions of the~~
168 ~~commission.~~ The commission shall fairly represent the ~~above-~~
169 ~~stated~~ fields identified in s. 350.04(2). Recommendations of the
170 council shall be nonpartisan.

171 Section 7. Section 350.035, Florida Statutes, is created
172 to read:

173 350.035 Prohibited influence on commissioners.--Neither the
174 Governor, the President of the Senate, the Speaker of the House
175 of Representatives, nor a member of the Public Service
176 Commission Nominating Council shall attempt to sway the
177 independent judgment of the commission by bringing pressure to
178 bear upon a commissioner or commission employee through that
179 person's role in the nomination, appointment, or confirmation of
180 commissioners. It is the duty of the Commission on Ethics to
181 receive and investigate sworn complaints of violations of this
182 section pursuant to ss. 112.322-112.3241.

183 Section 8. Section 350.04, Florida Statutes, is amended to
184 read:

Amendment No.

185 350.04 Qualifications of commissioners; training and
186 continuing education.—

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

189 (a)~~(1)~~ Have any financial interest, other than ownership
190 of shares in a mutual fund, in any business entity which, either
191 directly or indirectly, owns or controls any public utility
192 regulated by the commission, in any public utility regulated by
193 the commission, or in any business entity which, either directly
194 or indirectly, is an affiliate or subsidiary of any public
195 utility regulated by the commission.

196 (b)~~(2)~~ Be employed by or engaged in any business activity
197 with any business entity which, either directly or indirectly,
198 owns or controls any public utility regulated by the commission,
199 by any public utility regulated by the commission, or by any
200 business entity which, either directly or indirectly, is an
201 affiliate or subsidiary of any public utility regulated by the
202 commission.

203 (2) Each person recommended for appointment to the Public
204 Service Commission by the Public Service Commission Nominating
205 Council must:

206 (a) Have earned at least a baccalaureate degree from an
207 institution of higher learning accredited by a regional or
208 national accrediting body; and

209 (b) Possess a minimum of 10 years of professional
210 experience, or a minimum of 6 years of professional experience
211 if the person has earned an advanced degree, in one or more of
212 the following:

Amendment No.

- 213 | 1. Energy or electric industry issues.
- 214 | 2. Telecommunications issues.
- 215 | 3. Water and sewer industry issues.
- 216 | 4. Finance.
- 217 | 5. Economics.
- 218 | 6. Accounting.
- 219 | 7. Engineering.
- 220 | 8. Law.

221 | (3) Before voting on any matter before the Public Service
222 | Commission, each person appointed to the commission after July
223 | 1, 2010, shall complete a comprehensive course of study,
224 | developed by the executive director and general counsel of the
225 | Office of Regulatory Staff in coordination with the National
226 | Association of Regulatory Utility Commissioners Subcommittee on
227 | Education and Research, that addresses the substantive matters
228 | within the jurisdiction of the commission, administrative law
229 | applicable to commission proceedings, and standards of conduct
230 | applicable to commissioners. Thereafter, each commissioner must
231 | complete annually no less than 10 hours of continuing
232 | professional education directly related to substantive matters
233 | within the jurisdiction of the commission.

234 | (4) No less than once every 12 months, each commissioner
235 | and commission employee shall receive training, in a form
236 | developed by the executive director and general counsel of the
237 | Office of Regulatory Staff, that addresses the ethical standards
238 | of conduct applicable to commissioners and their staff.

239 | (5) The chair of the Public Service Commission shall
240 | certify the commission's compliance with these requirements, and

Amendment No.

241 each commissioner shall certify his or her individual compliance
242 with the continuing professional education requirements of
243 subsection (3). Each certification of compliance shall be
244 provided to the President of the Senate and the Speaker of the
245 House of Representatives.

246 Section 9. Section 350.041, Florida Statutes, is amended
247 to read:

248 350.041 Commissioners; standards of conduct.-

249 (1) STATEMENT OF INTENT.-

250 (a) Professional, impartial, and honorable commissioners
251 are indispensable to the effective performance of the
252 commission's duties. A commissioner shall maintain high
253 standards of conduct and shall personally observe those
254 standards so that the integrity and impartiality of the
255 commission may be preserved. The standards of conduct provided
256 in this section should be construed and applied to further that
257 objective.

258 (b) In addition to the provisions of part III of chapter
259 112, which are applicable to public service commissioners by
260 virtue of their being public officers and full-time employees of
261 the legislative branch of government, the conduct of public
262 service commissioners shall be governed by the standards of
263 conduct provided in this section. Nothing shall prohibit the
264 standards of conduct from being more restrictive than part III
265 of chapter 112. Further, this section shall not be construed to
266 contravene the restrictions of part III of chapter 112. In the
267 event of a conflict between this section and part III of chapter
268 112, the more restrictive provision shall apply.

Amendment No.

269 (2) STANDARDS OF CONDUCT.—

270 (a) A commissioner may not accept anything from any
271 business entity which, either directly or indirectly, owns or
272 controls any public utility regulated by the commission, from
273 any public utility regulated by the commission, or from any
274 business entity which, either directly or indirectly, is an
275 affiliate or subsidiary of any public utility regulated by the
276 commission. A commissioner may attend conferences and associated
277 meals and events that are generally available to all conference
278 participants without payment of any fees in addition to the
279 conference fee. Additionally, while attending a conference, a
280 commissioner may attend meetings, meals, or events that are not
281 sponsored, in whole or in part, by any representative of any
282 public utility regulated by the commission and that are limited
283 to commissioners only, committee members, or speakers if the
284 commissioner is a member of a committee of the association of
285 regulatory agencies that organized the conference or is a
286 speaker at the conference. It is not a violation of this
287 paragraph for a commissioner to attend a conference for which
288 conference participants who are employed by a utility regulated
289 by the commission have paid a higher conference registration fee
290 than the commissioner, or to attend a meal or event that is
291 generally available to all conference participants without
292 payment of any fees in addition to the conference fee and that
293 is sponsored, in whole or in part, by a utility regulated by the
294 commission. If, during the course of an investigation by the
295 Commission on Ethics into an alleged violation of this
296 paragraph, allegations are made as to the identity of the person

Amendment No.

297 giving or providing the prohibited gift, that person must be
298 given notice and an opportunity to participate in the
299 investigation and relevant proceedings to present a defense. If
300 the Commission on Ethics determines that the person gave or
301 provided a prohibited gift, the person may not appear before the
302 commission or otherwise represent anyone before the commission
303 for a period of 2 years.

304 (b) A commissioner may not accept any form of employment
305 with or engage in any business activity with any business entity
306 which, either directly or indirectly, owns or controls any
307 public utility regulated by the commission, any public utility
308 regulated by the commission, or any business entity which,
309 either directly or indirectly, is an affiliate or subsidiary of
310 any public utility regulated by the commission.

311 (c) A commissioner may not have any financial interest,
312 other than shares in a mutual fund, in any public utility
313 regulated by the commission, in any business entity which,
314 either directly or indirectly, owns or controls any public
315 utility regulated by the commission, or in any business entity
316 which, either directly or indirectly, is an affiliate or
317 subsidiary of any public utility regulated by the commission. If
318 a commissioner acquires any financial interest prohibited by
319 this section during his or her term of office as a result of
320 events or actions beyond the commissioner's control, he or she
321 shall immediately sell such financial interest or place such
322 financial interest in a blind trust at a financial institution.
323 A commissioner may not attempt to influence, or exercise any
324 control over, decisions regarding the blind trust.

Amendment No.

325 (d) A commissioner may not accept anything from a party in
326 a proceeding currently pending before the commission. If, during
327 the course of an investigation by the Commission on Ethics into
328 an alleged violation of this paragraph, allegations are made as
329 to the identity of the person giving or providing the prohibited
330 gift, that person must be given notice and an opportunity to
331 participate in the investigation and relevant proceedings to
332 present a defense. If the Commission on Ethics determines that
333 the person gave or provided a prohibited gift, the person may
334 not appear before the commission or otherwise represent anyone
335 before the commission for a period of 2 years.

336 (e) A commissioner may not serve as the representative of
337 any political party or on any executive committee or other
338 governing body of a political party; serve as an executive
339 officer or employee of any political party, committee,
340 organization, or association; receive remuneration for
341 activities on behalf of any candidate for public office; engage
342 on behalf of any candidate for public office in the solicitation
343 of votes or other activities on behalf of such candidacy; or
344 become a candidate for election to any public office without
345 first resigning from office.

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

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

Amendment No.

353 (h) The chair shall require order and decorum in
354 proceedings before the commission. In the absence of the chair,
355 the commissioner presiding over a commission proceeding shall
356 require order and decorum in the proceeding.

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

361 (j) A commissioner shall perform his or her official
362 duties without bias or prejudice. A commissioner may not, in the
363 performance of his or her official duties, by words or conduct
364 manifest bias or prejudice.

365 (k) A commissioner may not, with respect to parties or
366 classes of parties, cases, controversies, or issues likely to
367 come before the commission, make pledges, promises, or
368 commitments that are inconsistent with the impartial performance
369 of the commissioner's official duties.

370 (l) A commissioner may not be swayed by partisan
371 interests, public clamor, or fear of criticism.

372 (m) ~~(h)~~ A commissioner must avoid impropriety in all of his
373 or her activities and must act at all times in a manner that
374 promotes public confidence in the integrity and impartiality of
375 the commission.

376 (n) ~~(i)~~ A commissioner may not directly or indirectly,
377 through staff or other means, solicit anything of value from any
378 public utility regulated by the commission, or from any business
379 entity that, whether directly or indirectly, is an affiliate or
380 subsidiary of any public utility regulated by the commission, or

Amendment No.

381 from any party appearing in a proceeding considered by the
382 commission in the last 2 years.

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

386 (b) The Commission on Ethics shall provide the Governor
387 and the Florida Public Service Commission Nominating Council
388 with a report of its findings and recommendations with respect
389 to alleged violations by a public service commissioner. The
390 Governor is authorized to enforce these ~~the~~ findings and
391 recommendations ~~of the Commission on Ethics~~, pursuant to part
392 III of chapter 112.

393 (c) The Commission on Ethics shall provide the
394 disciplinary officials or bodies specified in part III of
395 chapter 112 with a report of its findings and recommendations
396 with respect to alleged violations of the specific provisions of
397 this section that, pursuant to s. 350.073, are applicable to the
398 executive director of the Office of Regulatory Staff.

399 (d) A public service commissioner, a commission employee,
400 the executive director of the Office of Regulatory Staff, or a
401 member of the Florida Public Service Commission Nominating
402 Council may request an advisory opinion from the Commission on
403 Ethics, pursuant to s. 112.322(3)(a), regarding the standards of
404 conduct or prohibitions set forth in this section and ss.
405 350.031, 350.04, and 350.042.

406 Section 10. Section 350.042, Florida Statutes, is amended
407 to read:

408 350.042 Ex parte communications.-

Amendment No.

409 (1) Each A commissioner and employee of the commission
410 shall should accord to every person who is a party to or is
411 registered with the commission as an interested person in a
412 proposed agency action proceeding, or who is a party to a
413 proceeding under s. 120.565, s. 120.569, or s. 120.57 legally
414 interested in a proceeding, or the person's lawyer, full right
415 to be heard according to law, and, except as authorized by law,
416 shall not neither initiate, solicit, or nor consider ex parte
417 communications concerning a pending proposed agency action the
418 merits, threat, or offer of reward in any proceeding or a
419 proceeding under s. 120.565, s. 120.569, or s. 120.57 other than
420 a proceeding under s. 120.54 or s. 120.565, workshops, or
421 internal affairs meetings. No individual shall discuss ex parte
422 with a commissioner the merits of any issue that he or she knows
423 will be filed with the commission within 180 90 days. The
424 provisions of this subsection shall not apply to commission
425 staff.

426 (a) As used in this section, the term "ex parte
427 communication" means any communication that:

428 1. If it is a written or printed communication or a
429 communication in electronic form, is not served on all parties
430 to a proceeding; or

431 2. If it is an oral communication, is made without
432 adequate notice to the parties and without an opportunity for
433 the parties to be present and heard.

434 (b) Where circumstances require, ex parte communications
435 concerning scheduling, administrative purposes, or emergencies

Amendment No.

436 that do not deal with substantive matters or issues on the
437 merits are authorized, if:

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

441 2. The commissioner or commission employee makes provision
442 promptly to notify all parties of the substance of the ex parte
443 communication and, where possible, allows an opportunity to
444 respond.

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

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

453 (4) If a commissioner or commission employee knowingly
454 receives an ex parte communication prohibited by this section
455 ~~relative to a proceeding other than as set forth in subsection~~
456 ~~(1)~~, to which he or she is assigned, he or she must place on the
457 record of the proceeding copies of all written communications
458 received, all written responses to the communications, and a
459 memorandum stating the substance of all oral communications
460 received and all oral responses made, and shall give written
461 notice to all parties to the communication that such matters
462 have been placed on the record. Any party to the proceeding who
463 desires to respond to the ~~an ex parte~~ communication may do so.

Amendment No.

464 The response must be received by the commission within 10 days
465 after receiving notice that the ~~ex parte~~ communication has been
466 placed on the record. The commissioner may, if he or she deems
467 it necessary to eliminate the effect of an ex parte
468 communication received by him or her, withdraw from the
469 proceeding, in which case the chair shall substitute another
470 commissioner for the proceeding.

471 (5) Any individual who makes an ex parte communication
472 prohibited by this section shall submit to the commission a
473 written statement describing the nature of such communication,
474 to include the name of the person making the communication, the
475 name of each ~~the~~ commissioner or commission employee
476 ~~commissioners~~ receiving the communication, copies of all written
477 communications made, all written responses to such
478 communications, and a memorandum stating the substance of all
479 oral communications received and all oral responses made. The
480 commission shall place on the record of a proceeding all such
481 communications.

482 (6) Any commissioner or commission employee who knowingly
483 fails to place on the record any ex parte ~~such~~ communications
484 prohibited by this section, in violation of this ~~the~~ section,
485 within 15 days after ~~of~~ the date of the ~~such~~ communication is
486 subject to removal or dismissal and may be assessed a civil
487 penalty not to exceed \$5,000. Any individual who knowingly fails
488 to comply with subsection (5) may be assessed a civil penalty
489 not to exceed \$5,000.

490 (7) (a) It is ~~shall be~~ the duty of the Commission on Ethics
491 to receive and investigate sworn complaints of violations of

Amendment No.

492 this section pursuant to the procedures contained in ss.
493 112.322-112.3241.

494 (b) If the Commission on Ethics finds that there has been
495 a violation of this section by a public service commissioner or
496 commission employee, it shall provide the Governor and the
497 Florida Public Service Commission Nominating Council with a
498 report of its findings and recommendations. The Governor is
499 authorized to enforce the findings and recommendations of the
500 Commission on Ethics, pursuant to part III of chapter 112.

501 (c) If a commissioner, commission employee, or other
502 individual fails or refuses to pay the Commission on Ethics any
503 civil penalties assessed pursuant to ~~the provisions of this~~
504 section, the Commission on Ethics may bring an action in any
505 circuit court to enforce the ~~such~~ penalty.

506 (d) If, during the course of an investigation by the
507 Commission on Ethics into an alleged violation of this section,
508 allegations are made as to the identity of the person who
509 participated in the ex parte communication, that person must be
510 given notice and an opportunity to participate in the
511 investigation and relevant proceedings to present a defense. If
512 the Commission on Ethics determines that the person participated
513 in the ex parte communication, the person may not appear before
514 the commission or otherwise represent anyone before the
515 commission for a period of 2 years.

516 Section 11. Subsections (1), (2), and (3) of section
517 350.06, Florida Statutes, are amended to read:

518 350.06 Place of meeting; expenditures; employment of
519 personnel; records availability and fees.-

Amendment No.

520 (1) The offices of the commission ~~said commissioners~~ shall
521 be in the vicinity of Tallahassee, but the commissioners may
522 hold sessions anywhere in the state at their discretion.

523 (2) All sums of money authorized to be paid on account of
524 the commission ~~said commissioners~~ shall be paid out of the State
525 Treasury only on the order of the Chief Financial Officer.

526 (3) The commission ~~commissioners~~ may employ clerical,
527 technical, and professional personnel reasonably necessary for
528 the performance of its their duties, except for those
529 responsibilities and functions reserved to the Office of
530 Regulatory Staff, and may also employ one or more persons
531 capable of stenographic court reporting, to be known as the
532 official reporters of the commission.

533 Section 12. Section 350.0605, Florida Statutes, is amended
534 to read:

535 350.0605 Former commissioners; executive directors; and
536 employees of the commission or Office of Regulatory Staff;
537 representation of clients before commission.—

538 (1) Any former commissioner of the Public Service
539 Commission or former executive director of the Office of
540 Regulatory Staff is prohibited from appearing before the
541 commission representing any client or any industry regulated by
542 the Public Service Commission for a period of 2 years following
543 termination of service as a commissioner or executive director
544 on the commission.

545 (2) Any former employee of the commission or the Office of
546 Regulatory Staff is prohibited from appearing before the
547 commission representing any client regulated by the Public

Amendment No.

548 Service Commission on any matter which was pending at the time
549 of termination and in which such former employee had
550 participated.

551 (3) For a period of 2 years following termination of
552 service as a commissioner or executive director on the
553 commission, a former commissioner of the Public Service
554 Commission or former executive director of the Office of
555 Regulatory Staff member may not accept employment by or
556 compensation from a business entity which, directly or
557 indirectly, owns or controls a public utility regulated by the
558 commission, from a public utility regulated by the commission,
559 from a business entity which, directly or indirectly, is an
560 affiliate or subsidiary of a public utility regulated by the
561 commission or is an actual business competitor of a local
562 exchange company or public utility regulated by the commission
563 and is otherwise exempt from regulation by the commission under
564 ss. 364.02(15) ~~(14)~~ and 366.02(1), or from a business entity or
565 trade association that has been a party to a commission
566 proceeding within the 2 years preceding the member's termination
567 of service on the commission. This subsection applies only to
568 members of the Florida Public Service Commission who are
569 appointed or reappointed after May 10, 1993.

570 Section 13. Subsection (1) of section 350.061, Florida
571 Statutes, is amended to read:

572 350.061 Public Counsel; appointment; oath; restrictions on
573 Public Counsel and his or her employees.-

574 (1) The Attorney General Committee on Public Counsel
575 Oversight shall appoint a Public Counsel ~~by majority vote of the~~

Amendment No.

576 ~~members of the committee~~ to represent the general public of
577 Florida before the Florida Public Service Commission. The Public
578 Counsel shall be an attorney admitted to practice before the
579 Florida Supreme Court and shall serve at the pleasure of the
580 Attorney General ~~Committee on Public Counsel Oversight~~, subject
581 ~~to biennial reconfirmation by the committee~~. The Public Counsel
582 shall perform his or her duties independently. Vacancies in the
583 office shall be filled in the same manner as the original
584 appointment.

585 Section 14. Section 350.0613, Florida Statutes, is amended
586 to read:

587 350.0613 Public Counsel; employees; receipt of pleadings.-
588 The Attorney General ~~committee~~ may authorize the Public Counsel
589 to employ clerical and technical assistants whose
590 qualifications, duties, and responsibilities the Attorney
591 General ~~committee~~ shall from time to time prescribe. The
592 Attorney General ~~committee~~ may from time to time authorize
593 retention of the services of additional attorneys or experts to
594 the extent that the best interests of the people of the state
595 will be better served thereby, including the retention of expert
596 witnesses and other technical personnel for participation in
597 contested proceedings before the commission. The commission
598 shall furnish the Public Counsel with copies of the initial
599 pleadings in all proceedings before the commission, and if the
600 Public Counsel intervenes as a party in any proceeding he or she
601 shall be served with copies of all subsequent pleadings,
602 exhibits, and prepared testimony, if used. Upon filing notice of
603 intervention, the Public Counsel shall serve all interested

Amendment No.

604 parties with copies of such notice and all of his or her
605 subsequent pleadings and exhibits.

606 Section 15. Section 350.0614, Florida Statutes, is amended
607 to read:

608 350.0614 Public Counsel; compensation and expenses.—

609 ~~(1)~~ The salaries and expenses of the Public Counsel and
610 his or her employees shall be allocated by the Attorney General
611 ~~committee~~ only from moneys appropriated to the Public Counsel by
612 the Legislature.

613 ~~(2) The Legislature declares and determines that the~~
614 ~~Public Counsel is under the legislative branch of government~~
615 ~~within the intention of the legislation as expressed in chapter~~
616 ~~216, and no power shall be in the Executive Office of the~~
617 ~~Governor or its successor to release or withhold funds~~
618 ~~appropriated to it, but the same shall be available for~~
619 ~~expenditure as provided by law and the rules or decisions of the~~
620 ~~Committee on Public Counsel Oversight.~~

621 ~~(3) Neither the Executive Office of the Governor nor the~~
622 ~~Department of Management Services or its successor shall have~~
623 ~~power to determine the number, or fix the compensation, of the~~
624 ~~employees of the Public Counsel or to exercise any manner of~~
625 ~~control over them.~~

626 Section 16. Section 350.071, Florida Statutes, is created
627 to read:

628 350.071 Office of Regulatory Staff; creation; purpose;
629 party status.—

Amendment No.

630 (1) The Office of Regulatory Staff is created as an office
631 within the Financial Services Commission. The office shall
632 perform its duties independently.

633 (2) The office shall be considered a party of record in
634 all proceedings before the Public Service Commission. All
635 tariffs, initial pleadings, complaints, and notices of appeal
636 filed with the commission shall be served upon the office. The
637 commission shall notify the office of the initiation of any
638 rulemaking proceeding, workshop, or other proceeding that the
639 commission is authorized by law to initiate.

640 (3) The office shall represent the public interest of this
641 state. As used in ss. 350.071-350.075, the term "public
642 interest" means a balancing of the following:

643 (a) Concerns of the using and consuming public, regardless
644 of customer class, with respect to services provided by any
645 company subject to the jurisdiction of the commission pursuant
646 to any provision of law.

647 (b) Preservation of the financial integrity of the state's
648 regulated public utilities and continued investment in and
649 maintenance of facilities in order to provide reliable utility
650 services at fair, just, and reasonable rates.

651 (c) Promotion of fair competition in telecommunications
652 markets.

653 (4) The Office of Regulatory Staff shall be subject to the
654 same provisions governing ex parte communications that apply to
655 any other party to a commission proceeding. Any recommendation
656 of the Office of Regulatory Staff shall be provided to the

Amendment No.

657 commission in a form, forum, and manner as may lawfully be
658 provided by any other party.

659 Section 17. Section 350.072, Florida Statutes, is created
660 to read:

661 350.072 Office of Regulatory Staff; employees;
662 supervision; budget; location; procedures governing
663 administration and operations.-

664 (1) The Office of Regulatory Staff shall consist of the
665 executive director and any clerical, technical, and professional
666 personnel that the executive director deems to be reasonably
667 necessary for the performance of the duties of the office. The
668 executive director is authorized to employ expert witnesses and
669 other professional expertise that the executive director deems
670 to be reasonably necessary to assist the office in the
671 performance of its duties.

672 (2) The executive director shall employ and set the
673 compensation for all personnel of the Office of Regulatory Staff
674 and shall be responsible for the supervision and direction of
675 all such personnel.

676 (3) Neither the executive director nor any employee of the
677 Office of Regulatory Staff shall be subject to the supervision,
678 direction, or control of the commission or the chair, any
679 member, or any employee of the commission.

680 (4) The executive director shall be responsible for
681 preparing the budget for the Office of Regulatory Staff and
682 shall submit the budget to the Financial Services Commission.

683 (5) The Office of Regulatory Staff shall maintain offices
684 in Leon County at a place convenient to the offices of the

Amendment No.

685 commission that will enable the Office of Regulatory Staff to
686 efficiently perform its functions and duties.

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

689 Section 18. Section 350.073, Florida Statutes, is created
690 to read:

691 350.073 Executive director; appointment; term of office;
692 vacancies; qualifications; salary; oath of office; standards of
693 conduct.-

694 (1) The Financial Services Commission shall appoint or
695 remove the executive director of the Office of Regulatory Staff
696 in the manner set forth in s. 20.121(3)(d), subject to
697 confirmation by the Senate. Until such time as the Senate
698 confirms the appointment of the executive director, the
699 appointee shall perform the functions of the office as provided
700 by law.

701 (2)(a) The term of the executive director shall be 4
702 years, and the initial term of office shall begin January 2,
703 2011. The Financial Services Commission shall appoint the
704 executive director no less than 60 days prior to the first day
705 of the term to which he or she is appointed.

706 (b) In case of a vacancy in the office of executive
707 director for any reason before expiration of the term of office,
708 the Financial Services Commission shall appoint a new executive
709 director in the same manner as the original appointment. The
710 Financial Services Commission may appoint an interim executive
711 director to serve until such time as a new executive director is
712 appointed.

Amendment No.

713 (3) A person may not be appointed as executive director
714 until the Financial Services Commission determines that the
715 person satisfies the criteria set forth in s. 350.04(1) and
716 (2)(a) and possesses a minimum of 12 years of professional
717 experience in one or more of the fields identified in s.
718 350.04(2)(b).

719 (4) The salary of the executive director shall be set by
720 the Financial Services Commission.

721 (5) The executive director shall take and subscribe to the
722 oath of office required of state officers by the State
723 Constitution.

724 (6) In addition to the provisions of part III of chapter
725 112, applicable to the executive director by virtue of being a
726 public officer, the executive director shall be subject to the
727 standards of conduct applicable to commissioners pursuant to s.
728 350.041(2)(a), (b), (c), (d), (e), (g), (l), and (n). In the
729 event of a conflict between this section and part III of chapter
730 112, the more restrictive provision shall apply.

731

732

733

734

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

735

Remove lines 2-71 and insert:

736

An act relating to reorganization of the Public Service

737

Commission; amending s. 112.324, F.S.; providing for disposition

738

by the Commission on Ethics of cases concerning the Public

739

Counsel and employees of the Public Counsel; amending s.

740

186.801, F.S.; directing the commission to request assistance

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB EUP 10-04 (2010)

Amendment No.

741 from the Office of Regulatory Staff to make a preliminary study
742 of certain site plans submitted to the commission by electric
743 utilities; amending s. 350.001, F.S.; revising legislative
744 intent; amending s. 350.011, F.S.; prohibiting certain acts by
745 commissioners and commission staff; repealing s. 350.012(1),
746 (2), (3), and (4), F.S., relating to Committee on Public Counsel
747 Oversight; creation; membership; powers and duties; amending s.
748 350.031, F.S.; revising requirements for nomination by the
749 Public Service Commission Nominating Council for appointment to
750 the commission; creating s. 350.035, F.S.; prohibiting attempts
751 by certain persons to sway the judgment of commissioners;
752 providing for the Commission on Ethics to investigate complaints
753 of violations pursuant to specified procedures; amending s.
754 350.04, F.S.; providing requirements for nomination by the
755 Public Service Commission Nominating Council for appointment to
756 the commission; requiring commissioners to complete a course of
757 study developed by the executive director and general counsel of
758 the Office of Regulatory Staff; requiring commissioners to
759 complete continuing education; providing training requirements
760 for commissioners and staff of the commission; requiring the
761 commissioners to provide certification of compliance to the
762 President of the Senate and the Speaker of the House of
763 Representatives; amending s. 350.041, F.S.; revising legislative
764 intent; revising standards of conduct for commissioners;
765 revising provisions for investigation and reports by the
766 Commission on Ethics of alleged violations; authorizing
767 commission employees and the executive director of the Office of
768 Regulatory Staff to request opinions from the Commission on

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB EUP 10-04 (2010)

Amendment No.

769 Ethics; amending s. 350.042, F.S.; revising provisions for
770 communications concerning agency action proceedings and
771 proceedings under specified provisions; providing for
772 application of such provisions to commission employees; revising
773 restrictions on such communications by commissioners and
774 commission employees; defining the term "ex parte
775 communication"; amending s. 350.06, F.S.; revising provisions
776 for the offices of the commission, payment of moneys, and
777 employment of personnel; amending s. 350.0605, F.S.; restricting
778 employment of a former executive director or former employee of
779 the Office of Regulatory Staff; amending s. 350.061, F.S.;
780 providing that the Public Counsel shall be appointed by and
781 serve at the pleasure of the Attorney General; amending s.
782 350.0613, F.S.; empowering the Attorney General to authorize the
783 Public Counsel to employ clerical and technical assistants whose
784 qualifications, duties, and responsibilities are prescribed by
785 the Attorney General and to retain the services of additional
786 attorneys or experts; amending s. 350.0614, F.S.; providing that
787 the salaries and expenses of the Public Counsel and employees
788 shall be allocated by the Attorney General only from moneys
789 appropriated to the Public Counsel by the Legislature; creating
790 s. 350.071, F.S.; creating the Office of Regulatory Staff within
791 the Financial Services Commission; providing for the office to
792 be considered a party of record in all proceedings before the
793 Public Service Commission; requiring the commission to notify
794 the office of certain proceedings; providing purpose of the
795 office; defining the term "public interest"; providing that the
796 office is subject to certain provisions governing ex parte

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB EUP 10-04 (2010)

Amendment No.

797 | communications; creating s. 350.072, F.S.; providing for an
798 | executive director and employees of the office; providing
799 | responsibilities of the executive director; providing for
800 | submission of a budget to the Financial Services Commission;
801 | providing for the location and internal administration and
802 | operation of the office; creating s. 350.073, F.S.;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A bill to be entitled

An act relating to reorganization of the Public Service Commission; amending s. 112.324, F.S.; providing for disposition by the Commission on Ethics of cases concerning the executive director or staff of the Office of Regulatory Staff; amending s. 119.011, F.S.; revising the definition of the term "agency" to include the Office of Regulatory Staff for purposes of provisions relating to public records; amending s. 186.801, F.S.; directing the commission to request assistance from the Office of Regulatory Staff to make a preliminary study of certain site plans submitted to the commission by electric utilities; amending s. 350.001, F.S.; revising legislative intent; amending s. 350.011, F.S.; prohibiting certain acts by commissioners and commission staff; amending s. 350.012, F.S.; reorganizing the Committee on Public Counsel Oversight into the Committee on Public Service Commission Oversight; directing the committee to appoint a Public Counsel and an executive director of the Office of Regulatory Staff and to perform other duties; amending s. 350.031, F.S.; revising requirements for nomination by the Public Service Commission Nominating Council for appointment to the commission; creating s. 350.035, F.S.; prohibiting attempts by certain persons to sway the judgment of commissioners; providing for the Commission on Ethics to investigate complaints of violations pursuant to specified procedures; amending s. 350.04, F.S.; providing requirements for nomination by the Public Service

29 Commission Nominating Council for appointment to the
30 commission; requiring commissioners to complete a course
31 of study developed by the executive director and general
32 counsel of the Office of Regulatory Staff and approved by
33 the Committee on Public Service Commission Oversight;
34 requiring commissioners to complete continuing education;
35 providing training requirements for commissioners and
36 staff of the commission and the Office of Regulatory
37 Staff; providing that the executive director of the Office
38 of Regulatory Staff shall provide the certification of
39 compliance to the Committee on Public Service Commission
40 Oversight; amending s. 350.041, F.S.; revising legislative
41 intent; revising standards of conduct for commissioners;
42 revising provisions for investigation and reports by the
43 Commission on Ethics of alleged violations; authorizing
44 commission employees and the executive director of the
45 Office of Regulatory Staff to request opinions from the
46 Commission on Ethics; amending s. 350.042, F.S.; revising
47 provisions for communications concerning agency action
48 proceedings and proceedings under specified provisions;
49 providing for application of such provisions to commission
50 employees; revising restrictions on such communications by
51 commissioners and commission employees; defining the term
52 "ex parte communication"; amending s. 350.06, F.S.;
53 revising provisions for the offices of the commission,
54 payment of moneys, and employment of personnel; amending
55 s. 350.0605, F.S.; restricting employment of a former
56 executive director or former employee of the Office of

57 | Regulatory Staff; creating s. 350.071, F.S.; creating the
58 | Office of Regulatory Staff within the legislative branch
59 | of government; providing for the office to be considered a
60 | party of record in all proceedings before the Public
61 | Service Commission; requiring the commission to notify the
62 | office of certain proceedings; providing purpose of the
63 | office; defining the term "public interest"; providing
64 | that the office is subject to certain provisions governing
65 | ex parte communications; creating s. 350.072, F.S.;
66 | providing for an executive director and employees of the
67 | office; providing responsibilities of the executive
68 | director; providing for submission of a budget to the
69 | Committee on Public Service Commission Oversight;
70 | providing for the location and internal administration and
71 | operation of the office; creating s. 350.073, F.S.;
72 | providing for appointment, term, qualifications, and
73 | salary of the executive director of the office; providing
74 | for application of specified provisions for standards of
75 | conduct; creating s. 350.074, F.S.; providing duties of
76 | the office; authorizing the office to intervene in certain
77 | proceedings; requiring the office to provide an annual
78 | report to the Legislature; directing the commission and
79 | the office to establish procedures by which the office may
80 | elect not to participate as a party in certain matters;
81 | creating s. 350.075, F.S.; authorizing the office to
82 | access certain books and records; amending s. 350.113,
83 | F.S.; revising authorized uses of the Florida Public
84 | Service Regulatory Trust Fund; amending s. 350.117, F.S.;

85 | authorizing the office to require reports; requiring a
 86 | copy of any report provided to the commission to be
 87 | provided to the office; authorizing the commission to
 88 | request that the office perform management and operation
 89 | audits of any regulated company; repealing s. 350.121,
 90 | F.S., relating to commission inquiries and the
 91 | confidentiality of business material; creating s. 350.122,
 92 | F.S.; requiring persons testifying before the Public
 93 | Service Commission to disclose certain financial and
 94 | fiduciary relationships; providing that a determination by
 95 | the commission that a violation occurred constitutes
 96 | agency action for which a hearing may be sought; amending
 97 | s. 364.016, F.S.; authorizing the office to assess a
 98 | telecommunications company for certain travel costs;
 99 | amending s. 364.02, F.S.; defining the term "office" as
 100 | used in provisions relating to telecommunications
 101 | companies; amending s. 364.15, F.S.; revising provisions
 102 | authorizing the commission to compel changes to a
 103 | telecommunications facility; amending s. 364.183, F.S.;
 104 | providing that the office shall have access to certain
 105 | records of a telecommunications company and may require a
 106 | telecommunications company to file records, reports, or
 107 | other data; specifying limitations on the authority of the
 108 | commission to access records; providing for the office to
 109 | maintain confidentiality; amending s. 364.185, F.S.;
 110 | providing powers of the office to investigate and inspect
 111 | telecommunications companies; removing such powers from
 112 | the commission; amending s. 364.335, F.S.; revising the

113 authority of the commission to institute a proceeding to
 114 determine whether the grant of a certificate of need
 115 concerning construction, operation, or control of a
 116 telecommunications facility is in the public interest;
 117 amending s. 364.3376, F.S.; providing for the office to
 118 conduct certain investigations; amending s. 364.3381,
 119 F.S.; revising the authority of the commission to
 120 investigate allegations of certain anticompetitive
 121 practices; amending s. 364.37, F.S.; revising the
 122 authority of the commission to make such order and
 123 prescribe such terms and conditions with respect to
 124 controversies concerning territory to be served by a
 125 telecommunications facility; amending s. 366.02, F.S.;
 126 defining the term "office" as used in provisions relating
 127 to public utilities; amending s. 366.05, F.S.; authorizing
 128 the office to make certain purchases for examinations and
 129 testing; providing that the office shall have access to
 130 certain records and may require records, reports, or other
 131 data; specifying limitations on the authority of the
 132 commission to access records; authorizing the office to
 133 assess a public utility for certain travel costs; amending
 134 ss. 366.06, 366.07, 366.071, and 366.076, F.S.; removing
 135 authority of the commission to initiate certain
 136 proceedings or take certain actions upon its own motion;
 137 amending s. 366.08, F.S.; providing powers of the office
 138 to investigate public utilities; removing such powers from
 139 the commission; amending s. 366.093, F.S.; providing
 140 powers of the office to have access to records; specifying

141 limitations on the authority of the commission to access
 142 records; providing for the office to maintain
 143 confidentiality; amending s. 366.82, F.S.; revising the
 144 authority of the commission to require modifications or
 145 additions to a utility's plans and programs; amending s.
 146 367.021, F.S.; defining the term "office" as used in
 147 provisions relating to water and wastewater utilities;
 148 amending s. 367.045, F.S.; requires a water or wastewater
 149 utility to provide notice to the office when it applies
 150 for an initial or amended certificate of authorization;
 151 providing for an objection and a request for a public
 152 hearing by the office; requiring the commission to give
 153 notice of certain actions upon petition of the office;
 154 amending s. 367.081, F.S.; revising the authority of the
 155 commission to fix rates of water and wastewater utilities
 156 or implement changes of such rates; amending s. 367.0814,
 157 F.S.; providing for a water or wastewater utility to
 158 request and obtain assistance from the Office of
 159 Regulatory Staff for the purpose of changing its rates and
 160 charges; revising the authority of the commission to
 161 authorize interim rates; directing the commission to
 162 request from the office any information necessary to
 163 complete a status report; amending ss. 367.0817, 367.082,
 164 367.0822, and 367.083, F.S.; revising authority of the
 165 commission to initiate certain proceedings or take certain
 166 actions upon its own motion; amending s. 367.101, F.S.;
 167 providing that the commission shall, upon request, direct
 168 the office to investigate agreements or proposals for

169 | charges and conditions for service availability and report
 170 | the results; amending s. 367.121, F.S.; revising powers of
 171 | the commission; providing powers of the office; amending
 172 | s. 367.122, F.S.; providing for the office to test meters;
 173 | amending s. 367.145, F.S.; revising provisions for use of
 174 | certain regulatory fees; amending s. 367.156, F.S.;
 175 | providing powers of the office to have access to records;
 176 | specifying limitations on the authority of the commission
 177 | to access records; providing for the office to maintain
 178 | confidentiality; amending s. 367.171, F.S.; revising
 179 | provisions for jurisdiction of certain cases involving a
 180 | utility that becomes subject to county regulation;
 181 | amending s. 368.05, F.S., relating to gas transmission and
 182 | distribution facilities; prohibiting the commission from
 183 | initiating proceedings under specified provisions on its
 184 | own motion; specifying limitations on the authority of the
 185 | commission to access records; amending s. 368.061, F.S.;
 186 | revising provisions for compromise of a civil penalty;
 187 | revising the authority of the commission to initiate
 188 | injunction proceedings; amending s. 368.103, F.S.;
 189 | defining the term "office" as used in the "Natural Gas
 190 | Transmission Pipeline Intrastate Regulatory Act";
 191 | amending ss. 368.106 and 368.107, F.S.; revising the
 192 | authority of the commission to initiate certain
 193 | proceedings or take certain actions concerning rates;
 194 | amending s. 368.108, F.S.; providing powers of the office
 195 | to have access to records; specifying limitations on the
 196 | authority of the commission to access records; providing

197 for the office to maintain confidentiality; amending s.
 198 368.1085, F.S.; authorizing the office to assess a natural
 199 gas transmission company for certain travel costs;
 200 removing the authority of the commission to assess such
 201 costs; amending s. 368.109, F.S.; revising provisions for
 202 use of certain regulatory fees; amending ss. 403.519,
 203 403.537, and 403.9422, F.S., relating to siting of
 204 electrical transmission lines; revising authority of the
 205 commission to initiate certain proceedings or take certain
 206 actions upon its own motion; amending ss. 196.012,
 207 199.183, 212.08, 288.0655, 290.007, 364.602, 489.103, and
 208 624.105, F.S.; conforming cross-references; providing an
 209 effective date.

210
 211 Be It Enacted by the Legislature of the State of Florida:

212
 213 Section 1. Paragraphs (a) and (c) of subsection (8) of
 214 section 112.324, Florida Statutes, are amended to read:

215 112.324 Procedures on complaints of violations; public
 216 records and meeting exemptions.—

217 (8) If, in cases pertaining to complaints other than
 218 complaints against impeachable officers or members of the
 219 Legislature, upon completion of a full and final investigation
 220 by the commission, the commission finds that there has been a
 221 violation of this part or of s. 8, Art. II of the State
 222 Constitution, it shall be the duty of the commission to report
 223 its findings and recommend appropriate action to the proper
 224 disciplinary official or body as follows, and such official or

225 | body shall have the power to invoke the penalty provisions of
 226 | this part, including the power to order the appropriate
 227 | elections official to remove a candidate from the ballot for a
 228 | violation of s. 112.3145 or s. 8(a) and (i), Art. II of the
 229 | State Constitution:

230 | (a) The President of the Senate and the Speaker of the
 231 | House of Representatives, jointly, in any case concerning the
 232 | Public Counsel, members of the Public Service Commission, the
 233 | executive director of the Office of Regulatory Staff, members of
 234 | the Public Service Commission Nominating Council, the Auditor
 235 | General, the director of the Office of Program Policy Analysis
 236 | and Government Accountability, or members of the Legislative
 237 | Committee on Intergovernmental Relations.

238 | (c) The President of the Senate, in any case concerning an
 239 | employee of the Senate; the Speaker of the House of
 240 | Representatives, in any case concerning an employee of the House
 241 | of Representatives; or the President and the Speaker, jointly,
 242 | in any case concerning an employee of a committee of the
 243 | Legislature whose members are appointed solely by the President
 244 | and the Speaker or in any case concerning an employee of the
 245 | Public Counsel, Public Service Commission, Office of Regulatory
 246 | Staff, Auditor General, Office of Program Policy Analysis and
 247 | Government Accountability, or Legislative Committee on
 248 | Intergovernmental Relations.

249 | Section 2. Subsection (2) of section 119.011, Florida
 250 | Statutes, is amended to read:

251 | 119.011 Definitions.—As used in this chapter, the term:

252 | (2) "Agency" means any state, county, district, authority,

253 or municipal officer, department, division, board, bureau,
 254 commission, or other separate unit of government created or
 255 established by law including, for the purposes of this chapter,
 256 the Commission on Ethics, the Public Service Commission, the
 257 Office of Regulatory Staff, and the Office of Public Counsel,
 258 and any other public or private agency, person, partnership,
 259 corporation, or business entity acting on behalf of any public
 260 agency.

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

263 186.801 Ten-year site plans.—

264 (2) Within 9 months after the receipt of the proposed
 265 plan, the commission shall request assistance from the Office of
 266 Regulatory Staff to make a preliminary study of such plan and
 267 shall classify the plan ~~it~~ as "suitable" or "unsuitable." The
 268 commission may suggest alternatives to the plan. All findings of
 269 the commission shall be made available to the Department of
 270 Environmental Protection for its consideration at any subsequent
 271 electrical power plant site certification proceedings. It is
 272 recognized that 10-year site plans submitted by an electric
 273 utility are tentative information for planning purposes only and
 274 may be amended at any time at the discretion of the utility upon
 275 written notification to the commission. A complete application
 276 for certification of an electrical power plant site under
 277 chapter 403, when such site is not designated in the current 10-
 278 year site plan of the applicant, shall constitute an amendment
 279 to the 10-year site plan. In its preliminary study of each 10-
 280 year site plan, the commission shall consider such plan as a

281 | planning document and shall review:

282 | (a) The need, including the need as determined by the
283 | commission, for electrical power in the area to be served.

284 | (b) The effect on fuel diversity within the state.

285 | (c) The anticipated environmental impact of each proposed
286 | electrical power plant site.

287 | (d) Possible alternatives to the proposed plan.

288 | (e) The views of appropriate local, state, and federal
289 | agencies, including the views of the appropriate water
290 | management district as to the availability of water and its
291 | recommendation as to the use by the proposed plant of salt water
292 | or fresh water for cooling purposes.

293 | (f) The extent to which the plan is consistent with the
294 | state comprehensive plan.

295 | (g) The plan with respect to the information of the state
296 | on energy availability and consumption.

297 | Section 4. Section 350.001, Florida Statutes, is amended
298 | to read:

299 | 350.001 Legislative intent.—

300 | (1) The Florida Public Service Commission has been and
301 | shall continue to be an arm of the legislative branch of
302 | government. In the exercise of its jurisdiction, the commission
303 | shall neither establish nor implement any regulatory policy that
304 | is contrary to, or is an expansion of, the authority granted to
305 | it by the Legislature.

306 | (2) The Public Service Commission and its staff shall
307 | perform their ~~its~~ duties independently, impartially,
308 | professionally, honorably, and without undue influence from any

309 person.

310 (3) It is the desire of the Legislature that the Governor
 311 participate in the appointment process of commissioners to the
 312 Public Service Commission. The Legislature accordingly delegates
 313 to the Governor a limited authority with respect to the Public
 314 Service Commission by authorizing him or her to participate in
 315 the selection of members only in the manner prescribed by s.
 316 350.031.

317 Section 5. Section 350.011, Florida Statutes, is amended
 318 to read:

319 350.011 Florida Public Service Commission; jurisdiction;
 320 powers and duties.—

321 (1) The state regulatory agency heretofore known as the
 322 Florida Railroad and Public Utilities Commission or Florida
 323 Public Utilities Commission shall be known and hereafter called
 324 Florida Public Service Commission, and all rights, powers,
 325 duties, responsibilities, jurisdiction, and judicial powers now
 326 vested in said Railroad and Public Utilities Commission or said
 327 Florida Public Utilities Commission and the commissioners
 328 thereof are vested in the Florida Public Service Commission and
 329 the commissioners thereof.

330 (2) The commissioners of the Florida Public Service
 331 Commission may not supervise, direct, or control any person
 332 whose services are employed by the Office of Regulatory Staff
 333 created under s. 350.071.

334 (3) Notwithstanding any other provision of law, the
 335 commission may not inspect, audit, or examine any entity subject
 336 to the jurisdiction of the commission pursuant to any provision

337 of law, as these functions are the sole responsibility of the
 338 Office of Regulatory Staff.

339 (4) The commission staff may not appear as a party in
 340 commission proceedings and shall not offer testimony on issues
 341 before the commission. The commission staff shall not conduct
 342 discovery, either informally or pursuant to the Florida Rules of
 343 Civil Procedure, in any proposed agency action proceeding or any
 344 proceeding under s. 120.569 or s. 120.57 in which the
 345 substantial interests of a party are determined by the
 346 commission.

347 Section 6. Subsections (1) and (2) of section 350.012,
 348 Florida Statutes, are amended to read:

349 350.012 Committee on Public Service Commission Counsel
 350 Oversight; creation; membership; powers and duties.-

351 (1) There is created a standing joint committee of the
 352 Legislature, designated the Committee on Public Service
 353 Commission Counsel Oversight, and composed of 12 members
 354 appointed as follows: six members of the Senate appointed by the
 355 President of the Senate, two of whom must be members of the
 356 minority party; and six members of the House of Representatives
 357 appointed by the Speaker of the House of Representatives, two of
 358 whom must be members of the minority party. The terms of members
 359 shall be for 2 years and shall run from the organization of one
 360 Legislature to the organization of the next Legislature. The
 361 President shall appoint the chair of the committee in even-
 362 numbered years and the vice chair in odd-numbered years, and the
 363 Speaker of the House of Representatives shall appoint the chair
 364 of the committee in odd-numbered years and the vice chair in

365 even-numbered years, from among the committee membership.
 366 Vacancies shall be filled in the same manner as the original
 367 appointment. Members shall serve without additional
 368 compensation, but shall be reimbursed for expenses.

369 (2) The committee shall:

370 (a) Appoint a Public Counsel as provided by general law;

371 (b) Appoint an executive director of the Office of
 372 Regulatory Staff, subject to confirmation by the Legislature, as
 373 provided by general law; and

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

375 Section 7. Paragraphs (b) and (d) of subsection (1) and
 376 subsection (5) of section 350.031, Florida Statutes, are amended
 377 to read:

378 350.031 Florida Public Service Commission Nominating
 379 Council.—

380 (1)

381 (b) All terms shall be for 4 years except those members of
 382 the House and Senate, who shall serve 2-year terms concurrent
 383 with the 2-year elected terms of House members. ~~All terms of the~~
 384 ~~members of the Public Service Commission Nominating Council~~
 385 ~~existing on June 30, 2008, shall terminate upon the effective~~
 386 ~~date of this act; however, such members may serve an additional~~
 387 ~~term if reappointed by the Speaker of the House of~~
 388 ~~Representatives or the President of the Senate.~~ To establish
 389 staggered terms, appointments of members shall be made for
 390 initial terms to begin on July 1, 2008, with each appointing
 391 officer to appoint three legislator members, one of whom shall
 392 be a member of the minority party, to terms through the

PCB EUP 10-04

Redraft - B

2010

393 remainder of the 2-year elected terms of House members; one
 394 nonlegislator member to a 6-month term; one nonlegislator member
 395 to an 18-month term; and one nonlegislator member to a 42-month
 396 term. Thereafter, the terms of the nonlegislator members of the
 397 Public Service Commission Nominating Council shall begin on
 398 January 2 of the year the term commences and end 4 years later
 399 on January 1.

400 (d) Vacancies on the council shall be filled for the
 401 unexpired portion of the term in the same manner as original
 402 appointments to the council. A member may not be reappointed to
 403 the council, except for a member of the House of Representatives
 404 or the Senate who may be appointed to two 2-year terms, ~~members~~
 405 ~~who are reappointed pursuant to paragraph (b)~~, or a person who
 406 is appointed to fill the remaining portion of an unexpired term.

407 (5) A person may not be nominated ~~to the Governor~~ for
 408 appointment to the Public Service Commission until the council
 409 has determined that the person satisfies the qualifications set
 410 forth in s. 350.04(2) ~~is competent and knowledgeable in one or~~
 411 ~~more fields, which shall include, but not be limited to: public~~
 412 ~~affairs, law, economics, accounting, engineering, finance,~~
 413 ~~natural resource conservation, energy, or another field~~
 414 ~~substantially related to the duties and functions of the~~
 415 ~~commission~~. The commission shall fairly represent the ~~above-~~
 416 ~~stated~~ fields identified in s. 350.04(2). Recommendations of the
 417 council shall be nonpartisan.

418 Section 8. Section 350.035, Florida Statutes, is created
 419 to read:

420 350.035 Prohibited influence on commissioners.—Neither the

421 Governor, the President of the Senate, the Speaker of the House
 422 of Representatives, a member of the Committee on Public Service
 423 Commission Oversight, nor a member of the Public Service
 424 Commission Nominating Council shall attempt to sway the
 425 independent judgment of the commission by bringing pressure to
 426 bear upon a commissioner or commission employee through that
 427 person's role in the nomination, appointment, or reconfirmation
 428 of commissioners. It is the duty of the Commission on Ethics to
 429 receive and investigate sworn complaints of violations of this
 430 section pursuant to ss. 112.322-112.3241.

431 Section 9. Section 350.04, Florida Statutes, is amended to
 432 read:

433 350.04 Qualifications of commissioners; training and
 434 continuing education.-

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

437 (a)~~(1)~~ Have any financial interest, other than ownership
 438 of shares in a mutual fund, in any business entity which, either
 439 directly or indirectly, owns or controls any public utility
 440 regulated by the commission, in any public utility regulated by
 441 the commission, or in any business entity which, either directly
 442 or indirectly, is an affiliate or subsidiary of any public
 443 utility regulated by the commission.

444 (b)~~(2)~~ Be employed by or engaged in any business activity
 445 with any business entity which, either directly or indirectly,
 446 owns or controls any public utility regulated by the commission,
 447 by any public utility regulated by the commission, or by any
 448 business entity which, either directly or indirectly, is an

449 affiliate or subsidiary of any public utility regulated by the
450 commission.

451 (2) Each person recommended for appointment to the Public
452 Service Commission by the Public Service Commission Nominating
453 Council must:

454 (a) Have earned at least a baccalaureate degree from an
455 institution of higher learning accredited by a regional or
456 national accrediting body; and

457 (b) Possess a minimum of 10 years of professional
458 experience, or a minimum of 6 years of professional experience
459 if the person has earned an advanced degree, in one or more of
460 the following:

- 461 1. Energy or electric industry issues.
- 462 2. Telecommunications issues.
- 463 3. Water and sewer industry issues.
- 464 4. Finance.
- 465 5. Economics.
- 466 6. Accounting.
- 467 7. Engineering.
- 468 8. Law.

469 (3) Before voting on any matter before the Public Service
470 Commission, each person appointed to the commission after July
471 1, 2010, shall complete a comprehensive course of study,
472 developed by the executive director and general counsel of the
473 Office of Regulatory Staff and approved by the Committee on
474 Public Service Commission Oversight, that addresses the
475 substantive matters within the jurisdiction of the commission,
476 administrative law applicable to commission proceedings, and

477 standards of conduct applicable to commissioners. Thereafter,
 478 each commissioner must complete annually no less than 10 hours
 479 of continuing professional education directly related to
 480 substantive matters within the jurisdiction of the commission.

481 (4) No less than once every 12 months, each commissioner,
 482 commission employee, and staff member of the Office of
 483 Regulatory Staff shall receive training, in a form developed by
 484 the executive director and general counsel of the Office of
 485 Regulatory Staff, that addresses the standards of conduct
 486 applicable to commissioners, their staff, and staff of the
 487 Office of Regulatory Staff.

488 (5) The executive director of the Office of Regulatory
 489 Staff shall certify the office's compliance with the training
 490 requirements imposed by this section, the chair of the Public
 491 Service Commission shall certify the commission's compliance
 492 with these requirements, and each commissioner shall certify his
 493 or her individual compliance with the continuing professional
 494 education requirements of subsection (3). Each certification of
 495 compliance shall be provided to the Committee on Public Service
 496 Commission Oversight.

497 Section 10. Section 350.041, Florida Statutes, is amended
 498 to read:

499 350.041 Commissioners; standards of conduct.—

500 (1) STATEMENT OF INTENT.—

501 (a) Professional, impartial, and honorable commissioners
 502 are indispensable to the effective performance of the
 503 commission's duties. A commissioner shall maintain high
 504 standards of conduct and shall personally observe those

PCB EUP 10-04

Redraft - B

2010

505 standards so that the integrity and impartiality of the
506 commission may be preserved. The standards of conduct provided
507 in this section should be construed and applied to further that
508 objective.

509 (b) In addition to the provisions of part III of chapter
510 112, which are applicable to public service commissioners by
511 virtue of their being public officers and full-time employees of
512 the legislative branch of government, the conduct of public
513 service commissioners shall be governed by the standards of
514 conduct provided in this section. Nothing shall prohibit the
515 standards of conduct from being more restrictive than part III
516 of chapter 112. Further, this section shall not be construed to
517 contravene the restrictions of part III of chapter 112. In the
518 event of a conflict between this section and part III of chapter
519 112, the more restrictive provision shall apply.

520 (2) STANDARDS OF CONDUCT.—

521 (a) A commissioner may not accept anything from any
522 business entity which, either directly or indirectly, owns or
523 controls any public utility regulated by the commission, from
524 any public utility regulated by the commission, or from any
525 business entity which, either directly or indirectly, is an
526 affiliate or subsidiary of any public utility regulated by the
527 commission. A commissioner may attend conferences and associated
528 meals and events that are generally available to all conference
529 participants without payment of any fees in addition to the
530 conference fee. Additionally, while attending a conference, a
531 commissioner may attend meetings, meals, or events that are not
532 sponsored, in whole or in part, by any representative of any

PCB EUP 10-04

Redraft - B

2010

533 public utility regulated by the commission and that are limited
534 to commissioners only, committee members, or speakers if the
535 commissioner is a member of a committee of the association of
536 regulatory agencies that organized the conference or is a
537 speaker at the conference. It is not a violation of this
538 paragraph for a commissioner to attend a conference for which
539 conference participants who are employed by a utility regulated
540 by the commission have paid a higher conference registration fee
541 than the commissioner, or to attend a meal or event that is
542 generally available to all conference participants without
543 payment of any fees in addition to the conference fee and that
544 is sponsored, in whole or in part, by a utility regulated by the
545 commission. If, during the course of an investigation by the
546 Commission on Ethics into an alleged violation of this
547 paragraph, allegations are made as to the identity of the person
548 giving or providing the prohibited gift, that person must be
549 given notice and an opportunity to participate in the
550 investigation and relevant proceedings to present a defense. If
551 the Commission on Ethics determines that the person gave or
552 provided a prohibited gift, the person may not appear before the
553 commission or otherwise represent anyone before the commission
554 for a period of 2 years.

555 (b) A commissioner may not accept any form of employment
556 with or engage in any business activity with any business entity
557 which, either directly or indirectly, owns or controls any
558 public utility regulated by the commission, any public utility
559 regulated by the commission, or any business entity which,
560 either directly or indirectly, is an affiliate or subsidiary of

561 any public utility regulated by the commission.

562 (c) A commissioner may not have any financial interest,
 563 other than shares in a mutual fund, in any public utility
 564 regulated by the commission, in any business entity which,
 565 either directly or indirectly, owns or controls any public
 566 utility regulated by the commission, or in any business entity
 567 which, either directly or indirectly, is an affiliate or
 568 subsidiary of any public utility regulated by the commission. If
 569 a commissioner acquires any financial interest prohibited by
 570 this section during his or her term of office as a result of
 571 events or actions beyond the commissioner's control, he or she
 572 shall immediately sell such financial interest or place such
 573 financial interest in a blind trust at a financial institution.
 574 A commissioner may not attempt to influence, or exercise any
 575 control over, decisions regarding the blind trust.

576 (d) A commissioner may not accept anything from a party in
 577 a proceeding currently pending before the commission. If, during
 578 the course of an investigation by the Commission on Ethics into
 579 an alleged violation of this paragraph, allegations are made as
 580 to the identity of the person giving or providing the prohibited
 581 gift, that person must be given notice and an opportunity to
 582 participate in the investigation and relevant proceedings to
 583 present a defense. If the Commission on Ethics determines that
 584 the person gave or provided a prohibited gift, the person may
 585 not appear before the commission or otherwise represent anyone
 586 before the commission for a period of 2 years.

587 (e) A commissioner may not serve as the representative of
 588 any political party or on any executive committee or other

PCB EUP 10-04

Redraft - B

2010

589 governing body of a political party; serve as an executive
590 officer or employee of any political party, committee,
591 organization, or association; receive remuneration for
592 activities on behalf of any candidate for public office; engage
593 on behalf of any candidate for public office in the solicitation
594 of votes or other activities on behalf of such candidacy; or
595 become a candidate for election to any public office without
596 first resigning from office.

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

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

604 (h) The chair shall require order and decorum in
605 proceedings before the commission. In the absence of the chair,
606 the commissioner presiding over a commission proceeding shall
607 require order and decorum in the proceeding.

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

612 (j) A commissioner shall perform his or her official
613 duties without bias or prejudice. A commissioner may not, in the
614 performance of his or her official duties, by words or conduct
615 manifest bias or prejudice.

616 (k) A commissioner may not, with respect to parties or

PCB EUP 10-04

Redraft - B

2010

617 classes of parties, cases, controversies, or issues likely to
 618 come before the commission, make pledges, promises, or
 619 commitments that are inconsistent with the impartial performance
 620 of the commissioner's official duties.

621 (l) A commissioner may not be swayed by partisan
 622 interests, public clamor, or fear of criticism.

623 (m) ~~(h)~~ A commissioner must avoid impropriety in all of his
 624 or her activities and must act at all times in a manner that
 625 promotes public confidence in the integrity and impartiality of
 626 the commission.

627 (n) ~~(i)~~ A commissioner may not directly or indirectly,
 628 through staff or other means, solicit anything of value from any
 629 public utility regulated by the commission, or from any business
 630 entity that, whether directly or indirectly, is an affiliate or
 631 subsidiary of any public utility regulated by the commission, or
 632 from any party appearing in a proceeding considered by the
 633 commission in the last 2 years.

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

637 (b) The Commission on Ethics shall provide the Governor
 638 and the Florida Public Service Commission Nominating Council
 639 with a report of its findings and recommendations with respect
 640 to alleged violations by a public service commissioner. The
 641 Governor is authorized to enforce these ~~the~~ findings and
 642 recommendations ~~of the Commission on Ethics~~, pursuant to part
 643 III of chapter 112.

644 (c) The Commission on Ethics shall provide the

645 disciplinary officials or bodies specified in part III of
 646 chapter 112 with a report of its findings and recommendations
 647 with respect to alleged violations of the specific provisions of
 648 this section that, pursuant to s. 350.073, are applicable to the
 649 executive director of the Office of Regulatory Staff.

650 (d) A public service commissioner, a commission employee,
 651 the executive director of the Office of Regulatory Staff, or a
 652 member of the Florida Public Service Commission Nominating
 653 Council may request an advisory opinion from the Commission on
 654 Ethics, pursuant to s. 112.322(3)(a), regarding the standards of
 655 conduct or prohibitions set forth in this section and ss.
 656 350.031, 350.04, and 350.042.

657 Section 11. Section 350.042, Florida Statutes, is amended
 658 to read:

659 350.042 Ex parte communications.—

660 (1) Each A commissioner and employee of the commission
 661 shall ~~should~~ accord to every person who is a party to or is
 662 registered with the commission as an interested person in a
 663 proposed agency action proceeding, or who is a party to a
 664 proceeding under s. 120.565, s. 120.569, or s. 120.57 ~~legally~~
 665 interested in a proceeding, or the person's lawyer, full right
 666 to be heard according to law, and, except as authorized by law,
 667 shall ~~not~~ ~~neither~~ initiate, solicit, or ~~not~~ consider ex parte
 668 communications concerning a pending proposed agency action ~~the~~
 669 merits, threat, or offer of reward in any proceeding or a
 670 proceeding under s. 120.565, s. 120.569, or s. 120.57 ~~other than~~
 671 a proceeding under s. 120.54 or s. 120.565, workshops, or
 672 internal affairs meetings. No individual shall discuss ex parte

PCB EUP 10-04

Redraft - B

2010

673 with a commissioner the merits of any issue that he or she knows
674 will be filed with the commission within 180 ~~90~~ days. ~~The~~
675 ~~provisions of this subsection shall not apply to commission~~
676 ~~staff.~~

677 (a) As used in this section, the term "ex parte
678 communication" means any communication that:

679 1. If it is a written or printed communication or a
680 communication in electronic form, is not served on all parties
681 to a proceeding; or

682 2. If it is an oral communication, is made without
683 adequate notice to the parties and without an opportunity for
684 the parties to be present and heard.

685 (b) Where circumstances require, ex parte communications
686 concerning scheduling, administrative purposes, or emergencies
687 that do not deal with substantive matters or issues on the
688 merits are authorized, if:

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

692 2. The commissioner or commission employee makes provision
693 promptly to notify all parties of the substance of the ex parte
694 communication and, where possible, allows an opportunity to
695 respond.

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

700 (3) This section shall not apply to oral communications or

PCB EUP 10-04

Redraft - B

2010

701 discussions in scheduled and noticed open public meetings of
 702 educational programs or of a conference or other meeting of an
 703 association of regulatory agencies.

704 (4) If a commissioner or commission employee knowingly
 705 receives an ex parte communication prohibited by this section
 706 ~~relative to a proceeding other than as set forth in subsection~~
 707 ~~(1)~~, to which he or she is assigned, he or she must place on the
 708 record of the proceeding copies of all written communications
 709 received, all written responses to the communications, and a
 710 memorandum stating the substance of all oral communications
 711 received and all oral responses made, and shall give written
 712 notice to all parties to the communication that such matters
 713 have been placed on the record. Any party to the proceeding who
 714 desires to respond to the ~~an ex parte~~ communication may do so.
 715 The response must be received by the commission within 10 days
 716 after receiving notice that the ~~ex parte~~ communication has been
 717 placed on the record. The commissioner may, if he or she deems
 718 it necessary to eliminate the effect of an ex parte
 719 communication received by him or her, withdraw from the
 720 proceeding, in which case the chair shall substitute another
 721 commissioner for the proceeding.

722 (5) Any individual who makes an ex parte communication
 723 prohibited by this section shall submit to the commission a
 724 written statement describing the nature of such communication,
 725 to include the name of the person making the communication, the
 726 name of each ~~the~~ commissioner or commission employee
 727 ~~commissioners~~ receiving the communication, copies of all written
 728 communications made, all written responses to such

729 | communications, and a memorandum stating the substance of all
 730 | oral communications received and all oral responses made. The
 731 | commission shall place on the record of a proceeding all such
 732 | communications.

733 | (6) Any commissioner or commission employee who knowingly
 734 | fails to place on the record any ex parte ~~such~~ communications
 735 | prohibited by this section, in violation of this ~~the~~ section,
 736 | within 15 days after ~~of~~ the date of the ~~such~~ communication is
 737 | subject to removal or dismissal and may be assessed a civil
 738 | penalty not to exceed \$5,000. Any individual who knowingly fails
 739 | to comply with subsection (5) may be assessed a civil penalty
 740 | not to exceed \$5,000.

741 | (7) (a) It is ~~shall be~~ the duty of the Commission on Ethics
 742 | to receive and investigate sworn complaints of violations of
 743 | this section pursuant to the procedures contained in ss.
 744 | 112.322-112.3241.

745 | (b) If the Commission on Ethics finds that there has been
 746 | a violation of this section by a public service commissioner or
 747 | commission employee, it shall provide the Governor and the
 748 | Florida Public Service Commission Nominating Council with a
 749 | report of its findings and recommendations. The Governor is
 750 | authorized to enforce the findings and recommendations of the
 751 | Commission on Ethics, pursuant to part III of chapter 112.

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

757 (d) If, during the course of an investigation by the
 758 Commission on Ethics into an alleged violation of this section,
 759 allegations are made as to the identity of the person who
 760 participated in the ex parte communication, that person must be
 761 given notice and an opportunity to participate in the
 762 investigation and relevant proceedings to present a defense. If
 763 the Commission on Ethics determines that the person participated
 764 in the ex parte communication, the person may not appear before
 765 the commission or otherwise represent anyone before the
 766 commission for a period of 2 years.

767 Section 12. Subsections (1), (2), and (3) of section
 768 350.06, Florida Statutes, are amended to read:

769 350.06 Place of meeting; expenditures; employment of
 770 personnel; records availability and fees.-

771 (1) The offices of the commission ~~said commissioners~~ shall
 772 be in the vicinity of Tallahassee, but the commissioners may
 773 hold sessions anywhere in the state at their discretion.

774 (2) All sums of money authorized to be paid on account of
 775 the commission ~~said commissioners~~ shall be paid out of the State
 776 Treasury only on the order of the Chief Financial Officer.

777 (3) The commission ~~commissioners~~ may employ clerical,
 778 technical, and professional personnel reasonably necessary for
 779 the performance of its ~~their~~ duties, except for those
 780 responsibilities and functions reserved to the Office of
 781 Regulatory Staff, and may also employ one or more persons
 782 capable of stenographic court reporting, to be known as the
 783 official reporters of the commission.

784 Section 13. Section 350.0605, Florida Statutes, is amended
785 to read:

786 350.0605 Former commissioners; executive directors; and
787 employees of the commission or Office of Regulatory Staff;
788 representation of clients before commission.-

789 (1) Any former commissioner of the Public Service
790 Commission or former executive director of the Office of
791 Regulatory Staff is prohibited from appearing before the
792 commission representing any client or any industry regulated by
793 the Public Service Commission for a period of 2 years following
794 termination of service as a commissioner or executive director
795 ~~on the commission.~~

796 (2) Any former employee of the commission or the Office of
797 Regulatory Staff is prohibited from appearing before the
798 commission representing any client regulated by the Public
799 Service Commission on any matter which was pending at the time
800 of termination and in which such former employee had
801 participated.

802 (3) For a period of 2 years following termination of
803 service as a commissioner or executive director ~~on the~~
804 ~~commission,~~ a former commissioner of the Public Service
805 Commission or former executive director of the Office of
806 Regulatory Staff ~~member~~ may not accept employment by or
807 compensation from a business entity which, directly or
808 indirectly, owns or controls a public utility regulated by the
809 commission, from a public utility regulated by the commission,
810 from a business entity which, directly or indirectly, is an
811 affiliate or subsidiary of a public utility regulated by the

812 commission or is an actual business competitor of a local
 813 exchange company or public utility regulated by the commission
 814 and is otherwise exempt from regulation by the commission under
 815 ss. 364.02~~(15)~~~~(14)~~ and 366.02(1), or from a business entity or
 816 trade association that has been a party to a commission
 817 proceeding within the 2 years preceding the member's termination
 818 of service on the commission. This subsection applies only to
 819 members of the Florida Public Service Commission who are
 820 appointed or reappointed after May 10, 1993.

821 Section 14. Section 350.071, Florida Statutes, is created
 822 to read:

823 350.071 Office of Regulatory Staff; creation; purpose;
 824 party status.—

825 (1) The Office of Regulatory Staff is created within the
 826 legislative branch of government within the intent expressed in
 827 chapter 216. The office shall perform its duties independently.

828 (2) The office shall be considered a party of record in
 829 all proceedings before the Public Service Commission. All
 830 tariffs, initial pleadings, complaints, and notices of appeal
 831 filed with the commission shall be served upon the office. The
 832 commission shall notify the office of the initiation of any
 833 rulemaking proceeding, workshop, or other proceeding that the
 834 commission is authorized by law to initiate.

835 (3) The office shall represent the public interest of this
 836 state. As used in ss. 350.071-350.075, the term "public
 837 interest" means a balancing of the following:

838 (a) Concerns of the using and consuming public, regardless
 839 of customer class, with respect to services provided by any

840 company subject to the jurisdiction of the commission pursuant
 841 to any provision of law.

842 (b) Preservation of the financial integrity of the state's
 843 regulated public utilities and continued investment in and
 844 maintenance of facilities in order to provide reliable utility
 845 services at fair, just, and reasonable rates.

846 (c) Promotion of fair competition in telecommunications
 847 markets.

848 (4) The Office of Regulatory Staff shall be subject to the
 849 same provisions governing ex parte communications that apply to
 850 any other party to a commission proceeding. Any recommendation
 851 of the Office of Regulatory Staff shall be provided to the
 852 commission in a form, forum, and manner as may lawfully be
 853 provided by any other party.

854 Section 15. Section 350.072, Florida Statutes, is created
 855 to read:

856 350.072 Office of Regulatory Staff; employees;
 857 supervision; budget; location; procedures governing
 858 administration and operations.-

859 (1) The Office of Regulatory Staff shall consist of the
 860 executive director and any clerical, technical, and professional
 861 personnel that the executive director deems to be reasonably
 862 necessary for the performance of the duties of the office. The
 863 executive director is authorized to employ expert witnesses and
 864 other professional expertise that the executive director deems
 865 to be reasonably necessary to assist the office in the
 866 performance of its duties.

867 (2) The executive director shall employ and set the
868 compensation for all personnel of the Office of Regulatory Staff
869 and shall be responsible for the supervision and direction of
870 all such personnel.

871 (3) Neither the executive director nor any employee of the
872 Office of Regulatory Staff shall be subject to the supervision,
873 direction, or control of the commission or the chairman, any
874 member, or any employee of the commission.

875 (4) The executive director shall be responsible for
876 preparing the budget for the Office of Regulatory Staff and
877 shall submit the budget to the Committee on Public Service
878 Commission Oversight.

879 (5) The Office of Regulatory Staff shall maintain offices
880 in Leon County at a place convenient to the offices of the
881 commission that will enable the Office of Regulatory Staff to
882 efficiently perform its functions and duties.

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

885 Section 16. Section 350.073, Florida Statutes, is created
886 to read:

887 350.073 Executive director; appointment; term of office;
888 vacancies; qualifications; salary; oath of office; standards of
889 conduct.—

890 (1) (a) The Committee on Public Service Commission
891 Oversight shall appoint the executive director of the Office of
892 Regulatory Staff by majority vote of the committee, subject to
893 confirmation by a majority vote of the Senate and the House of
894 Representatives.

PCB EUP 10-04

Redraft - B

2010

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

898 (c) The reappointment of an executive director is subject
899 to confirmation by a majority vote of the Senate and the House
900 of Representatives.

901 (d) The appointment of an executive director may be
902 terminated at any time by a majority vote of the Senate and the
903 House of Representatives.

904 (2) (a) The term of the executive director shall be 4
905 years, and the initial term of office shall begin January 2,
906 2011. The Committee on Public Service Commission Oversight shall
907 appoint the executive director no less than 60 days prior to the
908 first day of the term to which he or she is appointed.

909 (b) In case of a vacancy in the office of executive
910 director for any reason before expiration of the term of office,
911 the Committee on Public Service Commission Oversight shall
912 appoint a new executive director in the same manner as the
913 original appointment. The committee may appoint an interim
914 executive director to serve until such time as a new executive
915 director is appointed.

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

921 (3) The salary of the executive director shall be set by
922 the committee.

923 (4) The executive director shall take and subscribe to the
 924 oath of office required of state officers by the State
 925 Constitution.

926 (5) In addition to the provisions of part III of chapter
 927 112, applicable to the executive director by virtue of being a
 928 public officer and full-time employee of the legislative branch
 929 of government, the executive director shall be subject to the
 930 standards of conduct applicable to commissioners pursuant to s.
 931 350.041(2)(a), (b), (c), (d), (e), (g), (l), and (n). In the
 932 event of a conflict between this section and part III of chapter
 933 112, the more restrictive provision shall apply.

934 Section 17. Section 350.074, Florida Statutes, is created
 935 to read:

936 350.074 Office of Regulatory Staff; duties.-

937 (1) The Office of Regulatory Staff shall represent the
 938 public interest with respect to matters within the jurisdiction
 939 of the commission and, when considered necessary and in the
 940 public interest by the executive director, shall petition the
 941 commission to initiate proceedings on matters within its
 942 jurisdiction. The office shall have authority to:

943 (a) Review and investigate the rates charged or proposed
 944 to be charged, and the service furnished or proposed to be
 945 furnished, by any public utility or regulated company.

946 (b) Inspect, audit, and examine public utilities and
 947 regulated companies regarding matters within the jurisdiction of
 948 the commission.

949 (c) Represent the public interest in commission
 950 proceedings, hearings, rulemakings, and other regulatory

951 matters.

952 (d) Investigate complaints made in connection with matters
 953 under the jurisdiction of the commission, including those
 954 complaints that are directed to the commission or commissioners.

955 (e) Assist customers in the informal resolution of
 956 complaints regarding the rates or service of public utilities
 957 and regulated companies or regarding any other matter within the
 958 jurisdiction of the commission.

959 (f) Make studies to the commission with respect to
 960 standards, regulations, practices, or service of any public
 961 utility or regulated company.

962 (g) Provide legal representation of the public interest
 963 before other state agencies, federal agencies, and state and
 964 federal courts in connection with matters under the jurisdiction
 965 of the commission, including proceedings that could affect the
 966 rates or service of any public utility or regulated company.

967 (h) Educate the public on matters within the jurisdiction
 968 of the commission which are of special interest to consumers.

969 (2) The commission may not require the Office of
 970 Regulatory Staff to sponsor witnesses or provide testimony in
 971 any proceeding, but it may request in writing or at any duly
 972 noticed public meeting that the office:

973 (a) Provide information and reports on any matter subject
 974 to the commission's jurisdiction and matters incidental to the
 975 jurisdiction of the commission;

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

978 (c) Conduct inspections, audits, or examinations of public

979 utilities and regulated companies regarding matters within the
 980 jurisdiction of the commission.

981 (3) Decisions relating to whether, when, or how to
 982 petition to initiate proceedings before the commission or to
 983 participate or intervene in proceedings before other state
 984 agencies, federal agencies, or state or federal courts are in
 985 the sole discretion of the executive director, except for those
 986 matters that are specified by order of a court of competent
 987 jurisdiction.

988 (4) The Office of Regulatory Staff is considered to have
 989 an interest sufficient to maintain actions for judicial review
 990 of commission orders or decisions and may, as of right and in a
 991 manner prescribed by law, intervene or otherwise participate in
 992 any civil proceeding which involves the review or enforcement of
 993 commission action that the executive director determines may
 994 substantially affect the public interest.

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

997 (6) The commission and the office shall establish mutually
 998 acceptable procedures by which the office may elect not to
 999 participate as a party in noncontroversial matters.

1000 Section 18. Section 350.075, Florida Statutes, is created
 1001 to read:

1002 350.075 Office of Regulatory Staff; access to records.—The
 1003 Office of Regulatory Staff shall have the authority to access or
 1004 require the production of books, records, and information
 1005 pursuant to ss. 364.183, 366.093, and 367.156 and shall have the

PCB EUP 10-04

Redraft - B

2010

1006 authority to access or require production of any other records
 1007 as provided by law.

1008 Section 19. Subsections (1), (2), and (6) of section
 1009 350.113, Florida Statutes, are amended to read:

1010 350.113 Florida Public Service Regulatory Trust Fund;
 1011 moneys to be deposited therein.—

1012 (1) There is hereby created in the State Treasury a
 1013 special fund to be designated as the "Florida Public Service
 1014 Regulatory Trust Fund" which shall be used in the operation of
 1015 the commission and the Office of Regulatory Staff in the
 1016 performance of the various functions and duties required of them
 1017 ~~it~~ by law.

1018 (2) All fees, licenses, and other charges collected by the
 1019 commission shall be deposited in the State Treasury to the
 1020 credit of the Florida Public Service Regulatory Trust Fund to be
 1021 used in the operation of the commission and the Office of
 1022 Regulatory Staff as authorized by the Legislature; however,
 1023 penalties and interest assessed and collected by the commission
 1024 shall not be deposited in the trust fund but shall be deposited
 1025 in the General Revenue Fund. The Florida Public Service
 1026 Regulatory Trust Fund shall be subject to the service charge
 1027 imposed pursuant to chapter 215.

1028 (6) All moneys in the Florida Public Service Regulatory
 1029 Trust Fund shall be for the use of the commission and the Office
 1030 of Regulatory Staff in the performance of their ~~its~~ functions
 1031 and duties as provided by law, subject to the fiscal and
 1032 budgetary provisions of general law.

PCB EUP 10-04

Redraft - B

2010

1033 Section 20. Subsections (1) and (2) of section 350.117,
 1034 Florida Statutes, are amended to read:

1035 350.117 Reports; audits.—

1036 (1) The commission and the Office of Regulatory Staff may
 1037 require such regular or emergency reports, including, but not
 1038 limited to, financial reports, as the commission or the office
 1039 deems necessary to fulfill its obligations under the law. A copy
 1040 of any report provided to the commission must be provided to the
 1041 Office of Regulatory Staff.

1042 (2) The commission may request that the Office of
 1043 Regulatory Staff perform management and operation audits of any
 1044 regulated company. The commission may consider the results of
 1045 such audits in establishing rates; however, the company shall
 1046 not be denied due process as a result of the use of any such
 1047 management or operation audit.

1048 Section 21. Section 350.121, Florida Statutes, is
 1049 repealed.

1050 Section 22. Section 350.122, Florida Statutes, is created
 1051 to read:

1052 350.122 Testimony; public disclosure of affiliation.—

1053 (1) Each person offering testimony at a meeting, workshop,
 1054 hearing, or other scheduled event of the commission shall
 1055 disclose any financial or fiduciary relationship with any party
 1056 to the proceedings at the time the testimony is provided to the
 1057 commission.

1058 (2) The determination by the commission that a person has
 1059 knowingly violated this section constitutes agency action for
 1060 which a hearing may be sought under chapter 120.

PCB EUP 10-04

Redraft - B

2010

1061 Section 23. Section 364.016, Florida Statutes, is amended
 1062 to read:

1063 364.016 Travel costs.—The office ~~commission~~ has the
 1064 authority to assess a telecommunications company for reasonable
 1065 travel costs associated with reviewing the records of the
 1066 telecommunications company and its affiliates when such records
 1067 are kept out of state. The telecommunications company may bring
 1068 the records back into the state for review.

1069 Section 24. Subsections (11) through (16) of section
 1070 364.02, Florida Statutes, are renumbered as subsections (12)
 1071 through (17), respectively, and a new subsection (11) is added
 1072 to that section to read:

1073 364.02 Definitions.—As used in this chapter, the term:
 1074 (11) "Office" means the Office of Regulatory Staff.

1075 Section 25. Section 364.15, Florida Statutes, is amended
 1076 to read:

1077 364.15 Compelling repairs, improvements, changes,
 1078 additions, or extensions.—Whenever the commission finds, ~~on its~~
 1079 ~~own motion or~~ upon petition or complaint, that repairs or
 1080 improvements to, or changes in, any telecommunications facility
 1081 ought reasonably to be made, or that any additions or extensions
 1082 should reasonably be made to any telecommunications facility, in
 1083 order to promote the security or convenience of the public or
 1084 employees or in order to secure adequate service or facilities
 1085 for basic local telecommunications services consistent with the
 1086 requirements set forth in this chapter, the commission shall
 1087 make and serve an order directing that such repairs,
 1088 improvements, changes, additions, or extensions be made in the

PCB EUP 10-04

Redraft - B

2010

1089 manner to be specified in the order. This section authorizes the
 1090 commission to impose only those requirements that it is
 1091 otherwise authorized to impose under this chapter.

1092 Section 26. Subsections (1) and (2) of section 364.183,
 1093 Florida Statutes, are amended to read:

1094 364.183 Access to company records.—

1095 (1) The commission and the office shall have access to all
 1096 records of a telecommunications company that are reasonably
 1097 necessary for the disposition of matters within the commission's
 1098 jurisdiction. The commission and the office shall also have
 1099 access to those records of a local exchange telecommunications
 1100 company's affiliated companies, including its parent company,
 1101 that are reasonably necessary for the disposition of any matter
 1102 concerning an affiliated transaction or a claim of
 1103 anticompetitive behavior including claims of cross-subsidization
 1104 and predatory pricing. Both the commission and the office may
 1105 require a telecommunications company to file records, reports or
 1106 other data directly related to matters within the commission's
 1107 jurisdiction in the form specified in the request ~~by the~~
 1108 ~~commission~~ and may require such company to retain such
 1109 information for a designated period of time. Upon request of the
 1110 company or other person, any records received by the commission
 1111 or the office which are claimed by the company or other person
 1112 to be proprietary confidential business information shall be
 1113 kept confidential and shall be exempt from s. 119.07(1) and s.
 1114 24(a), Art. I of the State Constitution. The authority of the
 1115 commission to access records under this section is granted
 1116 subject to the limitations set forth in s. 350.011(3) and (4).

PCB EUP 10-04

Redraft - B

2010

1117 (2) Discovery in any docket or proceeding before the
 1118 commission shall be in the manner provided for in Rule 1.280 of
 1119 the Florida Rules of Civil Procedure. Upon a showing by a
 1120 company or other person and a finding by the commission that
 1121 discovery will require the disclosure of proprietary
 1122 confidential business information, the commission shall issue an
 1123 appropriate protective order designating the manner for handling
 1124 such information during the course of the proceeding and for
 1125 protecting such information from disclosure outside the
 1126 proceeding. Such proprietary confidential business information
 1127 shall be exempt from s. 119.07(1). Any records provided pursuant
 1128 to a discovery request for which proprietary confidential
 1129 business information status is requested shall be treated by the
 1130 commission, the Office of Regulatory Staff, ~~and~~ the Office of
 1131 the Public Counsel, and any other party subject to the public
 1132 records law as confidential and shall be exempt from s.
 1133 119.07(1), pending a formal ruling on such request by the
 1134 commission or the return of the records to the person providing
 1135 the records. Any record which has been determined to be
 1136 proprietary confidential business information and is not entered
 1137 into the official record of the proceeding shall be returned to
 1138 the person providing the record within 60 days after the final
 1139 order, unless the final order is appealed. If the final order is
 1140 appealed, any such record shall be returned within 30 days after
 1141 the decision on appeal. The commission shall adopt the necessary
 1142 rules to implement this subsection.

1143 Section 27. Section 364.185, Florida Statutes, is amended
 1144 to read:

PCB EUP 10-04

Redraft - B

2010

1145 364.185 Investigations and inspections; power of office
 1146 ~~commission~~.—The office ~~commission~~ or its duly authorized
 1147 representatives may during all reasonable hours enter upon any
 1148 premises occupied by any telecommunications company and may set
 1149 up and use thereon all necessary apparatus and appliances for
 1150 the purpose of making investigations, inspections, examinations,
 1151 and tests and exercising any power conferred by this chapter or
 1152 chapter 350; however, the telecommunications company shall be
 1153 notified of and be represented at the making of such
 1154 investigations, inspections, examinations, and tests. The
 1155 requirement to provide prior notification and representation
 1156 shall not be applicable to the onsite field inspection of
 1157 equipment used to provide telecommunications services to the
 1158 transient public, including the facilities of call aggregators.

1159 Section 28. Subsections (2) and (4) of section 364.335,
 1160 Florida Statutes, are amended to read:

1161 364.335 Application for certificate.—

1162 (2) If the commission grants the requested certificate,
 1163 any person who would be substantially affected by the requested
 1164 certification may, within 21 days after the granting of such
 1165 certificate, file a written objection requesting a proceeding
 1166 pursuant to ss. 120.569 and 120.57. The commission may, upon
 1167 petition of the office ~~on its own motion~~, institute a proceeding
 1168 under ss. 120.569 and 120.57 to determine whether the grant of
 1169 such certificate is in the public interest. The commission shall
 1170 order such proceeding conducted in or near the territory applied
 1171 for, if feasible. If any person requests a public hearing on the
 1172 application, such hearing shall, if feasible, be held in or near

PCB EUP 10-04

Redraft - B

2010

1173 the territory applied for, and the transcript of the public
 1174 hearing and any material submitted at or prior to the hearing
 1175 shall be considered part of the record of the application and
 1176 any proceeding related to the application.

1177 (4) Except as provided in s. 364.33, revocation,
 1178 suspension, transfer, or amendment of a certificate shall be
 1179 subject to the provisions of this section; except that, when the
 1180 commission institutes a proceeding upon petition of the office
 1181 ~~initiates the action~~, the commission shall furnish notice to the
 1182 appropriate local government and to the Public Counsel.

1183 Section 29. Subsection (10) of section 364.3376, Florida
 1184 Statutes, is amended to read:

1185 364.3376 Operator services.—

1186 (10) The office ~~commission~~ shall conduct an effective
 1187 program of random, no-notice compliance investigations of the
 1188 operator services providers and call aggregators operating
 1189 within the state. When the office ~~commission~~ finds a blocking
 1190 violation, it shall notify the commission and provide
 1191 information to assist the commission in determining ~~determine~~
 1192 whether the blocking is the responsibility of the call
 1193 aggregator or the operator services provider. The commission ~~and~~
 1194 may fine the responsible party in accordance with s. 364.285.
 1195 Upon the failure of the responsible party to correct a violation
 1196 within a mandatory time limit established by the commission or
 1197 upon a proven pattern of intentional blocking, the commission
 1198 shall order the discontinuance of the call aggregator's
 1199 telephone service or revoke the operator services provider's
 1200 certificate, as applicable.

PCB EUP 10-04

Redraft - B

2010

1201 Section 30. Subsection (3) of section 364.3381, Florida
 1202 Statutes, is amended to read:

1203 364.3381 Cross-subsidization.—

1204 (3) The commission shall have continuing oversight
 1205 jurisdiction over cross-subsidization, predatory pricing, or
 1206 other similar anticompetitive behavior and may investigate, upon
 1207 petition or complaint ~~or on its own motion~~, allegations of such
 1208 practices.

1209 Section 31. Section 364.37, Florida Statutes, is amended
 1210 to read:

1211 364.37 Controversy concerning territory to be served;
 1212 powers of commission.—If any person in constructing or extending
 1213 his or her telecommunications facility unreasonably interferes
 1214 or is about to unreasonably interfere with any
 1215 telecommunications facility or service of any other person, or
 1216 if a controversy arises between any two or more persons with
 1217 respect to the territory professed to be served by each, the
 1218 commission, upon petition of the office or ~~on its own initiative~~
 1219 ~~or on~~ complaint of any person claiming to be adversely affected,
 1220 may make such order and prescribe such terms and conditions with
 1221 respect thereto as are just and reasonable.

1222 Section 32. Subsection (4) is added to section 366.02,
 1223 Florida Statutes, to read:

1224 366.02 Definitions.—As used in this chapter:

1225 (4) "Office" means the Office of Regulatory Staff.

1226 Section 33. Subsections (6), (9), and (11) of section
 1227 366.05, Florida Statutes, are amended to read:

1228 366.05 Powers.—

PCB EUP 10-04

Redraft - B

2010

1229 (6) The commission or the office, if designated by the
 1230 commission to conduct testing, may purchase materials,
 1231 apparatus, and standard measuring instruments for such
 1232 examination and tests.

1233 (9) Both the commission and the office may require the
 1234 filing of reports and other data by a public utility or its
 1235 affiliated companies, including its parent company, regarding
 1236 transactions, or allocations of common costs, among the utility
 1237 and such affiliated companies. Both the commission and the
 1238 office may also require such reports or other data necessary to
 1239 ensure that a utility's ratepayers do not subsidize nonutility
 1240 activities. The authority of the commission to access records
 1241 under this subsection is granted subject to the limitations set
 1242 forth in s. 350.011(3) and (4).

1243 (11) The office may ~~commission has the authority to~~ assess
 1244 a public utility for reasonable travel costs associated with
 1245 reviewing the records of the public utility and its affiliates
 1246 when such records are kept out of state. The public utility may
 1247 bring the records back into the state for review.

1248 Section 34. Subsections (2) and (3) of section 366.06,
 1249 Florida Statutes, are amended to read:

1250 366.06 Rates; procedure for fixing and changing.—

1251 (2) Whenever the commission finds, upon request made ~~or~~
 1252 ~~upon its own motion,~~ that the rates demanded, charged, or
 1253 collected by any public utility for public utility service, or
 1254 that the rules, regulations, or practices of any public utility
 1255 affecting such rates, are unjust, unreasonable, unjustly
 1256 discriminatory, or in violation of law; that such rates are

1257 | insufficient to yield reasonable compensation for the services
 1258 | rendered; that such rates yield excessive compensation for
 1259 | services rendered; or that such service is inadequate or cannot
 1260 | be obtained, the commission shall order and hold a public
 1261 | hearing, giving notice to the public and to the public utility,
 1262 | and shall thereafter determine just and reasonable rates to be
 1263 | thereafter charged for such service and promulgate rules and
 1264 | regulations affecting equipment, facilities, and service to be
 1265 | thereafter installed, furnished, and used.

1266 | (3) Pending a final order by the commission in any rate
 1267 | proceeding under this section, the commission may withhold
 1268 | consent to the operation of all or any portion of the new rate
 1269 | schedules, delivering to the utility requesting such increase,
 1270 | within 60 days, a reason or written statement of good cause for
 1271 | withholding its consent. Such consent shall not be withheld for
 1272 | a period longer than 8 months from the date of filing the new
 1273 | schedules. The new rates or any portion not consented to shall
 1274 | go into effect under bond or corporate undertaking at the end of
 1275 | such period, but the commission shall, by order, require such
 1276 | public utility to keep accurate account in detail of all amounts
 1277 | received by reason of such increase, specifying by whom and in
 1278 | whose behalf such amounts were paid and, upon completion of
 1279 | hearing and final decision in such proceeding, shall by further
 1280 | order require such public utility to refund with interest at a
 1281 | fair rate, to be determined by the commission in such manner as
 1282 | it may direct, such portion of the increased rate or charge as
 1283 | by its decision shall be found not justified. Any portion of
 1284 | such refund not thus refunded to patrons or customers of the

PCB EUP 10-04

Redraft - B

2010

1285 public utility shall be refunded or disposed of by the public
1286 utility as the commission may direct; however, no such funds
1287 shall accrue to the benefit of the public utility. The
1288 commission shall take final commission action in the docket and
1289 enter its final order within 12 months of the commencement date
1290 for final agency action. As used in this subsection, the
1291 "commencement date for final agency action" means the date upon
1292 which it has been determined by the commission or its designee
1293 that the utility has filed with the clerk the minimum filing
1294 requirements as established by rule of the commission. Within 30
1295 days after receipt of the application, rate request, or other
1296 written document for which the commencement date for final
1297 agency action is to be established, the commission or its
1298 designee shall either determine the commencement date for final
1299 agency action or issue a statement of deficiencies to the
1300 applicant, specifically listing why said applicant has failed to
1301 meet the minimum filing requirements. Such statement of
1302 deficiencies shall be binding upon the commission to the extent
1303 that, once the deficiencies in the statement are satisfied, the
1304 commencement date for final agency action shall be promptly
1305 established as provided herein. Thereafter, within 15 days after
1306 the applicant indicates to the commission that it believes that
1307 it has met the minimum filing requirements, the commission or
1308 its designee shall either determine the commencement date for
1309 final agency action or specifically enumerate in writing why the
1310 requirements have not been met, in which case this procedure
1311 shall be repeated until the commencement date for final agency
1312 action is established. When the commission initiates a

PCB EUP 10-04

Redraft - B

2010

1313 | proceeding upon a request made by a person other than the
 1314 | utility, the commencement date for final agency action shall be
 1315 | the date upon which the order initiating the proceeding is
 1316 | issued.

1317 | Section 35. Section 366.07, Florida Statutes, is amended
 1318 | to read:

1319 | 366.07 Rates; adjustment.—Whenever the commission, after
 1320 | public hearing either upon petition of the office ~~its own motion~~
 1321 | or upon complaint, shall find the rates, rentals, charges or
 1322 | classifications, or any of them, proposed, demanded, observed,
 1323 | charged or collected by any public utility for any service, or
 1324 | in connection therewith, or the rules, regulations,
 1325 | measurements, practices or contracts, or any of them, relating
 1326 | thereto, are unjust, unreasonable, insufficient, excessive, or
 1327 | unjustly discriminatory or preferential, or in anywise in
 1328 | violation of law, or any service is inadequate or cannot be
 1329 | obtained, the commission shall determine and by order fix the
 1330 | fair and reasonable rates, rentals, charges or classifications,
 1331 | and reasonable rules, regulations, measurements, practices,
 1332 | contracts or service, to be imposed, observed, furnished or
 1333 | followed in the future.

1334 | Section 36. Subsections (1) and (3) of section 366.071,
 1335 | Florida Statutes, are amended to read:

1336 | 366.071 Interim rates; procedure.—

1337 | (1) The commission may, during any proceeding for a change
 1338 | of rates, ~~upon its own motion, or~~ upon petition from any party,
 1339 | or by a tariff filing of a public utility, authorize the
 1340 | collection of interim rates until the effective date of the

PCB EUP 10-04

Redraft - B

2010

1341 final order. Such interim rates may be based upon a test period
 1342 different from the test period used in the request for permanent
 1343 rate relief. To establish a prima facie entitlement for interim
 1344 relief, ~~the commission,~~ the petitioning party, or the public
 1345 utility shall demonstrate that the public utility is earning
 1346 outside the range of reasonableness on rate of return calculated
 1347 in accordance with subsection (5).

1348 (3) In granting such relief, the commission may, in an
 1349 expedited hearing but within 60 days of the commencement of the
 1350 proceeding, upon petition ~~or upon its own motion,~~ preclude the
 1351 recovery of any extraordinary or imprudently incurred
 1352 expenditures or, for good cause shown, increase the amount of
 1353 the bond or corporate undertaking.

1354 Section 37. Subsection (1) of section 366.076, Florida
 1355 Statutes, is amended to read:

1356 366.076 Limited proceedings; rules on subsequent
 1357 adjustments.-

1358 (1) Upon petition ~~or its own motion,~~ the commission may
 1359 conduct a limited proceeding to consider and act upon any matter
 1360 within its jurisdiction, including any matter the resolution of
 1361 which requires a public utility to adjust its rates to consist
 1362 with the provisions of this chapter. The commission shall
 1363 determine the issues to be considered during such a proceeding
 1364 and may grant or deny any request to expand the scope of the
 1365 proceeding to include other matters.

1366 Section 38. Section 366.08, Florida Statutes, is amended
 1367 to read:

1368 366.08 Investigations, inspections; power of office

PCB EUP 10-04

Redraft - B

2010

1369 ~~commission.~~—The office ~~commission~~ or its duly authorized
 1370 representatives may during all reasonable hours enter upon any
 1371 premises occupied by any public utility and may set up and use
 1372 thereon all necessary apparatus and appliances for the purpose
 1373 of making investigations, inspections, examinations and tests
 1374 and exercising any power conferred by this chapter or chapter
 1375 350; however provided, such public utility shall have the right
 1376 to be notified of and be represented at the making of such
 1377 investigations, inspections, examinations and tests.

1378 Section 39. Subsections (1) and (2) of section 366.093,
 1379 Florida Statutes, are amended to read:

1380 366.093 Public utility records; confidentiality.—

1381 (1) The commission and the office shall ~~continue to~~ have
 1382 reasonable access to all public utility records and records of
 1383 the utility's affiliated companies, including its parent
 1384 company, regarding transactions or cost allocations among the
 1385 utility and such affiliated companies, and such records
 1386 necessary to ensure that a utility's ratepayers do not subsidize
 1387 nonutility activities. Upon request of the public utility or
 1388 other person, any records received by the commission or the
 1389 office which are shown and found by the commission to be
 1390 proprietary confidential business information shall be kept
 1391 confidential and shall be exempt from s. 119.07(1). The
 1392 authority of the commission to access records under this section
 1393 is granted subject to the limitations set forth in s. 350.011(3)
 1394 and (4).

1395 (2) Discovery in any docket or proceeding before the
 1396 commission shall be in the manner provided for in Rule 1.280 of

1397 | the Florida Rules of Civil Procedure. Information which affects
 1398 | a utility's rates or cost of service shall be considered
 1399 | relevant for purposes of discovery in any docket or proceeding
 1400 | where the utility's rates or cost of service are at issue. The
 1401 | commission shall determine whether information requested in
 1402 | discovery affects a utility's rates or cost of service. Upon a
 1403 | showing by a utility or other person and a finding by the
 1404 | commission that discovery will require the disclosure of
 1405 | proprietary confidential business information, the commission
 1406 | shall issue appropriate protective orders designating the manner
 1407 | for handling such information during the course of the
 1408 | proceeding and for protecting such information from disclosure
 1409 | outside the proceeding. Such proprietary confidential business
 1410 | information shall be exempt from s. 119.07(1). Any records
 1411 | provided pursuant to a discovery request for which proprietary
 1412 | confidential business information status is requested shall be
 1413 | treated by the commission, the Office of Regulatory Staff, ~~and~~
 1414 | the office of the Public Counsel, and any other party subject to
 1415 | the public records law as confidential and shall be exempt from
 1416 | s. 119.07(1), pending a formal ruling on such request by the
 1417 | commission or the return of the records to the person providing
 1418 | the records. Any record which has been determined to be
 1419 | proprietary confidential business information and is not entered
 1420 | into the official record of the proceeding must be returned to
 1421 | the person providing the record within 60 days after the final
 1422 | order, unless the final order is appealed. If the final order is
 1423 | appealed, any such record must be returned within 30 days after
 1424 | the decision on appeal. The commission shall adopt the necessary

PCB EUP 10-04

Redraft - B

2010

1425 rules to implement this provision.

1426 Section 40. Subsections (6) and (7) of section 366.82,
1427 Florida Statutes, are amended to read:

1428 366.82 Definition; goals; plans; programs; annual reports;
1429 energy audits.—

1430 (6) The commission may change the goals upon a showing of
1431 ~~for~~ reasonable cause. The time period to review the goals,
1432 however, shall not exceed 5 years. After the programs and plans
1433 to meet those goals are completed, the commission shall
1434 determine what further goals, programs, or plans are warranted
1435 and adopt them.

1436 (7) Following adoption of goals pursuant to subsections
1437 (2) and (3), the commission shall require each utility to
1438 develop plans and programs to meet the overall goals within its
1439 service area. Upon petition, the commission may require
1440 modifications or additions to a utility's plans and programs at
1441 any time it is shown to be in the public interest consistent
1442 with this act. In approving plans and programs for cost
1443 recovery, the commission shall have the flexibility to modify or
1444 deny plans or programs that would have an undue impact on the
1445 costs passed on to customers. If any plan or program includes
1446 loans, collection of loans, or similar banking functions by a
1447 utility and the plan is approved by the commission, the utility
1448 shall perform such functions, notwithstanding any other
1449 provision of the law. However, no utility shall be required to
1450 loan its funds for the purpose of purchasing or otherwise
1451 acquiring conservation measures or devices, but nothing herein
1452 shall prohibit or impair the administration or implementation of

1453 a utility plan as submitted by a utility and approved by the
 1454 commission under this subsection. If the commission disapproves
 1455 a plan, it shall specify the reasons for disapproval, and the
 1456 utility whose plan is disapproved shall resubmit its modified
 1457 plan within 30 days. Prior approval by the commission shall be
 1458 required to modify or discontinue a plan, or part thereof, which
 1459 has been approved. If any utility has not implemented its
 1460 programs and is not substantially in compliance with the
 1461 provisions of its approved plan at any time, the commission
 1462 shall adopt programs required for that utility to achieve the
 1463 overall goals. Utility programs may include variations in rate
 1464 design, load control, cogeneration, residential energy
 1465 conservation subsidy, or any other measure within the
 1466 jurisdiction of the commission which the commission finds likely
 1467 to be effective; this provision shall not be construed to
 1468 preclude these measures in any plan or program.

1469 Section 41. Subsections (9) through (13) of section
 1470 367.021, Florida Statutes, are renumbered as subsections (10)
 1471 through (14), respectively, and a new subsection (9) is added to
 1472 that section to read:

1473 367.021 Definitions.—As used in this chapter, the
 1474 following words or terms shall have the meanings indicated:

1475 (9) "Office" means the Office of Regulatory Staff.

1476 Section 42. Paragraph (a) of subsection (1), paragraph (a)
 1477 of subsection (2), and subsections (4) and (6) of section
 1478 367.045, Florida Statutes, are amended to read:

1479 367.045 Certificate of authorization; application and
 1480 amendment procedures.—

1481 (1) When a utility applies for an initial certificate of
 1482 authorization from the commission, it shall:

1483 (a) Provide notice of the actual application filed by mail
 1484 or personal delivery to the governing body of the county or city
 1485 affected, ~~to~~ the Public Counsel, the office, ~~to~~ the commission,
 1486 and ~~to~~ such other persons and in such other manner as may be
 1487 prescribed by commission rule;

1488 (2) A utility may not delete or extend its service outside
 1489 the area described in its certificate of authorization until it
 1490 has obtained an amended certificate of authorization from the
 1491 commission. When a utility applies for an amended certificate of
 1492 authorization from the commission, it shall:

1493 (a) Provide notice of the actual application filed by mail
 1494 or personal delivery to the governing body of the county or
 1495 municipality affected, ~~to~~ the Public Counsel, the office, ~~to~~ the
 1496 commission, and ~~to~~ such other persons and in such other manner
 1497 as may be prescribed by commission rule;

1498 (4) If, within 30 days after the last day that notice was
 1499 mailed or published by the applicant, whichever is later, the
 1500 commission receives from the Public Counsel, the office, a
 1501 governmental authority, or a utility or consumer who would be
 1502 substantially affected by the requested certification or
 1503 amendment a written objection requesting a proceeding pursuant
 1504 to ss. 120.569 and 120.57, the commission shall order such
 1505 proceeding conducted in or near the area for which application
 1506 is made, if feasible. Notwithstanding the ability to object on
 1507 any other ground, a county or municipality has standing to
 1508 object on the ground that the issuance or amendment of the

1509 certificate of authorization violates established local
 1510 comprehensive plans developed pursuant to ss. 163.3161-163.3211.
 1511 If a consumer, utility, or governmental authority or the office
 1512 or Public Counsel requests a public hearing on the application,
 1513 such hearing must, if feasible, be held in or near the area for
 1514 which application is made; and the transcript of such hearing
 1515 and any material submitted at or before the hearing must be
 1516 considered as part of the record of the application and any
 1517 proceeding related thereto.

1518 (6) The revocation, suspension, transfer, or amendment of
 1519 a certificate of authorization is subject to the provisions of
 1520 this section. The commission shall give 30 days' notice before
 1521 it initiates any such action upon petition of the office.

1522 Section 43. Paragraph (a) of subsection (2) and paragraph
 1523 (a) of subsection (4) of section 367.081, Florida Statutes, are
 1524 amended to read:

1525 367.081 Rates; procedure for fixing and changing.-

1526 (2)(a)1. The commission shall, ~~either upon request or upon~~
 1527 ~~its own motion~~, fix rates which are just, reasonable,
 1528 compensatory, and not unfairly discriminatory. In every such
 1529 proceeding, the commission shall consider the value and quality
 1530 of the service and the cost of providing the service, which
 1531 shall include, but not be limited to, debt interest; the
 1532 requirements of the utility for working capital; maintenance,
 1533 depreciation, tax, and operating expenses incurred in the
 1534 operation of all property used and useful in the public service;
 1535 and a fair return on the investment of the utility in property
 1536 used and useful in the public service. However, the commission

PCB EUP 10-04

Redraft - B

2010

1537 shall not allow the inclusion of contributions-in-aid-of-
 1538 construction in the rate base of any utility during a rate
 1539 proceeding, nor shall the commission impute prospective future
 1540 contributions-in-aid-of-construction against the utility's
 1541 investment in property used and useful in the public service;
 1542 and accumulated depreciation on such contributions-in-aid-of-
 1543 construction shall not be used to reduce the rate base, nor
 1544 shall depreciation on such contributed assets be considered a
 1545 cost of providing utility service.

1546 2. For purposes of such proceedings, the commission shall
 1547 consider utility property, including land acquired or facilities
 1548 constructed or to be constructed within a reasonable time in the
 1549 future, not to exceed 24 months after the end of the historic
 1550 base year used to set final rates unless a longer period is
 1551 approved by the commission, to be used and useful in the public
 1552 service, if:

1553 a. Such property is needed to serve current customers;

1554 b. Such property is needed to serve customers 5 years
 1555 after the end of the test year used in the commission's final
 1556 order on a rate request as provided in subsection (6) at a
 1557 growth rate for equivalent residential connections not to exceed
 1558 5 percent per year; or

1559 c. Such property is needed to serve customers more than 5
 1560 full years after the end of the test year used in the
 1561 commission's final order on a rate request as provided in
 1562 subsection (6) only to the extent that the utility presents
 1563 clear and convincing evidence to justify such consideration.
 1564

PCB EUP 10-04

Redraft - B

2010

1565 Notwithstanding the provisions of this paragraph, the commission
 1566 shall approve rates for service which allow a utility to recover
 1567 from customers the full amount of environmental compliance
 1568 costs. Such rates may not include charges for allowances for
 1569 funds prudently invested or similar charges. For purposes of
 1570 this requirement, the term "environmental compliance costs"
 1571 includes all reasonable expenses and fair return on any prudent
 1572 investment incurred by a utility in complying with the
 1573 requirements or conditions contained in any permitting,
 1574 enforcement, or similar decisions of the United States
 1575 Environmental Protection Agency, the Department of Environmental
 1576 Protection, a water management district, or any other
 1577 governmental entity with similar regulatory jurisdiction.

1578 (4) (a) On or before March 31 of each year, the commission
 1579 by order shall establish a price increase or decrease index for
 1580 major categories of operating costs incurred by utilities
 1581 subject to its jurisdiction reflecting the percentage of
 1582 increase or decrease in such costs from the most recent 12-month
 1583 historical data available. The commission by rule shall
 1584 establish the procedure to be used in determining such indices
 1585 and a procedure by which a utility, without further action by
 1586 the commission, or the commission upon petition of the office ~~on~~
 1587 ~~its own motion~~, may implement an increase or decrease in its
 1588 rates based upon the application of the indices to the amount of
 1589 the major categories of operating costs incurred by the utility
 1590 during the immediately preceding calendar year, except to the
 1591 extent of any disallowances or adjustments for those expenses of
 1592 that utility in its most recent rate proceeding before the

PCB EUP 10-04

Redraft - B

2010

1593 commission. The rules shall provide that, upon a finding of good
 1594 cause, including inadequate service, the commission may order a
 1595 utility to refrain from implementing a rate increase hereunder
 1596 unless implemented under a bond or corporate undertaking in the
 1597 same manner as interim rates may be implemented under s.
 1598 367.082. A utility may not use this procedure between the
 1599 official filing date of the rate proceeding and 1 year
 1600 thereafter, unless the case is completed or terminated at an
 1601 earlier date. A utility may not use this procedure to increase
 1602 any operating cost for which an adjustment has been or could be
 1603 made under paragraph (b), or to increase its rates by
 1604 application of a price index other than the most recent price
 1605 index authorized by the commission at the time of filing.

1606 Section 44. Subsections (1), (2), (4), (6), (8), and (10)
 1607 of section 367.0814, Florida Statutes, are amended to read:

1608 367.0814 Office of Regulatory Staff assistance in changing
 1609 rates and charges; interim rates.—

1610 (1) The commission may establish rules by which a water or
 1611 wastewater utility whose gross annual revenues are \$250,000 or
 1612 less may request and obtain ~~staff~~ assistance from the Office of
 1613 Regulatory Staff for the purpose of changing its rates and
 1614 charges. A utility may request such ~~staff~~ assistance by filing
 1615 an application with the commission. The gross annual revenue
 1616 level shall be adjusted on July 1, 2013, and every 5 years
 1617 thereafter, based on the most recent cumulative 5 years of the
 1618 price index established by the commission pursuant to s.
 1619 367.081(4)(a).

1620 (2) The official date of filing is established as 30 days

PCB EUP 10-04

Redraft - B

2010

1621 after official acceptance by the office ~~commission~~ of the
 1622 application. If a utility does not remit a fee, as provided by
 1623 s. 367.145, within 30 days after acceptance, the commission may
 1624 deny the application. The commission has 15 months after the
 1625 official date of filing within which to issue a final order.

1626 (4) The commission may, upon petition from the office or
 1627 ~~its own motion, or upon petition~~ from the regulated utility,
 1628 authorize the collection of interim rates until the effective
 1629 date of the final order. Such interim rates may be based upon a
 1630 test period different from the test period used in the request
 1631 for permanent rate relief. To establish interim relief, there
 1632 must be a demonstration that the operation and maintenance
 1633 expenses exceed the revenues of the regulated utility, and
 1634 interim rates shall not exceed the level necessary to cover
 1635 operation and maintenance expenses as defined by the Uniform
 1636 System of Accounts for Class C Water and Wastewater Utilities
 1637 (1996) of the National Association of Regulatory Utility
 1638 Commissioners.

1639 (6) The utility, in requesting ~~staff~~ assistance from the
 1640 office, shall agree to accept the final rates and charges
 1641 approved by the commission unless the final rates and charges
 1642 produce less revenue than the existing rates and charges.

1643 (8) If a utility becomes exempt from commission regulation
 1644 or jurisdiction during the pendency of a ~~staff-assisted~~ rate
 1645 case conducted pursuant to this section, the request for rate
 1646 relief is deemed to have been withdrawn. Interim rates, if
 1647 previously approved, shall become final. Temporary rates, if
 1648 previously approved, must be discontinued, and any money

PCB EUP 10-04

Redraft - B

2010

1649 collected pursuant to the temporary rates, or the difference
 1650 between temporary and interim rates, if previously approved,
 1651 must be refunded to the customers of the utility with interest.

1652 (10) The commission shall submit to the President of the
 1653 Senate and the Speaker of the House of Representatives by
 1654 January 1, 2013, and every 5 years thereafter, a report of the
 1655 status of proceedings conducted under this section, including
 1656 the number of utilities eligible to request ~~staff~~ assistance
 1657 from the office, the number of proceedings conducted annually
 1658 for the most recent 5-year period, the associated impact on
 1659 commission and office resources, and any other information the
 1660 commission deems appropriate. The commission shall request from
 1661 the office any information necessary to complete this report.

1662 Section 45. Subsection (6) of section 367.0817, Florida
 1663 Statutes, is amended to read:

1664 367.0817 Reuse projects.—

1665 (6) After the reuse project is placed in service, the
 1666 commission, upon ~~by~~ petition ~~or on its own motion~~, may initiate
 1667 a proceeding to true-up the costs of the reuse project and the
 1668 resulting rates.

1669 Section 46. Subsections (1) and (3) of section 367.082,
 1670 Florida Statutes, are amended to read:

1671 367.082 Interim rates; procedure.—

1672 (1) The commission may, during any proceeding for a change
 1673 of rates, ~~upon its own motion~~, upon petition from any party, or
 1674 by a tariff filing of a utility or a regulated company,
 1675 authorize the collection of interim rates until the effective
 1676 date of the final order. Such interim rates may be based upon a

PCB EUP 10-04

Redraft - B

2010

1677 test period different from the test period used in the request
 1678 for permanent rate relief. Upon application by a utility, the
 1679 commission may use the projected test-year rate base when
 1680 determining the interim rates or revenues subject to refund. To
 1681 establish a prima facie entitlement for interim relief, ~~the~~
 1682 ~~commission,~~ the petitioning party, the utility, or the regulated
 1683 company shall demonstrate that the utility or the regulated
 1684 company is earning outside the range of reasonableness on rate
 1685 of return calculated in accordance with subsection (5).

1686 (3) In granting such relief, the commission may, in an
 1687 expedited hearing but within 60 days of the commencement of the
 1688 proceeding, upon petition ~~or upon its own motion,~~ preclude the
 1689 recovery of any extraordinary or imprudently incurred
 1690 expenditures or, for good cause shown, increase the amount of
 1691 the bond, escrow, letter of credit, or corporate undertaking.

1692 Section 47. Subsection (1) of section 367.0822, Florida
 1693 Statutes, is amended to read:

1694 367.0822 Limited proceedings.—

1695 (1) Upon petition ~~or by its own motion,~~ the commission may
 1696 conduct limited proceedings to consider, and act upon, any
 1697 matter within its jurisdiction, including any matter the
 1698 resolution of which requires a utility to adjust its rates. The
 1699 commission shall determine the issues to be considered during
 1700 such a proceeding and may grant or deny any request to expand
 1701 the scope of the proceeding to include other related matters.
 1702 However, unless the issue of rate of return is specifically
 1703 addressed in the limited proceeding, the commission shall not
 1704 adjust rates if the effect of the adjustment would be to change

PCB EUP 10-04

Redraft - B

2010

1705 the last authorized rate of return.

1706 Section 48. Section 367.083, Florida Statutes, is amended
 1707 to read:

1708 367.083 Determination of official date of filing.—Within
 1709 30 days after receipt of an application, rate request, or other
 1710 written document for which an official date of filing is to be
 1711 established, the commission or its designee shall either
 1712 determine the official date of filing or issue a statement of
 1713 deficiencies to the applicant, specifically listing why said
 1714 applicant has failed to meet the minimum filing requirements.
 1715 Such statement of deficiencies shall be binding upon the
 1716 commission to the extent that, once the deficiencies in the
 1717 statement are satisfied, the official date of filing shall be
 1718 promptly established as provided herein. Thereafter, within 20
 1719 days after the applicant indicates to the commission that it
 1720 believes that it has met the minimum filing requirements, the
 1721 commission or its designee shall either determine the official
 1722 date of filing or issue another statement of deficiencies,
 1723 specifically listing why the requirements have not been met, in
 1724 which case this procedure shall be repeated until the applicant
 1725 meets the minimum filing requirements and the official date of
 1726 filing is established. When the commission initiates a
 1727 proceeding upon request made by a person other than the utility,
 1728 the official date of filing shall be the date upon which the
 1729 order initiating the proceeding is issued.

1730 Section 49. Subsection (1) of section 367.101, Florida
 1731 Statutes, is amended to read:

1732 367.101 Charges for service availability.—

1733 (1) The commission shall set just and reasonable charges
 1734 and conditions for service availability. The commission by rule
 1735 may set standards for and levels of service-availability charges
 1736 and service-availability conditions. Such charges and conditions
 1737 shall be just and reasonable. The commission shall, upon request
 1738 ~~or upon its own motion,~~ direct the office to investigate
 1739 agreements or proposals for charges and conditions for service
 1740 availability and report the results to the commission.

1741 Section 50. Paragraphs (i) and (k) of subsection (1) and
 1742 subsection (2) of section 367.121, Florida Statutes, are amended
 1743 to read:

1744 367.121 Powers of commission and office.-

1745 (1) In the exercise of its jurisdiction, the commission
 1746 shall have power:

1747 (i) To require the filing of reports and other data by a
 1748 public utility or its affiliated companies, including its parent
 1749 company, regarding transactions or allocations of common costs,
 1750 among the utility and such affiliated companies. The commission
 1751 may also require such reports or other data necessary to ensure
 1752 that a utility's ratepayers do not subsidize nonutility
 1753 activities. The authority of the commission to access records
 1754 under this paragraph is granted subject to the limitations set
 1755 forth in s. 350.011(3) and (4).

1756 ~~(k) To assess a utility for reasonable travel costs~~
 1757 ~~associated with reviewing the records of the utility and its~~
 1758 ~~affiliates when such records are kept out of state. The utility~~
 1759 ~~may bring the records back into the state for review.~~

1760 (2) (a) The office ~~commission~~ or its duly authorized

1761 representatives may, during all reasonable hours, enter upon any
 1762 premises occupied by any utility and set up and use thereon any
 1763 necessary apparatus and appliance for the purpose of making
 1764 investigations, inspections, examinations, and tests and
 1765 exercising any power conferred by this chapter. Such utility
 1766 shall have the right to be notified of and be represented at the
 1767 making of such investigations, inspections, examinations, and
 1768 tests.

1769 (b) The office may assess a utility for reasonable travel
 1770 costs associated with reviewing the records of the utility and
 1771 its affiliates when such records are kept out of state. The
 1772 utility may bring the records back into the state for review.

1773 Section 51. Subsections (3) and (4) of section 367.122,
 1774 Florida Statutes, are amended to read:

1775 367.122 Examination and testing of meters.—

1776 (3) The commission shall establish reasonable fees to be
 1777 paid for testing such meters on the request of the customers.
 1778 Current utility customers or users may, at their discretion, pay
 1779 the fee fixed by the commission at the time of the request or
 1780 have the utility include the fee with their next regularly
 1781 scheduled statement. However, the fee shall be paid by the
 1782 utility and repaid to the customer or user if the meter is found
 1783 defective or incorrect to the disadvantage of the customer or
 1784 user in excess of the degree or amount of tolerance customarily
 1785 allowed for such meters, or as may be provided for in rules and
 1786 regulations of the commission. No fee may be charged for any
 1787 such testing done by the commission or its representatives. The
 1788 commission may designate the office to conduct testing on its

1789 behalf.

1790 (4) The commission or the office, if designated by the
 1791 commission to conduct testing, may purchase materials,
 1792 apparatus, and standard measuring instruments for such
 1793 examinations and tests.

1794 Section 52. Subsection (3) of section 367.145, Florida
 1795 Statutes, is amended to read:

1796 367.145 Regulatory assessment and application fees.—

1797 (3) Fees collected by the commission pursuant to this
 1798 section may only be used to cover the cost of the commission and
 1799 the office in regulating water and wastewater systems. Fees
 1800 collected by the commission pursuant to chapters 364 and 366 may
 1801 not be used to pay the cost of regulating water and wastewater
 1802 systems.

1803 Section 53. Subsections (1) and (2) of section 367.156,
 1804 Florida Statutes, are amended to read:

1805 367.156 Public utility records; confidentiality.—

1806 (1) The commission and the office shall ~~continue to~~ have
 1807 reasonable access to all utility records and records of
 1808 affiliated companies, including its parent company, regarding
 1809 transactions or cost allocations among the utility and such
 1810 affiliated companies, and such records necessary to ensure that
 1811 a utility's ratepayers do not subsidize nonutility activities.
 1812 Upon request of the utility or any other person, any records
 1813 received by the commission or the office which are shown and
 1814 found by the commission to be proprietary confidential business
 1815 information shall be kept confidential and shall be exempt from
 1816 s. 119.07(1). The authority of the commission to access records

1817 under this section is granted subject to the limitations set
 1818 forth in s. 350.011(3) and (4).

1819 (2) Discovery in any docket or proceeding before the
 1820 commission shall be in the manner provided for in Rule 1.280 of
 1821 the Florida Rules of Civil Procedure. Information which affects
 1822 a utility's rates or cost of service shall be considered
 1823 relevant for purposes of discovery in any docket or proceeding
 1824 where the utility's rates or cost of service are at issue. The
 1825 commission shall determine whether information requested in
 1826 discovery affects a utility's rates or cost of service. Upon
 1827 showing by a utility or other person and a finding by the
 1828 commission that discovery will require the disclosure of
 1829 proprietary confidential business information, the commission
 1830 shall issue appropriate protective orders designating the manner
 1831 for handling such information during the course of the
 1832 proceeding and for protecting such information from disclosure
 1833 outside the proceeding. Such proprietary confidential business
 1834 information shall be exempt from s. 119.07(1). Any records
 1835 provided pursuant to a discovery request for which proprietary
 1836 confidential business information status is requested shall be
 1837 treated by the commission, the Office of Regulatory Staff, and
 1838 the Office of the Public Counsel, and any other party subject to
 1839 the public records act as confidential and shall be exempt from
 1840 s. 119.07(1), pending a formal ruling on such request by the
 1841 commission or the return of the records to the person providing
 1842 the records. Any record which has been determined to be
 1843 proprietary confidential business information and is not entered
 1844 into the official record of the proceeding must be returned to

PCB EUP 10-04

Redraft - B

2010

1845 | the person providing the record within 60 days after the final
 1846 | order, unless the final order is appealed. If the final order is
 1847 | appealed, any such record must be returned within 30 days after
 1848 | the decision on appeal. The commission shall adopt the necessary
 1849 | rules to implement this provision.

1850 | Section 54. Subsection (5) of section 367.171, Florida
 1851 | Statutes, is amended to read:

1852 | 367.171 Effectiveness of this chapter.—

1853 | (5) When a utility becomes subject to regulation by a
 1854 | county, all cases in which the utility is a party then pending
 1855 | before the commission, or in any court by appeal from any order
 1856 | of the commission, shall remain within the jurisdiction of the
 1857 | commission or court until disposed of in accordance with the law
 1858 | in effect on the day such case was filed by any party with the
 1859 | commission or initiated by the commission upon the petition of
 1860 | any party, whether or not the parties or the subject of any such
 1861 | case relates to a utility in a county wherein this chapter no
 1862 | longer applies.

1863 | Section 55. Subsection (4) is added to section 368.05,
 1864 | Florida Statutes, to read:

1865 | 368.05 Commission jurisdiction; rules.—

1866 | (4) The commission may not, on its own motion, initiate
 1867 | any proceeding under this part. The authority of the commission
 1868 | to access records under this section is granted subject to the
 1869 | limitations set forth in s. 350.011(3) and (4).

1870 | Section 56. Subsections (2) and (3) of section 368.061,
 1871 | Florida Statutes, are amended to read:

1872 | 368.061 Penalty.—

1873 (2) Any such civil penalty may be compromised by the
 1874 commission ~~commissioners~~. In determining the amount of such
 1875 penalty or the amount agreed upon in compromise, the
 1876 appropriateness of such penalty to the size of the business of
 1877 the person charged, the gravity of the violation, and the good
 1878 faith of the person charged in attempting to achieve compliance
 1879 after notification of a violation shall be considered. Each
 1880 penalty shall be a lien upon the real and personal property of
 1881 said persons and enforceable by the commission as statutory
 1882 liens under chapter 85, the proceeds of which shall be deposited
 1883 in the general revenue fund of the state.

1884 (3) The commission ~~commissioners~~ may, upon petition at
 1885 ~~their discretion~~, cause to be instituted in any court of
 1886 competent jurisdiction in this state proceedings for injunction
 1887 against any person subject to the provisions of this part to
 1888 compel the observance of the provisions of this part or any
 1889 rule, regulation, or requirement of the commission made
 1890 thereunder.

1891 Section 57. Subsections (5) and (6) of section 368.103,
 1892 Florida Statutes, are renumbered as subsections (6) and (7),
 1893 respectively, and a new subsection (5) is added to that section
 1894 to read:

1895 368.103 Definitions.—As used in ss. 368.101-368.112, the
 1896 term:

1897 (5) "Office" means the Office of Regulatory Staff.

1898 Section 58. Subsection (2) of section 368.106, Florida
 1899 Statutes, is amended to read:

1900 368.106 Statement of intent to increase rates; major

PCB EUP 10-04

Redraft - B

2010

1901 changes; hearing; suspension of rate schedules; determination of
 1902 rate level.-

1903 (2) Except when a rate is deemed just and reasonable
 1904 pursuant to s. 368.105(3), if there is filed with the commission
 1905 an initial rate, or a change or modification in any rate in
 1906 effect, the commission shall, on complaint by any person whose
 1907 substantial interests are affected by the rate, or may, upon
 1908 petition by the office ~~on its own motion~~, at any time before
 1909 such rate would have taken effect, order a hearing pursuant to
 1910 ss. 120.569 and 120.57 to determine whether the rate is just and
 1911 reasonable.

1912 Section 59. Section 368.107, Florida Statutes, is amended
 1913 to read:

1914 368.107 Unreasonable or violative existing rates and
 1915 services.-If the commission, after reasonable notice and
 1916 hearing, upon petition by the office ~~on its own motion~~ or
 1917 written complaint by any person who has a substantial interest,
 1918 finds that any rate or service filed with the commission,
 1919 including any rate filed pursuant to s. 368.105(3), whether or
 1920 not being demanded, observed, charged, or collected by any
 1921 natural gas transmission company for any service is unjust,
 1922 unreasonable, or unduly discriminatory or preferential, or in
 1923 any way in violation of any provision of law, the commission
 1924 shall determine the just and reasonable rates, including maximum
 1925 or minimum rates and services, to be thereafter observed and in
 1926 force, and shall fix the same by order to be served on the
 1927 natural gas transmission company. Those rates and services shall
 1928 constitute the legal rates and services of the natural gas

PCB EUP 10-04

Redraft - B

2010

1929 transmission company until changed as provided by ss. 368.101-
 1930 368.112.

1931 Section 60. Subsections (1) and (2) of section 368.108,
 1932 Florida Statutes, are amended to read:

1933 368.108 Confidentiality; discovery.-

1934 (1) The commission and the office shall ~~continue to~~ have
 1935 reasonable access to all natural gas transmission company
 1936 records and records of the natural gas transmission company's
 1937 affiliated companies, including its parent company, regarding
 1938 transactions or cost allocations among the natural gas
 1939 transmission company and such affiliated companies, and such
 1940 records necessary to ensure that a natural gas transmission
 1941 company's ratepayers do not subsidize unregulated activities.
 1942 Upon request of the natural gas transmission company or other
 1943 person, any records received by the commission or the office
 1944 which are shown and found by the commission to be proprietary
 1945 confidential business information shall be confidential and
 1946 exempt from s. 119.07(1). The authority of the commission to
 1947 access records under this section is granted subject to the
 1948 limitations set forth in s. 350.011(3) and (4).

1949 (2) Discovery in any docket or proceeding before the
 1950 commission shall be in the manner provided for in Rule 1.280 of
 1951 the Florida Rules of Civil Procedure. Information which affects
 1952 a natural gas transmission company's rates or cost of service
 1953 shall be considered relevant for purposes of discovery in any
 1954 docket or proceeding where the natural gas transmission
 1955 company's rates or cost of service are at issue. The commission
 1956 shall determine whether information requested in discovery

PCB EUP 10-04

Redraft - B

2010

1957 affects a natural gas transmission company's rates or cost of
 1958 service. Upon a showing by a natural gas transmission company or
 1959 other person and a finding by the commission that discovery will
 1960 require the disclosure of proprietary confidential business
 1961 information, the commission shall issue appropriate protective
 1962 orders designating the manner for handling such information
 1963 during the course of the proceeding and for protecting such
 1964 information from disclosure outside the proceeding. Such
 1965 proprietary confidential business information shall be exempt
 1966 from s. 119.07(1). Any records provided pursuant to a discovery
 1967 request for which proprietary confidential business information
 1968 status is requested shall be treated by the commission, the
 1969 Office of Regulatory Staff, ~~and~~ the Office of the Public
 1970 Counsel, and any other party subject to the public records law
 1971 as confidential and shall be exempt from s. 119.07(1) pending a
 1972 formal ruling on such request by the commission or the return of
 1973 the records to the person providing the records. Any record
 1974 which has been determined to be proprietary confidential
 1975 business information and is not entered into the official record
 1976 of the proceeding must be returned to the person providing the
 1977 record within 60 days after the final order, unless the final
 1978 order is appealed. If the final order is appealed, any such
 1979 record must be returned within 30 days after the decision on
 1980 appeal. The commission shall adopt the necessary rules to
 1981 implement this provision.

1982 Section 61. Section 368.1085, Florida Statutes, is amended
 1983 to read:

1984 368.1085 Travel costs.—The office ~~commission~~ has the

PCB EUP 10-04

Redraft - B

2010

1985 authority to assess a natural gas transmission company for
 1986 reasonable travel costs associated with reviewing the records of
 1987 the natural gas transmission company and its affiliates when
 1988 such records are kept out of state. The natural gas transmission
 1989 company may bring the records back into the state for review.

1990 Section 62. Section 368.109, Florida Statutes, is amended
 1991 to read:

1992 368.109 Regulatory assessment fees.—Each natural gas
 1993 transmission company operating under ss. 368.101-368.112, for
 1994 all or any part of the preceding 6-month period, shall pay to
 1995 the commission, within 30 days following the end of each 6-month
 1996 period, a fee that may not exceed 0.25 percent annually of its
 1997 gross operating revenues derived from intrastate business
 1998 excluding sales for resales to natural gas transmission
 1999 companies, public utilities that supply gas, municipal gas
 2000 utilities, and gas districts. The fee shall, to the extent
 2001 practicable, be related to the cost of the commission and the
 2002 office in regulating such natural gas transmission companies.

2003 Section 63. Subsection (1) of section 403.519, Florida
 2004 Statutes, is amended to read:

2005 403.519 Exclusive forum for determination of need.—

2006 (1) On request by an applicant or upon petition by the
 2007 Office of Regulatory Staff ~~on its own motion~~, the commission
 2008 shall begin a proceeding to determine the need for an electrical
 2009 power plant subject to the Florida Electrical Power Plant Siting
 2010 Act.

2011 Section 64. Paragraph (a) of subsection (1) of section
 2012 403.537, Florida Statutes, is amended to read:

PCB EUP 10-04

Redraft - B

2010

2013 403.537 Determination of need for transmission line;
 2014 powers and duties.—

2015 (1)(a) Upon request by an applicant or upon petition by
 2016 the Office of Regulatory Staff ~~its own motion~~, the Florida
 2017 Public Service Commission shall schedule a public hearing, after
 2018 notice, to determine the need for a transmission line regulated
 2019 by the Florida Electric Transmission Line Siting Act, ss.

2020 403.52-403.5365. The notice shall be published at least 21 days
 2021 before the date set for the hearing and shall be published by
 2022 the applicant in at least one-quarter page size notice in
 2023 newspapers of general circulation, and by the commission in the
 2024 manner specified in chapter 120, by giving notice to counties
 2025 and regional planning councils in whose jurisdiction the
 2026 transmission line could be placed, and by giving notice to any
 2027 persons who have requested to be placed on the mailing list of
 2028 the commission for this purpose. Within 21 days after receipt of
 2029 a request for determination by an applicant, the commission
 2030 shall set a date for the hearing. The hearing shall be held
 2031 pursuant to s. 350.01 within 45 days after the filing of the
 2032 request, and a decision shall be rendered within 60 days after
 2033 such filing.

2034 Section 65. Paragraph (a) of subsection (1) of section
 2035 403.9422, Florida Statutes, is amended to read:

2036 403.9422 Determination of need for natural gas
 2037 transmission pipeline; powers and duties.—

2038 (1)(a) Upon request by an applicant or upon petition by
 2039 the Office of Regulatory Staff ~~its own motion~~, the commission
 2040 shall schedule a public hearing, after notice, to determine the

2041 need for a natural gas transmission pipeline regulated by ss.
 2042 403.9401-403.9425. Such notice shall be published at least 45
 2043 days before the date set for the hearing and shall be published
 2044 in at least one-quarter page size in newspapers of general
 2045 circulation and in the Florida Administrative Weekly, by giving
 2046 notice to counties and regional planning councils in whose
 2047 jurisdiction the natural gas transmission pipeline could be
 2048 placed, and by giving notice to any persons who have requested
 2049 to be placed on the mailing list of the commission for this
 2050 purpose. Within 21 days after receipt of a request for
 2051 determination by an applicant, the commission shall set a date
 2052 for the hearing. The hearing shall be held pursuant to s. 350.01
 2053 within 75 days after the filing of the request, and a decision
 2054 shall be rendered within 90 days after such filing.

2055 Section 66. Subsection (6) of section 196.012, Florida
 2056 Statutes, is amended to read:

2057 196.012 Definitions.—For the purpose of this chapter, the
 2058 following terms are defined as follows, except where the context
 2059 clearly indicates otherwise:

2060 (6) Governmental, municipal, or public purpose or function
 2061 shall be deemed to be served or performed when the lessee under
 2062 any leasehold interest created in property of the United States,
 2063 the state or any of its political subdivisions, or any
 2064 municipality, agency, special district, authority, or other
 2065 public body corporate of the state is demonstrated to perform a
 2066 function or serve a governmental purpose which could properly be
 2067 performed or served by an appropriate governmental unit or which
 2068 is demonstrated to perform a function or serve a purpose which

PCB EUP 10-04

Redraft - B

2010

2069 would otherwise be a valid subject for the allocation of public
 2070 funds. For purposes of the preceding sentence, an activity
 2071 undertaken by a lessee which is permitted under the terms of its
 2072 lease of real property designated as an aviation area on an
 2073 airport layout plan which has been approved by the Federal
 2074 Aviation Administration and which real property is used for the
 2075 administration, operation, business offices and activities
 2076 related specifically thereto in connection with the conduct of
 2077 an aircraft full service fixed base operation which provides
 2078 goods and services to the general aviation public in the
 2079 promotion of air commerce shall be deemed an activity which
 2080 serves a governmental, municipal, or public purpose or function.
 2081 Any activity undertaken by a lessee which is permitted under the
 2082 terms of its lease of real property designated as a public
 2083 airport as defined in s. 332.004(14) by municipalities,
 2084 agencies, special districts, authorities, or other public bodies
 2085 corporate and public bodies politic of the state, a spaceport as
 2086 defined in s. 331.303, or which is located in a deepwater port
 2087 identified in s. 403.021(9)(b) and owned by one of the foregoing
 2088 governmental units, subject to a leasehold or other possessory
 2089 interest of a nongovernmental lessee that is deemed to perform
 2090 an aviation, airport, aerospace, maritime, or port purpose or
 2091 operation shall be deemed an activity that serves a
 2092 governmental, municipal, or public purpose. The use by a lessee,
 2093 licensee, or management company of real property or a portion
 2094 thereof as a convention center, visitor center, sports facility
 2095 with permanent seating, concert hall, arena, stadium, park, or
 2096 beach is deemed a use that serves a governmental, municipal, or

PCB EUP 10-04

Redraft - B

2010

2097 public purpose or function when access to the property is open
 2098 to the general public with or without a charge for admission. If
 2099 property deeded to a municipality by the United States is
 2100 subject to a requirement that the Federal Government, through a
 2101 schedule established by the Secretary of the Interior, determine
 2102 that the property is being maintained for public historic
 2103 preservation, park, or recreational purposes and if those
 2104 conditions are not met the property will revert back to the
 2105 Federal Government, then such property shall be deemed to serve
 2106 a municipal or public purpose. The term "governmental purpose"
 2107 also includes a direct use of property on federal lands in
 2108 connection with the Federal Government's Space Exploration
 2109 Program or spaceport activities as defined in s. 212.02(22).
 2110 Real property and tangible personal property owned by the
 2111 Federal Government or Space Florida and used for defense and
 2112 space exploration purposes or which is put to a use in support
 2113 thereof shall be deemed to perform an essential national
 2114 governmental purpose and shall be exempt. "Owned by the lessee"
 2115 as used in this chapter does not include personal property,
 2116 buildings, or other real property improvements used for the
 2117 administration, operation, business offices and activities
 2118 related specifically thereto in connection with the conduct of
 2119 an aircraft full service fixed based operation which provides
 2120 goods and services to the general aviation public in the
 2121 promotion of air commerce provided that the real property is
 2122 designated as an aviation area on an airport layout plan
 2123 approved by the Federal Aviation Administration. For purposes of
 2124 determination of "ownership," buildings and other real property

PCB EUP 10-04

Redraft - B

2010

2125 improvements which will revert to the airport authority or other
 2126 governmental unit upon expiration of the term of the lease shall
 2127 be deemed "owned" by the governmental unit and not the lessee.
 2128 Providing two-way telecommunications services to the public for
 2129 hire by the use of a telecommunications facility, as defined in
 2130 s. 364.02 (16) ~~(15)~~, and for which a certificate is required under
 2131 chapter 364 does not constitute an exempt use for purposes of s.
 2132 196.199, unless the telecommunications services are provided by
 2133 the operator of a public-use airport, as defined in s. 332.004,
 2134 for the operator's provision of telecommunications services for
 2135 the airport or its tenants, concessionaires, or licensees, or
 2136 unless the telecommunications services are provided by a public
 2137 hospital.

2138 Section 67. Paragraph (b) of subsection (1) of section
 2139 199.183, Florida Statutes, is amended to read:

2140 199.183 Taxpayers exempt from nonrecurring taxes.—

2141 (1) Intangible personal property owned by this state or
 2142 any of its political subdivisions or municipalities shall be
 2143 exempt from taxation under this chapter. This exemption does not
 2144 apply to:

2145 (b) Property related to the provision of two-way
 2146 telecommunications services to the public for hire by the use of
 2147 a telecommunications facility, as defined in s. 364.02 (16) ~~(15)~~,
 2148 and for which a certificate is required under chapter 364, when
 2149 the service is provided by any county, municipality, or other
 2150 political subdivision of the state. Any immunity of any
 2151 political subdivision of the state or other entity of local
 2152 government from taxation of the property used to provide

PCB EUP 10-04

Redraft - B

2010

2153 telecommunication services that is taxed as a result of this
 2154 paragraph is hereby waived. However, intangible personal
 2155 property related to the provision of telecommunications services
 2156 provided by the operator of a public-use airport, as defined in
 2157 s. 332.004, for the operator's provision of telecommunications
 2158 services for the airport or its tenants, concessionaires, or
 2159 licensees, and intangible personal property related to the
 2160 provision of telecommunications services provided by a public
 2161 hospital, are exempt from taxation under this chapter.

2162 Section 68. Subsection (6) of section 212.08, Florida
 2163 Statutes, is amended to read:

2164 212.08 Sales, rental, use, consumption, distribution, and
 2165 storage tax; specified exemptions.—The sale at retail, the
 2166 rental, the use, the consumption, the distribution, and the
 2167 storage to be used or consumed in this state of the following
 2168 are hereby specifically exempt from the tax imposed by this
 2169 chapter.

2170 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—There are also
 2171 exempt from the tax imposed by this chapter sales made to the
 2172 United States Government, a state, or any county, municipality,
 2173 or political subdivision of a state when payment is made
 2174 directly to the dealer by the governmental entity. This
 2175 exemption shall not inure to any transaction otherwise taxable
 2176 under this chapter when payment is made by a government employee
 2177 by any means, including, but not limited to, cash, check, or
 2178 credit card when that employee is subsequently reimbursed by the
 2179 governmental entity. This exemption does not include sales of
 2180 tangible personal property made to contractors employed either

PCB EUP 10-04

Redraft - B

2010

2181 | directly or as agents of any such government or political
 2182 | subdivision thereof when such tangible personal property goes
 2183 | into or becomes a part of public works owned by such government
 2184 | or political subdivision. A determination whether a particular
 2185 | transaction is properly characterized as an exempt sale to a
 2186 | government entity or a taxable sale to a contractor shall be
 2187 | based on the substance of the transaction rather than the form
 2188 | in which the transaction is cast. The department shall adopt
 2189 | rules that give special consideration to factors that govern the
 2190 | status of the tangible personal property before its affixation
 2191 | to real property. In developing these rules, assumption of the
 2192 | risk of damage or loss is of paramount consideration in the
 2193 | determination. This exemption does not include sales, rental,
 2194 | use, consumption, or storage for use in any political
 2195 | subdivision or municipality in this state of machines and
 2196 | equipment and parts and accessories therefor used in the
 2197 | generation, transmission, or distribution of electrical energy
 2198 | by systems owned and operated by a political subdivision in this
 2199 | state for transmission or distribution expansion. Likewise
 2200 | exempt are charges for services rendered by radio and television
 2201 | stations, including line charges, talent fees, or license fees
 2202 | and charges for films, videotapes, and transcriptions used in
 2203 | producing radio or television broadcasts. The exemption provided
 2204 | in this subsection does not include sales, rental, use,
 2205 | consumption, or storage for use in any political subdivision or
 2206 | municipality in this state of machines and equipment and parts
 2207 | and accessories therefor used in providing two-way
 2208 | telecommunications services to the public for hire by the use of

PCB EUP 10-04

Redraft - B

2010

2209 a telecommunications facility, as defined in s. 364.02 (16) ~~(15)~~,
 2210 and for which a certificate is required under chapter 364, which
 2211 facility is owned and operated by any county, municipality, or
 2212 other political subdivision of the state. Any immunity of any
 2213 political subdivision of the state or other entity of local
 2214 government from taxation of the property used to provide
 2215 telecommunication services that is taxed as a result of this
 2216 section is hereby waived. However, the exemption provided in
 2217 this subsection includes transactions taxable under this chapter
 2218 which are for use by the operator of a public-use airport, as
 2219 defined in s. 332.004, in providing such telecommunications
 2220 services for the airport or its tenants, concessionaires, or
 2221 licensees, or which are for use by a public hospital for the
 2222 provision of such telecommunications services.

2223 Section 69. Paragraph (b) of subsection (2) of section
 2224 288.0655, Florida Statutes, is amended to read:

2225 288.0655 Rural Infrastructure Fund.—

2226 (2)

2227 (b) To facilitate access of rural communities and rural
 2228 areas of critical economic concern as defined by the Rural
 2229 Economic Development Initiative to infrastructure funding
 2230 programs of the Federal Government, such as those offered by the
 2231 United States Department of Agriculture and the United States
 2232 Department of Commerce, and state programs, including those
 2233 offered by Rural Economic Development Initiative agencies, and
 2234 to facilitate local government or private infrastructure funding
 2235 efforts, the office may award grants for up to 30 percent of the
 2236 total infrastructure project cost. If an application for funding

PCB EUP 10-04

Redraft - B

2010

2237 is for a catalyst site, as defined in s. 288.0656, the office
 2238 may award grants for up to 40 percent of the total
 2239 infrastructure project cost. Eligible projects must be related
 2240 to specific job-creation or job-retention opportunities.
 2241 Eligible projects may also include improving any inadequate
 2242 infrastructure that has resulted in regulatory action that
 2243 prohibits economic or community growth or reducing the costs to
 2244 community users of proposed infrastructure improvements that
 2245 exceed such costs in comparable communities. Eligible uses of
 2246 funds shall include improvements to public infrastructure for
 2247 industrial or commercial sites and upgrades to or development of
 2248 public tourism infrastructure. Authorized infrastructure may
 2249 include the following public or public-private partnership
 2250 facilities: storm water systems; telecommunications facilities;
 2251 broadband facilities; roads or other remedies to transportation
 2252 impediments; nature-based tourism facilities; or other physical
 2253 requirements necessary to facilitate tourism, trade, and
 2254 economic development activities in the community. Authorized
 2255 infrastructure may also include publicly or privately owned
 2256 self-powered nature-based tourism facilities, publicly owned
 2257 telecommunications facilities, and broadband facilities, and
 2258 additions to the distribution facilities of the existing natural
 2259 gas utility as defined in s. 366.04(3)(c), the existing electric
 2260 utility as defined in s. 366.02, or the existing water or
 2261 wastewater utility as defined in s. 367.021(13)~~(12)~~, or any
 2262 other existing water or wastewater facility, which owns a gas or
 2263 electric distribution system or a water or wastewater system in
 2264 this state where:

2265 1. A contribution-in-aid of construction is required to
 2266 serve public or public-private partnership facilities under the
 2267 tariffs of any natural gas, electric, water, or wastewater
 2268 utility as defined herein; and

2269 2. Such utilities as defined herein are willing and able
 2270 to provide such service.

2271 Section 70. Subsection (8) of section 290.007, Florida
 2272 Statutes, is amended to read:

2273 290.007 State incentives available in enterprise zones.—
 2274 The following incentives are provided by the state to encourage
 2275 the revitalization of enterprise zones:

2276 (8) Notwithstanding any law to the contrary, the Public
 2277 Service Commission may allow public utilities and
 2278 telecommunications companies to grant discounts of up to 50
 2279 percent on tariffed rates for services to small businesses
 2280 located in an enterprise zone designated pursuant to s.
 2281 290.0065. Such discounts may be granted for a period not to
 2282 exceed 5 years. For purposes of this subsection, the term
 2283 "public utility" has the same meaning as in s. 366.02(1) and the
 2284 term "telecommunications company" has the same meaning as in s.
 2285 364.02(15) ~~(14)~~.

2286 Section 71. Subsection (4) of section 364.602, Florida
 2287 Statutes, is amended to read:

2288 364.602 Definitions.—For purposes of this part:

2289 (4) "Originating party" means any person, firm,
 2290 corporation, or other entity, including a telecommunications
 2291 company or a billing clearinghouse, that provides any
 2292 telecommunications service or information service to a customer

PCB EUP 10-04

Redraft - B

2010

2293 or bills a customer through a billing party, except the term
 2294 "originating party" does not include any entity specifically
 2295 exempted from the definition of "telecommunications company" as
 2296 provided in s. 364.02(15)~~(14)~~.

2297 Section 72. Subsection (5) of section 489.103, Florida
 2298 Statutes, is amended to read:

2299 489.103 Exemptions.—This part does not apply to:

2300 (5) Public utilities, including special gas districts as
 2301 defined in chapter 189, telecommunications companies as defined
 2302 in s. 364.02(15)~~(14)~~, and natural gas transmission companies as
 2303 defined in s. 368.103(4), on construction, maintenance, and
 2304 development work performed by their employees, which work,
 2305 including, but not limited to, work on bridges, roads, streets,
 2306 highways, or railroads, is incidental to their business. The
 2307 board shall define, by rule, the term "incidental to their
 2308 business" for purposes of this subsection.

2309 Section 73. Section 624.105, Florida Statutes, is amended
 2310 to read:

2311 624.105 Waiver of customer liability.—Any regulated
 2312 company as defined in s. 350.111, any electric utility as
 2313 defined in s. 366.02(2), any utility as defined in s.
 2314 367.021(13)~~(12)~~ or s. 367.022(2) and (7), and any provider of
 2315 communications services as defined in s. 202.11(2) may charge
 2316 for and include an optional waiver of liability provision in
 2317 their customer contracts under which the entity agrees to waive
 2318 all or a portion of the customer's liability for service from
 2319 the entity for a defined period in the event of the customer's
 2320 call to active military service, death, disability, involuntary

PCB EUP 10-04

Redraft - B

2010

2321 | unemployment, qualification for family leave, or similar
 2322 | qualifying event or condition. Such provisions may not be
 2323 | effective in the customer's contract with the entity unless
 2324 | affirmatively elected by the customer. No such provision shall
 2325 | constitute insurance so long as the provision is a contract
 2326 | between the entity and its customer.

2327 | Section 74. This act shall take effect October 1, 2010.