

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA
Tuesday - February 09, 2010
Immediately Following Agenda Conference
Room 140 - Betty Easley Conference Center

NOTICE

The Florida Concrete Products Association's presentation has been deferred. Please note the following change in order of items to be heard:

1. Approve January 25, 2010, Internal Affairs Meeting Minutes.
2. Discussion of Potential Legislative Proposals for the 2010 Session.
3. Draft Comments in Response to FCC Public Notice Regarding Universal Service Forbearance Petition of Partner Communications Cooperative. Approval is sought.
4. Briefing on EPA rulemaking
5. Other matters if any.

TD/sa

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON
ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE
OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6068.



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA

9:30 AM – 12:00 PM

Monday - January 25, 2010

Room 140 - Betty Easley Conference Center

COMMISSIONERS PRESENT: Chairman Argenziano
Commissioner Edgar
Commissioner Skop
Commissioner Klement
Commissioner Stevens

STAFF PARTICIPATING: Devlin, Hill, Kiser, Helton, Pennington, S. Brown, Marr, Futrell,
Shafer, Muir

1. Approve January 6, 2010, Internal Affairs Meeting Minutes.

The minutes were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

2. Draft Annual Report on Activities Pursuant to the Florida Energy Efficiency and Conservation Act (FEECA) as required by Sections 366.82(10) and 377.703(3)(f) Florida Statutes. Due to the Governor and Legislature on March 1, 2010. Approval is sought.

The draft annual report was approved as modified by the Commissioners at the Internal Affairs Meeting.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

3. U.S. Department of Energy State Regulators Assistance Grant: Staff Seeks Approval of Required Plan Documents. Approval is sought.

The Project Management and Workforce Plans were approved as modified by the Commissioners at the Internal Affairs meeting. Staff was asked to provide frequent updates and to coordinate with Commissioner's offices for training and site visits.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

4. Discussion of Potential Legislative Proposals for the 2010 Session.

A discussion was held between the Commissioners and staff concerning potential legislative proposals for the 2010 session concerning ex parte communications at the Commission. Staff was directed to incorporate the Commissioners comments into the legislative proposal and bring it back to the next Internal Affairs Meeting.

Staff will contact Senator Fasano's office to update him on the status of discussions on the legislative proposal.

Commissioners participating: Argenziano, Edger, Skop, Klement, Stevens

5. Update on Executive Director Position.

The Commissioners unanimously selected Timothy Devlin as the Commission's Executive Director. A discussion was held concerning restoring the second Deputy Executive Director position. This decision will be made by the Executive Director as well as beginning to give some thoughts to succession planning.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

6. Other matters, if any.

- Commissioner Stevens requested that staff investigate a recent media release concerning EPA placing heavy restrictions on water in Florida. It appears that these restrictions are more stringent for Florida than any other state. Staff is to report back on this issue at the next Internal Affairs meeting.
- Commissioner Stevens brought to the attention of the Commissioners the possibility of launching a pro-active public information and marketing campaign as a public outreach to let the Florida consumers know more about the Commission and the changes we are making and that the Commission does not rubber stamp any requests. The Public Information Officer, Cindy Muir, advised the Commissioners on the current public outreach programs. Press releases and free public interest programming were also discussed.
- Commissioner Skop reported that he had received the information he had requested concerning the JEA Solar Agreement. JEA did an excellent job with the agreement, and should be considered a benchmark.



URBAN HEAT ISLAND

Public Service Commission

January 25, 2010

RESEARCH ON URBAN HEAT ISLAND HAS PROVEN THIS IS A FUNDAMENTAL ASPECT FOR CLIMATE CHANGE

Definition	Increase in ambient temperature that occurs in cities because paved areas and buildings absorb more heat from the sun than natural landscape
Main Contributing Factor	<p>Solar reflectivity is the single most important factor contributing to heat island effect</p> <ul style="list-style-type: none"> • This reflectivity is measured in Albedo, the degree to which a material reflects incoming solar radiation • It is a function of a surface's color (i.e. dark surfaces absorb radiation and release heat) <p>"In urban areas, pavements and roofs constitute over 60% of urban surfaces (roofs 20-25%, pavements about 40%)."⁽¹⁾</p>
Environmental Impact	<ul style="list-style-type: none"> • Additional energy needed to cool warmer cities, emitting additional CO₂ • Greater frequency and severity of smog episodes
<u>Steven Chu</u>⁽²⁾ U. S. Secretary of Energy	<p>"If you look at all the buildings and <u>make all the roofs white</u>, and if you <u>make the pavement a more concrete-type of color</u> than a black-type of color, and you do this uniformly... It's the equivalent of <u>reducing the carbon emissions due to all the cars in the world by 11 years</u>"</p>

(1) NREL- "The Effect of Pavements' Temperatures on Air Temperatures in Large Cities"

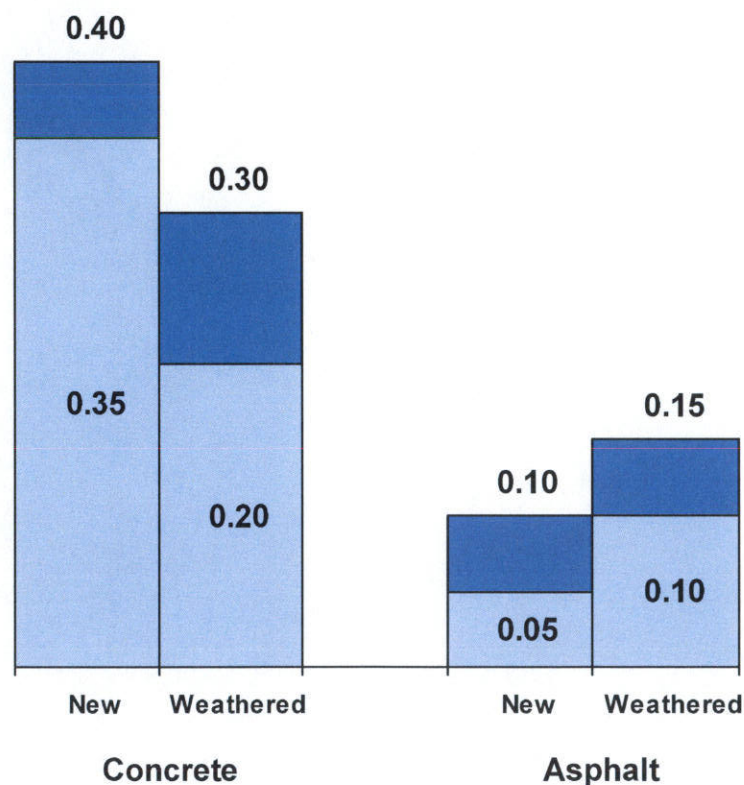
(2) Financial Times, May 27, 2009

HIGHER ALBEDO VALUES PRODUCE GREATER REFLECTANCE THAT REDUCES THE HEAT ISLAND EFFECT

Average Albedo for Pavements⁽¹⁾

Comments

Albedo



Light colored pavements become darker as the road ages due to oil drips, tire marks, debris, etc

- Studies suggest this is not a great concern as “residual reflectivity is still much greater than reflectivity from darker colored materials”⁽²⁾

Dark colored pavements become lighter with time and increase their albedo

- As asphaltic coating wears down, aggregates are exposed revealing a higher albedo surface
- By this time, IRI of pavement decreased to a point where resurfacing must be planned

Color of aggregates can impact Albedo

(1) ACPA “Albedo: A measure of pavement surface reflectance” (LBNL, Levinson, Akbari)

(2) “Cooling Our Communities” USEPA

Source: PCA (Gajda, VanGeem); “Spectra Solar Reflectance of Various Materials” Berdahl, Bretz

HIGH ALBEDO PAVEMENTS COULD PROVIDE SIGNIFICANT ENVIRONMENTAL BENEFITS TO THE STATE OF FLORIDA

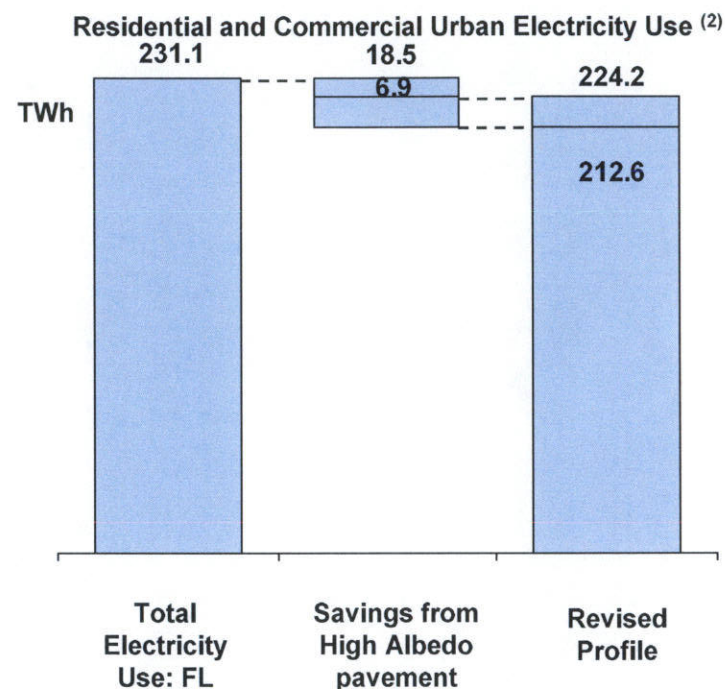
Pavements, Air Temperature, and Electricity Usage

Lawrence Berkeley National Laboratory:

The Effects of Pavement's Temperatures on Air Temperatures in Large Cities

- Lawrence Berkeley National Laboratory conducted study measuring impact of pavement albedo on Urban Heat Island reductions
- Findings prove that concrete pavements would reduce energy consumption in LA by 100 MW or 71.8 MT CO₂ annually
- Estimated that 3 – 8% of electricity in cities (pop. 100,000+) is used to offset the heat from the heat island effect

Extrapolating to FL

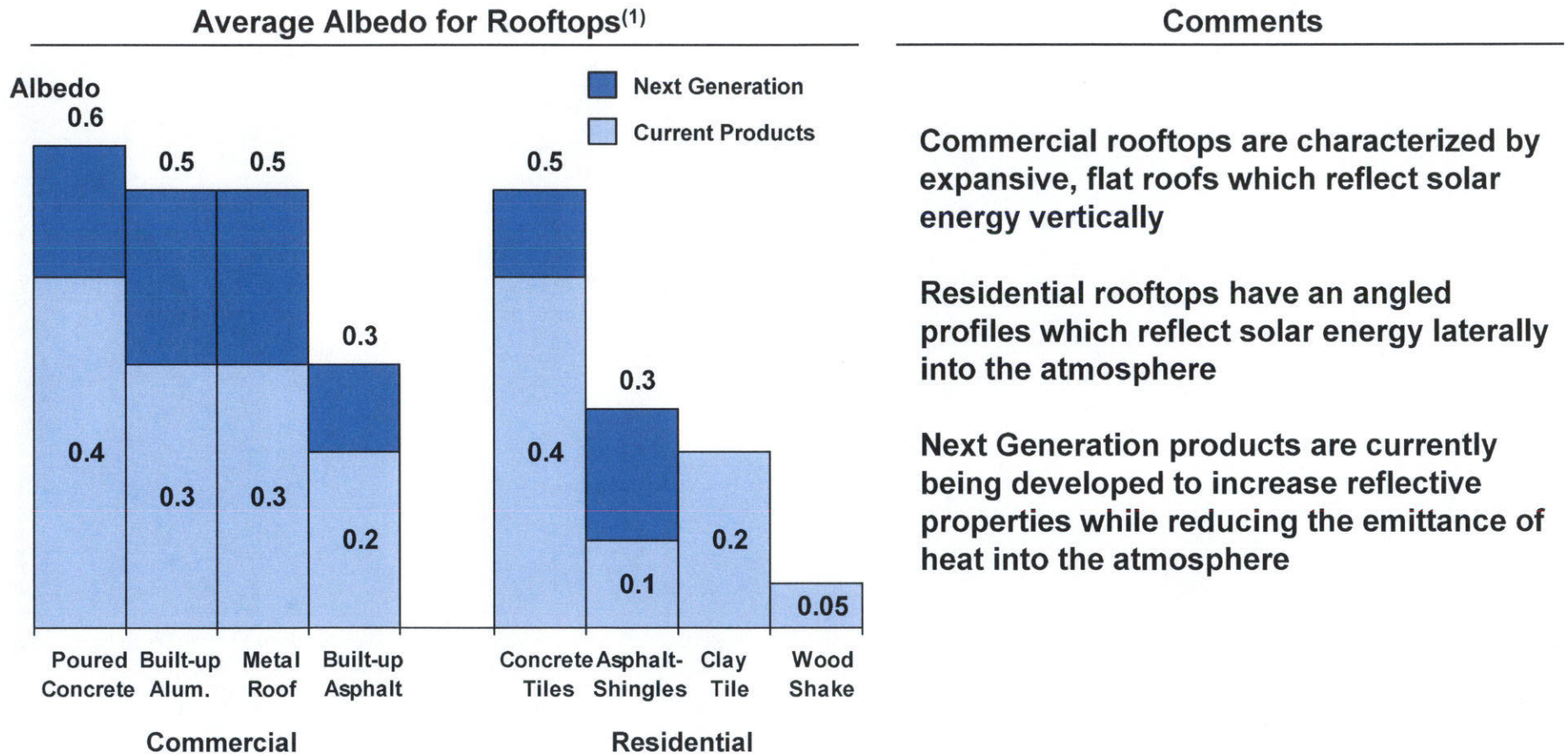


Concrete pavements could save Floridians 6.9 – 18.5 TWh (5.0 – 13.3 MMT CO₂), which is equivalent to annual emissions of 1.0 M – 2.7 M vehicles ⁽¹⁾

- U.S.EPA – Energy Information Administration – 0.718 MT CO₂/ MWh
- American Council for Energy Efficient Economy

MATERIALS CHOICE FOR ROOFS ALSO HAVE A SIGNIFICANT IMPACT ON URBAN HEAT ISLAND EFFECT

Estimates indicate roofs cover 20 – 25% of a city's surface



For every 1,000SF of rooftop, an increase in albedo of 0.04 will eliminate 10 tons of CO₂ over the life of the building ⁽³⁾

(1) LBNL-Production of Cool Concrete Tile & Asphalt Shingle Roofing Products

(2) U.S. EPA- Reducing Urban Heat Islands: A Compendium of Strategies

(3) LBNL, Akgari, et al 2009, Climate Change

HIGHLY REFLECTIVE ROOFTOPS ARE A PASSIVE SOLUTION THAT PROVIDES EXCEPTIONAL ENVIRONMENTAL BENEFITS

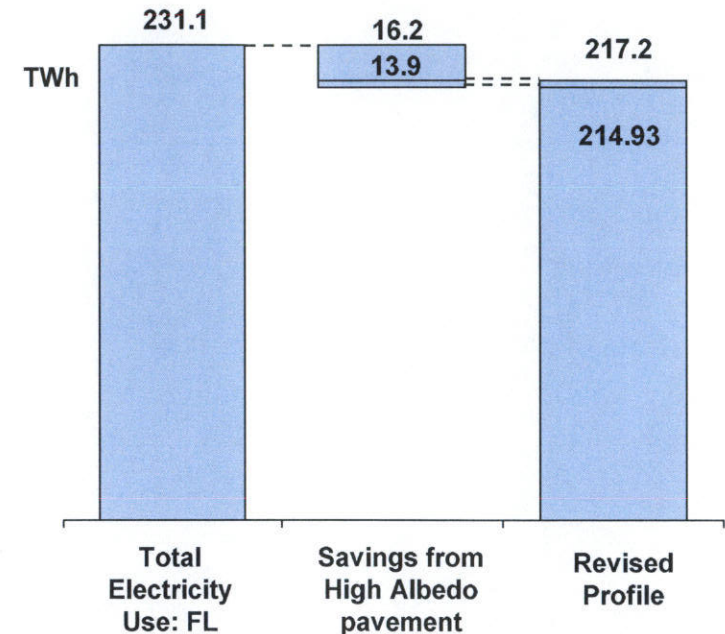
Roofs, Air Temperature, and Electricity Usage

Extrapolating to FL

Lawrence
Berkeley National
Laboratory:

Energy Savings
for Heat Island
Reduction
Strategies

- Study focused specifically on the benefits of reflective rooftops
- Estimates that cool roofs would lead to a CO₂ reduction of 6 – 7% ⁽²⁾
- Study estimated that widespread use of cool roofs could reduce the national peak demand for electricity by 6.2 to 7.2 GWh ⁽²⁾



Cool roofs could save Floridians 13.9 -16.2 TWh (9.9 – 12.8 MMT CO₂), which is equivalent to annual emissions of 2.0 – 2.6 M vehicles

(1) NREL- "The Effect of Pavements' Temperatures on Air Temperatures in Large Cities"

(2) LBNL - Energy Savings for Heat Island Reduction Strategies.

(3) U.S.EPA – Energy Information Administration – 0.718 MT CO₂/ MWh

(4) USDA – Economic Research Service

IMPORTANT FIRST STEP WAS TAKEN BY THE CITY OF MIAMI

Ordinance will apply to all new construction
and to replacement of 50% of site hardscape

Miami Ordinance Requirements

Option to choose between following two alternatives:

	Comments
1 Provide any combination of following strategies for 50% of site hardscape <ul style="list-style-type: none">• Shade from solar panels or roofing materials with solar reflectance (albedo) of at least 0.30• Shade from trees within 5 years of occupancy• Paving materials with a solar reflectance of at least 0.30• Pervious pavement system	No monitoring mechanism specified Lack of performance requirements
2 50% of parking spaces under cover with parking roof minimum solar reflectance (albedo) of 0.30	

Implications for Florida

State could adopt a similar piece of legislation

- Concerns such as monitoring mechanism for trees within 5 years or performance requirements for pervious pavements
- Ensure that spirit of the law cannot be bypassed

This would be a major contribution to the environment and quality of life

- Cool pavements could save 6.9 – 18.5 TWh (5.0 – 13.3 MMT CO₂)
- Cool roofs could save 13.9 - 16.2 TWh (9.9 – 12.8 MMT CO₂)
- These would equate to putting 3.0 – 5.3 M vehicles out of circulation

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 1, 2010

TO: Timothy Devlin, Executive Director

FROM: Katherine Pennington, Government Liaison, Office of the General Counsel
Mary Anne Helton, Deputy General Counsel

RE: Discussion of Legislative Proposals for the 2010 Session
Critical Information: Guidance requested at the February 1, 2010, Internal Affairs meeting on proposed legislation regarding ex parte communication.

At the November 30, 2009, and January 6 and January 25, 2010, Internal Affairs meetings, staff proposed potential legislative changes to Section 350.042, Florida Statutes (F.S.), "Ex Parte Communications." After discussion at these meetings, the Commission requested additional information and revisions to these proposals. The following attachments provide the requested information:

1. The Commission requested that the General Counsel and staff research the Code of Judicial Conduct to determine which canons of the Code have applicability to the quasi-judicial role of the Commission.
 - Attachment A is a Summary of Findings of Applicability of the Code of Judicial Conduct. This summary also includes suggested language provided by a commissioner.
 - Attachment B is a table containing text of the Code of Judicial Conduct and its applicability to the Commission.
2. Commissioners requested a one-page "Situation, Target, Proposal" (STP) document regarding potential changes to the nominating and appointment process for Commissioners.
 - Attachment C is the STP document requested by the Commission at the January 25, 2010 Internal Affairs meeting. This STP document identifies potential changes to the nomination and appointment process for Commissioners.
3. The Commission discussed additional revisions to the legislative proposal regarding ex parte communication and post-Commission employment/representation. Staff incorporated these suggestions into the proposed legislation.

- Attachment D is the revised legislative proposal reflecting the following revisions:

- a) Defined “legally interested party” to mean any party to a proceeding before the commission, a representative of a party to a proceeding pending before the commission, corporations, partnerships, limited liability companies, elected or appointed officials of state government, and other public and elected officials.” (page 4, lines 19-22)
 - b) No revisions to the proposed definition for ex parte communication. Staff researched other state and federal regulatory agencies and existing proposed language is consistent. (page 5, lines 12-14)
 - c) Extension of ex parte restriction to the Governor, Cabinet, and Legislature. This language is incorporated into the proposed language based on discussions at the January 25, 2010, Internal Affairs meeting. (page 5, line 18 – page 6, line 2)
 - d) The Commission requested staff to review language to allow a Commissioner to withdraw from a hearing if they unknowingly participate in an ex parte communication regarding an issue that is a docketed issue at some future point. Staff found that existing language in section 350.042(4), F.S., allows a commissioner to “withdraw from a proceeding, if necessary to eliminate the effect of the ex parte communication.” (page 6, lines 17-19)
 - e) Staff included language to clarify which definition of “lobby” or “lobbying” applies to the post-employment restrictions. Staff noted in its bill analyses sent to the House and Senate substantive committees that existing statutory language contains more than one definition of “lobbying.” Rather than creating an additional definition for purposes of the legislative proposal, new language in the bill references the definition of “lobby” and “lobbying” in section 11.045, F.S. (page 8, lines 16-20)
4. Attachment E represents suggested language to address a concern expressed by a Commissioner. This language restricts communication regarding docketed matters once a record is closed (post-hearing) until staff recommendations are filed. This language could be addressed in the rulemaking process; however, it is provided here for discussion purposes.

cc: Curt Kiser, General Counsel

ATTACHMENT A

Summary of Findings of Applicability of the Code of Judicial Conduct For Discussion Purposes Internal Affairs Meeting February 9, 2010

The table contained in Attachment B sets out the Florida Code of Judicial Conduct (Code), and provides commentary on its applicability to the Commission. According to the Application section of the Code:

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a civil traffic infraction hearing officer, court commissioner, general or special magistrate, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.

Canons 1, 2A, and 3 are highlighted in gray in Attachment B. Canon 1 states: "A Judge Shall Uphold the Integrity and Independence of the Judiciary." (Page 5 of Attachment B) According to Canon 2.A, "[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Page 6 of Attachment B) Pursuant to Canon 3, "A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently." (Page 6 of Attachment B)

The Commission could propose that the Legislature require Commissioners to follow Canons 1, 2A, and 3. Alternatively, the Commission could propose adoption of the entire Canon and propose that where the Code is in direct conflict with statutory provisions applicable to commissioners or the commission, the Florida Statutes shall control.

Language proposed for discussion:

(2) STANDARDS OF CONDUCT. –

(j) Commissioners shall observe and abide by the Code of Judicial Conduct as adopted by the Florida Supreme Court in docketed proceedings before the commission. In cases where all or part of a canon of the Code of Judicial Conduct conflicts with statutory provisions applicable to commissioners or the commission, statutory provisions shall prevail. Any material violation of the Code of Judicial Conduct, excluding canons preempted by conflicting statutory provisions as provided in the paragraph shall be grounds for suspension and removal by the Governor.

Florida Code of Judicial Conduct (2009)

	Applicability to FPSC
<p>Preamble</p> <p>Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.</p> <p>The Code of Judicial Conduct establishes standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Definitions Section, an Application Section, and Commentary. The text of the Canons and the Sections, including the Definitions and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which, if proven, can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.</p> <p>The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is not to be construed to impinge on the essential independence of judges in making judicial decisions.</p> <p>The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code</p>	

	Applicability to FPSC
<p>were invoked by lawyers for mere tactical advantage in a proceeding. The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.</p> <p>The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.</p>	
Definitions	
<p>"<i>Appropriate authority</i>" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported.</p> <p>"<i>Candidate</i>." A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, opens a campaign account as defined by Florida law, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to nonjudicial office.</p> <p>"<i>Court personnel</i>" does not include the lawyers in a proceeding before a judge.</p> <p>"<i>De minimis</i>" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.</p> <p>"<i>Economic interest</i>" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that:</p>	

	Applicability to FPSC
<p>(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;</p> <p>(ii) service by a judge as an officer, director, advisor, or other active participant in an educational, religious, charitable, fraternal, sororal, or civic organization, or service by a judge's spouse, parent, or child as an officer, director, advisor, or other active participant in any organization does not create an economic interest in securities held by that organization;</p> <p>(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;</p> <p>(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.</p> <p><i>"Fiduciary"</i> includes such relationships as personal representative, administrator, trustee, guardian, and attorney in fact.</p> <p><i>"Impartiality"</i> or <i>"impartial"</i> denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.</p> <p><i>"Judge."</i> When used herein this term means Article V, Florida Constitution judges and, where applicable, those persons performing judicial functions under the direction or supervision of an Article V judge.</p> <p><i>"Knowingly," "knowledge," "known,"</i> or <i>"knows"</i> denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.</p>	

	Applicability to FPSC
<p>"<i>Law</i>" denotes court rules as well as statutes, constitutional provisions, and decisional law</p> <p>"<i>Member of the candidate's family</i>" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.</p> <p>"<i>Member of the judge's family</i>" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.</p> <p>"<i>Member of the judge's family residing in the judge's household</i>" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.</p> <p>"<i>Nonpublic information</i>" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports.</p> <p>"<i>Political organization</i>" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.</p> <p>"<i>Public election.</i>" This term includes primary and general elections; it includes partisan elections, nonpartisan elections, and retention elections.</p> <p>"<i>Require.</i>" The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.</p>	

	Applicability to FPSC
<p><i>"Third degree of relationship."</i> The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.</p>	
<p>Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary</p>	<p>The judiciary is an independent branch of government that exercises the judicial power of the state under Article V of the Florida Constitution. Standards of conduct for judges are contained in the Code of Judicial Conduct and are enforced by the Supreme Court based on recommendations from the Judicial Qualifications Commission.</p> <p>The PSC is an arm of the legislative branch of government under Section 350.001, Florida Statutes. The PSC exercises quasi-legislative power (ratemaking), quasi-judicial power (adjudication of disputes between utilities or between utilities and their customers), and quasi-executive power (administration and implementation of statutes, including rulemaking and enforcement). Standards of conduct for PSC Commissioners are set forth in Chapter 112, Florida Statutes (applicable to legislative and executive branch employees generally) and Chapter 350, Florida Statutes (applicable to Public Service Commissioners). These standards of conduct are enforced by the Florida Commission on Ethics.</p> <p>Canon 1 states that “a judge shall uphold the integrity and independence of the judiciary.”</p> <p>In a similar vein, the need for integrity and impartiality by public officials is one of the legislative policies underlying the specific standards of conduct in Chapter 112. See §112.311(1), F.S. In addition, Section 350.041(2)(h) specifically requires that “a commissioner...must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.”</p>

	Applicability to FPSC
An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.	
Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities	
A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.	<p>The fundamental premise of Canon 2 is that a judge “shall avoid impropriety and the appearance of impropriety” in all of his or her activities. As described in Canon 2.A, this includes requirements that a judge comply with the law and “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”</p> <p>PSC Commissioners are subject to similar requirements as a result of the 2005 amendments to Chapter 350. In particular, Section 350.041(2)(h) requires that a commissioner “must avoid impropriety in all of his or her activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.”</p>
B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.	<p>Canon 2.B also provides that a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. The same topic is addressed for PSC Commissioners and other public officers by Section 112.313(6), which prohibits a public officer from corruptly using or attempting to use his or her official position to secure a special privilege, benefit, or exemption for himself, herself, or others. In addition, Section 350.041(2)(e) prohibits a Commissioner from serving as a “representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive</p>

	Applicability to FPSC
	remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy”
C. A judge should not hold membership in an organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership in a fraternal, sororal, religious, or ethnic heritage organization shall not be deemed to be a violation of this provision.	
Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently	<p>Canon 3 requires a judge to perform the duties of office impartially and diligently. The various sections of this canon contain a mix of provisions, some of which could be applicable to non-judicial officers and others of which are unique to judges.</p> <p>The provisions that might have some application to non-judicial officers generally have counterparts for PSC Commissioners in either Chapter 112 or Chapter 350.</p>
A. <i>Judicial Duties in General.</i> --The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the specific standards set forth in the following sections apply.	Canon 3.A provides that a judge's judicial duties take precedence over all of the judge's other activities. Section 112.313(7) prohibits public officers from having any employment or contractual relationship (i) with an entity they regulate, (ii) that would create a continuing or frequently recurring conflict of interest, or (iii) that would impede the full and faithful discharge of his or her public duties. In addition, Section 350.041(2)(b) and (c) prohibits a Commissioner from having an employment or a financial relationship with a Commission regulated entity.
<p>B. <i>Adjudicative Responsibilities.</i></p> <p>(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.</p> <p>(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.</p>	<p>Canon 3.B.1 requires a judge to hear and decide matters assigned to the judge. Section 286.012 provides that any PSC Commissioner assigned to a matter and present at the meeting at which a decision is made cannot abstain from voting on that matter absent a conflict of interest.</p> <p>Other subsections of Canon 3.B control the conduct of a judge in conducting judicial proceedings. Section</p>

	Applicability to FPSC
<p>(3) A judge shall require order and decorum in proceedings before the judge.</p> <p>(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.</p> <p>(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.</p> <p>(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words, gestures, or other conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors are issues in the proceeding.</p> <p>(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:</p> <p>(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:</p>	<p>350.041(2)(g) covers similar conduct by providing that “[a] commissioner may not conduct himself or herself in an unprofessional manner at any time during the performance of his or her official duties.”</p> <p>Canon 3.B.7 requires a judge to accord to every person who has a legal interest in a proceeding the right to be heard according to law. With limited exceptions, it also provides that a judge shall not initiate, permit or consider ex parte communications. Section 350.042 contains an almost identical provision requiring a commissioner to accord interested persons a right to be heard according to law and prohibiting ex parte communications except as authorized by law. In recognition of the diverse role of PSC Commissioners, there are specific statutory exceptions to the ex parte prohibition for rulemaking proceedings, declaratory statement proceedings, workshops, internal affairs meetings, communications from individual residential ratepayers, and oral communications in open public meetings of educational programs or conferences of regulatory agencies.</p> <p>Canon 3.B.9 prohibits a judge from making any public comment that might be expected to affect the outcome, or impair the fairness, of a pending judicial proceeding. Section 350.041(2)(f) similarly prohibits a PSC Commissioner from making any public comment about the merits of any adjudicatory proceeding pending before the commission.</p> <p>Canon 3.B.11 prohibits a judge from using nonpublic information acquired in a judicial capacity. PSC Commissioners are subject to a similar prohibition on the use of nonpublic information under Section 112.313(8).</p>

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<p>(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and</p> <p>(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.</p> <p>(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.</p> <p>(c) A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.</p> <p>(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.</p> <p>(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.</p> <p>(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.</p> <p>(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.</p> <p>(10) A judge shall not, with respect to parties or classes of parties, cases,</p>	

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<p>controversies or issues likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.</p> <p>(11) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.</p> <p>(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.</p>	
<p><i>C. Administrative Responsibilities.</i></p> <p>(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.</p> <p>(2) A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.</p> <p>(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.</p> <p>(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.</p>	
<p><i>D. Disciplinary Responsibilities.</i></p> <p>(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.</p>	

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<p>(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.</p> <p>(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.</p>	
<p>E. <i>Disqualification.</i></p> <p>(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:</p> <p>(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;</p> <p>(b) the judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;</p> <p>(c) the judge knows that he or she individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;</p> <p>(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:</p> <p>(i) is a party to the proceeding, or an officer, director, or trustee of a party;</p>	<p>Canon 3.E requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. Similar provisions are contained in Section 120.665, which provides for disqualification of a Commissioner for bias, interest, or prejudice, and Section 112.3143(4), which provides for disclosure of any financial conflict of interest.</p>

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<p>(ii) is acting as a lawyer in the proceeding;</p> <p>(iii) is known by the judge to have a more than de minimus interest that could be substantially affected by the proceeding;</p> <p>(iv) is to the judge's knowledge likely to be a material witness in the proceeding.</p> <p>(e) the judge's spouse or a person within the third degree of relationship to the judge participated as a lower court judge in a decision to be reviewed by the judge.</p> <p>(f) the judge, while a judge or candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:</p> <p>(i) parties or classes of parties in the proceeding;</p> <p>(ii) an issue in the proceeding; or</p> <p>(iii) the controversy in the proceeding.</p> <p>(2) A judge should keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the economic interests of the judge's spouse and minor children residing in the judge's household.</p>	
<p><i>F. Remittal of Disqualification.</i> --A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.</p>	
<p>Canon 4. A Judge is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice</p>	<p>Canon 4 encourages a judge to engage in activities (such as speaking, writing and teaching) to improve the law, the legal system and the administration of justice. Since PSC</p>

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	Commissioners are not required to be lawyers, this portion of the Canon does not have any direct applicability to a commissioner's activities.
<p>A. A judge shall conduct all of the judge's quasi-judicial activities so that they do not:</p> <ul style="list-style-type: none"> (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) undermine the judge's independence, integrity, or impartiality; (3) demean the judicial office; (4) interfere with the proper performance of judicial duties; (5) lead to frequent disqualification of the judge; or (6) appear to a reasonable person to be coercive. 	Canon 4.A.1 is specifically designed to ensure that a judge's activities do not cast doubt on his impartiality. This same underlying concern is addressed by Section 350.041(2)(h), which requires a PSC Commissioner to act at all times in a manner that promotes public confidence in the integrity and impartiality of the Commission.
B. A judge is encouraged to speak, write, lecture, teach and participate in other quasijudicial activities concerning the law, the legal system, the administration of justice, and the role of the judiciary as an independent branch within our system of government, subject to the requirements of this Code.	
C. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.	Other parts of Canon 4 place some restrictions on a judge's activities that are unique to the judiciary and could interfere with a PSC Commissioner's activities as head of a legislative branch agency. For example, Canon 4C prohibits a judge from consulting with an executive or legislative body or official except on certain limited matters. Application of this standard to PSC Commissioners would prevent them, for example, from responding to a legislator regarding an issue between a utility and one of the legislator's constituents.
D. A judge is encouraged to serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental entity devoted to the improvement of the law, the legal system, the judicial branch, or the administration	Pursuant to Section 350.041(2)(e), "[a] commissioner may not serve as the representative of any political party or on any executive committee or other governing body of a

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<p>of justice, subject to the following limitations and the other requirements of this Code.</p> <p>(1) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization</p> <p>(a) will be engaged in proceedings that would ordinarily come before the judge, or</p> <p>(b) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.</p> <p>(2) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:</p> <p>(a) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally or directly participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;</p> <p>(b) may appear or speak at, receive an award or other recognition at, be featured on the program of, and permit the judge's title to be used in conjunction with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice and the funds raised will be used for a law related purpose(s);</p> <p>(c) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;</p> <p>(d) shall not personally or directly participate in membership solicitation if the solicitation might reasonably be perceived as coercive;</p>	<p>political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; . . .”</p>

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(e) shall not make use of court premises, staff, stationery, equipment, or other resources for fund-raising purposes, except for incidental use for activities that concern the law, the legal system, or the administration of justice, subject to the requirements of this Code.	
Canon 5. A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict with Judicial Duties	Canon 5 regulates a judge's extrajudicial activities to minimize the risk of conflict with judicial duties. The various sections of this canon contain a mix of provisions, some of which could be applicable to non-judicial officers and others of which are unique to judges.
<p>A. <i>Extrajudicial Activities in General.</i> --A judge shall conduct all of the judge's extrajudicial activities so that they do not:</p> <ul style="list-style-type: none"> (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) undermine the judge's independence, integrity, or impartiality; (3) demean the judicial office; (4) interfere with the proper performance of judicial duties; (5) lead to frequent disqualification of the judge; or (6) appear to a reasonable person to be coercive. 	
B. <i>Avocational Activities.</i> --A judge is encouraged to speak, write, lecture, teach and participate in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code.	
<p>C. <i>Governmental, Civic or Charitable Activities.</i></p> <ul style="list-style-type: none"> (1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests. (2) A judge shall not accept appointment to a governmental committee or 	Canon 5.C.1 prohibits a judge from consulting with an executive or legislative body or official except on certain limited matters. As noted in the analysis of Canon 4C, application of this standard to PSC Commissioners would prevent them, for example, from responding to a legislator regarding an issue between a utility and one of the legislator's constituents.

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<p>commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, the judicial branch, or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.</p> <p>(3) A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.</p> <p>(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization</p> <p>(i) will be engaged in proceedings that would ordinarily come before the judge, or</p> <p>(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.</p> <p>(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:</p> <p>(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally or directly participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;</p> <p>(ii) shall not personally or directly participate in membership solicitation if the solicitation might reasonably be perceived as coercive;</p> <p>(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.</p>	<p>Canon 5.C.2 prohibits a judge from accepting appointment to a governmental committee that is concerned with issues of fact or policy on matters other than improvement of the law, the legal system, the judicial branch, or the administration of justice. Applied to PSC Commissioners, this would appear to have precluded service on the 2020 Study Commission or on a panel for any forum called by the Governor.</p>

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<p><i>D. Financial Activities.</i></p> <p>(1) A judge shall not engage in financial and business dealings that</p> <p style="padding-left: 40px;">(a) may reasonably be perceived to exploit the judge's judicial position, or</p> <p style="padding-left: 40px;">(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.</p> <p>(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.</p> <p>(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:</p> <p style="padding-left: 40px;">(a) a business closely held by the judge or members of the judge's family, or</p> <p style="padding-left: 40px;">(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.</p> <p>(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.</p> <p>(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:</p> <p style="padding-left: 40px;">(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an</p>	<p>Canon 5.D places restrictions on financial activities that are designed to minimize the number of cases in which a judge is disqualified. Because PSC Commissioners deal with only utility cases, Section 350.041(2)(c) flatly prohibits a PSC Commissioner from having a financial interest in any utility or utility affiliate. In addition, Section 112.313(7) provides that a commissioner cannot have any employment or contractual relationship with an entity regulated by the Commission or with an entity that would create a recurring conflict of interest.</p> <p>Canon 5.D.5 contains a number of restrictions related to acceptance of gifts. PSC Commissioners are subject not only to the gift restrictions in Section 112.3148, but are prohibited by Section 350.041(2)(a) and (d) from accepting "anything" from a utility, a utility affiliate, or a party to a Commission proceeding.</p>

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<p>invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;</p> <p>(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;</p> <p>(c) ordinary social hospitality;</p> <p>(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;</p> <p>(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;</p> <p>(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;</p> <p>(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or</p> <p>(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value, or the aggregate value in a calendar year of such gifts, bequests, favors, or loans from a single source, exceeds \$100.00, the judge reports it in the same manner as the judge reports gifts under Canon 6B(2).</p>	
E. <i>Fiduciary Activities.</i>	Canon 5.E on fiduciary activities does not appear to serve any useful purpose as applied to non-judicial officers.

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<p>(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.</p> <p>(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.</p> <p>(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.</p>	
<p>F. Service as Arbitrator or Mediator.</p> <p>(1) A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law or Court rule. A judge may, however, take the necessary educational and training courses required to be a qualified and certified arbitrator or mediator, and may fulfill the requirements of observing and conducting actual arbitration or mediation proceedings as part of the certification process, provided such program does not, in any way, interfere with the performance of the judge's judicial duties.</p> <p>(2) A senior judge may serve as a mediator in a case in which the senior judge is not presiding only if the senior judge is certified pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators. Such senior judge may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge may in no other way advertise, solicit business, associate with a law firm, or participate in any other activity that directly or indirectly promotes his or her mediation services. A senior judge shall not serve as a mediator in any case in which the judge is currently presiding. A senior judge who provides mediation services shall not preside over the same type of case the judge mediates in the circuit where the mediation services are provided; however, a senior judge may preside over other types of cases (e.g., criminal, juvenile, family law, probate) in the same circuit and may preside over cases in circuits in</p>	

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which the judge does not provide mediation services. A senior judge shall disclose if the judge is being utilized or has been utilized as a mediator by any party, attorney, or law firm involved in the case pending before the senior judge. Absent express consent of all parties, a senior judge is prohibited from presiding over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator within the previous three years. A senior judge shall disclose any negotiations or agreements for the provision of mediation services between the senior judge and any of the parties or counsel to the case.	
G. <i>Practice of Law.</i> --A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.	
Canon 6. Fiscal Matters of a Judge Shall Be Conducted in a Manner that Does Not Give the Appearance of Influence or Impropriety; a Judge Shall Regularly File Public Reports as Required by Article II, Section 8, of the Constitution of Florida, and Shall Publicly Report Gifts; Additional Financial Information Shall Be Filed with the Judicial Qualifications Commission to Ensure Full Financial Disclosure	<p>Canon 6 regulates a judge's compensation for quasi-judicial and extrajudicial activities to avoid the appearance of influence or impropriety, and imposes financial reporting requirements on judges.</p> <p>The same topics are covered, for PSC Commissioners, by the provisions of Chapter 112 and 350. With regard to financial disclosure, PSC Commissioners are subject under Section 112.3145 to the same financial disclosure requirement as other non-constitutional state officers.</p> <p>With regard to compensation for speaking activities, PSC Commissioners are subject to the provisions of Section 112.3149 relating to honoraria and expenses related to an honorarium event.</p> <p>With regard to other activities, PSC Commissioners are prohibited by Section 350.041(2)(a) and (d) from accepting anything from a utility, a utility affiliate, or a party to a Commission proceeding. In addition, Section 350.041(2)(b) prohibits a PSC Commissioner from accepting any form of employment from, or engaging in any business activity with, a public utility or its affiliate.</p>
A. <i>Compensation for Quasi-Judicial and Extrajudicial Services and</i>	

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<p><i>Reimbursement of Expenses.</i> --A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:</p> <p>(1) <i>Compensation.</i> --Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.</p> <p>(2) <i>Expense Reimbursement.</i> --Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, to the judge's spouse. Any payment in excess of such an amount is compensation.</p>	
<p><i>B. Public Financial Reporting.</i></p> <p>(1) <i>Income and Assets.</i> --A judge shall file such public report as may be required by law for all public officials to comply fully with the provisions of Article II, Section 8, of the Constitution of Florida. The form for public financial disclosure shall be that recommended or adopted by the Florida Commission on Ethics for use by all public officials. The form shall be filed with the Florida Commission on Ethics on the date prescribed by law, and a copy shall be filed simultaneously with the Judicial Qualifications Commission.</p> <p>(2) <i>Gifts.</i> --A judge shall file a public report of all gifts which are required to be disclosed under Canon 5D(5)(h) of the Code of Judicial Conduct. The report of gifts received in the preceding calendar year shall be filed with the Florida Commission on Ethics on or before July 1 of each year. A copy shall be filed simultaneously with the Judicial Qualifications Commission.</p> <p>(3) <i>Disclosure of Financial Interests Upon Leaving Office.</i> --A judge shall file a final disclosure statement within 60 days after leaving office, which report shall cover the period between January 1 of the year in which the judge leaves office and his or her last day of office, unless, within the 60-day period, the judge takes another public position requiring financial disclosure under Article II, Section 8, of</p>	

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the Constitution of Florida, or is otherwise required to file full and public disclosure for the final disclosure period. The form for disclosure of financial interests upon leaving office shall be that recommended or adopted by the Florida Commission on Ethics for use by all public officials. The form shall be filed with the Florida Commission on Ethics and a copy shall be filed simultaneously with the Judicial Qualifications Commission.	
<p><i>C. Confidential Financial Reporting to the Judicial Qualifications Commission.</i></p> <p>To ensure that complete financial information is available for all judicial officers, there shall be filed with the Judicial Qualifications Commission on or before July 1 of each year, if not already included in the public report to be filed under Canon 6B(1) and (2), a verified list of the names of the corporations and other business entities in which the judge has a financial interest as of December 31 of the preceding year, which shall be transmitted in a separate sealed envelope, placed by the Commission in safekeeping, and not be opened or the contents thereof disclosed except in the manner hereinafter provided.</p> <p>At any time during or after the pendency of a cause, any party may request information as to whether the most recent list filed by the judge or judges before whom the cause is or was pending contains the name of any specific person or corporation or other business entity which is a party to the cause or which has a substantial direct or indirect financial interest in its outcome. Neither the making of the request nor the contents thereof shall be revealed by the chair to any judge or other person except at the instance of the individual making the request. If the request meets the requirements hereinabove set forth, the chair shall render a prompt answer thereto and thereupon return the report to safekeeping for retention in accordance with the provisions hereinabove stated. All such requests shall be verified and transmitted to the chair of the Commission on forms to be approved by it.</p>	
<i>D. Limitation of Disclosure.</i> --Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.	
Canon Form 6A. Gift Disclosure	
All judicial officers must file with the Florida Commission on Ethics a [sworn] list of all gifts received during the preceding calendar year of a value in excess of	Section 112.3148(8)(a) requires the quarterly disclosure of permissible gifts that are valued at more than \$100.00, with

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<p>\$100.00 as provided in Canon 5D(5) and Canon 6B(2) of the Code of Judicial Conduct.</p> <p>Name: Telephone: Address: Position Held:</p> <p>Please identify all gifts you received during the preceding calendar year of a value in excess of \$ 100.00, as required by Canon 5D(5) and Canon 6B(2) of the Code of Judicial Conduct.</p> <p>OATH State of Florida County of I, , the public official filing this disclosure statement, being first duly sworn, do depose on oath and say that the facts set forth in the above statement are true, correct, and complete to the best of my knowledge and belief. (Signature of Reporting Official) (Signature of Officer Authorized to Administer Oaths) My Commission expires Sworn to and subscribed before me this day of , 20 .</p>	<p>certain limited exceptions. In addition, Section 112.3149 requires the annual disclosure of honorarium event related expenses.</p>
<p>Canon 7. A Judge or Candidate for Judicial Office Shall Refrain from Inappropriate Political Activity</p>	<p>Canon 7 regulates the political activities of judges, and candidates for election or appointment to judicial office.</p> <p>These provisions are either unique to candidates for elected office or to judges. They do not apply to issues that might arise with appointed PSC Commissioners.</p> <p>To the extent that political activities of PSC Commissioners are a matter of concern, they are dealt with by Section 350.041(2)(e). Under that section, a PSC Commissioner may not serve as a representative of a</p>

	Applicability to FPSC
	political party or on the governing board of a party, may not receive remuneration for activities on behalf of any candidate, may not engage in solicitation of votes or other activities on behalf of a candidate, and may not become a candidate for public office without first resigning from the Commission.
<p><i>A. All Judges and Candidates.</i></p> <p>(1) Except as authorized in Sections 7B(2), 7C(2) and 7C(3), a judge or a candidate for election or appointment to judicial office shall not:</p> <ul style="list-style-type: none"> (a) act as a leader or hold an office in a political organization; (b) publicly endorse or publicly oppose another candidate for public office; (c) make speeches on behalf of a political organization; (d) attend political party functions; or (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions. <p>(2) A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.</p> <p>(3) A candidate for a judicial office:</p> <ul style="list-style-type: none"> (a) shall be faithful to the law and maintain professional competence in it, and shall not be swayed by partisan interests, public clamor, or fear of criticism; (b) shall maintain the dignity appropriate to judicial office and act in a manner 	

	Applicability to FPSC
<p>consistent with the impartiality, integrity, and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;</p> <p>(c) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;</p> <p>(d) except to the extent permitted by Section 7C(1), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;</p> <p>(e) shall not:</p> <p>(i) with respect to parties or classes of parties, cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or</p> <p>(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;</p> <p>(iii) while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. This section does not apply to proceedings in which the judicial candidate is a litigant in a personal capacity.</p> <p>(iv) commend or criticize jurors for their verdict, other than in a court pleading, filing or hearing in which the candidate represents a party in the proceeding in which the verdict was rendered.</p> <p>(f) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 7A(3)(d).</p>	

	Applicability to FPSC
<p><i>B. Candidates Seeking Appointment to Judicial or Other Governmental Office.</i></p> <p>(1) A candidate for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.</p> <p>(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:</p> <p>(a) such persons may:</p> <p>(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;</p> <p>(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals; and</p> <p>(iii) provide to those specified in Sections 7B(2)(a)(i) and 7B(2)(a)(ii) information as to his or her qualifications for the office;</p> <p>(b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:</p> <p>(i) retain an office in a political organization,</p> <p>(ii) attend political gatherings, and</p> <p>(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.</p>	
<p><i>C. Judges and Candidates Subject to Public Election.</i></p> <p>(a) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit</p>	

	Applicability to FPSC
<p>campaign funds, or solicit attorneys for publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from any person or corporation authorized by law. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family.</p> <p>(2) A candidate for merit retention in office may conduct only limited campaign activities until such time as the judge certifies that the judge's candidacy has drawn active opposition. Limited campaign activities shall only include the conduct authorized by subsection C(1), interviews with reporters and editors of the print, audio and visual media, and appearances and speaking engagements before public gatherings and organizations. Upon mailing a certificate in writing to the Secretary of State, Division of Elections, with a copy to the Judicial Qualifications Commission, that the judge's candidacy has drawn active opposition, and specifying the nature thereof, a judge may thereafter campaign in any manner authorized by law, subject to the restrictions of subsection A(3).</p> <p>(3) A judicial candidate involved in an election or re-election, or a merit retention candidate who has certified that he or she has active opposition, may attend a political party function to speak in behalf of his or her candidacy or on a matter that relates to the law, the improvement of the legal system, or the administration of justice. The function must not be a fund raiser, and the invitation to speak must also include the other candidates, if any, for that office. The candidate should refrain from commenting on the candidate's affiliation with any political party or other candidate, and should avoid expressing a position on any political issue. A judicial candidate attending a political party function must avoid conduct that suggests or appears to suggest support of or opposition to a political party, a political issue, or another candidate. Conduct limited to that described above does not constitute participation in a partisan political party activity.</p>	
<p>D. Incumbent Judges. --A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.</p>	

	Applicability to FPSC
<p>E. <i>Applicability.</i> --Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 4-8.2(b) of the Rules Regulating The Florida Bar.</p>	
<p>F. <i>Statement of Candidate for Judicial Office.</i> --Each candidate for a judicial office, including an incumbent judge, shall file a statement with the qualifying officer within 10 days after filing the appointment of campaign treasurer and designation of campaign depository, stating that the candidate has read and understands the requirements of the Florida Code of Judicial Conduct. Such statement shall be in substantially the following form:</p> <p>STATEMENT OF CANDIDATE FOR JUDICIAL OFFICE</p> <p>I, _____, the judicial candidate, have received, have read, and understand the requirements of the Florida Code of Judicial Conduct.</p> <p>Signature of Candidate date</p>	
<p>Application of the Code of Judicial Conduct</p> <p>This Code applies to justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts.</p> <p>Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a civil traffic infraction hearing officer, court commissioner, general or special magistrate, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.</p> <p>Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.</p> <p>If the hiring or appointing authority for persons who perform a judicial function is</p>	

	Applicability to FPSC
<p>not a judge then that authority should adopt the applicable provisions of this Code.</p> <p><i>A. Civil Traffic Infraction Hearing Officer.</i> --A civil traffic infraction hearing officer:</p> <p>(1) is not required to comply with Section 5C(2), 5D(2) and (3), 5E, 5F, and 5G, and Section 6B and 6C.</p> <p>(2) should not practice law in the civil or criminal traffic court in any county in which the civil traffic infraction hearing officer presides.</p> <p><i>B. Retired/Senior Judge.</i></p> <p>(1) A retired judge eligible to serve on assignment to temporary judicial duty, hereinafter referred to as "senior judge," shall comply with all the provisions of this Code except Sections 5C(2), 5E, 5F(1), and 6A. A senior judge shall not practice law and shall refrain from accepting any assignment in any cause in which the judge's present financial business dealings, investments, or other extra-judicial activities might be directly or indirectly affected.</p> <p>(2) If a retired justice or judge does not desire to be assigned to judicial service, such justice or judge who is a member of The Florida Bar may engage in the practice of law and still be entitled to receive retirement compensation. The justice or judge shall then be entitled to all the rights of an attorney-at-law and no longer be subject to this Code.</p>	
Effective Date of Compliance	
A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 5D(2), 5D(3) and 5E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.	

Situation, Target, Proposal (STP)
Florida Public Service Commission Selection Process

Situation

Pursuant to Section 350.031, Florida Statutes, the Florida Public Service Commission Nominating Council (Council) nominates persons for vacancies on the Florida Public Service Commission (FPSC). The Governor appoints a person to the vacant seat from the Council's list, subject to Senate confirmation.

Target

To continue to attract and obtain qualified Commissioners to the FPSC in an impartial selection process.

Proposal

To make the process of selecting members of the Florida Public Service Commission less political, the Judicial Nominating Commission for the Florida Supreme Court (JNC) should be the body to nominate persons to fill vacancies on the Commission. The Governor should then appoint a person from the JNC's nominations. Retention of Commissioners should be by merit selection of the electorate.

The JNC is authorized by Article V, Sections 11 and 20, of the Florida Constitution. The composition of the JNC is set out in Section 43.291, Florida Statutes.

Draft 1/28/10

Ex parte communications.

Section 1. Section 1. Subsection (2) of section 350.041, Florida Statutes, is amended to read:

(2) STANDARDS OF CONDUCT.

(a) A commissioner may not accept anything from any business entity which, either directly or indirectly, owns or controls any public utility regulated by the commission, from any public utility regulated by the commission, or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any public utility regulated by the commission. A commissioner may attend conferences and associated meals and events that are generally available to all conference participants without payment of any fees in addition to the conference fee. Additionally, while attending a conference, a commissioner may attend meetings, meals, or events that are not sponsored, in whole or in part, by any representative of any public utility regulated by the commission and that are limited to commissioners only, committee members, or speakers if the commissioner is a member of a committee of the association of regulatory agencies that organized the conference or is a speaker at the conference. It is not a violation of this paragraph for a commissioner to attend a conference for which conference participants who are employed by a utility regulated by the commission have paid a higher conference registration fee than the commissioner, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee and that is sponsored, in whole or in part, by a utility regulated by the commission. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this paragraph, allegations are made as to the identity of the

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

6 (b) A commissioner may not accept any form of employment with or engage in any business
7 activity with any business entity which, either directly or indirectly, owns or controls any
8 public utility regulated by the commission, any public utility regulated by the commission, or
9 any business entity which, either directly or indirectly, is an affiliate or subsidiary of any
10 public utility regulated by the commission.

11 (c) A commissioner may not have any financial interest, other than shares in a mutual fund,
12 in any public utility regulated by the commission, in any business entity which, either
13 directly or indirectly, owns or controls any public utility regulated by the commission, or in
14 any business entity which, either directly or indirectly, is an affiliate or subsidiary of any
15 public utility regulated by the commission. If a commissioner acquires any financial interest
16 prohibited by this section during his or her term of office as a result of events or actions
17 beyond the commissioner's control, he or she shall immediately sell such financial interest or
18 place such financial interest in a blind trust at a financial institution. A commissioner may not
19 attempt to influence, or exercise any control over, decisions regarding the blind trust.

20 (d) A commissioner may not accept anything from a party in a proceeding currently pending
21 before the commission. If, during the course of an investigation by the Commission on Ethics
22 into an alleged violation of this paragraph, allegations are made as to the identity of the
23 person giving or providing the prohibited gift, that person must be given notice and an

1 opportunity to participate in the investigation and relevant proceedings to present a defense.
2 If the Commission on Ethics determines that the person gave or provided a prohibited gift,
3 the person may not appear before the commission or otherwise represent anyone before the
4 commission for a period of 2 years.

5 (e) A commissioner may not serve as the representative of any political party or on any
6 executive committee or other governing body of a political party; serve as an executive
7 officer or employee of any political party, committee, organization, or association; receive
8 remuneration for activities on behalf of any candidate for public office; engage on behalf of
9 any candidate for public office in the solicitation of votes or other activities on behalf of such
10 candidacy; or become a candidate for election to any public office without first resigning
11 from office.

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

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

17 (h) A commissioner must avoid impropriety in all of his or her activities and must act at all
18 times in a manner that promotes public confidence in the integrity and impartiality of the
19 commission.

20 (i) A commissioner may not directly or indirectly, through staff or other means, solicit
21 anything of value from any public utility regulated by the commission, or from any business
22 entity that, whether directly or indirectly, is an affiliate or subsidiary of any public utility

1 regulated by the commission, or from any party appearing in a proceeding considered by the
2 commission in the last 2 years.

3 (j) Commissioners shall observe and abide by the Code of Judicial Conduct as adopted by the
4 Florida Supreme Court in docketed proceedings before the commission. In cases where all
5 or part of a canon of the Code of Judicial Conduct conflicts with statutory provisions
6 applicable to commissioners or the commission, statutory provisions shall prevail. Any
7 material violation of the Code of Judicial Conduct, excluding canons preempted by
8 conflicting statutory provisions as provided in the paragraph shall be grounds for suspension
9 and removal by the Governor.

10 Section 2. Section 350.042, Florida Statutes, is amended to read:

11 (1) This section shall govern communications directed to commissioners and commission
12 direct reporting staff concerning proceedings before the commission. The purpose of this
13 section is to ensure the fairness of the commission's proceedings; to assure the public that
14 commission decisions are not influenced by prohibited communications between
15 commissioners and legally interested persons; to ensure that commissioners have unrestricted
16 independence to make decisions based on the facts and merits of individual proceedings, free
17 from the perception of undue influence, threat, or offer of reward; and to ensure the
18 preservation of the due process rights of all parties to proceedings.

19 (2) For purposes of this section a legally interested person means any party to a proceeding
20 before the commission, a representative of a party to a proceeding pending before the
21 commission, corporations, partnerships, limited liability companies, elected or appointed
22 officials of state government, and other public and elected officials.

1 ~~(3)~~ (4) A commissioner and commissioners' direct reporting staff shall afford ~~should accord~~
2 to every person who is legally interested in a proceeding as defined in this section, or the
3 person's lawyer, the full right to be heard according to law, and, except as authorized in this
4 section by law, shall neither initiate, engage in, nor consider ex parte communications
5 ~~concerning the merits, threat, or offer of reward~~ in any proceeding, other than ~~an proceeding~~
6 ~~under s. 120.54 or s. 120.565, undocketed workshops, or internal affairs meetings~~. No
7 legally interested person individual shall discuss ex parte with a commissioner or a
8 commissioner's direct reporting staff the merits of any issue that he or she reasonably
9 foresees ~~knows~~ will be filed with the commission ~~within 90 days~~. For purposes of this
10 section, commissioner's direct reporting staff means a commissioner's chief advisor and a
11 commissioner's executive assistant.

12 ~~(4)~~ (2) For purposes of this section, ex parte communication means any communication that,
13 if written, is not served on all the parties to a proceeding, and, if oral, is made without
14 adequate notice to the parties and without an opportunity for them to be present and heard.
15 The provisions of this section shall not prohibit an individual residential ratepayer from
16 communicating with a commissioner or a commissioner's direct reporting staff, provided that
17 the ratepayer is representing only himself or herself, without compensation.

18 ~~(5)~~ (3) The ex parte communication restrictions provided in subsection (3) shall also apply to
19 communication directed to commissioners and commissioners' direct reporting staff from the
20 Governor, Cabinet, or Legislature. Written or oral communication from the Governor,
21 Cabinet, or Legislature that is only a status inquiry and does not address the merits of a
22 proceeding as defined in subsection (3) is not an ex parte communication. A written
23 communication from the Governor, Cabinet, or Legislature that attaches or forwards

1 constituent correspondence concerning the merits of a docketed proceeding shall be placed in
2 the commission's docket files.

3 (6) This section shall not apply to oral communications or discussions in scheduled and
4 noticed open public meetings of educational programs or of a conference or other meeting of
5 an association of regulatory agencies. This exemption does not allow a commissioner or
6 commissioners' direct reporting staff to discuss matters individually with parties or legally
7 interested persons to proceedings.

8 (7) (4) If a commissioner or commissioners' direct reporting staff knowingly receives an ex
9 parte communication relative to a proceeding other than as set forth in subsection (1), to
10 which he or she is assigned, he or she must place on the record of the proceeding copies of all
11 written communications received, all written responses to the communications, and a
12 memorandum stating the substance of all oral communications received and all oral
13 responses made, and shall give written notice to all parties to the communication that such
14 matters have been placed on the record. Any party who desires to respond to an ex parte
15 communication may do so. The response must be received by the commission within 10 days
16 after receiving notice that the ex parte communication has been placed on the record. The
17 commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte
18 communication received by him or her, withdraw from the proceeding, in which case the
19 chair shall substitute another commissioner for the proceeding.

20 (6) (5) Any legally interested person who participates in ~~makes~~ an ex parte communication
21 shall submit to the commission a written statement describing the nature of such
22 communication, to include the name of the person making the communication, the name of
23 the commissioner or commissioners' direct reporting staff receiving the communication,

1 copies of all written communications made, all written responses to such communications,
2 and a memorandum stating the substance of all oral communications received and all oral
3 responses made. The commission shall place on the record of a proceeding all such
4 communications.

5 (7) (6) Any commissioner or commissioners' direct reporting staff who knowingly fails to
6 place on the record any such communications, in violation of the section, within 15 days of
7 the date of such communication is subject to removal and may be assessed a civil penalty not
8 to exceed \$5,000.

9 (8) (7) (a) It ~~is shall be~~ the duty of the Commission on Ethics to receive and investigate
10 sworn complaints of violations of this section pursuant to the procedures contained in ss.
11 112.322-112.3241.

12 (b) If the Commission on Ethics finds that there has been a violation of this section by a
13 public service commissioner or commissioners' direct reporting staff, it shall provide the
14 Governor and the Florida Public Service Commission Nominating Council with a report of
15 its findings and recommendations. The Governor is authorized to enforce the findings and
16 recommendations of the Commission on Ethics, pursuant to part III of chapter 112.

17 (c) If a commissioner or commissioners' direct reporting staff fails or refuses to pay the
18 Commission on Ethics any civil penalties assessed pursuant to the provisions of this section,
19 the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

20 (d) If, during the course of an investigation by the Commission on Ethics into an alleged
21 violation of this section, allegations are made as to the identity of the person who participated
22 in the ex parte communication, that person must be given notice and an opportunity to
23 participate in the investigation and relevant proceedings to present a defense. If the

1 Commission on Ethics determines that the person participated in the ex parte communication,
2 the person may not appear before the commission or otherwise represent anyone before the
3 commission for a period of 2 years and may be assessed a civil penalty not to exceed \$5,000.

4 In addition, the regulated entity represented by the person may be assessed a penalty of up to
5 one percent of the entity's annual operating revenue for the most recent calendar year.

6 (9) The Commission may adopt rules to implement the provisions of this section for
7 commissioners and commission staff concerning communications with legally interested
8 persons.

9 Section 2. Section 350.0605, Florida Statutes, is amended to read:

10 350.0605 Former commissioners and employees; representation of clients or industry before
11 commission; lobbying the legislative or executive branch.

12 (1)(a) Any former commissioner of the Public Service Commission is prohibited from
13 appearing before the commission representing any client or any industry regulated by the
14 Public Service Commission for a period of 4 ½ years following his or her termination of
15 service on the commission.

16 (b) Any former commissioner is prohibited from representing as a lobbyist as defined in s.
17 11.045 any client or any industry regulated by the commission to lobby before the legislative
18 or executive branch of state government for a period of 4 years following his or her
19 termination of service on the commission. This subsection applies only to commissioners
20 who are appointed or reappointed after July 1, 2010.

21 (2) Any former employee of the commission is prohibited from appearing before the
22 commission representing any client or industry regulated by the commission for a period of 4

1 years following his or her termination of employment with the commission. This subsection
2 applies to employees of the commission hired on or after July 1, 2010. Any former employee
3 ~~of the commission is prohibited from appearing before the commission representing any~~
4 ~~client regulated by the Public Service Commission on any matter which was pending at the~~
5 ~~time of termination and in which such former employee had participated.~~

6 (3) For a period of 4 ~~2~~ years following termination of service on the commission, a former
7 commission member may not accept employment by or compensation from a business entity
8 which, directly or indirectly, owns or controls a public utility regulated by the commission,
9 from a public utility regulated by the commission, from a business entity which, directly or
10 indirectly, is an affiliate or subsidiary of a public utility regulated by the commission or is an
11 actual business competitor of a local exchange company or public utility regulated by the
12 commission and is otherwise exempt from regulation by the commission under ss.
13 364.02(14) and 366.02(1), or from a business entity or trade association that has been a party
14 to a commission proceeding within the 4 ~~2~~ years preceding the member's termination of
15 service on the commission. This subsection applies only to members of the Florida Public
16 Service Commission who are appointed or reappointed after May 10, 1993.

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

ATTACHMENT E

In all docketed proceedings in which a hearing has been held, commission staff shall not initiate, engage in, nor consider ex parte communications during the period between the end of the hearing, when the record is closed, and the filing of the commission staff recommendation. This subsection does not apply to commission staff required to initiate or respond to written communications for the purpose of scheduling or completing discovery. All written communication falling within this exemption for commission staff shall be filed with the commission clerk, placed in the docket, and posted to the commission website within 72 hours from the time that the written communication was sent or received by the commission.



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 1, 2010

TO: Timothy J. Devlin, Executive Director

FROM: Division of Regulatory Analysis (Fogleman, Shafer) *AF GB*
Division of Economic Regulation (Dowds) *AL*
Office of the General Counsel (Miller) *WNT*

RE: FPSC Draft Comments in Response to FCC Public Notice regarding USF
Forbearance Request by Partner Communications Cooperative.
Critical Information: Please place on February 9, 2010 Internal Affairs.
Comments are due February 11, 2010. FPSC approval of comments is sought.

On January 12, 2010, the Federal Communications Commission (FCC) released a Public Notice seeking comments on Partner Communications Cooperative's (Partner) forbearance petition from rules relating to the federal universal service fund. If granted, this incumbent carrier in Iowa would receive additional federal high-cost support at the expense of consumers in net payer states, such as Florida. Furthermore, if such forbearance were to be granted, it would establish precedent for similar petitions. The proposed comments oppose the forbearance petition. Staff seeks approval of the attached comments (Attachment A).

Background

In 2006, Partner, a rural incumbent local exchange carrier (ILEC), purchased four exchanges from a non-rural ILEC. While the four exchanges were eligible for high-cost support, the support amount available was based on the non-rural support mechanism. The amount of high-cost support carriers receive from the rural mechanisms (such as the high-cost loop and local switching support mechanisms) is typically more generous than for non-rural carriers. In order to discourage gaming of the program, the FCC adopted rules in 1997 to limit incentives for carriers to purchase exchanges for the sole purpose of capturing additional high-cost support. Specifically, carriers making a binding commitment on or after May 7, 1997 to purchase a high-cost exchange would receive the same level of support per line as the seller received prior to the sale. Partner is seeking forbearance from the application of these rules by the FCC.

Forbearance

Section 10 of the 1996 Telecommunications Act allows a telecommunications carrier to petition the FCC to refrain, or forbear, from applying any statutory provision or regulation if the FCC determines the forbearance petition meets three criteria. To approve a forbearance petition, the FCC must find:

- The regulation is not necessary to ensure that the carrier's service charges, practices, classification, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory;

- Enforcement of the regulation is not necessary for consumer protection; and
- Forbearance is consistent with the public interest.

In determining whether forbearance is in the public interest, the FCC must consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.” Possible outcomes include approval, denial, or approval in part and denial in part. Forbearance petitions are “deemed granted” by operation of law if the FCC fails to act within one year from the date the petition is received.

Florida’s Net Contributor Status

The high-cost program represents 63 percent of the \$7.1 billion federal universal service program for 2008. Florida is the third largest net contributor to the high-cost program, and the largest net contributor for all of the programs. In 2008, consumers in Florida contributed close to \$297 million into the high-cost program, while only \$77 million was distributed to eligible carriers providing service in Florida. While approval of the forbearance petition would likely only increase the size of the fund slightly, it would set the stage to allow other carriers to continue to game the current system and create inequities, as opposed to adopting fundamental reform. Even without additional pressure the universal service assessment factor has grown from 12.3 percent for the fourth quarter of 2009 to a record high of 14.1 percent for the first quarter of 2010.

Prior Comments

The proposed comments are consistent with those filed in previous proceedings. In 2008, the FPSC filed comments opposing Hawaiian Telcom, Inc.’s petition for waiver of certain FCC rules regarding the high-cost support in order to get additional support. In that instance, Hawaiian Telcom purchased exchanges from an incumbent carrier. While the rules relating to how much high-cost support it would be eligible to receive was clear, Hawaiian Telcom sought to change the rules for its benefit. The FCC has not yet ruled in this proceeding.

cc: Charles H. Hill
S. Curtis Kiser

DRAFT
Before the
Federal Communications Commission
Washington, D.C. 20554

Attachment A

In the Matter of

Petition of Partner Communications Cooperative for
Forbearance Pursuant to 47 U.S.C. § 160 (c) in Iowa

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WC Docket No. 05-337

**COMMENTS OF THE
FLORIDA PUBLIC SERVICE COMMISSION**

CHAIRMAN NANCY ARGENZIANO

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER NATHAN A. SKOP

COMMISSIONER DAVID E. KLEMENT

COMMISSIONER BEN A. "STEVE" STEVENS III

February 2010

Introduction

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Public Notice (Notice) released on January 12, 2010. In this Notice (DA 10-50), the Federal Communications Commission (FCC) seeks comment on the petition of Partner Communications Cooperative (Partner) for forbearance from sections 54.305(b) and (d) of the FCC's rules. Specifically, Partner requests that the FCC forebear from enforcing sections 54.305(b) and (d) of the FCC's rules so that Partner may receive additional universal service high-cost support and local switching support for four exchanges it acquired in 2006. Partner states that granting its petition will allow Partner to upgrade its telephone network and provide the platform for eventual ubiquitous broadband coverage in the four acquired high-cost exchanges, as well as in its two original exchanges. While the FPSC is sympathetic to the conditions faced by Partner, the FPSC believes that granting its forbearance petition is not the appropriate solution. Furthermore, the FPSC does not believe that the petition meets the forbearance criteria established within the Telecommunications Act.

Existing Transfer Rules

In 1997, the FCC concluded that universal service support payments potentially may unduly influence a carrier's decision to purchase exchanges from other carriers.¹ In order to discourage carriers from placing unreasonable reliance upon the availability of universal service support in deciding whether to purchase exchanges from other carriers, the FCC concluded that a carrier making a binding commitment on or after May 7, 1997 to purchase a high-cost exchange should receive the same level of support per line as the seller received prior to the sale. This decision predates Partner's interest in purchasing exchanges in 2004.

The FPSC believes that Partner should have taken into consideration the amount of federal universal service support that would be available to it and the condition of the network it was purchasing before completing the acquisition of the four exchanges. Partner should have factored in the need for network improvements into the acquisition negotiations. The FPSC is troubled by this request for additional support from a carrier that should have understood the business ramifications of its acquisition, but now seeks to change the rules to its advantage. The

¹ Report and Order, CC Docket No. 96-45, FCC 97-157, Released May 8, 1997, ¶ 308.

FPSC believes that approval of this petition would set a dangerous precedent that would encourage other carriers to seek out additional support at a time when the universal service fund has been growing significantly.

Furthermore, according to its own petition, there appears to have been opportunity for Partner to not consummate the acquisition, had it determined that the purchase of these exchanges was not in its members' best interests. The conclusion of the acquisition was not completed until 2006. The FPSC believes that requesting the FCC now to waive its rules to shelter this firm, while major reform to the program is being considered, is both unreasonable and unwarranted. While Partner is planning to upgrade its network to eventually deploy fiber-to-the home network, it is not unique. The FCC continues to work to understand and reduce the barriers that carriers face to make such investments to further the deployment of broadband ubiquitously thought the United States. Moreover, Congress has allocated support for such investments through the American Recovery and Reinvestment Act of 2009.

Joint Federal / State Responsibility

The solution proposed by Partner only focuses on granting it additional federal high-cost support. It does so without accounting for the complementary responsibility of the state to promote and advance universal service. The Telecommunications Act itself notes this joint responsibility.² There is no evidence within the petition to indicate that Partner has sought out any intrastate high-cost support to aid in improving its network. It would be premature for the FCC to grant the relief requested by Partner until Iowa has an opportunity to assess such needs and determine what actions, if any, are necessary and prudent in meeting its responsibilities to advancing universal service.

Ongoing Reform

The FCC has several open proceedings before it pertaining to reform of the high-cost support mechanisms.³ The FPSC is concerned that, if granted, Partner's forbearance petition

² 47 U.S.C. § 254(b)(5).

³ FNRPM, WC Docket No. 05-337, CC Docket No. 96-45, FCC 09-112, Released: December 15, 2009; Public Notice, GN Docket No. 09-51, WC Docket No. 05-337, DA 09-2558, Released: December 8, 2009; Public Notice, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2419, Released: November 13, 2009.

would set a precedent that may lead to additional petitions seeking similar piecemeal relief, as opposed to genuine reform. Fundamental reform of the high-cost mechanisms is the subject of those NPRMs for which the FCC is currently seeking comments; therefore, it may be desirable to determine the impact of such reforms before considering granting the petition. We encourage the FCC to move forward expeditiously with USF reform, rather than entertaining entity-specific piecemeal solutions.

Forbearance Criteria

Section 10 of the 1996 Telecommunications Act allows a telecommunications carrier to petition the FCC to refrain, or forbear, from applying any statutory provision or regulation if the FCC determines the forbearance petition meets three criteria. To approve a forbearance petition, the FCC must find:

- The regulation is not necessary to ensure that the carrier's service charges, practices, classification, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory;
- Enforcement of the regulation is not necessary for consumer protection; and
- Forbearance is consistent with the public interest.

While Partner has attempted to address each of these issues, the FPSC believes that the petition overlooks several key factors that should be considered by the FCC while evaluating this petition.

Regulation is Not Necessary

Partner asserts that Section 54.305 is not necessary to ensure that Partner's charges, practices, or classifications are just and reasonable and not unjustly or unreasonably discriminatory. Specifically, Partner states that it is subject to competition from numerous wireless, cable, satellite providers, as well as broadband-based content providers of voice "applications." This growing number of telecommunications competitors will serve to keep Partner's rates just, reasonable, and non-discriminatory. However, even if this is true, the FPSC is concerned that granting the requested forbearance may unreasonably discriminate against other providers of services in these exchanges. If competition is so robust from competitors who

lack access to such high-cost funds within the exchanges, we question why it is necessary for government to subsidize one class of provider.

Enforcement is Not Necessary

Partner argues that not only will forbearance not harm consumers, but also that continued enforcement of Section 54.305 might actually harm consumers in Partner's four acquired exchanges. Specifically, by limiting the amount of high-cost support it can receive, Partner contends that its consumers are harmed because Partner will have access to less capital needed to invest in those exchanges. Partner states that its local exchange upgrades and fiber build-out plans are contingent upon its receipt of support of High-Cost Loop Support and Local Switching Support in the purchased exchanges. Partner should have known it was not eligible for this support at the time it completed the acquisition.

Regarding the impact on the federal universal service program, Partner claims that the incremental increase in the fund due to its forbearance petition, if granted, will not substantially affect what consumers pay into the federal fund. The FPSC disagrees with this assertion. The federal universal service fund has continued to grow, while the assessable revenues have declined. As a result, the assessment factor has increased to a record high of 14.1 percent. From 2000 to 2008, the overall size of the federal universal service program has grown from \$4.5 billion to \$7.6 billion. The continued escalation of the size of the fund threatens the "affordability" criterion that the program was intended to safeguard. As the Tenth Circuit recognized, "excessive subsidization may affect the affordability of telecommunications services, thus violating the principle in §254(b)(1)."⁴

Public Interest

Because additional high-cost funding would enable Partner to upgrade its network and allow for a fiber-to-the home deployment, it asserts that forbearance is in the public interest. Partner also states that its improvements will promote more competition among voice and broadband providers, giving the public more voice and broadband choices accompanied with lower prices. What is missing from this discussion is the effect such continued increases in the

⁴ Qwest Communications International v. FCC, 398 F.3d 1222, 1234 (2005).

size of the federal universal service fund have on the public in areas other than these four exchanges and overall affordability of rates elsewhere in this country.

Partner suggests that because TracFone's forbearance petition from certain Section 54 rules was granted by the FCC, it should be granted similar relief. While TracFone's forbearance petition was granted, forbearance was granted for completely different rules and for different reasons than the circumstances before Partner. The TracFone petition dealt with rules relating to the "own facilities" requirement to receive universal service support. Furthermore, TracFone's access to federal universal service support is limited to low-income support, not the high-cost support sought by Partner.

Conclusion

The FPSC does not believe the forbearance petition filed by Partner should be granted. Partner knew, or should have known, of the need for network improvements when it purchased the network from Iowa Telecommunications Services and how much federal universal service support would be available. Partner should first look to the state commission to seek out any intrastate remedies available before looking to the federal jurisdiction for additional support. The FPSC believes that the criteria needed for the FCC to grant Partner's forbearance petition have not been met. Partner fails to recognize the systemic growth that the fund continues to exhibit and its relationship to affordability. While increased subsidies may be in the public interest of all consumers in those exchanges, we believe that the FCC should also consider the public interest of consumers that have to pay into the program. The analysis must be balanced. Furthermore, it is not clear why additional support is necessary if there are a sufficient number of unsubsidized competitors offering service, where the existence of such providers will force Partner to maintain reasonable rates. Finally, the FPSC believes that granting Partner's petition is premature since fundamental reform measures regarding high-cost support are pending before the FCC. The FPSC appreciates the opportunity to provide comments and looks forward to continued participation.

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 9, 2010

TO: Timothy J. Devlin, Executive Director

FROM: Division of Regulatory Analysis (Hunter, Shafer) *TH* *OS* *mb* *ALT*

RE: Environmental Protection Agency's Proposed Rules for Numeric Nutrient Criteria for Florida's Surface Water.

Critical Information: Please place on February 9, 2010, Internal Affairs.
Briefing requested by Commissioners.

At the January 25, 2010, Internal Affairs, Commissioner Stevens requested information relating to recent developments of a federal Environmental Protection Agency (EPA) rulemaking proceeding. The EPA rulemaking could ultimately have a financial impact on wastewater utilities in Florida that discharge treated effluent to Florida surface waters. The following memorandum outlines the background and current status of rule development for numeric nutrient criteria for Florida's surface water.

On January 26, 2010, the EPA proposed numeric nutrient water quality criteria to protect aquatic life in lakes and flowing waters, including canals, within the state of Florida. It also proposed regulations to establish a framework for Florida to develop "restoration standards" for impaired waters.

Background

The Florida Department of Environmental Protection (DEP) began the development of numeric nutrient criteria for lakes and streams in 2002, when the EPA first reached mutual agreement on DEP's Numeric Nutrient Criteria Development Plan. From 2002 through 2009, DEP conducted 22 meetings with the Nutrient Technical Advisory Committee (TAC), which consists of scientific experts from a variety of backgrounds including environmental groups, EPA, consultants, and state and local governments.

On January 14, 2009, EPA made a determination under section 303(c)(4)(B) of the Clean Water Act (CWA) that numeric nutrient water quality criteria are necessary for the state of Florida to meet the requirements of CWA section 303(c). Florida currently implements a narrative criterion that states, "In no case shall nutrient concentration of a body of water be altered so as to cause an imbalance in natural population of flora or fauna."

DEP proposed revisions to Chapter 62-302, FAC (Water Quality Standards) and Chapter 62-303, FAC (Impaired Waters Rule) to establish numeric nutrient criteria for lakes, streams, estuaries, and coastal waters on January 30, 2009. DEP intended to propose and adopt the criteria into State Water Quality Standards and receive EPA approval within a 12-month

timeframe. However, in August 2009, EPA entered into a consent decree with Earth Justice on behalf of several environmental groups¹ to develop proposed rules establishing numeric nutrient criteria for lakes and flowing waters in Florida by January 14, 2010, and for Florida estuarine and coastal waters by January 14, 2011. The rulemakings are to be final by October 15, 2010 and October 15, 2011, respectively. DEP has suspended its rulemaking proceeding pending the outcome of the EPA proceeding.

Concerns

Industry and community interests are concerned that guidelines set by the EPA will be more stringent than those established by DEP and cost the state and its businesses and residents billions of dollars a year. Another concern is that these rules apply solely to Florida and do not require states that contribute to nutrient content in Florida's waterways to share responsibility for water quality. Therefore, Florida will bear the entire cost of remediation efforts that will be needed to meet the new EPA standards. The basis for EPA establishing state specific surface water nutrient criteria standards for Florida alone is currently the subject of litigation.

According to DEP personnel, approximately 200 wastewater systems in the state currently discharge treated wastewater effluent to Florida surface waters. Of those, only six systems are currently required to treat their discharge to sufficient levels to comply with the proposed standards. However, the standards as currently proposed apply to the water bodies, not specifically the wastewater effluent. The wastewater facility permit issued by DEP determines the treatment standards for each individual facility on a case-by-case basis. How surface water nutrient level indicators will be measured to determine compliance will impact whether remediation efforts will be necessary for any particular wastewater utility. The indicators and their measurement is the subject of EPA's rulemaking. The surface water standards as proposed are also likely to be very site specific. It is safe to say that most affected wastewater facilities will either have to upgrade treatment facilities or seek alternative methods of disposal. Each wastewater facility permit will have to be evaluated on a case-by-case basis to examine appropriate options. Staff is currently in the process of trying to identify those jurisdictional utilities that may be impacted by the proposed rules.

Comments

The EPA's rulemaking has a 60 day comment period that began January 26, 2010, when the draft rule was published in the Federal Register. The comment period ends March 27, 2010.

cc: Charles H. Hill
S. Curtis Kiser

¹ Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper.

II. Outside Persons Who Wish to Address the Commission at Internal Affairs

NOTE: The records reflect that no outside persons addressed the Commission at this Internal Affairs meeting.

III. Supplemental Materials for Internal Affairs

NOTE: The following material pertains to Item 2 of
this agenda.

DRAFT

Side by Side Comparison
PSC Proposal relating to Ex Parte Communication and SB 1034 (as amended)
February 2, 2010 **DRAFT**

PSC Proposal (02/02/2010)	Senate Bill 1034 as amended 02/02/2010
Language regarding the Code of Judicial Conduct. At 1/25/2010 meeting, Commissioners requested additional information regarding each canon and asked staff to report at the 02/09/2010 Internal Affairs meeting. Current staff recommendation is to require adherence to the Code of Judicial Conduct, as applicable. Where statute conflicts with the Code, the statute will prevail.	No provision in SB 1034
(added intent language) ... to ensure the fairness of the commission's proceedings; assure the public that commission decisions are not influenced by prohibited communications between commissioners and legally interested persons; ensure that commissioners have unrestricted independence to make fact based decisions free from the perception of undue influence, threat, or offer of reward; and to ensure the preservation of the due process rights of all parties to proceedings.	No provision in SB 1034
At 01/25/2010 meeting, Commissioners requested staff to research definition of "legally interested persons." Staff proposes that legally interested person means "any party to a proceeding before the commission, a representative of a party to a proceeding pending before the commission, corporations, partnerships, limited liability companies, elected or appointed officials of state government, and other public and elected officials."	No provision in SB 1034
Extends ex parte communication restriction to commissioners' direct reporting staff for docketed proceedings and rulemaking. Does not apply to undocketed workshops or internal affairs meetings. Ex parte restriction is extended to administrative rulemaking. "Direct reporting staff" is a commissioner's chief advisor and executive assistant.	Same as SB 1034 as amended; uses the term "advisory staff", rather than "direct reporting staff." Advisory staff include commissioners' assistants and executive secretaries.

Side by Side Comparison
PSC Proposal relating to Ex Parte Communication and SB 1034 (as amended)
February 2, 2010 **DRAFT**

PSC Proposal (02/02/2010)	Senate Bill 1034 as amended 02/02/2010
✓ Removes the 90 day restriction on ex parte communication; prohibits communication on any issue that parties can "reasonably foresee" will be filed with Commission.	Same provision in SB 1034
✓ Defines ex parte communication as "any communication that, if written, is not served on all the parties to a proceeding, and, if oral, is made without adequate notice to the parties and an opportunity for them to be present and heard."	<i>add docketed information</i> No provision in SB 1034.
Provides specific language that the ex parte restriction applies to communication directed to commissioners and direct reporting staff from the Governor, Cabinet, or Legislature. Written or oral communication that is only a status inquiry and does not address the merits of a proceeding is not an ex parte communication. A written communication that attaches or forwards constituent correspondence concerning the merits of a docketed proceeding must be placed in the docketed file.	No provision in SB 1034.
Clarifies existing exemption from the ex parte restriction for conferences, training seminars, etc. The new language clarifies that this exemption does not allow Commissioners or their direct staff to discuss matters individually with parties to any proceeding.	No change to existing language in SB 1034.
This provision not currently included in PSC discussions; can implement by rule. Communications received are currently placed in the docket file and are available electronically <i>made on received</i> NOTE: The requirement to post written communication the same day the Commission receives it could be problematic. It may not be feasible to post written communications received late in the workday. Would "within one business day" be acceptable?	<i>made on received</i> Provides that any oral or written communication between a commissioner or advisory staff and a representative of a utility regulated by the Commission must be posted the commission's website within 72 hours after the communication occurs. Any written communication received must be posted on the commission website the same day the Commission receives the communication. A written summary of any documented emergency or a brief, unscheduled follow-up to a previous meeting or telephone conference call must also be posted on the commission website within 72 hours after the communication occurs.

Side by Side Comparison
PSC Proposal relating to Ex Parte Communication and SB 1034 (as amended)
February 2, 2010 **DRAFT**

PSC Proposal (02/02/2010)	Senate Bill 1034 as amended 02/02/2010
<p>NOTE: This appears to conflict with the requirement in the amendment to post “notice at least 72 hours before...any written communication.” Not sure how to provide 72 hours notice via the website for written communication prior to receipt.</p> <p>NOTE: The SB authorizes OPC to participate in these noticed meetings; however, when OPC is one of several intervenors, should OPC receive this opportunity, but not other intervenors? Current procedures in the PSC rules allow all parties to have the opportunity to participate.</p>	<p>Notice must be placed on the commission website at least 72 hours before any meeting, conference call, or written communication. OPC may participate in the meeting, telephone conference call or written communication to question or directly respond to the communication.</p> <p>PSC Comment: This provision of the SB uses the term “regulated utility”. This language may not include telecommunications companies as they are not a “utility” as defined in the statutes. Recommend revising language to “<u>regulated entity</u>” or “any client or industry regulated by the commission”. <i>entity</i></p>
<p>This provision not included in PSC proposal; can implement by rule.</p>	<p>Specifies that this restriction does not apply to commission staff or representatives of a regulated utility who are required to initiate or receive brief, unscheduled communications intended to obtain additional information after the completion of an audit.</p>
<p>Provides for a civil penalty up to \$5000 for a commissioner, commissioners’ direct reporting staff, or representative of a regulated entity who knowingly violates the restrictions on ex parte communication or who fail to place a record of an ex parte communication on the record within 15 days of receiving the communication. (This language is existing law; the change adds commissioners’ direct reporting staff and representatives of a regulated entity to the civil fine provision.)</p>	<p>Civil penalty applies to Commissioners or Commissioner’s direct reporting staff. No prohibition or penalty in SB 1034 for “representatives of a regulated entity”. <i>410 of 120</i></p> <p>Note from Senate staff analysis: “The inclusion of “direct reporting staff” in the provisions on investigation of and discipline for ex parte communications appears to remove all authority of the commission over its employees regarding these alleged violations.</p>
<p>Also provides for penalties for the regulated entities who violate the ex parte restrictions; the regulated entity may be assessed a penalty of up to one percent of the entity’s annual operating revenue for the most recent calendar year.</p>	<p>No provision in SB 1034. <i>1/10 of 1%</i></p>
<p>Authorizes the Commission to adopt rules for commissioners and commission staff concerning communications with legally interested persons.</p>	<p>No provision in SB 1034. <i>all external parties as well 5,000 for 3rd parties</i></p>

Side by Side Comparison
PSC Proposal relating to Ex Parte Communication and SB 1034 (as amended)
February 2, 2010 **DRAFT**

PSC Proposal (02/02/2010)	Senate Bill 1034 as amended 02/02/2010
Prohibits former commissioners from representing any regulated entity before the Commission or from lobbying (as defined in s. 11.045, F.S.) before the executive or legislative branch of government for four years after termination from the commission. Applies to commissioners appointed or reappointed after July 1, 2010.	Same provision included in SB 1034, except that it includes former commissioners and former commissioners' direct reporting staff. Additionally, the prohibition is for two years, rather than four years. Applies to commissioners appointed or reappointed or direct reporting staff hired on or after July 1, 2010.
Prohibits <u>any</u> former employee of the commission from appearing before the commission to represent any regulated entity for four years after termination from the commission.	Additional language to prohibit a former commissioner or former direct reporting staff from appearing before the commission to represent any regulated entity (or subsidiary, etc.) that has been a party to a commission proceeding within the two years preceding the former commissioner's or commissioners' direct reporting staff. (This language appears to be more specific than or conflict with the preceding provision.) SB 1034, as amended, does not appear to extend this prohibit to remaining commission employees as existing statutory language prohibits or existing PSC proposal prohibits.
Commissioners asked staff to research a "recusal" clause in the event a communication occurred that later became a docketed matter. Current statutory language in 350.042(4), F.S. allows commissioners to withdraw from proceedings to "eliminate the effect of an ex parte communication."	NA
	Note from Senate analysis: Changes to s. 350.0605, F.S. appear to prohibit lobbying any "state government," possibly overly restricting former commissioners and employees from moving out of Florida to find employment.
This note from the Senate analysis also applies to the current PSC proposal, except that the lobbying prohibition only applies to former commissioners and commissioners' direct reporting staff and the prohibition in the PSC proposal is for four years rather than two years.	Note from Senate analysis: Existing restrictions on post employment of state elected officials, appointed officials, and employees contained in ss. 112.313, and 350.0605, F.S. are less restrictive than those proposed in the SB. Existing restrictions apply only to the agency of previous

Side by Side Comparison
PSC Proposal relating to Ex Parte Communication and SB 1034 (as amended)
February 2, 2010 **DRAFT**

PSC Proposal (02/02/2010)	Senate Bill 1034 as amended 02/02/2010
Additionally, the PSC proposal also prohibits former employees from appearing before the commission for four years.	employment and only to senior management or select exempt employees or to those matters in which the employee participated. The bill prohibits any representation before the PSC for two years but also prohibits lobbying either the legislative or the executive branch. The connection between PSC employment and lobbying an entity with which the employee most likely had no employment contact is unclear, as is the purpose of the prohibition.

02/02/2010 working document

Post Employment Prohibitions

Who	Prohibition	PSC Proposal/ How long?	SB 1034 as amended/How long
Former commissioner	Before the PSC	4 years	2 years
Former commissioner	Executive or Legislative branch	4 years	2 years
Former commissioner	Employment with regulated entity that has been a party to proceedings within the previous two years.	NA	2 years
Former commissioner	Employment with a regulated entity	4 years	NA
Former employee	Before the PSC	4 years	Existing language deleted
Former "advisory staff member"	Before the PSC	4 years	NA
Former "advisory staff member"	Executive or Legislative Branch	4 years	2 years
Former "advisory staff member"	Employment with regulated entity that has been a party to proceedings within the previous two years.	NA	2 years

11-00361D-10

Senate Amendment (with title amendments)

Delete everything after the resolving clause
and insert:

That Section 1. Section 350.031, Florida Statutes, is
amended to read:

350.031 Florida Public Service Commission Nominating
Council.—

(1) The Judicial Nominating Commission for the Florida
Supreme Court (JNC) shall be the council to nominate persons to
fill vacancies on the Florida Public Service Commission.

(2)-(3) A majority of the membership of the council may
conduct any business before the council. All meetings and
proceedings of the council shall be staffed by the Office of
Legislative Services and shall be subject to the provisions of
ss. 119.07 and 286.011. Members of the council are entitled to
receive per diem and travel expenses as provided in s. 112.061,
which shall be funded by the Florida Public Service Regulatory
Trust Fund. Applicants invited for interviews before the council
may, in the discretion of the council, receive per diem and
travel expenses as provided in s. 112.061, which shall be funded
by the Florida Public Service Regulatory Trust Fund. The council
shall establish policies and procedures to govern the process by
which applicants are nominated.

(3)-(4) The council may spend a nominal amount, not to
exceed \$10,000, to advertise a vacancy on the Florida Public
Service Commission, which shall be funded by the Florida Public
Service Regulatory Trust Fund.

(4)-(5) A person may not be nominated to the Governor for
appointment to the Public Service Commission until the council

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30 has determined that the person is competent and knowledgeable in
31 one or more fields, which shall include, but not be limited to:
32 public affairs, law, economics, accounting, engineering,
33 finance, natural resource conservation, energy, or another field
34 substantially related to the duties and functions of the
35 commission. The commission shall fairly represent the above-
36 stated fields. Recommendations of the council shall be
37 nonpartisan.

38 (5)(6) It is the responsibility of the council to nominate
39 to the Governor no fewer than three persons for each vacancy
40 occurring on the Public Service Commission. The council shall
41 submit the recommendations to the Governor by September 15 of
42 those years in which the terms are to begin the following
43 January, or within 60 days after a vacancy occurs for any reason
44 other than the expiration of the term.

45 (6)(7) The Governor shall fill a vacancy occurring on the
46 Public Service Commission by appointment of one of the
47 applicants nominated by the council only after a background
48 investigation of such applicant has been conducted by the
49 Florida Department of Law Enforcement. If the Governor has not
50 made an appointment within 30 consecutive calendar days after
51 the receipt of the recommendation, the council, by majority
52 vote, shall appoint, within 30 days after the expiration of the
53 Governor's time to make an appointment, one person from the
54 applicants previously nominated to the Governor to fill the
55 vacancy.

56 (7) Upon appointment by the Governor, a commissioner shall
57 serve for the full or unexpired portion of the term to which the
58 commissioner was appointed pursuant to section 350.01, Florida

11-00361D-10

Statutes.

(8) Retention of a commissioner upon the expiration of their term shall be accomplished through merit selection by the majority of the electorate under a statewide retention vote.

(9) A commissioner seeking retention vote to remain on the commission for an additional four year term shall file their intent to serve an additional term with the Secretary of State no later than January 1 of the year prior to the expiration of their term.

(10) A vacancy on the commission shall occur when commissioner is not retained under a statewide retention vote, upon the expiration of their term when a commissioner does not seek retention pursuant to subsection (9), upon the resignation of a commissioner, or upon the removal of a commissioner by the Governor.

That Section 2. Upon the effective date of this act, Subsection (3) of section 350.01, Florida Statutes, is amended to read:

(3) A commissioner seeking retention vote to remain on the commission for an additional four year term shall file their intent to serve an additional term with the Secretary of State no later than January 1 of the year prior to the expiration of their term. ~~Any person serving on the commission who seeks to be appointed or reappointed shall file with the nominating council no later than June 1 prior to the year in which his or her term expires a statement that he or she desires to serve an additional term.~~

11-00361D-10

That Section 3. This act shall take effect on July 1, 2011.

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

And the title is amended as follows:

Delete line(s) 1-12

and insert:

Senate Joint Resolution

A joint resolution amending s. 350.031, F.S.; revising the manner in which commissioners of the Florida Public Service Commissioners are nominated, appointed, and retained in office; amending s. 350.031(3), F.S.; requiring notification of intent to be retained for an additional term.

SB 1034a (revised)	SB 1034a (committee amendment)	Comment
<p>Section 1. Section 350.042, Florida Statutes, is amended to read:</p> <p>350.042 Ex parte communications.-</p> <p><u>This section shall govern communications directed to commissioners, and a commissioners' direct reporting staff, concerning proceedings before the Florida Public Service Commission. The purpose of this section is to ensure the fairness of the commission's proceedings by assuring the public that commission decisions are not influenced by prohibited communications between commissioners and legally interested persons.</u></p>	<p>Section 1. Section 350.042, Florida Statutes, is amended to read:</p> <p>350.042 Ex parte communications.-</p>	<p>Revised to incorporate preamble language taken from Commission staff proposal discussed at Internal Affairs.</p>
<p><u>(1)(a) It is the express intent of the legislature that the Florida Public Service Commission shall afford to every person who is legally interested in a proceeding, or the person's attorney or qualified representative, the full right to be heard according to law except as otherwise prohibited in this section.</u></p>	<p>(1) A commissioner <u>and his or her advisory staff shall afford should accord</u> to every person who is legally interested in a proceeding, or the person's lawyer, <u>the full right to be heard according to law, and, except as authorized in this section by law,</u> shall neither initiate, engage in, nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than <u>an undocketed workshop a proceeding under s. 120.54 or s. 120.565, workshops,</u> or internal affairs meetings. <u>An</u> No individual shall <u>not</u> discuss ex parte with a commissioner <u>or his or her advisory staff</u> the merits of any issue that <u>the individual</u> knows will be filed with the commission. <u>For the purposes of this section the term "advisory staff" refers to commissioner's assistants and executive secretaries.</u> The provisions of this subsection shall not apply to <u>other</u> commission staff <u>unless otherwise provided in this section.</u></p>	<p>Revised to add subparagraph (1)(a) representing the highlighted portion of subsection (1) as shown. Currently, subsection (1) is written as a single paragraph addressing several topics. Breaking down subsection (1) into logical subparagraphs improves readability and clarifies intent while incorporating Commission proposed changes (e.g., defining terms, etc.).</p> <p>The proposed revisions offer no substantive changes, but present the content in a manner that it is more straightforward and readily understood.</p> <p style="text-align: right;"> <i>Commissioner's Clerk</i> Parties/Staff Handout Internal Affairs Agenda on 8/9/10 Item No. 22 </p>

SB 1034a (revised)	SB 1034a (committee amendment)	Comment
<p>(b) For purposes of this section, the term "legally interested" means any party to a proceeding before the commission, a representative of a party to a proceeding pending before the commission, corporations, partnerships, limited liability companies, elected or appointed officials of state government, and other public and elected officials.</p>	<p>(1) A commissioner and his or her advisory staff shall afford should accord to every person who is legally interested in a proceeding, or the person's lawyer, <u>the full right to be heard according to law, and, except as authorized in this section by law,</u> shall neither initiate, engage in, nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than <u>an undocketed workshop a proceeding under s. 120.54 or s. 120.565, workshops,</u> or internal affairs meetings. <u>An</u> No individual shall <u>not</u> discuss ex parte with a commissioner <u>or his or her advisory staff</u> the merits of any issue that <u>the individual</u> knows will be filed with the commission. <u>For the purposes of this section the term "advisory staff" refers to commissioner's assistants and executive secretaries.</u> The provisions of this subsection shall not apply to <u>other</u> commission staff <u>unless otherwise provided in this section.</u></p>	<p>Revised to add subparagraph (1)(b) defining the term "legally interested". Currently, subsection (1) is written as a single paragraph addressing several topics. Breaking down subsection (1) into logical subparagraphs improves readability and clarifies intent while incorporating Commission proposed changes (e.g., defining terms, etc.).</p> <p>The proposed revisions offer no substantive changes, but present the content in a manner that it is more straightforward and readily understood.</p>
<p>(c) For purposes of this section, the term "ex parte" means any communication regarding a docketed matter that, if written, is not served on all the parties to a proceeding, and, if oral, is made without adequate notice to the parties and an opportunity for them to be present and heard.</p>	<p>(1) A commissioner and his or her advisory staff shall afford should accord to every person who is legally interested in a proceeding, or the person's lawyer, <u>the full right to be heard according to law, and, except as authorized in this section by law,</u> shall neither initiate, engage in, nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than <u>an undocketed workshop a proceeding under s. 120.54 or s. 120.565, workshops,</u> or internal affairs meetings. <u>An</u> No individual shall <u>not</u> discuss ex parte with a commissioner <u>or his or her advisory staff</u> the</p>	<p>Revised to add subparagraph (1)(c) defining the term "ex parte". Currently, subsection (1) is written as a single paragraph addressing several topics. Breaking down subsection (1) into logical subparagraphs improves readability and clarifies intent while incorporating Commission proposed changes (e.g., defining terms, etc.).</p> <p>The proposed revisions offer no substantive changes, but present the content in a manner that it is more straightforward and readily understood.</p>

SB 1034a (revised)	SB 1034a (committee amendment)	Comment
SEE ABOVE	<p>merits of any issue that <u>the individual</u> knows will be filed with the commission. <u>For the purposes of this section the term "advisory staff" refers to commissioner's assistants and executive secretaries.</u> The provisions of this subsection shall not apply to <u>other</u> commission staff <u>unless</u> otherwise provided in this section.</p>	SEE ABOVE
<p><u>(d) For purposes of this section, the term "commissioner's direct reporting staff" means a commissioner's chief advisor and a commissioner's executive assistant.</u></p>	<p>(1) A commissioner <u>and his or her advisory staff shall afford</u> should accord to every person who is legally interested in a proceeding, or the person's lawyer, <u>the full right to be heard according to law, and, except as authorized in this section by law,</u> shall neither initiate, <u>engage in,</u> nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than <u>an undocketed workshop a proceeding under s. 120.54 or s. 120.565, workshops,</u> or internal affairs meetings. An <u>No</u> individual shall <u>not</u> discuss ex parte with a commissioner <u>or his or her advisory staff</u> the merits of any issue that <u>the individual</u> knows will be filed with the commission. <u>For the purposes of this section the term "advisory staff" refers to commissioner's assistants and executive secretaries.</u> The provisions of this subsection shall not apply to <u>other</u> commission staff <u>unless</u> otherwise provided in this section.</p>	<p>Revised to add subparagraph (1)(d) defining the term "commissioner's direct reporting staff" replacing the highlighted portion of subsection (1) as shown. Currently, subsection (1) is written as a single paragraph addressing several topics. Breaking down subsection (1) into logical subparagraphs improves readability and clarifies intent while incorporating Commission proposed changes (e.g., defining terms, etc.).</p> <p>The proposed revision replaces the term "advisory staff" with "commissioner's direct reporting staff" to avoid a conflict having legal significance to the commission.</p> <p>The proposed revision also presents the content in a manner that it is more straightforward and readily understood.</p>

SB 1034a (revised)	SB 1034a (committee amendment)	Comment
<p>(e) A commissioner, or a member of the commissioner's direct reporting staff, shall neither initiate, <u>engage in</u>, nor consider ex parte communications in any proceeding other than an undocketed workshop or internal affairs meeting. The provisions of this subsection shall not apply to commission staff <u>unless otherwise provided for in this section</u>.</p>	<p>(1) A commissioner <u>and his or her advisory staff shall afford should accord</u> to every person who is legally interested in a proceeding, or the person's lawyer, <u>the full right to be heard according to law, and, except as authorized in this section by law</u>, shall neither initiate, <u>engage in</u>, nor consider ex parte communications concerning the merits, threat, or offer of reward in any ^{docketed} proceeding other than <u>an undocketed workshop</u> a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. <u>An individual shall not discuss ex parte with a commissioner or his or her advisory staff the merits of any issue that the individual knows will be filed with the commission. For the purposes of this section the term "advisory staff" refers to commissioner's assistants and executive secretaries.</u> The provisions of this subsection shall not apply to <u>other</u> commission staff <u>unless otherwise provided in this section</u>.</p>	<p>Revised to add subparagraph (1)(e) representing the highlighted portions of subsection (1) as shown. Currently, subsection (1) is written as a single paragraph addressing several topics. Breaking down subsection (1) into logical subparagraphs improves readability and clarifies intent while incorporating Commission proposed changes (e.g., defining terms, etc.).</p> <p>The proposed revisions offer no substantive changes, but present the content in a manner that it is more straightforward and readily understood.</p>
<p>(f) <u>An individual shall not discuss any matter with a commissioner, or a member of the commissioner's direct reporting staff, that the individual reasonably foresees will be filed with the commission.</u></p>	<p>(1) A commissioner <u>and his or her advisory staff shall afford should accord</u> to every person who is legally interested in a proceeding, or the person's lawyer, <u>the full right to be heard according to law, and, except as authorized in this section by law</u>, shall neither initiate, <u>engage in</u>, nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than <u>an undocketed workshop</u> a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. <u>An individual shall not discuss ex parte with a commissioner or his or her advisory staff the merits of any issue that the individual knows will</u></p>	<p>Revised to add subparagraph (1)(f) representing the highlighted portion of subsection (1) as shown. Currently, subsection (1) is written as a single paragraph addressing several topics. Breaking down subsection (1) into logical subparagraphs improves readability and clarifies intent while incorporating Commission proposed changes (e.g., defining terms, etc.).</p> <p>The proposed revision changes the mental state criteria from knows to reasonably foresees to prohibit discussion of issues not yet filed. Reference to ex parte is unnecessary and deleted consistent with how the term ex parte is defined</p>

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SEE ABOVE	be filed with the commission. <u>For the purposes of this section the term "advisory staff" refers to commissioner's assistants and executive secretaries.</u> The provisions of this subsection shall not apply to <u>other</u> commission staff <u>unless otherwise provided in this section.</u>	<p>in subparagraph 1(c). Revisions to the mental state is consistent with Commission proposed changes.</p> <p>The proposed revision also presents the content in a manner that it is more straightforward and readily understood.</p>
<u>(2)(a) Any oral or written communication between a commissioner or advisory staff, or a member of the commissioner's direct reporting staff, and a representative of a utility regulated by the commission, not otherwise prohibited under subsection (1), must be made available to the public. Such oral or written communication must be posted to the commission website within 72 hours after the communication was made or received.</u>	<u>(2)(a) Any oral or written communication between a commissioner or advisory staff and a representative of a utility regulated by the commission must be made available to the public. Such oral or written communication must be posted to the commission website within 72 hours after the communication occurs.</u>	<p>Revised subparagraph (2)(a) as shown in the highlighted portions to accomplish the following:</p> <ul style="list-style-type: none"> • Replaced reference to "advisory staff" with "commissioner's direct reporting staff" • Added clause "not otherwise prohibited under subsection (1)" to correct error, facilitate intent, and avoid conflict with term "ex parte" (Critical Problem) • Revised temporal requirement to "after the communication was made or received" to clarify intent
<u>(b) The commission shall post to the commission's website a copy of any written communication by the close of the next business day on the same day that the communication is received by the commission.</u>	<u>(b) The commission shall post to the commission's website a copy of any written communication on the same day that the communication is received by the commission.</u>	<p>Revised subparagraph (2)(b) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> • Revised temporal requirement to "within 24 hours after" to provide a workable solution in instances where a document is received by the commission just before the close of business

SB 1034a (revised)	SB 1034a (committee amendment)	Comment
<p><u>(c) The commission shall prepare a written summary of any communication related to a documented emergency, or a communication related to a brief, or an unscheduled follow-up to a previously scheduled meeting or previously scheduled telephone conference call. The commission shall post such the written summary to the commission website within 72 hours after the communication was made or received.</u></p>	<p><u>(c) The commission shall prepare a written summary of any communication related to a documented emergency, or a communication related to a brief, unscheduled follow-up to a previously scheduled meeting or previously scheduled telephone conference call. The commission shall post the summary to the commission website within 72 hours after such communication occurs.</u></p>	<p>Revised subparagraph (2)(c) as shown in the highlighted portions to accomplish the following:</p> <ul style="list-style-type: none"> • Corrected grammatical errors • Added "written" for consistent usage • Revised temporal requirement to "after the communication was made or received" to clarify intent
<p><u>(d) Notice shall be posted on the commission website at least 72 hours prior to the occurrence of any meeting, telephone conference call, or written communication between the a commissioner or advisory staff, or a member of the commissioner's direct reporting staff, and a representative of a regulated utility. The Public Counsel may participate in the meeting, telephone conference call, or written communication for the purpose of questioning or directly responding to the communication.</u></p>	<p><u>(d) Notice shall be posted on the commission website at least 72 hours prior to the occurrence of any meeting, telephone conference call, or written communication between the commissioner and his or her advisory staff and a representative of a regulated utility. The Public Counsel may participate in the meeting, telephone conference call, or written communication for the purpose of questioning or directly responding to the communication.</u></p>	<p>Revised subparagraph (2)(d) as shown in the highlighted portions to accomplish the following:</p> <ul style="list-style-type: none"> • Replaced reference to "advisory staff" with "commissioner's direct reporting staff"
<p><u>(e) This subsection does not apply to commission staff or representatives of a regulated utility who are required to initiate or receive brief, unscheduled communications for the purpose of obtaining additional information that may be needed after the completion of an audit.</u></p>	<p><u>(e) This subsection does not apply to commission staff or representatives of a regulated utility who are required to initiate or receive brief, unscheduled communications for the purpose of obtaining additional information that may be needed after the completion of an audit.</u></p>	<p>Revised subparagraph (2)(e) as shown in the highlighted portions to accomplish the following:</p> <ul style="list-style-type: none"> • Deleted "that may be needed" to remove redundancy.

SB 1034a (revised)	SB 1034a (committee amendment)	Comment
<p>(3)(2) The provisions of This section shall not prohibit an individual residential ratepayer from communicating with a commissioner or <u>advisory staff</u>, or a member of the commissioner's direct reporting staff, if, provided that the ratepayer is representing only himself or herself, without compensation.</p>	<p>(3)(2) The provisions of This section does shall not prohibit an individual residential ratepayer from communicating with a commissioner <u>or his or her advisory staff if</u>, provided that the ratepayer is representing only himself or herself, without compensation.</p>	<p>Revised subsection (3) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> Deleted "does" and kept "shall" (more permissive for ratepayer) Replaced reference to "advisory staff" with "commissioner's direct reporting staff"
<p>(4)(3) This section shall not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.</p>	<p>(4)(3) This section <u>does</u> shall not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.</p>	<p>Revised subsection (4) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> Deleted "does" and kept "shall" (more affirmative)
<p>(5)(4) If a commissioner or his or her <u>advisory staff</u>, or a member of the commissioner's direct reporting staff, knowingly receives an ex parte communication <u>prohibited under subsection (1)</u>, relative to a proceeding other than as set forth in subsection (1), to which <u>the commissioner</u> he or she is assigned, he or she must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commissioner or <u>advisory staff member</u>, or member of the commissioner's direct reporting staff, and shall give written notice to all parties to the communication that such matters have been placed</p>	<p>(5)(4) If a commissioner <u>or his or her</u> <u>advisory staff</u> knowingly receives an ex parte communication relative to a proceeding other than as set forth in subsection (1), to which <u>the commissioner</u> he or she is assigned, <u>the commissioner or his or her advisory staff</u> he or she must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made. <u>The commissioner or his or her advisory staff</u>, and shall give written notice to all parties to the communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication</p>	<p>Revised subsection (5) as shown in the highlighted portions to accomplish the following:</p> <ul style="list-style-type: none"> Replaced reference to "advisory staff" with "commissioner's direct reporting staff" Replaced "relative to a proceeding other than set forth in subsection (1)" clause with "prohibited under subsection (1)" to correct error, facilitate intent, and avoid an "ex parte" communication that cannot be cured by timely disclosure in a manner consistent with existing statute. (Critical Problem)

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<p>on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication received by him or her, withdraw from the proceeding, in which case the chair shall substitute another commissioner for the proceeding.</p>	<p>may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication received by him or her, withdraw from the proceeding, in which case the chair shall substitute another commissioner for the proceeding.</p>	<p>SEE ABOVE</p>
<p>(6)(5) Any individual who makes an ex parte communication shall submit to the commission a written statement describing the nature of <u>the</u> such communication, to include the name of the person making the communication, the name of <u>each</u> the commissioner or advisory staff member, or member of the commissioner's direct reporting staff, commissioners receiving the communication, copies of all written communications made, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commission shall place on the record of a proceeding all such communications.</p>	<p>(6)(5) Any individual who makes an ex parte communication shall submit to the commission a written statement describing the nature of <u>the</u> such communication, to include the name of the person making the communication, the name of <u>each</u> the commissioner or <u>advisory staff member</u> commissioners receiving the communication, copies of all written communications made, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commission shall place on the record of a proceeding all such communications.</p>	<p>Revised subsection (6) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> • Replaced reference to "advisory staff" with "commissioner's direct reporting staff"
<p>(7)(6) Any commissioner advisory staff member, or member of the commissioner's direct reporting staff, who knowingly fails to place on the record any such communications, in violation of the section, within 15 days <u>after</u> of the date of <u>the</u> such communication is subject to removal, <u>or</u> dismissal, and may be assessed a civil penalty not</p>	<p>(7)(6) Any commissioner <u>or advisory staff member</u> who knowingly fails to place on the record any such communications, in violation of the section, within 15 days <u>after</u> of the date of <u>the</u> such communication is subject to removal <u>or dismissal</u> and may be assessed a civil penalty not to exceed \$5,000.</p>	<p>Revised subsection (7) as shown in the highlighted portions to accomplish the following:</p> <ul style="list-style-type: none"> • Replaced reference to "advisory staff" with "commissioner's direct reporting staff"

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to exceed \$5,000.	SEE ABOVE	<ul style="list-style-type: none"> Corrected grammatical errors
NO REVISION REQUIRED	<p>(8)(7)(a) It <u>is</u> shall be the duty of the Commission on Ethics to receive and investigate sworn complaints of violations of this section pursuant to the procedures contained in ss. 112.322-112.3241.</p>	<p>Subparagraph (8)(a) does not require revision.</p>
<p>(b) If the Commission on Ethics finds that there has been a violation of this section by a <u>public service commissioner or advisory staff</u>, or a member of the commissioner's direct reporting staff, it shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor <u>may</u> is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112.</p>	<p>(b) If the Commission on Ethics finds that there has been a violation of this section by a public service commissioner <u>or his or her advisory staff</u>, it shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor <u>may</u> is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112.</p>	<p>Revised subparagraph (8)(b) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> Replaced reference to "advisory staff" with "commissioner's direct reporting staff"
<p>(c) If a commissioner <u>or advisory staff</u>, or a member of the commissioner's direct reporting staff, fails or refuses to pay the Commission on Ethics any civil penalties assessed pursuant to the provisions of this section, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.</p>	<p>(c) If a commissioner <u>or his or her advisory staff</u> fails or refuses to pay the Commission on Ethics any civil penalties assessed pursuant to the provisions of this section, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.</p>	<p>Revised subparagraph (8)(c) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> Replaced reference to "advisory staff" with "commissioner's direct reporting staff"

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<p>(d) If, during the course of an investigation by the Commission on Ethics into an alleged violation of this section, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years, and may be assessed a civil penalty not to exceed \$5,000. In addition, the regulated entity represented by the person, if applicable, may be assessed a penalty of up to one percent of the entity's annual operating revenue for the most recent calendar year.</p>	<p>(d) If, during the course of an investigation by the Commission on Ethics into an alleged violation of this section, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years.</p>	<p>Revised subparagraph (8)(d) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> Revised to add civil penalty for individual and regulated entity consistent with commission proposed change.
<p>Section 2. Section 350.0605, Florida Statutes, is amended to read:</p> <p>350.0605 Former commissioners and employees; representation of clients <u>or industry</u> before commission; <u>lobbying the legislative or executive branch.</u>—</p> <p>(1)(a) Any former commissioner of the Public Service Commission is prohibited from appearing before the commission representing any client or any industry regulated by the Public Service Commission for a period of <u>4 2</u> years following <u>his or her</u> termination of service on the commission.</p>	<p>Section 2. Section 350.0605, Florida Statutes, is amended to read:</p> <p>350.0605 Former commissioners and employees; representation of clients <u>or industry</u> before commission; <u>lobbying the legislative or executive branch.</u>—</p> <p>(1)(a) Any former commissioner of the Public Service Commission is prohibited from appearing before the commission representing any client or any industry regulated by the Public Service Commission for a period of 2 years following <u>his or her</u> termination of service on the commission.</p>	<p>Revised subparagraph (1)(a) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> Revised to change 2 years to 4 years

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<p><u>(b) Any former commissioner of the Public Service Commission is prohibited from lobbying the legislative or executive branch of state government representing any client or any industry regulated by the commission for a period of 4 2 years following his or her termination of service on the commission. This subsection applies only to commissioners who are appointed or reappointed on or after July 1, 2010.</u></p>	<p><u>(b) Any former commissioner of the Public Service Commission is prohibited from lobbying the legislative or executive branch of state government on behalf of any client or any industry regulated by the commission for a period of 2 years following his or her termination of service on the commission. This subsection applies only to commissioners who are appointed or reappointed on or after July 1, 2010.</u></p>	<p>Revised subparagraph (1)(b) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> • Replaced reference "on behalf of" with "representing" to add clarity. • Revised to change 2 years to 4 years
<p><u>(2) Any former employee advisory staff member of the Public Service Commission is prohibited from appearing before the commission representing any client or industry regulated by the Public Service Commission, or from lobbying the legislative or executive branch of state government representing any client or industry regulated by the Public Service Commission, for a period of 4 2 years following his or her termination of employment with the commission. This subsection applies only to employees advisory staff of the commission who are hired with the commission on or after July 1, 2010. For the purposes of this section, the term "advisory staff" means commissioners' assistants and executive secretaries. Any former employee of the commission is prohibited from appearing before the commission representing any client regulated by the Public Service Commission on any matter which was pending at the time of termination and in which such former employee had participated.</u></p>	<p><u>(2) Any former advisory staff member of the Public Service Commission is prohibited from appearing before the commission representing any client or industry regulated by the Public Service Commission, or from lobbying the legislative or executive branch of state government representing any client or industry regulated by the Public Service Commission, for a period of 2 years following his or her termination of employment with the commission. This subsection applies only to advisory staff of the commission who are hired with the commission on or after July 1, 2010. For the purposes of this section, the term "advisory staff" means commissioners' assistants and executive secretaries. Any former employee of the commission is prohibited from appearing before the commission representing any client regulated by the Public Service Commission on any matter which was pending at the time of termination and in which such former employee had participated.</u></p>	<p>Revised subsection (2) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> • Replaced reference "advisory staff member" with "employee" to avoid a conflict having legal significance to the commission. • Revised to change 2 years to 4 years

SB 1034a (revised)	SB 1034a (committee amendment)	Comment
<p>(3) For a period of 4 ½ years following termination of employment with the commission, a former commissioner or former commission staff advisory staff member may not accept employment by or compensation from a business entity that, directly or indirectly, owns or controls a public utility regulated by the commission, from a public utility regulated by the commission, from a business entity that, directly or indirectly, is an affiliate or subsidiary of a public utility regulated by the commission or is an actual business competitor of a local exchange company or public utility regulated by the commission and is otherwise exempt from regulation by the commission under ss. 364.02(14) and 366.02(1), or from a business entity or trade association that has been a party to a commission proceeding within the 2 years preceding the former commissioner or commission staff member's termination of employment with the commission. This subsection applies only to former commissioners or commission staff members who are hired with the commission on or after July 1, 2010.</p> <p>-(3) For a period of 2 years following termination of service on the commission, a former member may not accept employment by or compensation from a business entity which, directly or indirectly, owns or controls a public utility regulated by the commission, from a public utility regulated by the commission, from a business entity which, directly or indirectly, is an affiliate or subsidiary of a public utility regulated by the commission or is an actual business competitor of a local exchange company or public utility regulated by the commission and is</p>	<p>(3) For a period of 2 years following termination of employment with the commission, a former commissioner or former advisory staff member may not accept employment by or compensation from a business entity that, directly or indirectly, owns or controls a public utility regulated by the commission, from a public utility regulated by the commission, from a business entity that, directly or indirectly, is an affiliate or subsidiary of a public utility regulated by the commission or is an actual business competitor of a local exchange company or public utility regulated by the commission and is otherwise exempt from regulation by the commission under ss. 364.02(14) and 366.02(1), or from a business entity or trade association that has been a party to a commission proceeding within the 2 years preceding the former commissioner or commission staff member's termination of employment with the commission. This subsection applies only to former commissioners or commission staff members who are hired with the commission on or after July 1, 2010.</p> <p>-(3) For a period of 2 years following termination of service on the commission, a former member may not accept employment by or compensation from a business entity which, directly or indirectly, owns or controls a public utility regulated by the commission, from a public utility regulated by the commission, from a business entity which, directly or indirectly, is an affiliate or subsidiary of a public utility regulated by the commission or is an actual business competitor of a local exchange company or public utility regulated by the commission and is</p>	<p>Revised subsection (3) as shown in the highlighted portion to accomplish the following:</p> <ul style="list-style-type: none"> • Replaced "advisory staff" with "commission staff". • Revised to change 2 years to 4 years

SB 1034a (revised)	SB 1034a (committee amendment)	Comment
<p>otherwise exempt from regulation by the commission under ss. 364.02(14) and 366.02(1), or from a business entity or trade association that has been a party to a commission proceeding within the 2 years preceding the member's termination of service on the commission. This subsection applies only to members of the Florida Public Service Commission who are appointed or reappointed after May 10, 1993.</p>	<p>otherwise exempt from regulation by the commission under ss. 364.02(14) and 366.02(1), or from a business entity or trade association that has been a party to a commission proceeding within the 2 years preceding the member's termination of service on the commission. This subsection applies only to members of the Florida Public Service Commission who are appointed or reappointed after May 10, 1993.</p>	<p>SEE ABOVE</p>
<p><u>Section 3. Subsection (2) of section 350.041, Florida Statutes, is amended to read:</u></p> <p>(2) STANDARDS OF CONDUCT.—</p> <p><u>(j) Commissioners shall observe and abide by the Code of Judicial Conduct as adopted by the Florida Supreme Court in docketed proceedings before the Florida Public Service Commission. In instances where a canon of the Code of Judicial Conduct is in direct conflict with statutory provisions applicable to commissioners or the commission, Florida Statutes shall control. Any material violation of the Code of Judicial Conduct, excluding canons preempted by conflicting statutory provisions referenced above, shall be grounds for suspension and removal by the Governor.</u></p>	<p>NOT INCLUDED</p>	<p>Amended subsection (2) of section 350.041 Florida Statutes to accomplish the following:</p> <ul style="list-style-type: none"> • Revised to add subparagraph (2)(j) requiring Commissioners to observe and abide by the Code of Judicial Conduct consistent with commission proposed change.
<p><u>Section 4 (3).</u> This act shall take effect July 1, 2010.</p>	<p><u>Section 3 .</u> This act shall take effect July 1, 2010.</p>	<p>Revised to add Section 4 accommodating the addition of Section 3.</p>

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<p>===== T I T L E A M E N D M E N T =====</p> <p>And the title is amended as follows:</p> <p> Delete line(s) 1-20</p> <p>and insert:</p> <p> A bill to be entitled</p> <p>An act relating to the Public Service Commission; amending s. 350.042, F.S.; revising provisions relating to ex parte communications; eliminating an exemption from certain prohibitions provided for commission member of a commissioner's direct reporting staff; requiring that communications between a commissioner , or commission members of a commissioner's direct reporting staff, and a representative of a utility be made available to the public and advance notice be provided to the Public Counsel; providing penalties for commission members of a commissioner's direct reporting commission staff who fail to report certain communications; amending s. 350.0605, F.S.; prohibiting former commissioners and employees of the Public Service Commission from lobbying the legislative or executive branch of state government <u>representing any client or industry regulated by the Public Service Commission for 4 2</u> years after termination of service or employment with the commission; prohibiting any former employee of the commission from appearing before the commission representing any client or industry regulated by the commission for <u>4 2</u> years after termination of employment with the commission; providing that such prohibitions apply to commissioners and employees who are appointed or reappointed or terminate their employment with the commission on or after a specified date; prohibiting a former commissioner or commission staff member from accepting employment by or compensation from certain entities regulated by the commission for a period of <u>4 2</u> years after termination of employment with the commission; providing that the prohibition apply to former commissioners and commission staff members who terminate their employment with the commission on or after a specified date; providing an effective date; amending s. 350.041(2), F.S.; requiring commissioners to adhere to the Code of Judicial Conduct; providing that Florida Statutes preempt the requirement in instances where canons are in direct conflict with statutory provisions</p>		<p>Revised to reflect revisions</p>

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<u>applicable to commissioners or the commission;</u> <u>providing penalties for commissioners who fail to</u> <u>adhere to the requirement.</u>		