

# TITLE XXVII

## RAILROADS AND OTHER REGULATED UTILITIES

### CHAPTER 350

#### FLORIDA PUBLIC SERVICE COMMISSION

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**350.001 Legislative intent.**—The Florida Public Service Commission has been and shall continue to be an arm of the legislative branch of government. It is the desire of the Legislature that the Governor participate in the appointment process of commissioners to the Public Service Commission. The Legislature accordingly

delegates to the Governor a limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members only from the list provided by the Florida Public Service Commission Nominating Council in the manner prescribed by s. 350.031.

**History.**—s. 1, ch. 78-426; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 527, ch. 95-148.

#### **350.01 Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings.—**

(1) The Florida Public Service Commission shall consist of five commissioners appointed pursuant to s. 350.031.

(2)(a) Each commissioner serving on July 1, 1978, shall be permitted to remain in office until the completion of his or her current term. Upon the expiration of the term, a successor shall be appointed in the manner prescribed by 's. 350.031(3) and (4) for a 4-year term, except that the terms of the initial members appointed under this act shall be as follows:

1. The vacancy created by the present term ending in January, 1981, shall be filled by appointment for a 4-year term and for 4-year terms thereafter; and

2. The vacancies created by the two present terms ending in January, 1979, shall be filled by appointment for a 3-year term and for 4-year terms thereafter.

(b) Two additional commissioners shall be appointed in the manner prescribed by 's. 350.031(3) and (4) for 4-year terms beginning the first Tuesday after the first Monday in January, 1979, and successors shall be appointed for 4-year terms thereafter.

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

(3) Any person serving on the commission who seeks to be appointed or reappointed shall file with the nominating council at least 180 days before the expiration of his or her term a statement that he or she desires to serve an additional term.

(4) One member of the commission shall be elected by majority vote to serve as chair for a term of 2 years, beginning with the first Tuesday after the first Monday in January 1979. A member may not serve two consecutive terms as chair.

(5) The primary duty of the chair is to serve as chief administrative officer of the commission; however, the chair may participate in any proceedings pending before the commission when administrative duties and time permit. In order to distribute the workload and

expedite the commission's calendar, the chair, in addition to other administrative duties, has authority to assign the various proceedings pending before the commission requiring hearings to two or more commissioners or to the commission's office of hearing examiners under the supervision of the office of general counsel. Only those commissioners assigned to a proceeding requiring hearings are entitled to participate in the final decision of the commission as to that proceeding; provided, if only two commissioners are assigned to a proceeding requiring hearings and cannot agree on a final decision, the chair shall cast the deciding vote for final disposition of the proceeding. If more than two commissioners are assigned to any proceeding, a majority of the members assigned shall constitute a quorum and a majority vote of the members assigned shall be essential to final commission disposition of those proceedings requiring actual participation by the commissioners. If a commissioner becomes unavailable after assignment to a particular proceeding, the chair shall assign a substitute commissioner. In those proceedings assigned to a hearing examiner, following the conclusion of the hearings, the designated hearing examiner is responsible for preparing recommendations for final disposition by a majority vote of the commission. A petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding.

(6) A majority of the commissioners may determine that the full commission shall sit in any proceeding. The public counsel or a person regulated by the Public Service Commission and substantially affected by a proceeding may file a petition that the proceeding be assigned to the full commission. Within 15 days of receipt by the commission of any petition or application, the full commission shall dispose of such petition by majority vote and render a written decision thereon prior to assignment of less than the full commission to a proceeding. In disposing of such petition, the commission shall consider the overall general public interest and impact of the pending proceeding, including but not limited to the following criteria: the magnitude of a rate filing, including the number of customers affected and the total revenues requested; the services rendered to the affected public; the urgency of the requested action; the needs of the consuming public and the utility; value of service involved; the effect on consumer relations, regulatory policies, conservation, economy, competition, public health, and safety of the area involved. If the petition is denied, the commission shall set forth the grounds for denial.

(7) This section does not prohibit a commissioner, designated by the chair, from conducting a hearing as provided under s. 120.57(1) and the rules of the commission adopted pursuant thereto.

**History.**—s. 1, ch. 4549, 1897; s. 1, ch. 4700, 1899; GS 2882; s. 10, ch. 7838, 1919; RGS 4607; CGL 6692; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 78-426; s. 211, ch. 81-259; s. 2, ch. 81-318; s. 28, ch. 85-81; s. 6, ch. 87-50; s. 56, ch. 95-143; s. 528, ch. 95-148.

**Note.**—Renumbered as s. 350.031(5) and (6) by s. 1, ch. 90-272.

**350.011 Florida Public Service Commission; jurisdiction; powers and duties.**—The state regulatory agency heretofore known as the Florida Railroad and Public Utilities Commission or Florida Public Utilities

Commission shall be known and hereafter called Florida Public Service Commission, and all rights, powers, duties, responsibilities, jurisdiction, and judicial powers now vested in said Railroad and Public Utilities Commission or said Florida Public Utilities Commission and the commissioners thereof are vested in the Florida Public Service Commission and the commissioners thereof. Whenever reference is made to the Florida Railroad and Public Utilities Commission or Florida Public Utilities Commission and the commissioners thereof in the laws of the state previously enacted or enacted at this session of the Legislature, such reference shall be construed to mean the Florida Public Service Commission and the commissioners thereof and all appropriations for the use of said Railroad and Public Utilities Commission or Florida Public Utilities Commission and the members thereof for the biennium or continuing in nature previously made or made at this session of the Legislature, shall be construed to be for the use of said Florida Public Service Commission and the commissioners thereof, to be used for the purposes set out in the laws making said appropriations; provided, however, the change in name of said regulatory agency shall in nowise affect any pending causes and proceedings, existing notices, orders, certificates, permits, licenses, or authorities previously granted or any action previously taken by the Florida Railroad and Public Utilities Commission or Florida Public Utilities Commission.

**History.**—s. 1, ch. 24095, 1947; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 81-318; s. 6, ch. 87-50.

**350.03 Power of Governor to remove and to fill vacancies.**—The Governor shall have the same power to remove, suspend, or appoint to fill vacancies in the office of commissioners as in other offices.

**History.**—s. 1, ch. 4700, 1899; GS 2884; RGS 4609; CGL 6694; s. 2, ch. 81-318; s. 6, ch. 87-50.

**350.031 Florida Public Service Commission Nominating Council.**—

(1) There is created a Florida Public Service Commission Nominating Council consisting of nine members. At least one member of the council must be 60 years of age or older. Three members, including one member of the House of Representatives, shall be appointed by the Speaker of the House; three members, including one member of the Senate, shall be appointed by the President of the Senate; and three members shall be selected and appointed by a majority vote of the other six members of the council. All terms shall be for 4 years, except those members of the House and Senate, who shall serve 2-year terms concurrent with the 2-year elected terms of House members. Vacancies on the council shall be filled for the unexpired portion of the term in the same manner as original appointments to the council.

(2)(a) No member or spouse shall be the holder of the stocks or bonds of any company, other than through ownership of shares in a mutual fund, regulated by the commission, or any affiliated company of any company regulated by the commission, or be an agent or employee of, or have any interest in, any company regulated by the commission or any affiliated company of any company regulated by the commission, or in any firm

which represents in any capacity either companies which are regulated by the commission or affiliates of companies regulated by the commission. As a condition of appointment to the council, each appointee shall affirm to the Speaker and the President his or her qualification by the following certification: "I hereby certify that I am not a stockholder, other than through ownership of shares in a mutual fund, in any company regulated by the commission or in any affiliate of a company regulated by the commission, nor in any way, directly or indirectly, in the employment of, or engaged in the management of any company regulated by the commission or any affiliate of a company regulated by the commission, or in any firm which represents in any capacity either companies which are regulated by the commission or affiliates of companies regulated by the commission."

This certification is made as condition to appointment to the Florida Public Service Commission Nominating Council.

(b) A member of the council may be removed by the Speaker of the House of Representatives and the President of the Senate upon a finding by the Speaker and the President that the council member has violated any provision of this subsection or for other good cause.

(c) If a member of the council does not meet the requirements of this subsection, the President of the Senate or the Speaker of the House of Representatives, as appropriate, shall appoint a legislative replacement.

(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 Joint Legislative Management Committee 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. 112.06, 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.

(4) A person may not be nominated to the Governor until the council has determined that the person is competent and knowledgeable in one or more fields, which shall include, but not be limited to: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or another field substantially related to the duties and functions of the commission. The commission shall fairly represent the above-stated fields. Recommendations of the council shall be nonpartisan.

(5) It is the responsibility of the council to nominate to the Governor not fewer than three persons for each vacancy occurring on the Public Service Commission. The council shall submit the recommendations to the Governor by October 1 of those years in which the terms are to begin the following January, or within 60 days after a vacancy occurs for any reason other than the expiration of the term.

(6) The Governor shall fill a vacancy occurring on the Public Service Commission by appointment of one of the applicants nominated by the council only after a background investigation of such applicant has been conducted by the Florida Department of Law Enforcement. If the Governor has not made an appointment by December 1 to fill a vacancy for a term to begin the following January, then the council, by majority vote, shall appoint by December 31 one person from the applicants previously nominated to the Governor to fill the vacancy. If the Governor has not made the appointment to fill a vacancy occurring for any reason other than the expiration of the term by the 60th day following receipt of the nominations of the council, the council by majority vote shall appoint within 30 days thereafter one person from the applicants previously nominated to the Governor to fill the vacancy.

(7) Each appointment to the Public Service Commission shall be subject to confirmation by the Senate. If the Senate refuses to confirm or rejects the Governor's appointment, the council shall initiate, in accordance with this section, the nominating process within 30 days.

**History.**—s. 3, ch. 78-426; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 6, ch. 87-172; s. 1, ch. 90-272; s. 529, ch. 95-148.

**Note.**—Section 112.06 does not exist.

**350.04 Qualifications of commissioners.**—A commissioner may not, at the time of appointment or during his or her term of office:

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

(2) Be employed by or engaged in any business activity with any business entity which, either directly or indirectly, owns or controls any public utility regulated by the commission, by any public utility regulated by the commission, or by any business entity which, either directly or indirectly, is an affiliate or subsidiary of any public utility regulated by the commission.

**History.**—s. 1, ch. 4700, 1899; GS 2885; RGS 4610; CGL 6695; s. 1, ch. 65-422; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 2, ch. 90-272; s. 530, ch. 95-148.

**350.041 Commissioners; standards of conduct.**—

(1) **STATEMENT OF INTENT.**—In addition to the provisions of part III of chapter 112, which are applicable to public service commissioners by virtue of their being public officers and full-time employees of the legislative branch of government, the conduct of public service commissioners shall be governed by the standards of conduct provided in this section. Nothing shall prohibit the standards of conduct from being more restrictive than part III of chapter 112. Further, this section shall not be construed to contravene the restrictions of part III of chapter 112. In the event of a conflict between this section and part III of chapter 112, the more restrictive provision shall apply.

(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 com-

mission, 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.

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

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

(d) A commissioner may not accept anything from a party in a proceeding currently pending before the commission.

(e) A commissioner may not serve as the 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 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; or become a candidate for election to any public office without first resigning from office.

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

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

(3) The Commission on Ethics shall accept and investigate any alleged violations of this section pursuant to the procedures contained in ss. 112.322-112.3241. The Commission on Ethics shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112. A public service commissioner or a member of the Florida Public Service Commission Nominating Council may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), regarding the standards of conduct or prohibitions set forth in ss. 350.031, 350.04, 350.041 and 350.042.

**History.**—s. 3, ch. 90-272; s. 531, ch. 95-148.

#### **350.042 Ex parte communications.—**

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The provisions of this subsection shall not apply to commission staff.

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

(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.

(4) If a commissioner knowingly receives an ex parte communication relative to a proceeding other than as set forth in subsection (1), to which 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, 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 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.

(5) Any individual who makes an ex parte communication shall submit to the commission a written statement describing the nature of such communication, to include the name of the person making the communication, the name of the commissioner or 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.

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

(7)(a) It 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.

(b) If the Commission on Ethics finds that there has been a violation of this section by a public service com-

missioner, it shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112.

(c) If a commissioner 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.

**History.**—s. 4, ch. 90-272; s. 532, ch. 95-148.

**350.043 Enforcement and interpretation.**—Any violation of s. 350.031, s. 350.04, s. 350.041, s. 350.042, or s. 350.0605 by a commissioner, former commissioner, former employee, or Public Service Commission Nominating Council member shall be punishable as provided in ss. 112.317 and 112.324. The Commission on Ethics is hereby given the power and authority to investigate complaints of violation of this chapter in the manner provided in part III of chapter 112, as if this section were included in that part. A Commissioner may request an advisory opinion from the Commission on Ethics as provided by s. 112.322(3)(a).

**History.**—s. 5, ch. 90-272; s. 13, ch. 94-277.

**350.05 Oath of office.**—Before entering upon the duties of his or her office each commissioner shall subscribe to the following oath: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am qualified to hold office under the constitution of the state, and that I will well and faithfully perform at all times the duties of Florida Public Service Commissioner, on which I am now about to enter in a professional, independent, objective, and nonpartisan manner; that I do not have any financial, employment, or business interest which is prohibited by chapter 350, Florida Statutes; and that I will abide by the standards of conduct required of me by chapters 112 and 350, Florida Statutes, so help me God." In case any commissioner should in any way become disqualified, he or she shall at once remove such disqualification or resign, and upon his or her failure to do so, he or she shall be suspended from office by the Governor and dealt with as provided by law.

**History.**—s. 1, ch. 4700, 1899; GS 2886; RGS 4611; CGL 6696; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 65-422; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 6, ch. 90-272; s. 533, ch. 95-148.

**350.051 Qualifications of Chief Auditor.**—The Chief Auditor of the Florida Public Service Commission, who is designated and serves as the director of the accounting department of said commission, shall be a person holding a certificate to practice in the state as a certified public accountant issued by the State Board of Accountancy under chapter 473.

**History.**—s. 1, ch. 69-168; s. 2, ch. 81-318; s. 6, ch. 87-50.

**350.06 Place of meeting; expenditures; employment of personnel; records availability and fees.**—

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

(2) All sums of money authorized to be paid on account of said commissioners shall be paid out of the State Treasury only on the order of the Comptroller.

(3) The commissioners may employ clerical, technical, and professional personnel reasonably necessary for the performance of their duties. The commissioners may also employ one or more persons capable of stenographic court reporting, to be known as the official reporters of the commission, and fix the compensation of each not to exceed \$28,000 annually. The official reporters shall furnish only to the commission transcripts of all testimony taken by them, and the commission may make and sell certified copies of such testimony and charge therefor the same fees as are allowed clerks of the circuit courts of the state, subject to such rules and regulations as may be prescribed by the commission.

(4) When needed, the commission may engage supplementary qualified reporters at their usual rate of compensation; however, the supplementary reporters shall furnish the commission the original certified transcripts of testimony taken by them, but such reporters shall have the right to sell copies of such transcripts subject to rules and regulations of the commission. The commission may make copies of the transcripts for internal use without further compensation. When supplementary reporters are unable to provide copies within a reasonable time, the commission may, upon request, sell copies at its usual rate and shall deposit the proceeds in the Public Service Regulatory Trust Fund.

(5) Upon request by the governing body of a municipal or county government within 7 days after completion of the transcript and its delivery to the commission, the commission shall provide copies of the transcripts of testimony at the cost of reproduction and mailing, but such copies need not be certified unless specifically requested.

(6) The commission shall make available to the public counsel the original copy of all transcripts for use and study in the commission offices. If the commission makes any copies of transcripts for internal use and if the public counsel has so requested in writing to the clerk of the commission at the time of his or her intervention, the commission shall supply the public counsel with a copy of the transcript at no charge. In all other cases, the public counsel may obtain a copy of the transcript from the commission for the cost of reproduction.

(7) The commission shall collect for copying, examining, comparing, correcting, verifying, certifying, or furnishing orders, records, transcripts of testimony, papers, or other instruments the same fees that are allowed clerks of the circuit courts of Florida. In cases where the fee would amount to less than \$1, no fee shall be charged.

(8) Copies of commission orders furnished to public officials, newspapers, periodical publications, federal agencies, state officials of other states, and parties to the proceeding in which the order was entered and their attorneys shall be without charge. However, the commission may in its discretion charge fees for the furnishing of more than one copy of any order to any of the foregoing.

(9) The commission shall keep a book in which all fees collected by it as provided for herein shall be rec-

orded, together with the amount and purpose for which collected. This book shall be a public record. The commission shall prepare a statement of these fees in duplicate each month and remit one copy of the statement, together with all fees collected by it, to the Treasurer. All moneys collected pursuant to this section by the commission shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund.

**History.**—s. 2, ch. 4700, 1899; GS 2887; s. 1, ch. 5625, 1907; s. 1, ch. 7811, 1919; RGS 4612; s. 1, ch. 11365, 1925; s. 2, ch. 12218, 1927; CGL 6697; s. 1, ch. 15720, 1931; s. 2, ch. 75-109; s. 2, ch. 81-318; s. 9, ch. 85-61; s. 6, ch. 87-50; s. 23, ch. 87-225; s. 534, ch. 95-148.

**350.0605 Former commissioners and employees; representation of clients before commission.—**

(1) 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 termination of service on the commission.

(2) 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.

(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 otherwise exempt from regulation by the commission under ss. 364.02(7) 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.

**History.**—s. 4, ch. 78-426; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 1, ch. 93-201.

**Note.**—Redesignated as subsection (12) by s. 6, ch. 95-403.

**350.061 Public Counsel; appointment; oath; restrictions on Public Counsel and his or her employees.—**

(1) The Joint Legislative Auditing Committee shall appoint a Public Counsel by majority vote of the members of the committee to represent the general public of Florida before the Florida Public Service Commission. The Public Counsel shall be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Joint Legislative Auditing Committee, subject to annual reconfirmation by the committee. Vacancies in the office shall be filled in the same manner as the original appointment.

(2) The Public Counsel shall take and subscribe to the oath of office required of state officers by the State Constitution.

(3) No officer or full-time employee of the Public Counsel shall actively engage in any other business or profession; serve as the representative of any political party or on any executive committee or other governing body thereof; 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; or engage on behalf of any candidate for public office in the solicitation of votes or other activities in behalf of such candidacy. Neither the Public Counsel nor any employee of the Public Counsel shall become a candidate for election to public office unless he or she shall first resign from his or her office or employment.

**History.**—s. 1, ch. 74-195; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 535, ch. 95-148.

**350.0611 Public Counsel; duties and powers.—**It shall be the duty of the Public Counsel to provide legal representation for the people of the state in proceedings before the commission. The Public Counsel shall have such powers as are necessary to carry out the duties of his or her office, including, but not limited to, the following specific powers:

(1) To recommend to the commission, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission and urge therein any position which he or she deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission, and utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission which shall be reviewable by summary procedure in the circuit courts of this state;

(2) To have access to and use of all files, records, and data of the commission available to any other attorney representing parties in a proceeding before the commission;

(3) In any proceeding in which he or she has participated as a party, to seek review of any determination, finding, or order of the commission, or of any hearing examiner designated by the commission, in the name of the state or its citizens;

(4) To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make such recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions;

(5) To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission, in the name of the state or its citizens.

**History.**—s. 1, ch. 74-195; s. 1, ch. 77-174; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 536, ch. 95-148.

**350.0612 Public Counsel; location.—**The Public Counsel shall maintain his or her office in Leon County on the premises of the commission or, if suitable space there cannot be provided, at such other place convenient to the offices of the commissioners as will enable him or her to carry out expeditiously the duties and functions of his or her office.

**History.**—s. 1, ch. 74-195; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 537, ch. 95-148.

**350.0613 Public Counsel; employees; receipt of pleadings.**

—The committee may authorize the Public Counsel to employ clerical and technical assistants whose qualifications, duties, and responsibilities the committee shall from time to time prescribe. The committee may from time to time authorize retention of the services of additional attorneys or experts to the extent that the best interests of the people of the state will be better served thereby, including the retention of expert witnesses and other technical personnel for participation in contested proceedings before the commission. The commission shall furnish the Public Counsel with copies of the initial pleadings in all proceedings before the commission, and if the Public Counsel intervenes as a party in any proceeding he or she shall be served with copies of all subsequent pleadings, exhibits, and prepared testimony, if used. Upon filing notice of intervention, the Public Counsel shall serve all interested parties with copies of such notice and all of his or her subsequent pleadings and exhibits.

**History.**—s. 1, ch. 74-195; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 538, ch. 95-148.

**350.0614 Public Counsel; compensation and expenses.**

(1) The salaries and expenses of the Public Counsel and his or her employees shall be allocated by the committee only from moneys appropriated to the Public Counsel by the Legislature.

(2) The Legislature hereby declares and determines that the Public Counsel is under the legislative branch of government within the intention of the legislation as expressed in chapter 216, and no power shall be in the Executive Office of the Governor or its successor to release or withhold funds appropriated to it, but the same shall be available for expenditure as provided by law and the rules or decisions of the Joint Auditing Committee.

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

**History.**—s. 1, ch. 74-195; s. 120, ch. 79-190; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 121, ch. 92-279; s. 55, ch. 92-326; s. 539, ch. 95-148.

**350.111 "Regulated company" defined.**—As used in ss. 350.111-350.117 and ss. 350.121-350.128, "regulated company" means any public utility as defined in s. 366.02 or any person holding a valid and current certificate from the commission under chapter 351, chapter 364, chapter 365, or chapter 367.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50; s. 57, ch. 95-143.

**350.113 Florida Public Service Regulatory Trust Fund; moneys to be deposited therein.**

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

(2) All fees, licenses, and other charges collected by the commission shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund to be used in the operation of the commis-

sion as authorized by the Legislature; however, penalties and interest assessed and collected by the commission shall not be deposited in the trust fund but shall be deposited in the General Revenue Fund. The Florida Public Service Regulatory Trust Fund shall be subject to the service charge imposed pursuant to chapter 215.

(3) Each regulated company under the jurisdiction of the commission, which company was in operation for the preceding 6-month period, shall pay to the commission within 30 days following the end of each 6-month period, commencing June 30, 1977, a fee based upon the gross operating revenues for such period subject to the limitations of this subsection. The fees shall, to the extent practicable, be related to the cost of regulating such type of regulated company and shall in no event be greater than:

(a) For each railroad operating under chapter 351, one-eighth of 1 percent of its gross operating revenues derived from intrastate business.

(b) For each telephone company licensed or operating under chapter 364, one-eighth of 1 percent of its gross operating revenues derived from intrastate business.

(c) For each "public utility" as defined in s. 366.02, one-eighth of 1 percent of its gross operating revenues derived from intrastate business, excluding sales for resale between public utilities, municipal electric utilities, and rural electric cooperatives, or any combination thereof.

(d) For each municipal electric utility and rural electric cooperative, one sixty-fourth of 1 percent of its gross operating revenues derived from intrastate business, excluding sales for resale between public utilities, municipal electric utilities, and rural electric cooperatives, or any combination thereof.

(e) For each regulated company licensed under chapter 367, 2.5 percent of its gross revenues derived from intrastate business.

Differences, if any, between the amount paid in any 6-month period and the amount actually determined by the commission to be due shall, upon notification by the commission, be immediately paid or refunded. Each regulated company which is subject to the jurisdiction of the commission, but which did not operate under the commission's jurisdiction during the entire preceding 6-month period, shall, within 30 days after the close of the first 6-month period during which it commenced operations under, or became subject to, the jurisdiction of the commission, pay to the commission the prescribed fee based upon its gross operating revenues derived from intrastate business during those months or parts of months in which the regulated company did operate during such 6-month period. In no event shall payments under this section be less than \$25 annually.

(4) The commission shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date. If any regulated company fails to pay the required fee by such date, the commission shall estimate the amount of fee due from such information as it may be able to obtain from any source and shall add 5 percent of such amount to the fee as a penalty if the failure is for not more than

30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent. The commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company. However, no penalty shall be added to the fee if a return is made and the fee is paid before the date fixed in the notice given by the commission.

(5) The commission, for good cause shown by written request, may extend for a period not to exceed 30 days the time for paying any fee or for filing any report related thereto. If an extension is granted, there shall be collected a charge of 0.75 percent of the fee to be remitted for an extension of 15 days or less, or a charge of 1.5 percent of the fee for an extension of more than 15 days. No other penalty or interest shall be collected if such fee is remitted within the extension time granted. In lieu of paying the interest charge imposed by this subsection, a regulated company may remit an estimated amount of fee by the 30th day following a 6-month period. Any regulated company which remits an estimated fee payment by such date shall be granted a 30-day extension period in which to file and remit the actual fee due without the interest charge provided hereunder being imposed, unless the estimated fee payment remitted is less than 90 percent of the actual fee due for such period.

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

(7) Notwithstanding the provisions of s. 350.111, as used in this section only, the term "regulated company" includes any rural electric cooperative or municipal electric utility.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 15, ch. 83-339; s. 6, ch. 87-50; s. 45, ch. 91-221.

**350.115 Uniform systems and classifications of accounts.**—The commission may prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges. The commission shall use any such uniform system and classification of accounts that may be established by the Interstate Commerce Commission for railroads.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50.

**350.117 Reports; audits.**—

(1) The commission may require such regular or emergency reports, including, but not limited to, financial reports, as the commission deems necessary to fulfill its obligations under the law.

(2) The commission may perform management and operation audits of any regulated company except railroads. The commission may consider the results of such audits in establishing rates; however, the company shall not be denied due process as a result of the use of any such management or operation audit.

(3) As used in this section, "management and operation audit" means an appraisal, by a public accountant or other professional person, of management perform-

ance, including a testing of adherence to governing policy and profit capability; adequacy of operating controls and operating procedures; and relations with employees, customers, the trade, and the public generally.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50.

**350.121 Commission inquiries; confidentiality of business material.**—If the commission undertakes an inquiry, any records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics, obtained by the commission incident to the inquiry are considered confidential and exempt from s. 119.07(1) while the inquiry is pending. If at the conclusion of an inquiry the commission undertakes a formal proceeding, any matter determined by the commission or by a judicial or administrative body, federal or state, to be trade secrets or proprietary confidential business information coming into its possession pursuant to such inquiry shall be considered confidential and exempt from s. 119.07(1). Such material may be used in any administrative or judicial proceeding so long as the confidential or proprietary nature of the material is maintained.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50.

**350.123 Oaths; depositions; protective orders.**—The commission may administer oaths, take depositions, issue protective orders, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence necessary for the purpose of any investigation or proceeding. Challenges to, and enforcement of, such subpoenas and orders shall be handled as provided in s. 120.58.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50.

**350.124 Compelled testimony.**—If any person called to testify in a commission proceeding shall refuse to testify because of a claim of possible self-incrimination, the commission, after consultation with the appropriate state attorney, may apply to the chief judge of the appropriate judicial circuit for a judicial grant of immunity ordering the testimony of such person notwithstanding his or her objection, but in such case no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal prosecution.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50; s. 540, ch. 95-148.

**350.125 Administrative hearing officers.**—Any provision of law to the contrary notwithstanding, the commission shall utilize hearing officers of the Division of Administrative Hearings of the Department of Management Services to conduct hearings of the commission not assigned to members of the commission.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50; s. 122, ch. 92-279; s. 55, ch. 92-326.

**350.127 Penalties; rules; execution of contracts.**—

(1) The commission may impose upon any regulated company that is found to have refused to comply with or willfully violated any lawful rule or order of the commission, or any statute administered by the commission, a penalty for each such offense of not more than \$5,000,



to be fixed, imposed, and collected by the commission, or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by the commission. Each day that such refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the regulated company, enforceable by the commission as a statutory lien under chapter 85. The net proceeds from the enforcement of any such lien shall be deposited in the General Revenue Fund.

(2) The commission is authorized to adopt, by affirmative vote of a majority of the commission, rules reasonably necessary to implement any law which it administers.

(3) The commission may designate one or more employees to execute contracts on behalf of the commission.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50.

### 350.128 Judicial review.—

(1) As authorized by s. 3(b)(2), Art. V of the State Constitution, the Supreme Court shall, upon petition, review any action of the commission relating to rates or service of utilities providing electric, gas, or telephone service. The District Court of Appeal, First District, shall, upon petition, review any other action of the commission.

(2) Notice of such review shall be given by the petitioner to all parties who entered appearances of record in the proceedings before the commission in which the order sought to be reviewed was made.

(3) Such parties may file briefs in support of their interests, as such interests may appear, within the time and in the manner provided by the Florida Rules of Appellate Procedure.

(4) Such parties shall be entitled as a matter of right to make oral argument in support of their interests, as such interests may appear, in any case in which oral argument is granted by the court on the application of the petitioner or the respondent.

**History.**—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 6, ch. 87-50.

### 350.80 Coal slurry pipeline companies regulated.

(1) Any person, corporation, or other legal entity which exercises or intends to exercise powers of eminent domain pursuant to s. 361.08, or which owns or operates a coal slurry pipeline which was constructed on property acquired by eminent domain, shall be subject to regulation as a common carrier by the Florida Public Service Commission, unless such regulation is preempted by regulation of the Interstate Commerce Commission, and then only to the extent that such regulation is actually preempted by the Interstate Commerce Commission, to assure fairness in rates, rate structure or tariffs, and conditions of service.

(2) All coal slurry pipeline companies, as common carriers, shall be subject to the rules and regulations of the Florida Public Service Commission relating thereto and all applicable laws, including, but not limited to,

those governing common carriers as defined in <sup>2s.</sup> 350.11. No coal slurry pipeline company shall discriminate between or against any person, corporation, public utility, municipality, or other legal entity in regard to facilities furnished, services rendered, or rates charged for the transportation of coal or its derivatives. All contracts or agreements between any coal slurry pipeline company and any person, corporation, public utility, municipality, or other legal entity for the transportation of coal or its derivatives shall be submitted to the Florida Public Service Commission for review and approval prior to their execution. The commission shall adopt rules and regulations to ensure that all contracts, rates, and charges involving the transportation of coal or its derivatives by pipeline shall be just and reasonable, nondiscriminatory, and offer no preference to any person, corporation, public utility, municipality, or other legal entity. The commission shall prohibit any contract charging a rate for the transportation by pipeline of coal or its derivatives which is higher than the lowest rate available by any other common carrier operating in Florida.

(3) The Florida Public Service Commission shall file for proposed adoption, within 180 days from the effective date of this act, the necessary rules for the implementation of this act. The rules shall provide, among other things, an administrative procedure pursuant to chapter 120, under and by which the commission shall determine the public need for and the economic and environmental feasibility of any proposed coal slurry pipeline. Prior to the commission's determination of the environmental feasibility of any proposed coal slurry pipeline, it shall ask for comment from the Department of Environmental Protection. A final order of the Florida Public Service Commission determining the economic and environmental feasibility of a coal slurry pipeline system shall be conclusive and binding on the court in any condemnation proceeding brought pursuant to s. 361.08 and chapter 73 or chapter 74.

(4) It is the intent of the Legislature that electric utility companies under the regulation of the Florida Public Service Commission shall not unduly profit from mark-ups on the purchase price of the coal for the pipeline in the event that such companies are participants in the coal pipeline company. To this end, the commission shall have the right of access to the appropriate financial records of any coal pipeline company in which electric utility companies participate with regard to any rate hearing for the affected electric utility company. Should the commission be unable to enforce this provision, it shall consider the average price of coal in Florida at that time as being the cost to the electric utility company for ratemaking purposes.

**History.**—ss. 3, 4, 5, ch. 79-236; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 3, ch. 95-150.

**Note.**—Section 5 of ch. 79-236 provides that: "This act shall take effect when every state in which the coal slurry pipeline will pass en route to Florida has enacted laws granting eminent domain authority to coal slurry pipeline companies or other entities operating or proposing to operate a coal slurry pipeline, and when the appropriate governmental authority has guaranteed in writing to the Public Service Commission that a continuous source of water shall be available for use in said coal slurry pipeline."

**Note.**—Repealed by s. 6, ch. 81-170.