

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB JEC 08-11 Public Service Commission

**SPONSOR(S):** Jobs & Entrepreneurship Council

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Jobs & Entrepreneurship Council		Cater/Topp	Thorn
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

PCB JEC 08-11 amends various statutes related to the Public Service Commissioner selection process and the appointment of the Public Counsel. Specifically, the bill:

- Changes the membership of the Public Service Commission Nominating Council to become a hybrid of the current Committee on Public Service Commission Oversight and Public Service Commission Nominating Council;
- Renames the Committee on Public Service Commission Oversight as the Committee on Public Counsel Oversight and removes its authority related to the Public Service Commission;
- Clarifies the power of the Governor as it relates to removing commissioners; and
- Amends the starting date of the term of the chair of the Public Service Commission to conform to the starting date of the term of a commissioner.

This bill does not have a fiscal impact and will likely result in savings and efficiencies from combining the functions of two entities that participate in the selection process for PSC Commissioners.

This act shall take effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

#### **Provide Limited Government**

- The bill eliminates a step in the selection process for Public Service Commissioners.

### B. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

The PSC is an arm of the Florida Legislature.<sup>1</sup> It consists of five commissioners who are appointed by the Governor to serve staggered four-year terms that begin January 2. There are no term limits. Mid-term vacancies on the Commission are filled for the unexpired portion of a term in the same manner as an appointment for a new four-year term.<sup>2</sup>

Prior to 1978, the PSC consisted of three commissioners who were elected to four-year terms.<sup>3</sup> In 1978, the law was changed to create a five-member Commission whose members were appointed by the Governor. The 1978 law also created the Public Service Commission Nominating Council (“Nominating Council”). The purpose of the Nominating Council was to screen applicants and recommend to the Governor not fewer than three persons for each vacancy on the Commission. The Governor would then appoint one of those persons.<sup>4</sup> While the Nominating Council statute has changed over the years, the selection process remained fundamentally unchanged until 2005.<sup>5</sup>

As a result of the changes made in 2005, the process for selecting a commissioner now consists of the following steps:

1. A public meeting of the Public Service Commission Nominating Council, at which the Nominating Council selects the “most qualified applicants” to be interviewed;
2. A public meeting at which the Nominating Council interviews the selected applicants and nominates six persons for each vacancy to the Committee on Public Service Commission Oversight (“Oversight Committee”);
3. A public meeting at which the Oversight Committee interviews the nominees and selects three persons per vacancy to recommend to the Governor for appointment;
4. Appointment of a commissioner for each vacancy by the Governor; and

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<sup>1</sup> S. 350.001, F.S.

<sup>2</sup> S. 350.01(2)(c), F.S.

<sup>3</sup> S. 350.01, F.S. (1977).

<sup>4</sup> S. 350.01, F.S. (1979). The change in the selection process was created in ch. 78-426, L.O.F.

<sup>5</sup> SS. 1 & 2, ch. 2005-132, L.O.F.

5. Confirmation of each appointed commissioner by the Senate during the next regular session after the vacancy occurs.<sup>6</sup>

During the 2007-2008 Interim, staff of the Committee on Utilities & Telecommunications conducted a review of the Public Service Commissioner selection process. Based on its review, staff concluded that the current selection process for Public Service Commission members in Florida is unnecessarily duplicative because it uses two separate bodies – the Nominating Council and the Oversight Committee – to serve the same function of screening and nominating applicants.<sup>7</sup>

## **Proposed Changes**

### **Public Service Commission Nominating Council**

Currently, the Nominating Council consists of nine members, at least one of whom must be age 60 or older. Three members, including one member of the House of Representatives, are appointed by the Speaker of the House of Representatives. Another three members, including one member of the Senate, are appointed by the President of the Senate. These members serve at the pleasure of the presiding officer that appoints the member. The final three members are selected and appointed by the other six members of the Nominating Council.<sup>8</sup> Members serve four-year terms, except that members of the House of Representatives and Senate serve two-year terms concurrent with the elected terms of the House of Representatives.<sup>9</sup> The Nominating Council is staffed by the Office of Legislative Services (OLS).<sup>10</sup>

The bill amends s. 350.031, F.S., relating to the Nominating Council. First, it removes various provisions of this section to remove the Oversight Committee from the commissioner selection process. As a result, the selection process reverts back to the previous system in which the Nominating Council screened applicants and made recommendations to the Governor.

In addition, the bill amends the make-up of the Nominating Council. The bill increases the membership from nine to twelve, who are appointed as follows:

- Six members appointed by the Speaker of the House of Representatives, including three representatives; and
- Six members appointed by the President of the Senate, including three senators.

The bill requires that one legislative member from each chamber must be from the minority party.

The terms for members of the Nominating Council will remain the same, with those members who are not legislators serving four-year terms and those members who are legislators serving two-year terms.

Currently, the members of the Nominating Council select a chair. Under this bill, the President of the Senate will appoint the chair in even-numbered years and the vice chair in odd-numbered years. The

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<sup>6</sup> See ss. 350.012 and 350.031, F.S., and the Florida Public Service Commission Nominating Council Rules of Procedure, Section II.

<sup>7</sup> The report also indicated that the current process provides that, at each step, a specific number of applicants must be forwarded onto the next step, making it difficult to establish voting procedures to address tie votes.

<sup>8</sup> Pursuant to s. 350.031(2), F.S., members of the Nominating Council are prohibited from owning stocks or bonds in any company regulated by the Commission, except for indirect investment through a mutual fund. They are also prohibited from being an agent or employee of, or having an interest in, a company regulated by the Commission or an affiliate of such a company. Each appointee is required to affirm this upon appointment to the Nominating Council. Members of the Nominating Council may be removed by the Speaker of the House of Representatives or President of the Senate for a violation of s. 350.031, F.S., or for other good cause.

<sup>9</sup> S. 350.031(1), F.S.

<sup>10</sup> S. 350.031(3), F.S.

Speaker of the House of Representatives will appoint the chair in odd-numbered years and the vice chair in even-numbered years.

Current law requires that the Nominating Council recommend three persons per vacancy to the Oversight Committee. This provision is amended to provide that the Nominating Council will send to the Governor *not fewer than* three persons per vacancy.

To reflect the removal of the Oversight Committee from the selection process, the deadline for the Nominating Council to recommend applicants to the Governor is made September 15.<sup>11</sup> This change will shorten the overall length of time for the selection process.

The bill also removes the authority for the Nominating Council to spend funds to advertise a vacancy on the Nominating Council.<sup>12</sup> Because all members of the Nominating Council would be appointed under the bill, this provision is no longer needed.

#### Committee on Public Service Commission Oversight

In 2005, the Legislature created the Committee on Public Service Commission Oversight in s. 350.012, F.S.<sup>13</sup> The Oversight Committee is a joint committee of the Legislature and consists of twelve members. There are six members each from the House of Representatives and the Senate, with two members from each chamber being from the minority party. The members from the House of Representatives are appointed by the Speaker of the House of Representatives, and the members from the Senate are appointed by the President of the Senate. Committee members serve two-year terms based on the organization of the Legislature. The Speaker of the House appoints the chair of the committee in odd-numbered years and the vice chair in even-numbered years; the Senate President appoints the chair in even-numbered years and the vice chair in odd-numbered years. The Oversight Committee does not have a permanent staff. Instead, it is staffed by selected, existing legislative staff, when and as needed.<sup>14</sup>

Currently, from the list of nominees provided by the Nominating Council, the Oversight Committee recommends three applicants to the Governor for each vacancy on the PSC.<sup>15</sup> In addition, the Oversight Committee is responsible for appointing a Public Counsel who is subject to reconfirmation on a biennial basis.<sup>16</sup> The committee is also authorized to file a complaint with the Commission on Ethics against a PSC commissioner, former PSC commissioner, former PSC employee, or member of the Nominating Council for alleged violations of ch. 350, F.S.<sup>17</sup>

The bill amends s. 350.012, F.S., to rename the Committee on Public Service Commission Oversight as the Committee on Public Counsel Oversight. It removes the Oversight Committee's authority and responsibility to recommend applicants to the Governor for appointment to the PSC. It also removes the Oversight Committee's authority to file complaints with the Commission on Ethics. The committee's only function would be the oversight of the Public Counsel.

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<sup>11</sup> Current law requires the Nominating Council to recommend applicants for consideration by the Oversight Committee by August 1.

<sup>12</sup> S. 350.031(4), F.S.

<sup>13</sup> S.1, ch. 2005-132, L.O.F.

<sup>14</sup> S. 350.012, F.S.

<sup>15</sup> S. 350.031(7), F.S. Although the plain language of the statute states only that the Oversight Committee must select "three nominees" for recommendation to the Governor, the practice of the Oversight Committee has been to select three nominees *for each vacancy* for recommendation to the Governor.

<sup>16</sup> S. 350.012(2)(b), F.S.

<sup>17</sup> S. 350.012(3), F.S.

## Governor Appointment and Senate Confirmation

Section 350.001, F.S., declares that the PSC “has been and shall continue to be an arm of the legislative branch of government.” That section continues by stating that “[i]t 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 in the manner prescribed by s. 350.031.”

Section 350.031, F.S., provides that the Governor shall fill a vacancy on the PSC by appointing one of the applicants recommended by the Oversight Committee. The Governor may only make the appointment following a background check of the nominees by the Florida Department of Law Enforcement. If the Governor does not make an appointment within 30 days of receiving the Oversight Committee’s recommendations, the authority and duty to appoint someone to fill the vacancy reverts to the committee, which must choose from the names recommended to the Governor.

The PSC commissioner appointments are subject to Senate confirmation in the next regular session after the vacancy occurs. If the Senate refuses to confirm or rejects the Governor’s appointment, the Nominating Council is required to initiate the nominating process again within 30 days.

The bill amends s. 350.031(7), F.S., to clarify that the Governor has 30 consecutive calendar days to make an appointment after receipt of the Nominating Council’s recommendations. The bill also provides that, after an appointment is made, a successor Governor may remove an appointee only as provided in s. 350.03, F.S.

Section 350.03, F.S., provides that “the Governor has the same power to remove, suspend, or appoint to fill vacancies in the office of commissioners as in other offices.” The bill clarifies that this power is the power set forth in Art. IV, s. 7, of the State Constitution, which states:

(a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.

The bill also amends s. 350.012(8), F.S., concerning the Senate’s refusal to confirm, or rejection of, the Governor’s appointment, to conform it to the general statute on appointments. This general statute uses the terms “refuses to confirm” or “fails to consider.”

## Term of the Chair

Section 350.01(2)(b), F.S., provides for the terms of PSC commissioners. A commissioner’s term begins on January 2 and ends four-years later on January 1. However, s. 350.01(4), F.S., provides that the two-year term of the chair begins on the first Tuesday after the first Monday in January.<sup>18</sup>

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<sup>18</sup> The chair is elected by a majority vote of the commissioners.

The bill amends s. 350.01(4), F.S., to change the beginning of the term of the chair to January 2, to make it consistent with the beginning of the term of a commissioner.

Effective Date

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

- Section 1 Amends s. 350.01, F.S., relating to the Florida Public Service Commission; terms of commissioners, vacancies, election and duties of chair; quorum; proceedings.
- Section 2 Amends s. 350.012, F.S., creating the Committee on Public Counsel Oversight; membership; powers and duties.
- Section 3 Amends s. 350.03, F.S., relating to power of the Governor to fill vacancies.
- Section 4 Amends s. 350.031, F.S., relating to the Florida Public Service Commission Nominating Council.
- Section 5 Amends s. 350.061, F.S., relating to the Public Counsel; appointment; oath; restrictions on Public Counsel and his or her employees.
- Section 6 Amends s. 350.0614, F.S., relating to the Public Counsel; compensation and expenses.
- Section 7 Provides an effective date.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill will likely result in savings and efficiencies from combining the functions of two entities that participate in the selection process for PSC Commissioners. Currently, the membership for these entities totals 21 (nine for the Nominating Council and 12 for the Oversight Committee). This bill streamlines the PSC Commissioner selection process by:

- Expanding the membership of the Nominating Council to 12 appointed individuals; and
- Replacing the Committee on Public Service Commission Oversight with the Committee on Public Counsel Oversight.

The impact of this bill's proposed changes as it relates to the PSC Commissioner selection process can be summarized as follows:

- Making Nominating Council membership subject to appointment eliminates the need to advertise Council vacancies, which is also provided in this bill. OLS indicates that it has spent \$10,981.00 for Nominating Council vacancy advertisements from the Florida Public Service Regulatory Trust Fund since Fiscal Year 2004-2005. Therefore, the change to an appointive process will result in no advertising expenses, which allows those dollars to remain in the trust fund;
- Reducing the combined membership of the two entities from 21 to 12 will likely result in less travel expenses for Nominating Council membership and legislative staff. A current staff review of legislative staff travel expenses from 2005 to 2007 reveals a total average staff cost of \$1,337.00 for a Nominating Council meeting, and of approximately \$1,064.00 for an Oversight Committee meeting;
- Combining the two entities will likely result in less meetings, and therefore less meeting expenses, particularly for any meetings held outside Tallahassee where a room rental fee is required. A current staff review of meeting room expenses from 2005 to 2007 reveals an average meeting room cost of \$601.00 for a Nominating Council meeting, and of \$666.50 for an Oversight Committee meeting; and
- Eliminating the Committee on Public Service Commission Oversight will facilitate the selection process for applicants by reducing their amount of travel and any other expenses associated with the application process.

It is not clear what savings or efficiencies, if any, could be realized from replacing the Committee on Public Service Commission Oversight with the Committee on Public Counsel Oversight. Any savings or efficiencies associated with this change would be contingent upon the frequency of meetings, the

location of meetings, and the amount of travel-related expenses for assigned members and staff, among other factors.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of sales tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The rules governing the Public Service Commission Nominating Council will need to be amended to reflect changes in how some of its members are appointed. The rules governing the Joint Committee on Public Service Commission Oversight will need to be amended to reflect the change from recommending to the Governor names to fill a vacancy on the PSC to only appointing a Public Counsel.

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

None.

#### **D. STATEMENT OF THE SPONSOR**

Not applicable as this is a proposed council bill.

### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**