



Public Service Commission

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

DATE: June 16, 2005

TO: Braulio L. Baez, Chairman
J. Terry Deason, Commissioner
Rudy Bradley, Commissioner
Charles M. Davidson, Commissioner
Lisa Polak Edgar, Commissioner

FROM: Cindy B. Miller, Director, Office of Federal & Legislative Liaison

RE: Legislative Wrap-Up for 2005 Session (Amended and Updated)

There was intense activity on a number of regulatory issues. Those bills significant to the FPSC are listed below. **Attached are more detailed summaries in case they are useful.**

KEY BILLS THAT PASSED

Electric and Gas

CS/CS/CS/SB 1366, Storm Infrastructure Recovery

The legislation gives the FPSC authority to approve a type of securitized debt for paying any deficits in any investor-owned electric utility's (IOU) storm-recovery reserves and would permit the replenishment of storm reserves in anticipation of future hurricane events. The IOU may petition the FPSC for a "financing order" for costs associated with named storms that occurred during 2004 or thereafter. The "financing order" would allow for the issuance of storm-recovery bonds and the imposition, collection, and adjustment of storm-recovery charges.

The FPSC would determine whether the petition is reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts compared to traditional methods of financing or recovering storm costs. Any determination of whether storm-recovery costs are reasonable and prudent shall be made with reference to the general public interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric service. Once a petition is filed, the FPSC has 120 days to render a decision with an additional 15 days to issue the financing order. A party may petition for reconsideration within 5 days of the Order being issued.

In a financing order, the FPSC must address enumerated matters.

The FPSC may engage outside consultants or counsel in performing its responsibilities regarding the financing order and its review of actual costs of the bond issuance. Any expenses associated with such services shall be included in storm-recovery charges.

If the FPSC issues a financing order, the IOU must file at least biannually a petition or a letter requesting administrative approval to make certain adjustments to the storm-recovery charge to reflect any over or under-recovery amounts. Within 60 days after receiving an IOU's request, the FPSC must either approve the request or inform the IOU of any mathematical error in the calculation. Also, the IOU may correct its error and refile its request.

Within 120 days after the issuance of storm-recovery bonds, the IOU shall file with the FPSC information on the actual costs of the storm-recovery-bond issuance. The FPSC shall review the information to determine if such costs resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance. The FPSC may disallow any incremental issuance costs in excess of the lowest overall costs, and the lowest overall issuance cost, by requiring the IOU to make a contribution to the storm reserve in an amount equal to the excess of actual issuance costs incurred, and paid for out of storm-recovery bond proceeds.

A 30-day time frame is set forth for an adversely affected party to petition for judicial review in the Florida Supreme Court.

At the IOU's request, the FPSC may begin a proceeding and issue a financing order that provides for retiring and refunding storm-recovery bonds.

The bill provides for certain exceptions to FPSC jurisdiction; the FPSC may not:

- consider the storm-recovery bonds to be debt of the IOU other than for federal income tax purposes;
- consider the storm-recovery charges to be the revenue of the IOU;
- consider the storm-recovery costs or financing costs to be the costs of the IOU;
- determine any action taken by the IOU consistent with the financing order to be unjust or unreasonable;
- order an IOU to use storm-recovery bonds to finance any project or any expenditure unless it is pursuant to the IOU's petition pursuant to the Act.
- address the use or recovery of the storm-recovery bonds in any future proceedings.

The IOU must explicitly reflect that a portion of the charges on the customer bill represent storm-recovery charges. The FPSC determines whether to require the IOU to include such information as a separate line item on individual electric bills.

Failure to comply with this subsection shall subject the IOU to penalties under Section 366.095, Florida Statutes. Any monetary penalty or remedy and the costs of defending against the proposed penalty or remedy may not be recovered from the ratepayers.

The Act took effect upon becoming a law. Effective date: June 1, 2005. Chapter 2005-107, Laws of Florida.

HB 77, Waste-to-Energy/Renewable Energy – The bill requires the FPSC to establish requirements relating to the purchase of capacity and energy by IOUs from renewable energy producers. The IOUs are to continuously offer power sales contracts, with a minimum 10-year term, to producers of renewable energy for the purchase of electric energy. JEA and OUC are to offer contracts for renewable energy as well. Effective October 1, 2005.

HB 135, Street Lighting – The bill provides immunity for utilities on damages regarding incidents occurring due to failed street lights. Utilities must repair failed street lights within specified time frames. Effective upon becoming law.

Water and Wastewater

SB 444, Water Supplies – Chapter 373 is revised to require that the FPSC must allow entities under its jurisdiction constructing “or participating in constructing facilities” that provide alternative water supplies to recover their full, prudently incurred cost of constructing such facilities through their rate structure. If construction of a facility or participation in construction is pursuant to or in furtherance of a regional water supply plan, the cost shall be “deemed to be prudently incurred.” Effective upon becoming law.

Telecommunications

SB 2070, Communications Services – The bill repeals the tax on substitute networks and creates a Communications Service Tax Task Force, to be staffed by the Department of Revenue and the Florida Public Service Commission. First meeting must be held by July, 2006. Effective July 1, 2005.

SB 620, Wireless Emergency Telephone System – The bill addresses a number of matters on wireless, including E911. Effective July 1, 2005. Chapter 2005-170, Laws of Florida.

Other

SB 1010, Administrative Procedures – The Florida Administrative Weekly will be published on the Internet; and some largely procedural changes are made to Chapter 120. Effective July 1, 2005.

SB 1322, Chapter 350 Provisions/Telecom/Local Government/ Lifeline/Storm Cost Recovery – SB 1322 was initially proposed in the Senate as a revision of Chapter 350. However, the bill was amended to incorporate bills on telecom/advanced services, storm damage recovery, and Lifeline, (A 5-page summary is included, starting on page 8 of the attachment).

A Committee on Public Service Commission Oversight, composed of 12 members is created. The Committee will not have permanent staff. It will make recommendations to the Governor on nominees to fill an FPSC vacancy; and appoint a public counsel. It may also file complaints with the Commission on Ethics alleging a violation of Chapter 350 by a Commissioner, former Commissioner, former Commission employee, or member of the Nominating Council.

The FPSC and Public Counsel shall perform duties independently.

The Nominating Council will nominate to the new Committee 6 nominees for each vacancy by August 1. The Committee recommends to the Governor 3 nominees.

Standards of Conduct: Some Standards of Conduct for Commissioners are clarified and some new standards are established.

Local Government Provision of Communications Services: Requirements are placed on local governments that provide telecommunications.

Broadband and Voice over Internet Protocol. The primary changes to Chapter 364 relate to FPSC jurisdiction regarding broadband and VoIP services. The powers of the Commission are amended to emphasize promoting competition by encouraging innovation and investment and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.

A new section on consistency with Federal law provides that the FPSC shall maintain continuous liaisons with federal agencies whose policy decisions affect those telecom companies under FPSC jurisdiction.

Definitions are added regarding broadband and VoIP and “service.”

The telecom certification maximum application fee is increased from \$250 to \$500. The minimum regulatory assessment fee may be up to \$1,000, which the PSC must assess by rule.

Lifeline. The FPSC is to establish procedures for notification and termination of Lifeline benefits.

The bill establishes requirements for ETCs in the provision of Lifeline service: offer full or partial blocking to Lifeline at no charge; prohibits an ETC from collecting a deposit if a Lifeline subscriber elects toll blocking; prohibits a monthly number portability charge; establishes procedures for notification of the cancellation of Lifeline benefits; permits the discontinuance of benefits to subscribers no longer eligible; ETC may not refuse to connect or provide Lifeline benefits because of unpaid toll charges or non-basic charges; and ETC may block a Lifeline subscriber’s access to all long distance service when a Lifeline subscriber owes an outstanding amount for long distance or collect calls. The PSC must adopt rules to administer this section.

The bill adds OPC and the Department of Education to the entities required to develop procedures to promote Lifeline.

The eligibility criteria on Lifeline is changed to up to 135% of the Federal poverty guideline for those companies that do the access charge reduction/rate rebalancing.

Storm Damage Recovery: For named storms occurring after June 1, 2005, the costs and expenses related to damage shall constitute a compelling showing of changed circumstances, pursuant to Sec. 364.051(4)(b). A LEC may file to recover intrastate costs and expenses. The FPSC shall verify the intrastate costs and expenses and determine whether they are “reasonable under the circumstances.” The FPSC may determine the amount of any increases but it may not exceed 50 cents per month per customer line for a period of not more than 12 months. A company may file only one petition for storm recovery in any 12-month period for the previous storm season, but the petition may cover damage from more than one storm.

Effective Date: June 2, 2005. Chapter 2005-132, Laws of Florida.

HB 1377, Ethics for Public Officers and Employees – The bill adds standards for employees after retirement/termination. Would have been effective October 1, 2005. Vetoed June 15, 2005.

KEY BILLS THAT FAILED

SB 526, Electric Utility Task Force – A task force would have been created to analyze the current electric and distributions systems, and the current cable and telecom systems to the extent they use the same pole. It would have been staffed by the FPSC, the Department of Community Affairs, the Department of Management Services, and the Department of Health.

HB 1597, Hydrogen Energy Technology – The bill would have required the FPSC to flow through costs incurred by the utilities for hydrogen energy technologies in certain circumstances.

HB 751, Florida 211 Network – The bill would have expanded the 211 Network.

CBM:tf

Attachment

cc: Mary Andrews Bane
Charles H. Hill
Rick Melson
Manual Arisso
Cayce Hinton
Larry Harris
Katrina Tew
Roberta Bass
David Smith
Mary Anne Helton

Beth Keating
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Beth Salak
Dale Mailhot
Tim Devlin
Joe Jenkins
Bob Trapp
Dan Hoppe
Bev DeMello

Kevin Bloom
Richard Tudor
Hurd Reeves
Jim Dean
Allen Mortham
Greg Shafer
John Williams
Mark Futrell
Kathy Lewis

KEY BILLS THAT PASSED

Electric and Gas

CS/CS/CS/SB 1366 on Storm Infrastructure Recovery

1. Definitions

The bill sets out definitions which are integral to the overall purpose of the bill. For example, “storm recovery charge” means the amounts authorized by the FPSC to recover, finance or re-finance storm recovery costs, financing costs, costs to replenish the storm recovery reserve to the level that existed before the storm, or such other level as the FPSC may authorize in a financing order. The charge is to be imposed on all customer bills and collected by an electric utility or a collection agent in full through a charge that is separate and apart from the electric utility’s base rate. The charge is to be paid by all customers receiving transmission or distribution service from the electric utility under commission-approved rate schedules or under special contracts, even if the customer elects to purchase electricity from an alternative supplier following a fundamental change in regulation.

“Storm recovery costs” means, at the option and request of the electric utility, and as approved by the Commission, costs incurred or to be incurred by an electric utility in undertaking a storm recovery activity. Such costs shall be net of applicable insurance proceeds and, where determined appropriate by the commission, shall include adjustments for normal capital replacement and operating costs, lost revenues or other potential offsetting adjustments. The costs shall include costs to finance any deficiency in storm-recovery reserves until the time the bonds are issued, and costs of retiring any existing indebtedness relating to storm-recovery activities.

2. Financing Order

An electric utility may petition the FPSC for a financing order. The electric utility must provide information as delineated in the statute. Within 7 days after the filing of the petition, the FPSC must publish a case schedule that will permit an FPSC decision no later than 120 days after the petition is filed. No later than 135 days, the FPSC must issue a financing order or an order rejecting the petition. A reconsideration petition must be filed within 5 days of the order.

The Commission shall issue a financing order authorizing financing of reasonable and prudent storm-recovery costs, the storm recovery reserve amount determined appropriate by the commission, and financing costs if the commission finds that the issuance of the storm recovery bonds and the imposition of storm recovery charges are reasonably expected to result in overall costs or would avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing or recovering storm-recovery costs and storm-recovery reserve.

Any determination of whether storm-recovery costs are reasonable and prudent shall be made with reference to the general public interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric power.

The FPSC, in the financing order, shall:

- Specify the amount of storm-recovery costs and the level of storm-recovery reserves, taking into consideration certain factors; describe and estimate the amount of financing costs which may be recovered through the storm-recovery charges; and specify the period over which the costs may be recovered;
- Determine that the proposed structuring, expected pricing, and financing costs of the storm recovery bonds are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing or recovering storm-recovery costs;
- Determine what portion, if any, of the storm recovery reserves must be held in a funded reserve and any limitations on how the reserve may be held, accessed or used;
- Include a formula-based mechanism for making expeditious periodic adjustments in the charges customers are required to pay and for making any adjustments necessary to correct for over collection or under collection of the charges or to otherwise ensure timely payment;
- Specify the storm recovery property that is, or shall be, created in favor of an electric utility and that shall be used to pay or secure storm recovery bonds and financing;
- Specify the degree of flexibility for the electric utility in establishing the terms and conditions of the storm recovery bonds, including, but not limited to, repayment schedules, interest rates, and other financing costs;
- Provide that storm recovery charges shall be allocated to customer classes in a certain manner;
- Include any other conditions the FPSC considers appropriate and are not otherwise inconsistent with the law

The electric utility determines the remitting storm recovery charge in accordance with the financing order and such initial storm recovery shall be final upon the issuance of the bonds without further commission action.

The FPSC may engage outside consultants or counsel regarding performing the responsibilities on the finance order and on the review of the filing by the utility on actual costs. Any expenses associated with such services must be included as part of financing costs and included in storm recovery charges.

The financing order may provide that creation of the electric utility's storm recovery property is conditioned on and simultaneous with the sale or transfer of the storm-related property to an assignee and the pledge of the storm recovery property to secure storm recovery bonds.

If the FPSC issues a financing order, the electric utility must file with the Commission at least biannually a petition or a letter applying the formula-based mechanism and requesting administrative approval to make adjustments. The Commission's review is limited to whether there's a mathematical error relating to over-collection or under-collection and the amount of an adjustment. The FPSC has 60 days to approve the request or tell the utility of its mathematical error.

Within 120 days after the issuance of storm recovery bonds, the electric utility must file with the Commission information on the actual costs of the storm recovery bond issuance. The Commission must review the information to determine if the costs incurred in the issuance of the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and terms of the financing order. The Commission may disallow certain costs. The Commission may not make adjustments to the storm recovery charges for any such excess issuance costs.

After a certain point (the earlier of the transfer of storm recovery property to an assignee or the issuance of the bonds), the financing order is irrevocable, and except for certain instances, the commission may not amend or terminate the financing order. After the financing order is issued, the electric utility retains the sole discretion about selling or assigning storm recovery property.

At the request of an electric utility, the Commission may hold a proceeding and issue a subsequent financing order that provides for retiring and refunding storm recovery bonds, upon certain findings.

Judicial review is set out: A 30-day time clock is provided for a party to seek review (after the financing order is issued or reconsideration). Certain limitations are set forth on the court review. The Supreme Court must proceed to hear and determine the action as expeditiously as practicable and give its action precedence over other matters not accorded similar precedence by law.

Exceptions to Commission jurisdiction: If the Commission issues a financing order, the Commission may not consider the bonds to be the debt of the electric utility for federal income tax purposes, other limitations, nor may the Commission determine any action taken by an electric utility consistent with the order to be unjust or unreasonable. The Commission may not require a utility to finance any project, addition, plant, facility etc. unless a utility has filed a petition to finance the expenditure using storm recovery bonds.

The electric bills of an electric utility that has obtained a financing order and issued storm recovery bonds must explicitly reflect that a portion of charges on the bill represents storm recovery charges. The Commission shall determine whether to require electric utilities to include such information as amounts on storm recovery as a separate line item on individual electric bills. Additional requirements are added relating to the tariffs.

Numerous provisions address the legal nature of the storm recovery property. The storm recovery bonds are expressly not public debt.

A penalty for a violation of the section or the financing order may not be recovered from ratepayers.

The act took effect upon becoming law. Effective date: June 1, 2005. Chapter 2005-107, Laws of Florida.

HB 77 Relating to Renewable Energy

The bill would create Section 366.91, Florida Statutes, requiring that on or before January 1, 2006, the five investor-owned electric utilities (IOUs), JEA, and OUC are to continuously offer power sales contracts, with a minimum 10-year term, to producers of renewable energy for the purchase of electric energy. Current federal and state statutes and regulations govern the purchase of electric energy from non-utility generators, including renewable generators .

The bill requires the FPSC to establish requirements relating to the purchase of capacity and energy by IOUs from renewable energy producers and may adopt rules to administer the provisions relating to IOUs.

Capacity and energy payments are to be based upon the IOU's full avoided costs as defined in Section 366.051, Florida Statutes. Capacity payments, however, are not required if the renewable energy producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term.

Prudent and reasonable contract costs will be recovered through the appropriate cost recovery clause. The producer of renewable energy must pay the actual cost of interconnection with the transmission or distribution systems.

Renewable energy is defined in the bill as hydrogen not produced from fossil fuel sources; and biomass, solar, geothermal, wind, ocean energy, and hydroelectric. Biomass includes but is not limited to combustible residues and gases from forest-products manufacturing, agricultural and orchard crops, waste products from livestock, poultry, or food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

The bill specifies that in the case of OUC and JEA, the respective governing body shall determine the capacity and energy payments based on each utility's avoided cost.

The bill includes the following legislative intent:

The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

The Act shall take effect October 1, 2005.

HB 135 Relating to Street Lighting

A streetlight provider (i.e., a utility) is not liable for civil damages for personal injury, wrongful death, or property damage caused by the malfunction of a streetlight, unless the provider fails to comply with certain procedures. Those procedures addressed relate to providing

notice regarding malfunctioning streetlights to customers through annual bill inserts or publication in relevant newspapers of general circulation. The streetlight provider must repair any inoperative or malfunctioning streetlight within 60 days after receiving actual notice.

For a streetlight provider operating in a county affected by a state of emergency, the time period is extended to 365 days after the cessation of the emergency or such longer period of time as may be dictated by the circumstances or 60 days after receiving notice, whichever is later.

Where the streetlight provider is a public utility or an electric utility, the provider is not liable for any civil damages if the streetlight provider disconnected electric or gas to the streetlight upon the streetlight customer's request or as a result of the customer's failure to pay the bill or other breach of the streetlight agreement. Other restrictions on the utility's liability are set out.

The Act takes effect upon becoming law, and applies to causes of action occurring after that date.

Water and Wastewater

SB 444 on Water Supplies

This is an act relating to the development of water supplies. "Alternative water supply" is defined as salt water, brackish surface and groundwater, surface water captured predominantly during wet water flows; sources made available through the addition of new storage capacity for surface or groundwater; water that has been reclaimed after one or more public supply, municipal, industrial; commercial or agriculture uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable water supply plan.

Provisions on the FPSC in Chapter 373 are somewhat revised. The FPSC must allow entities under its jurisdiction constructing "or participating in constructing facilities" that provide alternative water supplies to recover their full, prudently incurred cost of constructing such facilities through their rate structure. Language is added: "if construction of a facility or participation in construction is pursuant to or in furtherance of a regional water supply plan, the cost shall be deemed to be prudently incurred." Also, "any state or water management district cost-share is not subject to the resource recovery provisions in this paragraph."

The Act takes effect upon becoming law.

Telecommunications

CS/CS/SB 620 on Wireless Emergency Telephone System

It removes language in Sec. 364.336, which inadvertently subjected wireless providers to regulatory assessment fees.

Collocation is addressed regarding the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. Certain revenues may be used to provide grants to rural counties and loans to medium counties for the purpose of updating E911 systems. The wireless 911 board may hire an Executive Director who must possess experience in the telecom and emergency 911 issues.

Provisions regarding local government's authority to impose tower design requirements are set out.

The Act takes effect July 1, 2005. Chapter 2005-171, Laws of Florida.

CS/SB 2070 on Telecom Tax

- Repeals “substitute communications system” definition.
- Repeals the tax on substitute communications systems set out in Sec. 202.12.
- Creates a Communications Service Tax Task Force to be housed for administrative purposes within the Dept. of Revenue, but to operate independently of the department.

The task force consists of nine members, three appointed by the Governor, three by the Senate President, and three by the House Speaker. Members must possess expertise in state or national telecom policy, taxation, law or technology. A member of the Legislature or a registered lobbyist may not be appointed to the task force. The task force shall study:

- (a) the national and state regulatory and tax policies relating to the communications industry, including the Internet Tax Freedom Act;
- (b) the levels of tax revenue that have been generated by the communications services taxes imposed or administered in Chapter 202, in the past and that are expected to be generated in the future, and their adequacy in funding government services and bonded indebtedness that rely on them;
- (c) the impact of the communications services taxes on Florida's competitiveness;
- (d) the impact of the diversity of communications technology and of changes in such technology on the state's ability to design tax laws, the applicability of which is reasonably clear to communications service providers and state administrators, and which are susceptible to efficient and fair administration by the state;
- (e) the administrative burdens imposed on communications services providers; and
- (f) to the extent that future revenues from the communications services tax are expected to be inadequate to fund government services and bonded indebtedness that rely on them, the options that are available for funding these services and bonded indebtedness.

The task force shall hold its organizational meeting by July 15, 2006. The FPSC shall provide staff for the technical and regulatory issues; the Dept. of Revenue shall provide administrative support and staff for the tax issues. The task force will report its findings and recommendation to the Governor, Senate President and House Speaker by Feb. 1, 2007. \$100,000 is appropriated from General Revenue to the Dept. of Revenue for the per diem and

travel. \$500,000 is appropriated from General Revenue to DOR for retaining expert witnesses and consultant services in communications technology and computer telephony.

“Communications services” is defined to include such transmission, conveyance or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the FCC as enhanced or value-added.

The Executive Director of the Department of Revenue is authorized to adopt emergency rules to administer this act. Other provisions are amended relating to registration, records required to be kept, charges for Internet access services.

The Act takes effect July 1, 2005.

Other

CS/CS/CS/SB 1010 Administrative Procedures

Agencies will be required to extend the time for a person to file a petition for an administrative hearing if the petitioner was misled into inaction or has been prevented in some extraordinary way from asserting his rights or has mistakenly filed the petition in the wrong forum. The pleading requirements for petitions for administrative hearings will not apply when the petition is filed to challenge agency enforcement or disciplinary actions against a licensee or other person.

The Department of State must publish the Florida Administrative Weekly (FAW) on its website; and the website must allow users to 1) comment on proposed rules through the website; 2) subscribe to an automated e-mail notification of selected FAW notices; 3) view agency forms that are incorporated into proposed rules; and 4) search for notices.

Requires the uniform rules of procedure to prescribe requirements for agency FAW notices of the filing of petitions declaratory statements, including any time limit for filing petitions to intervene or petitions for administrative hearing by a substantially affected person.

Revises rulemaking provisions of Chapter 120 to improve clarity.

The act takes effect July 1, 2005.

CS/CS/SB 1322 Chapter 350 Provisions\Telecom\Local Government\Lifeline\Hurricane Cost Recovery

SB 1322 was initially proposed in the Senate as a revision of Chapter 350. However, the bill ultimately was amended to consolidate four other Senate bills: SB 2068 on telecommunications; SB 1320 on Lifeline; SB 2072 on government provision of

telecommunications services; and SB 2232 on storm damage recovery. The bill contains many provisions that impact the FPSC in each of these areas.

Chapter 350 Provisions

A Committee on Public Service Commission Oversight, composed of 12 members, is created. Six Senate members will be appointed by the Senate President, Six House members will be appointed by the Speaker of the House. Two Senate members and two House members must be of the minority party. The terms shall be for two years and begin on the organization of one legislature to the organization of the next legislature. The Senate President appoints the chair in even-numbered years and the vice chair in odd-numbered years; the House Speaker appoints the chair in odd-numbered years and the vice chair in even-numbered years.

The Committee shall: (a) recommend to the Governor nominees to fill an FPSC vacancy; and (b) appoint a Public Counsel. Also, the Committee is authorized to file a complaint with the Commission on Ethics alleging a violation of Chapter 350 by a commissioner, former commissioner, former commission employee, or member of the PSC Nominating Council. The committee will not have a permanent staff, but the Senate President and House Speaker shall select staff members from among existing legislative staff, when and as needed.

The Public Service Commission shall perform its duties independently.

The Council may spend up to \$10,000 to advertise a vacancy on the council, which shall be funded by the FPSC Regulatory Trust Fund.

The Council must nominate to the Committee on Public Service Commission Oversight six persons for each vacancy. The Council submits the recommendations to the Committee by August 1. The Committee selects 3 nominees for recommendation to the Governor, which must be provided within 45 days after receipt of the list of nominees.

The Governor has 30 days to take action on the appointment; or the Committee, by majority vote, will make the appointment within 30 days after that. Confirmation by the Senate is to take place in the next regular session after the vacancy occurs, or the Council initiates a new nominating process.

Standards of Conduct

- 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.
- 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 a 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 for a Commissioner to attend a conference for which participants employed by a regulated utility have paid a higher conference registration fee, or to attend a

meal or event that is generally available to all participants without payment of any fees in addition to the conference fee that is sponsored by a regulated utility.

- The Commission on Ethics must give the person alleged to make a prohibited gift notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Ethics Commission determines the person gave a prohibited gift, the person may not appear before the FPSC or represent anyone before the FPSC for 2 years.
- A Commissioner must avoid impropriety in all of his/her activities and must act in a manner that promotes public confidence in the integrity and impartiality of the Commission.
- A Commissioner may not directly or indirectly, through staff or other means, solicit any thing of value from any public utility regulated by the Commission or from any business entity, whether directly or indirectly, is an affiliate or subsidiary of any regulated utility or from any party appearing in a PSC proceeding in the last 2 years.
- *Ex parte*. A person alleged to have made an *ex parte* communication must be given notice and an opportunity to participate in the investigation and proceedings to present a defense. If the Commission on Ethics finds a violation, the person may not appear or represent another before the Commission for 2 years.

Public Counsel

The Committee on Public Service Commission Oversight will appoint the Public Counsel, with biennial reconfirmation. The Public Counsel must perform duties independently.

Communications Services Offered by Governmental Entities

This section of the bill addresses the process and procedures a governmental entity must follow in order to enter into the provision of communications services (which include “advanced services,” “cable service,” “telecommunications service,” and construed in its broadest sense).

A governmental entity proposing to provide communications service shall hold no less than two public hearings (not less than 30 days apart). At least 40 days prior to the first public hearing, the governmental entity must provide notice electronically to the Department of Revenue and the Public Service Commission, which must post the notice on the commission’s website to be available to the public. The notice must include the geographic area of the proposed services.

The public hearing must consider whether the service is currently provided in the community and whether it is generally available throughout the community. It must consider whether a similar service is currently being offered in the community and is generally available throughout the community. If the service is not being offered, whether any other provider proposes to offer the same or similar service and what, if any, assurances that service provider has offered that it is willing and able to offer the same service.

The public hearing must also address the capital investment required by the government entity to provide the communications service, the estimated cost of operation and maintenance and, using a full cost-accounting method, the estimated realistic revenues and expenses of providing the service and the proposed method of financing.

Finally, the public hearing must address private and public costs and benefits of providing the service by a private entity or a governmental entity, including economic development impacts, tax-base growth, education, and public health.

At one or more of the public hearings the governmental entity must make available to the public a written business plan for the proposed communications service venture that must include:

1. The projected number of subscribers to proposed service(s);
2. The geographic areas to be served;
3. The types of communications services to be provided;
4. A plan to ensure that revenues exceed operating expenses and payment of principal and interest on debt within 4 years;
5. Estimated capital and operational costs and revenues for the first 4 years;
6. Projected network modernization and technological upgrade plans, including estimated costs.

After making specific findings regarding the factors, the governmental entity may authorize providing communications service(s) by a majority recorded vote and by resolution, ordinance or other formal means of adoption.

The bill places some restrictions on the issuance of bonds for financing the communications infrastructure.

The bill requires that the price established by a governmental entity for communications service must not be below the cost of providing that service. The cost standard for determining cross-subsidization is total long-run incremental cost of service.

The governmental entity must maintain separate books and records in accordance with generally accepted accounting principals for the communications service(s) operations. The governmental entity must establish an enterprise fund to account for its communications service(s) and shall adopt separate operating and capital budgets.

The governmental entity shall conduct an annual review at a formal public meeting to consider the progress it is making toward reaching its business plan goals and objectives. This review shall address related revenues, operating expenses, and payment of interest on debt.

If, four years after the initiation of communications service(s), revenues do not exceed operating expenses and payment of principal and interest on the debt, a governmental entity shall hold a public hearing to approve a plan to limit or cease operations, dispose of the system and cease providing services, partner with a private entity to bring revenues in excess of costs, or continue the provision of communications service(s) affirmed by a majority vote of the governing body of the governmental entity.

There are grandfathering provisions for governmental entities providing services as of April 1, 2005, that exclude them from most of the previously discussed provisions. However, they must establish separate books and records for provision of communications services.

The bill also contains an exemption for airports meeting certain criteria in their provision of communications services. An airport that provides shared tenant services under sec. 364.339 and meets certain other limitations is exempt. However, an airport authority or other governmental entity that provides or is proposing to provide communications services to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility, or to one or more subscribers outside its airport layout plan, is not exempt from the section.

Broadband and Voice Over Internet Protocol

The primary thrust of changes to Chapter 364 relate to clarification of the PSC's jurisdiction regarding advanced services including broadband and VoIP services. The bill specifies that communications activities not regulated by the PSC under Chapter 364, including but not limited to VoIP, wireless, and broadband are subject to this state's generally applicable business regulation and deceptive trade practices and consumer protection laws (364.01(3)).

The powers of the commission are amended to promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight (364.01(4)(d), F.S.).

New section 364.011, F.S., provides for specific exemptions from PSC oversight for the following services, except as delineated in the chapter or specifically authorized by federal law: intrastate interexchange telecommunications service; broadband services, regardless of the provider, platform, or protocol; VoIP; and wireless telecommunications, including commercial mobile radio service providers.

New section 364.012, F.S., provides for consistency with federal law in the regulation of telecommunications services. The section provides that the PSC shall maintain continuous liaisons with appropriate federal agencies whose policy decisions and rulemaking authority affect those telecommunications companies over which the commission has jurisdiction. The PSC is encouraged to participate in the proceedings of federal agencies in cases in which the state's consumers may be affected and to convey the PSC's policy positions and information requirements in order to achieve greater efficiency in regulation. The section does not limit or modify the duties of the local exchange carrier to provide unbundled access to network elements or the PSC's authority to arbitrate or enforce interconnection agreements as requested under Federal law (47 USC Secs 251, 252) at rates in accordance with FCC standards.

New section 364.013, F.S. provides that broadband service and the provision of VoIP shall be free of state regulation, except as delineated in the chapter or as specifically authorized by federal law, regardless of provider, platform or protocol.

A definition of "broadband service" is added to 364.02, F.S., definitions. Excluded from the definition (which then exempts the item from PSC jurisdiction) are any services tariffed at the PSC on or before January 1, 2005.

The definition of "service" has been modified to exclude broadband service in addition to VoIP from the definition. Additional language in the definition has been included that appears to

clarify that the PSC may arbitrate, enforce, or approve interconnection agreements, and resolve disputes as provided for by applicable federal law.

Subsection 364.02(16), F.S., defines VoIP to mean voice-over-Internet-protocol “as that term is defined in federal law.”

Subsection 364.335(c), F.S., is amended to increase the maximum charge for application for a certificate from \$250 to \$500.

Section 364.336, F.S., is amended to authorize the PSC to by rule assess a minimum regulatory assessment fee of up to \$1000 depending on the type of service provided by the telecommunications company.

Section 364.502, F.S., on LEC or CLEC provision of video programming is repealed.

Lifeline

Subsections 364.01(2) and (3) are amended to provide for specific Lifeline requirements relating to determining and maintaining eligibility and the terms and conditions for service for Lifeline subscribers. The bill also changes the applicability of the Lifeline provisions of the bill from telecommunications companies to Eligible Telecommunications Carriers, or ETCs, as defined in 47 C.F.R. s. 54.201. The bill limits applicability of the provisions to those ETCs that have been designated by the PSC.

The bill establishes the following requirements and procedures for ETCs in the provision of Lifeline service:

- (a) offer full or partial toll blocking to Lifeline subscribers at no charge;
- (b) prohibits an ETC from collecting a deposit if an eligible Lifeline subscriber voluntarily elects toll blocking;
- (c) prohibits collection of a monthly number-portability charge;
- (d) establishes procedures for notification of the cancellation of Lifeline benefits to subscribers that no longer qualify;
- (e) permits the discontinuance of benefits to subscribers shown to no longer be eligible;
- (f) may not refuse to connect, reconnect, or provide Lifeline benefits because of unpaid toll charges or non-basic charges; and
- (g) may block a Lifeline subscriber's access to all long distance service, except toll free numbers and the ability to make a toll-free call, when a Lifeline subscriber owes an outstanding amount for long-distance or collect calls. The block shall be lifted upon payment of the outstanding amount at no additional charge to the subscriber.

The bill provides that the PSC will establish procedures for notification and termination of Lifeline benefits. It also provides that Lifeline benefits are to appear on a subscriber's bill no later than 60 days following notification of eligibility by the Office of Public Counsel (OPC) or proof of eligibility from the customer.

An ETC may not discontinue service to Lifeline subscribers for non-payment of non-basic services, including long distance services. Lifeline subscribers shall be required to pay all

basic local exchange service fees, including the subscriber line charge (SLC), E-911, telephone relay system (TRS) charges, and applicable state and federal taxes.

An ETC may require that payment arrangements be made for outstanding debt associated with basic local exchange service, SLC, E-911, TRS charges and applicable state and federal taxes.

The income eligibility criteria is revised from 125% of the federal poverty guideline, to 135% of the federal poverty guideline.

Subsection (3)(h) is amended to add OPC and the Department of Education to the PSC, Department of Children and Families, and the telecommunications companies as parties required to develop procedures to promote Lifeline participation.

The legislation requires the PSC to adopt rules to administer the section.

Storm Damage Recovery

New subsection 364.051(4)(b) has been added to permit the recovery of costs and expenses related to damage occurring to the lines, plant, or facilities of a local exchange telecommunications company that is a result of a tropical system named by the National Hurricane Center. Such an event, occurring after June 1, 2005, shall constitute a compelling showing of changed circumstance pursuant to this section.

The bill provides that a local exchange company may file a petition to recover intrastate costs and expenses relating to repairing, restoring, or replacing lines, plants, or facilities damaged by a named storm. The PSC shall verify the intrastate costs and expenses submitted by the company and determine whether the intrastate costs and expenses are reasonable under the circumstances.

A company having a storm-reserve fund may recover tropical-system-related costs and expenses from its customers only in excess of the amount available in the storm reserve fund.

The PSC may determine the amount of any increase that the company may charge its customers, but the charge per line item may not exceed 50 cents per month per customer line for a period of not more than 12 months. The PSC may order the company to add an equal line-item charge per access line to the billing statement of the company's retail basic local telecommunications service customers, its retail non-basic telecommunications service customers, and, to the extent the PSC determines appropriate, its wholesale loop unbundled network element customers.

In order to qualify for filing a petition under this subsection, a company with one million or more access lines, but fewer than three million access lines, must have storm related costs and expenses exceeding \$1.5 million. A company with three million or more access lines must have storm related costs and expenses of at least \$5 million. A company with fewer than one million access lines is not required to meet a minimum damage threshold.

A company may file only one petition for storm recovery in any 12-month period for the previous storm season, but the petition may cover damage from more than one storm. The provisions of the subsections are not intended to adversely affect the PSC's consideration of any petition for an increase to basic rates to recover storm related damages which was filed prior to the effective date of this act.

The Act took effect upon becoming law. Effective Date: June 2, 2005. Chapter 2005-132, Laws of Florida.

HB 1377 on Ethics for Public Officers and Employees

This bill applies to all agencies, including the FPSC. It includes the following:

No agency employee shall, after retirement or termination, represent or advise another person or entity, except the state, in any matter in which the employee participated personally in his or her official capacity through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee. The term "matter" includes any judicial or other proceeding, application, request for a ruling, or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular action involving a specific party or parties.

The bill would have taken effect October 1, 2005. Vetoed June 15, 2005.

KEY BILLS THAT FAILED

SB 526, Electric Utility Task Force -- The bill, which passed unanimously in the Senate would have created a task force of nine members. It would have been staffed by the PSC, the Department of Community Affairs, the Department of Management Services, and the Department of Health. It would have performed several reviews, including an evaluation and analysis of the current electric and distribution systems, and the current cable and telecom systems to the extent they use the same poles, determine alternatives; an evaluation of problems caused by storm damage and problems with energy responses and restoration; evaluation of electrical needs of critical facilities, etc. The date for the Report was March 1, 2006.

HB 1597, Hydrogen Energy Technology -- The bill, which passed unanimously in the House, was aimed at promoting hydrogen energy technologies. It would have required the PSC to pass through costs incurred by utilities for hydrogen energy technologies, which have the potential to contribute to adequate and reliable electric service, and which have minimum rate impacts.

HB 751, Florida Statewide 211 Network -- The bill would have appropriated \$5 million from General Revenue to the Agency for Health Care Administration to fund the statewide expansion of the Florida 211 Network to all counties and to enhance the operation of existing providers. Funds would have been distributed to the Florida Alliance of Information and Referral Services.