

1 A bill to be entitled
2 An act relating to utility regulation; amending s.
3 120.80, F.S.; providing that specified agency
4 statements are subject to rulemaking requirements
5 under chapter 120; exempting such rules from
6 legislative ratification requirements if adopted
7 within a designated period of time; amending s.
8 350.01, F.S.; revising the terms for public service
9 commissioners; specifying the methods for filling
10 vacancies to the Florida Public Service Commission;
11 prohibiting a commissioner appointed after a certain
12 date from serving more than two consecutive terms;
13 prohibiting a state legislator from serving on the
14 commission for a specified period after leaving
15 legislative office; requiring the commission to hold
16 annual customer service meetings in specified
17 locations; amending s. 350.031, F.S.; creating
18 districts for purposes of specifying districts in
19 which commissioners must reside to fill certain
20 vacancies; amending s. 350.061, F.S.; revising
21 provisions to require the Attorney General to appoint
22 a Public Counsel; specifying that the Public Counsel
23 serves at the pleasure of the Attorney General;
24 amending s. 350.0613, F.S.; conforming provisions;
25 amending s. 350.0614, F.S.; conforming provisions to

26 authorize the Attorney General to allocate salaries
27 and expenses of the Public Counsel and staff; deleting
28 provisions that established the Public Counsel under
29 the legislative branch; amending s. 366.041, F.S.;
30 requiring the commission to establish utility specific
31 performance criteria in certain areas; specifying
32 conditions in which quantitative metrics must be used;
33 requiring an annual review of each utility's
34 performance; authorizing the commission to adjust the
35 rate of return on equity that each utility may retain
36 for a particular period based on performance in that
37 period; amending s. 366.05, F.S.; requiring the
38 commission to establish by rule a generation reserve
39 margin planning criterion; providing conditions on
40 approving such criterion; amending s. 366.06, F.S.;
41 requiring the commission to establish a multi-year
42 rate plan for each electric public utility;
43 establishing requirements for such plans; providing
44 for the transfer of all duties and functions of the
45 Office of Public Counsel to the Office of the Attorney
46 General; specifying that the Office of Public Counsel
47 shall be funded from the General Revenue Fund;
48 specifying term limitations for commissioners in
49 office on a specified date; providing an effective
50 date.

HB 7071

2017

51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75

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

Section 1. Paragraph (a) of subsection (13) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(a) Each agency statement, as defined under s. 120.52,
~~Agency statements that relates relate~~ to cost-recovery clauses,
factors, or mechanisms implemented pursuant to chapter 366,
relating to public utilities, is subject to the rulemaking
requirements under ~~are exempt from the provisions of s.~~
120.54(1) (a). Each such rule adopted before July 1, 2020, is
exempt from s. 120.541(3).

Section 2. Subsections (1), (2), and (3) of section 350.01, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

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

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

(2) (a) Each commissioner serving on July 1, 2017 ~~1978~~, may ~~shall be permitted to~~ remain in office until the completion of his or her current term. A commissioner serving on July 1, 2017,

76 who was appointed to fill a vacancy for an unexpired portion of
 77 a term of a commissioner is authorized to remain in office until
 78 completing such term.

79 (b) Upon the expiration of a ~~the~~ term, a successor shall
 80 be appointed for a 4-year term beginning on January 2 following
 81 the appointment and ending 4 years later on January 1 in the
 82 manner prescribed by s. 350.031. The following vacancies ~~for a~~
 83 ~~4-year term, except that the terms of the initial members~~
 84 ~~appointed under this act~~ shall be filled as follows:

85 1. The vacancies created by expiration of the two terms
 86 ending in January 2018 shall be filled by appointment of two
 87 commissioners, each representing an established district that is
 88 distinct from the other district; ~~vacancy created by the present~~
 89 ~~term ending in January, 1981, shall be filled by appointment for~~
 90 ~~a 4-year term and for 4-year terms thereafter; and~~

91 2. The vacancies created by expiration of the two terms
 92 ending in January 2019 shall be filled by appointment of two
 93 commissioners, each representing an established district that is
 94 distinct from the other district and that is not represented by
 95 an appointment made under subparagraph 1.; and ~~the two present~~
 96 ~~terms ending in January, 1979, shall be filled by appointment~~
 97 ~~for a 3-year term and for 4-year terms thereafter~~

98 3. The vacancy created by expiration of the term ending in
 99 January 2021 shall be filled by appointment of a commissioner
 100 representing a district that is not represented by the

101 appointments made under subparagraphs 1. and 2.

102 ~~(b) Two additional commissioners shall be appointed in the~~
103 ~~manner prescribed by s. 350.031 for 4-year terms beginning the~~
104 ~~first Tuesday after the first Monday in January, 1979, and~~
105 ~~successors shall be appointed for 4-year terms thereafter with~~
106 ~~each term beginning on January 2 of the year the term commences~~
107 ~~and ending 4 years later on January 1.~~

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

111 ~~(d)(3)~~ A Any person serving on the commission who seeks
112 reappointment for a second consecutive 4-year term to be
113 appointed or reappointed shall file a statement to that effect
114 with the nominating council by no later than June 1 of the year
115 preceding prior to the year in which his or her term expires a
116 statement that he or she desires to serve an additional term. A
117 commissioner appointed after July 1, 2017 2015, may not serve
118 more than two three consecutive terms. A commissioner appointed
119 before July 1, 2017, may not serve more than three consecutive
120 terms.

121 (e) A state legislator may not serve on the commission for
122 6 years after leaving legislative office.

123 (9) At least annually, the commission shall hold a
124 customer service meeting, open to the public, in the service
125 territory of each public utility that supplies electricity and

HB 7071

2017

126 | is regulated by the commission.

127 | Section 3. Subsection (5) of section 350.031, Florida
128 | Statutes, is amended to read:

129 | 350.031 Florida Public Service Commission Nominating
130 | Council.—

131 | (5) (a) To provide statewide representation on the
132 | commission, five districts are created whose boundaries align
133 | with those of the five state district courts of appeal
134 | established under chapter 35. A person may not be nominated for
135 | appointment to the commission unless he or she is a resident of
136 | the district that he or she is nominated to represent.

137 | (b) A person may not be nominated to the Governor for
138 | appointment to the ~~Public Service~~ commission until the council
139 | has determined that the person is competent and knowledgeable in
140 | one or more fields, including ~~which shall include~~, but not ~~be~~
141 | limited to: public affairs, law, economics, accounting,
142 | engineering, finance, natural resource conservation, energy, and
143 | ~~or~~ another field substantially related to the duties and
144 | functions of the commission. The commission membership must
145 | ~~shall~~ fairly represent these ~~the above-stated~~ fields.

146 | (c) Recommendations of the council shall be nonpartisan.

147 | Section 4. Subsection (1) of section 350.061, Florida
148 | Statutes, is amended to read:

149 | 350.061 Public Counsel; appointment; oath; restrictions on
150 | Public Counsel and his or her employees.—

151 (1) The Attorney General ~~committee designated by joint~~
 152 ~~rule of the Legislature or by agreement between the President of~~
 153 ~~the Senate and the Speaker of the House of Representatives as~~
 154 ~~the Committee on Public Counsel Oversight~~ shall appoint a Public
 155 Counsel to represent the general public of Florida before the
 156 Florida Public Service Commission. The Public Counsel shall be
 157 an attorney admitted to practice before the Florida Supreme
 158 Court and shall serve at the pleasure of the Attorney General
 159 ~~Committee on Public Counsel Oversight, subject to biennial~~
 160 ~~reconfirmation by the committee.~~ The Public Counsel shall
 161 perform his or her duties independently. Vacancies in the office
 162 shall be filled in the same manner as the original appointment.

163 Section 5. Section 350.0613, Florida Statutes, is amended
 164 to read:

165 350.0613 Public Counsel; employees; receipt of pleadings.-
 166 The Attorney General ~~committee~~ may authorize the Public Counsel
 167 to employ clerical and technical assistants whose
 168 qualifications, duties, and responsibilities the Attorney
 169 General ~~committee~~ shall from time to time prescribe. The
 170 Attorney General ~~committee~~ may from time to time authorize
 171 retention of the services of additional attorneys or experts to
 172 the extent that the best interests of the people of the state
 173 will be better served thereby, including the retention of expert
 174 witnesses and other technical personnel for participation in
 175 contested proceedings before the commission. The commission

HB 7071

2017

176 shall furnish the Public Counsel with copies of the initial
177 pleadings in all proceedings before the commission, and if the
178 Public Counsel intervenes as a party in any proceeding he or she
179 shall be served with copies of all subsequent pleadings,
180 exhibits, and prepared testimony, if used. Upon filing notice of
181 intervention, the Public Counsel shall serve all interested
182 parties with copies of such notice and all of his or her
183 subsequent pleadings and exhibits.

184 Section 6. Section 350.0614, Florida Statutes, is amended
185 to read:

186 350.0614 Public Counsel; compensation and expenses.—

187 ~~(1)~~ The salaries and expenses of the Public Counsel and
188 his or her employees shall be allocated by the Attorney General
189 ~~committee~~ only from moneys appropriated to the Public Counsel by
190 the Legislature.

191 ~~(2) The Legislature declares and determines that the~~
192 ~~Public Counsel is under the legislative branch of government~~
193 ~~within the intention of the legislation as expressed in chapter~~
194 ~~216, and no power shall be in the Executive Office of the~~
195 ~~Governor or its successor to release or withhold funds~~
196 ~~appropriated to it, but the same shall be available for~~
197 ~~expenditure as provided by law.~~

198 ~~(3) Neither the Executive Office of the Governor nor the~~
199 ~~Department of Management Services or its successor shall have~~
200 ~~power to determine the number, or fix the compensation, of the~~

HB 7071

2017

201 ~~employees of the Public Counsel or to exercise any manner of~~
202 ~~control over them.~~

203 Section 7. Subsections (1) and (2) of section 366.041,
204 Florida Statutes, are amended to read:

205 366.041 Rate fixing; adequacy of facilities as criterion;
206 performance criteria for public utilities supplying
207 electricity.—

208 (1) (a) In fixing the just, reasonable, and compensatory
209 rates, charges, fares, tolls, or rentals to be observed and
210 charged for service within the state by any and all public
211 utilities under its jurisdiction, the commission is authorized
212 to give consideration, among other things, to the efficiency,
213 sufficiency, and adequacy of the facilities provided and the
214 services rendered; the cost of providing such service and the
215 value of such service to the public; the ability of the utility
216 to improve such service and facilities; and energy conservation
217 and the efficient use of alternative energy resources; provided
218 that a ~~no~~ public utility may not ~~shall~~ be denied a reasonable
219 rate of return upon its rate base in any order entered pursuant
220 to such proceedings. In its consideration thereof, the
221 commission shall ~~have authority, and it shall be the~~
222 ~~commission's duty, to~~ hear service complaints, if any, that may
223 be presented by subscribers and the public during any
224 proceedings involving such rates, charges, fares, tolls, or
225 rentals; however, no service complaints shall be taken up or

226 considered by the commission at any proceedings involving rates,
227 charges, fares, tolls, or rentals unless the utility has been
228 given at least 30 days' written notice thereof, and any
229 proceeding may be extended, prior to final determination, for
230 such period; further, no order hereunder shall be made effective
231 until a reasonable time has been given the utility involved to
232 correct the cause of service complaints, considering the factor
233 of growth in the community and availability of necessary
234 equipment.

235 (b) In fixing the just, reasonable, and compensatory
236 rates, charges, fares, tolls, or rentals to be observed and
237 charged for service within the state by all public utilities
238 that supply electricity under its jurisdiction, the commission
239 shall establish utility-specific performance criteria related to
240 system reliability, customer service, power plant performance,
241 utility costs, employee and public safety, customer utilization
242 of approved energy efficiency and conservation programs,
243 implementation of distributed generation programs, the efficient
244 use of alternative energy resources, and any other areas
245 identified by the commission or identified elsewhere in this
246 chapter. Performance criteria shall, to the greatest extent
247 possible, be based on quantitative metrics that are objective,
248 easily measurable and verifiable, and reasonably within the
249 utility's control. In an order entered pursuant to such
250 proceedings, the commission shall develop a mechanism by which

251 overall utility performance will be reviewed and evaluated on an
252 annual basis, based on the performance criteria established by
253 the commission pursuant to this paragraph, and by which the
254 utility's allowed return on equity for the period reviewed shall
255 be adjusted based on its performance. The commission shall
256 design and implement this mechanism to determine whether overall
257 utility performance has been excellent, good, adequate, or
258 unsatisfactory for the period reviewed, and the commission may
259 establish financial incentives to encourage excellent utility
260 performance, provided that:

261 1. A utility whose performance is deemed excellent for the
262 period shall, inclusive of any incentive rewards and penalties,
263 be allowed to retain for that period a return on equity no
264 greater than 100 basis points above the midpoint of the range of
265 reasonableness approved by the commission.

266 2. A utility whose performance is deemed good for the
267 period shall, inclusive of any incentive rewards and penalties,
268 be allowed to retain for that period a return on equity no
269 greater than 50 basis points above the midpoint of the range of
270 reasonableness approved by the commission.

271 3. A utility whose performance is deemed adequate for the
272 period shall, inclusive of any incentive rewards and penalties,
273 be allowed to retain for that period a return on equity no
274 greater than the midpoint of the range of reasonableness
275 approved by the commission.

276 4. A utility whose performance is deemed unsatisfactory
277 for the period shall, inclusive of any incentive rewards and
278 penalties, be allowed to retain for that period a return on
279 equity no greater than 80 percent of the top of the range of
280 reasonableness approved by the commission.

281 (2) The power and authority herein conferred upon the
282 commission shall not cancel or amend any existing punitive
283 powers of the commission but shall be supplementary thereto and
284 shall be construed liberally to further the legislative intent
285 that excellent ~~adequate~~ service be rendered by public utilities
286 in the state in consideration for the rates, charges, fares,
287 tolls, and rentals fixed by said commission and observed by said
288 utilities under its jurisdiction.

289 Section 8. Subsection (7) of section 366.05, Florida
290 Statutes, is amended to read:

291 366.05 Powers.—

292 (7) To assure the development of adequate and reliable
293 energy grids, the commission shall establish by rule a
294 generation reserve margin planning criterion applicable to each
295 public utility under its jurisdiction that provides electric
296 service. The commission shall not approve or recognize the use
297 of a reserve margin planning criterion above 15 percent for any
298 such utility unless it finds that extraordinary circumstances
299 require the use of a higher reserve margin planning criterion to
300 assure an adequate and reliable energy grid. The commission may

301 ~~shall have the power to~~ require reports from all electric
302 utilities to assure the development of adequate and reliable
303 energy grids.

304 Section 9. Subsection (1) of section 366.06, Florida
305 Statutes, is amended to read:

306 366.06 Rates; procedure for fixing and changing.—

307 (1) (a) A public utility shall not, directly or indirectly,
308 charge or receive any rate not on file with the commission for
309 the particular class of service involved, and no change shall be
310 made in any schedule. All applications for changes in rates
311 shall be made to the commission in writing under rules and
312 regulations prescribed, and the commission shall have the
313 authority to determine and fix fair, just, and reasonable rates
314 that may be requested, demanded, charged, or collected by any
315 public utility for its service.

316 (b) The commission shall investigate and determine the
317 actual legitimate costs of the property of each utility company,
318 actually used and useful in the public service, and shall keep a
319 current record of the net investment of each public utility
320 company in such property which value, as determined by the
321 commission, shall be used for ratemaking purposes and shall be
322 the money honestly and prudently invested by the public utility
323 company in such property used and useful in serving the public,
324 less accrued depreciation, and shall not include any goodwill or
325 going-concern value or franchise value in excess of payment made

326 therefor.

327 (c) In fixing fair, just, and reasonable rates for a
328 public utility that provides electric service, the commission
329 shall establish a rate plan that will remain in effect for a
330 fixed period of not less than 3 years and which may provide for
331 clearly defined adjustments to rates during that fixed period to
332 account for expected changes in utility revenues and costs. Such
333 adjustments may include, but are not limited to: index-based
334 adjustments that account for factors such as inflation, customer
335 growth, and industry productivity; predetermined percentage
336 adjustments; adjustments for planned capital additions, subject
337 to commission approval; or a combination of one or more types of
338 adjustments. The rate plan shall also include the performance
339 evaluation mechanism established under s. 366.041 and may
340 include provisions to address the potential for utility earnings
341 during the term of the rate plan, to exceed or fall below the
342 range authorized by the commission in the rate proceeding,
343 provided that such provisions may not be triggered by
344 application of the performance evaluation mechanism established
345 under s. 366.041. Such provisions may include, but are not
346 limited to, mechanisms that provide for the sharing of surplus
347 or deficit earnings and provisions for termination of the rate
348 plan prior to its established termination date.

349 (d) In fixing fair, just, and reasonable rates for each
350 customer class, the commission shall, to the extent practicable,

351 consider the cost of providing service to the class, as well as
352 the rate history, value of service, and experience of the public
353 utility; the consumption and load characteristics of the various
354 classes of customers; and public acceptance of rate structures.

355 Section 10. (1) All powers, duties, functions, records,
356 offices, personnel, property, pending issues, and existing
357 contracts, administrative authority, administrative rules, and
358 unexpended balances of appropriations, allocations, and other
359 funds relating to the Office of Public Counsel pursuant to s.
360 350.061, Florida Statutes, are transferred by a type two
361 transfer, as defined in s. 20.06(2), Florida Statutes, from the
362 Legislature to the Office of the Attorney General. The Office of
363 Public Counsel shall be funded from the General Revenue Fund.

364 (2) Notwithstanding ss. 216.292 and 216.351, Florida
365 Statutes, upon approval by the Legislative Budget Commission,
366 the Executive Office of the Governor shall transfer funds and
367 positions between the Legislature and the Office of the Attorney
368 General to implement this act.

369 Section 11. Paragraph (e) of subsection (2) of s. 350.01,
370 Florida Statutes, as created in section 2 of this act, does not
371 preclude a commissioner appointed before July 1, 2017, from
372 completing his or her appointed term or from seeking
373 reappointment as otherwise permitted by s. 350.01(2)(d).

374 Section 12. This act shall take effect July 1, 2017.