

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Communications and Public Utilities Committee

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BILL: CS/SB 1542

INTRODUCER: Communications and Public Utilities Committee & Senators Constantine and Argenziano

SUBJECT: Office of Public Counsel

DATE: March 14, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Fav/CS</b>
2.			TA	
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6.				

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## I. Summary:

The bill authorizes the Public Counsel to:

- represent the state and its political subdivisions in their capacity as communications services and utility services consumers;
- receive, investigate, and take legal action upon complaints involving communications services not regulated by the Public Service Commission;
- appear before state and federal agencies to enhance terms and conditions of utility and communications services; and
- analyze and report on pending legislation relevant to the utility and communications services.

The bill substantially amends section 350.0611 of the Florida Statutes.

## II. Present Situation:

Section 350.0611, F.S., establishes the duties and powers of the Public Counsel. The Public Counsel provides legal representation for the people of the state in proceedings before the Public Service Commission and in proceedings before counties that regulate water utilities. The section gives the Public Counsel such powers as are necessary to carry out the duties of his or her office, including, but not limited to, the following specific powers:

- To petition the commission or the counties to commence any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission or the counties and urge therein any position which he or she deems to be in

- the public interest, and to utilize in these actions all forms of discovery available to attorneys in civil actions generally;
- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in a proceeding before the commission or the counties;
  - In any proceeding in which he or she has participated as a party, to seek review of any determination, finding, or order of the commission or the counties, or of any hearing examiner designated by the commission or the counties, in the name of the state or its citizens;
  - To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make such recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions; and
  - To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission, in the name of the state or its citizens.

### III. Effect of Proposed Changes:

The bill amends s. 350.0611, F.S., on the duties and powers of the Public Counsel. The bill provides that the Public Counsel is to provide legal representation to the State of Florida and its political subdivisions in their capacity as consumers of communications services and utility services. It also provides that the Public Counsel is to appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission on behalf of the State of Florida and its political subdivisions in their capacity as consumers of communications services and utility services.

The bill authorizes the Public Counsel to receive and investigate complaints on communications services<sup>1</sup> involving quality of service, consumer contract disputes, and other matters not regulated by the Public Service Commission. Additionally, if the Public Counsel believes the practice forming the basis of the complaint constitutes an unfair or deceptive trade practice or

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<sup>1</sup> The bill defines “communications services” by cross-reference to s. s. 202.11(2), F.S., which defines this term as “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes 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 Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services.
- (b) Installation or maintenance of wiring or equipment on a customer's premises.
- (c) The sale or rental of tangible personal property.
- (d) The sale of advertising, including, but not limited to, directory advertising.
- (e) Bad check charges.
- (f) Late payment charges.
- (g) Billing and collection services.
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.

other unlawful practice as defined in s. 501.204, F.S.,<sup>2</sup> either standing on its own or when considered with other similar, actual practices or potentially systemic practices, the Public Counsel is authorized to appear in the name of the citizens of the State of Florida to petition the circuit court of Leon County, or any other circuit court of the state in which the practice was identified, to enjoin the practice as an unfair and deceptive trade practice, and to petition for a judgment for actual damages for aggrieved consumers, for civil penalties of not more than \$10,000 for each willful unfair and deceptive trade practice, and to recover attorney's fees and costs of investigation and court costs. Any moneys collected under this subsection, other than moneys recovered for consumer damages, shall be deposited as received into the General Revenue Fund unallocated.

The bill also authorizes the Public Counsel to appear before state and federal agencies in the name of the state or its citizens, and on behalf of the State of Florida and its political subdivisions in their capacity as consumers of communications services and utility services, for any purpose which in the discretion of the Public Counsel would enhance terms and conditions of utility and communications services afforded to the Citizens of the State of Florida or to the state or its political subdivisions as consumers or would lead to more affordable rates charged by utility and communications providers. The Public Counsel is also authorized to challenge any fee, tax or other assessment levied by any state or federal authority that the Public Counsel believes to be materially adverse to the affordability of utility and communications provided to Florida Citizens or to the State of Florida as a consumer.

Finally, the bill authorizes the Public Counsel to analyze all pending legislation during each legislative session that is relevant to the provision of utility and communications services in the state and is further authorized and directed to prepare and submit periodic reports to the office of the Speaker of the House and the President of the Senate as well as the substantive committees to include, but not be limited to, the likely effect of pending legislation on conditions of service and the affordability of rates charged for utility and communications services provided in the state.

The bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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<sup>2</sup> Section 501.204, F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. It further provides that in construing this provision, due consideration and great weight are to be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2001.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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