

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2232/P1dn
MDK:jld:rs

April 25, 2013

Sen. Cowles:

Please note the following about this draft:

1. I restructured the language you provided to be consistent with the structure of s. 227.50 (1). Also, I made some changes to s. 227.50 (1) to eliminate the redundant “this subsection does not apply to” language at the beginning of s. 227.50 (1) (c), (d), and (e). To help you review the draft’s changes, here is how the draft changes s. 227.50 (1):

“227.50 (1) (a) ~~In~~ Except as provided in par. (am), in a contested case, no ex parte communication relative to the merits or a threat or offer of reward shall be made, before a decision is rendered, to the hearing examiner or any other official or employee of the agency who is involved in the decision-making process, by any of the following:

~~1. 1m.~~ 1. 1m. An official of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter; ~~or (b) Paragraph (a) 1.~~ This subdivision does not apply to an advisory staff which does not participate in the proceeding.

2. A party to the proceeding, or any person who directly or indirectly would have a substantial interest in the proposed agency action or an authorized representative or counsel.

~~(c) This subsection (am) Paragraph (a) does not apply to an~~ any of the following:

1. An ex parte communication which is authorized or required by statute.

~~(d) This subsection does not apply to an~~ 2. An ex parte communication by an official or employee of an agency which is conducting a class 1 proceeding.

~~(e) This subsection does not apply to any~~ 3. Any communication made to an agency in response to a request by the agency for information required in the ordinary course of its regulatory functions by rule of the agency.

4. In a contested case before the public service commission, an ex parte communication by or to any official or employee of the commission other than the hearing examiner or a commissioner.”

2. The draft prohibits ex parte communications by or to PSC commissioners, but allows ex parte communications by or to other PSC staff, such as commissioner executive assistants and legal staff. Is that okay?

3. I included an initial applicability provision that provides that the draft's changes first apply to ex parte communications made on or after the draft's effective date, which would include those made in contested case begun before the effective date. Is that okay, or should the draft apply only to contested cases begun on or after the effective date? Or do you prefer another approach to initial applicability?

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