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COMMITTEE REPORT

February 23, 2012

**H. 4205**

Introduced by Reps. Funderburk, G.A. Brown and Lucas

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Read the first time May 11, 2011.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4205) to amend Article 8, Chapter 36, Title 33, Code of Laws of South Carolina, 1976, relating to corporations not‑for‑profit providing water service financed by, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND ARTICLE 8, CHAPTER 36, TITLE 33, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CORPORATIONS NOT‑FOR‑PROFIT PROVIDING WATER SERVICE FINANCED BY FEDERAL OR STATE LOANS BEING PERMITTED TO CONVERT TO A PUBLIC SERVICE DISTRICT, BY ADDING SECTION 33‑36‑1315 SO AS TO PROVIDE FOR ADDITIONAL CONVERSION PROVISIONS, TERMS, AND LIMITATIONS FOR NONPROFIT CORPORATIONS OF A CERTAIN SIZE THAT PROVIDE WATER SERVICE IN TWO OR MORE COUNTIES; AND TO AMEND SECTION 33‑36‑1330, RELATING TO THE GOVERNING BOARD AND STRUCTURE OF A CORPORATION WHICH HAS BEEN CONVERTED TO A PUBLIC SERVICE DISTRICT, SO AS TO PROVIDE FOR THE GOVERNING STRUCTURE OF A PUBLIC SERVICE DISTRICT OF A CERTAIN SIZE THAT PROVIDES SERVICE IN TWO OR MORE COUNTIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds and determines, as facts, as follows:

(A) Corporations not‑for‑profit financed upon their original organization in whole or in part by federal or state loans provide water or sewer service, or a combination of water and sewer service, in various service areas throughout the State of South Carolina.

(B) In Williamsburg Rural Water & Sewer Co. v. Williamsburg County Water & Sewer Authority, 367 S.C. 566 (2006), the South Carolina Supreme Court stated that, in the event that a county declines to provide “these vital services to underserved areas,” such a corporation may “step into a governmental void” in order to do so, and thereby act as “a quasi‑public utility, as evidenced by the unique condemnation provisions applicable only to these type corporations.”

(C) Certain such corporations, over the passage of time, have expanded into multicounty, regional utility providers, and now serve thousands of customers in large service areas. These corporations are materially limited by the provisions of Chapter 36, Title 33 of the 1976 Code in the safe, effective, and cost‑efficient provision of utility services, in particular by the provisions of Chapter 36, Title 33 imposing unwieldy and burdensome membership rights relating to dissolution, merger, or transfer of assets. The administrative burden of these provisions is particularly exacerbated by the fact that termination of customer status does not terminate membership status, which is permanent.

(D) Moreover, these corporations will achieve materially lower borrowing costs, thereby decreasing their own costs and ultimately the rates paid by customers, by being recognized as political subdivisions of the State as contemplated by Section 103 of the Internal Revenue Code of 1986, as amended. It is an express purpose of this act that a corporation not‑for‑profit financed by federal or state loans, upon conversion to a public service district as permitted by Chapter 36, Title 33, will constitute a political subdivision of the State of South Carolina within the meaning of Section 103.

(E) The public health, safety, and welfare of the State of South Carolina will be furthered by allowing such a corporation, of a certain size and providing service in two or more counties, to convert to a public service district upon the satisfaction of the terms and conditions contained in Chapter 36, Title 33, as amended by this act. Without limiting the generality of the foregoing, the specific benefits of the conversion will include, without limitation, more efficient and cheaper administration, lower capital borrowing costs, more streamlined powers, lower rates to customers, higher quality service, more government accountability, greater capability for and responsiveness to local economic development, and greater transparency.

(F) Corporations not‑for‑profit financed by federal or state loans satisfying the size and service area requirements provided herein are regional in nature, are not specific or peculiar to a single county or counties, and provide services that cannot effectively be devolved upon a single county or existing governmental unit.

(G) Corporations not‑for‑profit financed by federal or state loans, once they have achieved the minimum size and service area requirements set forth in Section 33‑36‑1315, as added by this act, are often unable to comply with required notice procedures to satisfy quorum and voting requirements applicable to members. Among other things, because membership in such a corporation is perpetual and is not conditioned on current status as a customer, the corporation may have numerous members who may no longer be active customers, and may no longer reside in the corporation’s service area or even in the State of South Carolina. Therefore, it is a further express purpose of this act that corporations not‑for‑profit financed by federal or state loans, satisfying the minimum size and service area requirements set forth herein, have an alternative means of securing consent to the conversion herein described.

SECTION 2. Article 8, Chapter 36, Title 33 of the 1976 Code is amended by adding:

“Section 33‑36‑1315. (A) Corporations not‑for‑profit incorporated for the purposes of providing water service that, pursuant to the provisions of this article, serve a population of at least twenty thousand persons as shown in the most recent sanitary survey of the South Carolina Department of Health and Environmental Control, and that provide water service in two or more counties within the State, may determine, by resolution adopted by the board of directors of the corporation and subject to the additional conditions provided in this section, to become a public service district, a public body politic and corporate, and a political subdivision of the State. The procedures provided in this section are valid, complete, and sufficient to effect the conversion notwithstanding any contrary provisions of law or the corporation’s organizational documents or bylaws.

(B) Notice of the meeting of the board of directors at which the resolution to become a public service district is to be considered must be given by regular mail to each member of the corporation, addressed to the last known address of the member, and mailed not less than ten days before the meeting. Notice shall become effective upon mailing. The secretary of the corporation shall certify the date of mailing as to each member. The notice shall state the purpose, time, and place of the meeting. At the meeting, the board of directors shall afford any members in attendance with an opportunity to speak and be heard in support of or in opposition to the conversion of the corporation to a public service district.

(C) Promptly after adoption by the board of directors of a resolution to become a public service district, the board of directors shall cause notice of the adoption to be mailed by regular mail to each member of the corporation, addressed to the last known address of the member. In addition, the board of directors, not earlier than the mailing required above, also shall cause the notice of adoption to be published at least once in one or more newspapers of general circulation in the counties in which the corporation provides service. The mailed and published notices shall include the name of the corporation, a statement that the board of directors has determined by resolution that the corporation shall be converted to a public service district, the date of the adoption of the resolution, and a statement that the resolution shall become effective and not subject to further review unless a petition signed by not less than fifteen percent of the membership of the corporation is filed as provided in this section. Within sixty days after the publication of the last notice required by this subsection, a petition signed by the members of the corporation equal in number to at least fifteen percent of the total membership may be filed with the clerk of court for the counties in which the corporation provides service calling for a vote of the membership on the question of whether the corporation shall become a public service district.

(D) Except for a petition being duly and timely filed in accordance with subsection (C), no action whatsoever may be commenced to challenge on any grounds the conversion of the corporation to a public service district more than ninety days after the date of the last publication required by subsection (C).

(E) If a petition shall be duly and timely filed in accordance with subsection (C), then the board of directors shall call a meeting of the members of the corporation to submit the question of whether the corporation shall become a public service district. Notice of this meeting must be given by regular mail to each member of the corporation, addressed to the last known address of the member, and mailed not less than ten days before the meeting. Notice shall become effective upon mailing. The secretary of the corporation shall certify the date of mailing as to each member. The notice shall state the purpose, time, and place of the meeting. The question shall be determined upon a majority vote of the members present in person at the meeting and voting. Action taken at the meeting shall be effective only if a quorum of the members of the corporation is present in person. For purposes of this subsection, a quorum consists of at least fifteen percent of the members of the corporation upon admission to the meeting.

(F) If the membership vote results in a determination to become a public service district, then the corporation shall promptly cause notice of the result to be mailed by regular mail to each member, addressed to the last known address of each member. In addition, the corporation, not earlier than the date of the mailing required above, also shall cause notice of the result to be published once in a newspaper or newspapers of general circulation in each county in which the corporation provides service. The mailed and published notices shall include the name of the corporation, a statement that the corporation has determined by membership vote to become a public service district, and a statement that no action may be commenced on account of the meeting or the conversion of the corporation to a public service district more than twenty days after the date of the final publication. No action whatsoever may be commenced to challenge on any grounds the conversion of the corporation to a public service district more than twenty days after the date of the final publication.

(G) Upon a final, favorable determination, either by vote of the board of directors or by vote of the membership in the event a petition has been duly and timely filed in accordance with subsection (C), to become a public service district, and upon the expiration of the limitation periods provided by this section, the chief executive officer of the corporation shall petition the Secretary of State to issue a new charter to convert and constitute the nonprofit corporation a public service district, a public body politic and corporate and political subdivision of the State.”

SECTION 3. Section 33‑36‑1330 of the 1976 Code is amended to read:

“Section 33‑36‑1330. (A) For a corporation converted to a public service district pursuant to Section 33‑36‑1310, the existing board of directors and officers shall serve until the expiration of their present terms. Thereafter, and not less than forty‑five days ~~prior to~~ before any expiration of the term of a board member, the board of directors shall submit to the county legislative delegation the name or names of a person or persons recommended for appointment or reappointment. A letter of recommendation by the board stating why the name or names are recommended shall accompany the submission. The county legislative delegation shall consider the recommendation of the board but are not limited to make a selection for its own recommendation from among those submitted. Upon recommendation of the county legislative delegation, members of the board must be appointed by the Governor for a term of four years. A vacancy may be filled by the board, if the remaining term is less than two years; if more than two years, then in the usual manner for the unexpired term.

(B) For a corporation converted to a public service district pursuant to Section 33‑36‑1315, the existing directors, who shall constitute the initial governing board of the district, and officers shall serve until the expiration of their then current terms. Thereafter, the public service district must be governed by a board comprising the same number of members as the predecessor corporation had as directors; provided that the governing board shall comprise no fewer than five members and no more than nine members. The governing board, by resolution, may decrease the number of members to not less than five and may increase the number of members to not more than nine. The successor members must be recommended by the board and appointed by the respective county legislative delegations in accordance with the following procedures. Each county legislative delegation shall have the right to appoint a number of members that bears the same relationship to the total number of members as the number of customers of the district within the county bears to the total number of customers of the district. The number of customers within each county, and the total number of customers, must be determined by reference to the billing and customer records of the public service district. Not less than forty‑five days before the expiration of the term of any member, the governing board shall submit to the county legislative delegation with the right to appoint the successor member the name of a person recommended for appointment or reappointment to the board. A letter of recommendation by the board stating why the name is recommended shall accompany the submission. The county legislative delegation shall consider the recommendation of the board, but is not limited to that person in making its appointment. Each member must be appointed for a term of four years and until his successor is appointed and qualifies, provided that the terms of the members must be staggered by a county legislative delegation in making its appointments such that approximately one‑half of the total members appointed by that county legislative delegation must be appointed or reappointed every two years. No member may be appointed for more than two consecutive terms. A vacancy must be filled for the remainder of the unexpired term in the manner of original appointment.

(C) For a corporation converted to a public service district pursuant to Section 33‑36‑1310, the governing body of the district, by a resolution adopted by a two‑thirds vote of all members of the governing body, may request that board members be elected in a nonpartisan general election. If adopted, a certified copy of the resolution and a map clearly setting out the lines of the boundaries of the district in the county or counties in which the district is situated must be presented to the county election commission ~~prior to~~ before August first of a general election held in an even numbered year for the election to be held at the general election in November of that year. The governing body must be elected from single member election districts.

~~(C)~~(D) Notice of the election must be published by the governing body of the district at least three times ~~prior to~~ before the election, including (i) not less than sixty days ~~prior to~~ before the date of the election, (ii) two weeks after the first date of publication, and (iii) a date not more than fifteen and not less than ten days before the date of the election. The notice must appear in a newspaper of general circulation within the district and contain at a minimum the following:

(1) the full name of the district and its governing body;

(2) the names, addresses, and telephone numbers of the members of the district’s governing body;

(3) the existing means of appointment of members of the district’s governing body;

(4) a brief description of the governmental services provided by the district;

(5) a map showing generally the boundaries of the district;

(6) a list of precincts and polling places in which ballots may be cast; and

(7) an explanation of the procedure to be followed for election of members of the district’s governing body and state.”

SECTION 4. The provisions of this act are declared to be severable and if any one or more of the provisions are deemed to be invalid by a court of competent jurisdiction, then the remainder of the provisions are deemed to be of full force and effect and are a full and complete authorization to the extent of this intent. The enforceability and effectiveness of portions of this act not subject to preclearance under the Voting Rights Act of 1965 (42 U.S.C. §§ 1973, et seq.) shall not be subject to preclearance of any portions of this act, if any, that are subject to preclearance under said Voting Rights Act of 1965.

SECTION 5. This act takes effect upon approval by the Governor.

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