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COMMITTEE REPORT

January 10, 2018

**H. 4378**

Introduced by Reps. McCoy, Ott, Lucas, Anderson, Ballentine, Blackwell, Caskey, Crawford, Crosby, Davis, Finlay, Forrester, Gilliard, Hardee, Henegan, Hixon, Mack, Pope, Rutherford, J.E. Smith, Sandifer, Stavrinakis, Erickson, Huggins, W. Newton, Bales, Young, McEachern, Clary, Tallon, Brown, Fry, Robinson‑Simpson, V.S. Moss, Clyburn, Bennett and Arrington

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Read the first time January 9, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4378) to amend the Code of Laws of South Carolina, 1976, by adding Article 6 to Chapter 3, Title 58 so as to create the Utility Oversight, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, Part 3, by adding an appropriately numbered SECTION to read:

/ SECTION \_\_\_. Section 8‑13‑1344(A) of the 1976 Code, as added by Act 248 of 1991, is amended to read:

“(A)(1) A public utility may not include in its operating expenses a contribution or expenditure to influence an election or to operate a political action committee.

(2) A public utility may not make a campaign contribution to any member of the Utility Oversight Committee, established pursuant to Article 6, Chapter 3, Title 58.” /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 3, TITLE 58 SO AS TO CREATE THE UTILITY OVERSIGHT COMMITTEE AND TO PROVIDE FOR THE COMPOSITION, DUTIES, AND ADMINISTRATION OF THE COMMITTEE; TO REPEAL ARTICLE 5, CHAPTER 3, TITLE 58 RELATING TO THE STATE REGULATION OF PUBLIC UTILITIES REVIEW COMMITTEE; AND TO AMEND SECTIONS 8‑13‑935, 58‑3‑5, 58‑9‑280, 58‑9‑285, 58‑9‑2689, 58‑27‑2630, 58‑31‑20, AND 58‑39‑140, ALL RELATING TO UTILITIES AND THE REGULATION AND OVERSIGHT OF UTILITIES, SO AS TO MAKE CONFORMING CHANGES.

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

Part 1

Utility Oversight

SECTION 1. Chapter 3, Title 58 of the 1976 Code is amended by adding:

“Article 6

Utility Oversight Committee

Section 58‑3‑610. There is hereby established a committee to be known as the Utility Oversight Committee, hereinafter called the oversight committee, which must exercise the powers and fulfill the duties described in this article.

Section 58‑3‑620. (A) The oversight committee shall be composed of twelve members, three of whom shall be members of the House of Representatives, including the Speaker of the House of Representatives, or his designee, the Chairman of the Labor, Commerce and Industry Committee, or his designee, and the Minority Leader of the House, or his designee, three of whom shall be members of the Senate, including the President Pro Tempore of the Senate, or his designee, Chairman of the Senate Judiciary Committee, or his designee, and the Minority Leader of the Senate, or his designee. Also, the Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint a member from the general public. The remaining four members shall be appointed by the Governor from the general public. Each member appointed from the general public must meet the qualification of Section 58‑3‑20(A). Provided, however, that in making appointments to the committee, race, gender, and other demographic factors should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State. The members of the general public must be representative of all citizens of this State and must not be members of the General Assembly.

(B) The oversight committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman, and other officers as the oversight committee may consider necessary. Thereafter, the oversight committee must meet at least annually and at the call of the chairman or by a majority of the members. A quorum consists of six members.

(C) Unless the oversight committee finds a candidate qualified and nominates the candidate for a seat on the Public Service Commission or for the Executive Director of the Office of Regulatory Staff, the candidate must not be elected to the Public Service Commission or appointed to serve as Executive Director of the Office of Regulatory Staff.

(D) The members appointed from the general public serve for a term of four years, except that of those appointed in 2018, three of the Governor’s appointees shall serve for a term of two years. In making the appointments, the Governor shall specify the length of each appointee’s term. Thereafter, the members appointed from the general public shall serve for a term of four years.

(E) A person may not be appointed to the oversight committee if that person has made a political contribution to the appointing authority in the appointing authority’s applicable current election cycle or the previous two election cycles. For purposes of this section, ‘election cycle’ has the same meaning as provided in Section 8‑13‑1300.

Section 58‑3‑630. The oversight committee has the following powers and duties:

(1) to nominate:

(a) no more than three candidates for each seat on the Public Service Commission to be elected by the General Assembly. In order to be nominated, a candidate must be found qualified by meeting the requirements as provided in Sections 58‑3‑20 and 58‑3‑560;

(b) no more than one qualified candidate for the Governor to consider in appointing the Executive Director of the Office of Regulatory Staff. In order to be nominated, a candidate must be found qualified by meeting the minimum requirements as provided in Section 58‑4‑30. The oversight committee must give due consideration to a candidate’s experience and expertise in matters related to public utilities. A person must not be appointed to serve as Executive Director of the Office of Regulatory Staff unless nominated by the oversight committee. If the Governor rejects a person nominated for the position of executive director by the oversight committee, the oversight committee must nominate another candidate for the Governor to consider, until the Governor makes an appointment;

(2) notwithstanding any other provision of law, to set the salary of the Executive Director of the Office of Regulatory Staff;

(3) to review candidates for appointment to the South Carolina Public Service Authority Board of Directors as submitted by the Governor to determine whether the candidates meet the qualifications set forth in Section 58‑31‑20;

(4) to conduct an annual performance review of each member of the commission, which must be submitted to the General Assembly. A draft of the member’s performance review must be submitted to the member, and the member must be allowed an opportunity to be heard before the oversight committee before the final draft of the performance review is submitted to the General Assembly. The final performance review must be made a part of the member’s record for consideration if the member seeks reelection to the commission;

(5) to evaluate the actions of the commission, to the end that the members of the General Assembly may better judge whether these actions serve the best interests of the citizens of South Carolina, both individual and corporate;

(6) to develop and distribute to each party and its representatives appearing before the commission an anonymous and confidential survey evaluating the commissioners. At a minimum, the survey must include the following:

(a) knowledge and application of substantive utility issues; ability to perceive relevant issues;

(b) absence of influence by political considerations;

(c) absence of influence by identities of lawyers;

(d) absence of influence by identities of litigants;

(e) courtesy to all persons appearing before the commission; and

(f) temperament and demeanor in general, preparation for hearings, and attentiveness during hearings;

(7) to submit to the General Assembly, on an annual basis, the oversight committee’s evaluation of the performance of the commission. A proposed draft of the evaluation must be submitted to the commission before submission to the General Assembly, and the commission must be given an opportunity to be heard before the oversight committee before the completion of the evaluation and its submission to the General Assembly;

(8) to conduct an annual performance review of the Executive Director of the Office of Regulatory Staff, which must be submitted to the General Assembly. A draft of the executive director’s performance review must be submitted to the executive director, and the executive director must be allowed an opportunity to be heard before the oversight committee before the final draft of the performance review is submitted to the General Assembly;

(9) to submit to the General Assembly, on an annual basis, the oversight committee’s evaluation of the performance of the Office of Regulatory Staff. A proposed draft of the evaluation must be submitted to the Office of Regulatory Staff before submission to the General Assembly, and the Office of Regulatory Staff must be given an opportunity to be heard before the oversight committee before the completion of the evaluation and its submission to the General Assembly;

(10)(a) to assist the staff of the oversight committee in developing an annual workshop of at least six contact hours concerning ethics and the Administrative Procedures Act for the commissioners and employees of the Public Service Commission and the Executive Director and employees of the Office of Regulatory Staff;

(b) to specify the types of continuing education curriculum the commissioners and their employees must attend, and to approve of the curriculum if it is determined to be satisfactory;

(11) to make reports and recommendations to the General Assembly on matters relating to the powers and duties set forth in this section;

(12) to submit a letter with the annual budget proposals of the Office of Regulatory Staff and the Public Service Commission, indicating the oversight committee has reviewed and approved the proposals;

(13) to appoint a committee from the general public at large to advise the oversight committee on any of its powers and duties. Members must not be members of the General Assembly, members or employees of the Public Service Commission, or the Executive Director or employees of the Office of Regulatory Staff;

(14) to undertake such additional studies or evaluations as the oversight committee considers necessary; and

(15) to submit to the General Assembly, on an annual basis, a review of the state energy action plan of the State Energy Office as required by Section 48‑52‑430.

Section 58‑3‑640. (A) The oversight committee members are entitled to such mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which appointed. These expenses shall be paid from the general fund of the State on warrants duly signed by the chairman of the oversight committee and payable by the authorities from which they are appointed, except as provided in subsection (B) of this section.

(B) The expenses associated with the oversight committee’s duties to qualify and nominate candidates for the commission and the Executive Director of the Office of Regulatory Staff, to develop and distribute surveys, to develop an annual workshop on ethics and the Administrative Procedures Act, and to undertake studies shall be borne by the public utilities subject to the jurisdiction of the Public Service Commission. On or before the first day of July in each year, the Department of Revenue must assess each public utility its proportion of the expenses in proportion to its gross income from operation in this State in the year ending on the thirtieth day of June preceding that on which the assessment is made which is due and payable on or before July fifteenth. The assessments must be charged against the companies by the Department of Revenue and collected by the department in the manner provided by law for the collection of taxes from the companies including the enforcement and collection provisions of Article 1, Chapter 54, Title 12 and paid, less the Department of Revenue actual incremental increase in the cost of administration into the state treasury as other taxes collected by the Department of Revenue for the State. The oversight committee must certify to the Department of Revenue annually on or before May first the amounts to be assessed. The expenses of the oversight committee shall be advanced by a legislative body and the legislative body incurring such expense shall be reimbursed by the State at such time as the funds have been collected from the corporations liable therefor and, when collected, placed in the state treasury.

Section 58‑3‑650. (A) The oversight committee must use clerical and professional employees of the General Assembly for its staff, who must be made available to the oversight committee.

(B) The oversight committee may employ or retain other professional staff, upon the determination of the necessity for other staff by the oversight committee.

(C) The oversight committee may employ consultants to assist in identifying candidates for the Executive Director of the Office of Regulatory Staff.

(D) Except as provided in Section 58‑3‑540(B), the costs and expenses of the oversight committee must be funded in the annual state General Appropriations Act.

Section 58‑3‑660. (A) Whenever an election is to be held by the General Assembly in joint session to elect a person to serve on the commission, the oversight committee must conduct its screening pursuant to the provisions of Section 2‑20‑10, et seq.; however, Section 2‑20‑40 is not applicable to a screening by the oversight committee.

(B) In order to be nominated for a seat on the commission, candidates must meet the requirements of Section 58‑3‑20 and this section. In screening candidates for the commission and making its findings, the oversight committee must seek to find the best qualified people by giving due consideration to:

(1) ability, dedication, compassion, common sense, and integrity of the candidates; and

(2) the race and gender of the candidates and other demographic factors to assure nondiscrimination to the greatest extent possible of all segments of the population of the State.

Section 58‑3‑670. The oversight committee must allocate personal service positions and other appropriations within the commission to either the commission or the Office of Regulatory Staff. The oversight committee must organize appropriate divisions within the commission and, as submitted by the executive director, within the Office of Regulatory Staff. Notwithstanding any other provision of law, the oversight committee is authorized to approve position descriptions and compensation schedules for each position within the Office of Regulatory Staff. Notwithstanding any other provision of law, the salary of the Executive Director of the Office of Regulatory Staff shall not be construed as limiting the maximum salary that may be paid to other employees of the Office of Regulatory Staff. The oversight committee’s authority to reorganize the agencies and assign personal service positions and other appropriations supersedes any provision of law to the contrary. In effectuating the oversight committee’s assignment of positions between agencies, the Department of Administration is directed to assign through transfer both the position and the appropriation for the position. Notwithstanding this section or any other provision of law, the Executive Director of the Office of Regulatory Staff has sole authority to select and employ personnel of the Office of Regulatory Staff. A commission employee whose position is transferred to the Office of Regulatory Staff is, upon application to the executive director, entitled only to due consideration for the position.”

SECTION 2. Article 5, Chapter 3, Title 58 of the 1976 Code is repealed.

Part 2

Conforming Provisions

SECTION 3. Section 8‑13‑935 of the 1976 Code, as added by Act 175 of 2004, is amended to read:

“Section 8‑13‑935. (A) No candidate for or person intending to become a candidate for the Public Service Commission may seek, directly or indirectly, the pledge of a member of the General Assembly’s vote or contact, directly or indirectly, a member of the General Assembly regarding screening for the Public Service Commission, until: (1) the qualifications of all candidates for that office have been determined by the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee, and (2) the ~~review~~ oversight committee has formally released its report as to the qualifications of all candidates for the office to the General Assembly. For purposes of this section, ‘indirectly seeking a pledge’ means the candidate, or someone acting on behalf of and at the request of the candidate, requests a person to contact a member of the General Assembly on behalf of the candidate before nominations are formally made by the ~~review~~ oversight committee. The prohibitions of this section do not extend to an announcement of candidacy by the candidate or statement by the candidate detailing the candidate’s qualifications.

(B) No member of the General Assembly may offer his pledge until: (1) the qualifications of all candidates for the Public Service Commission have been determined by the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee, and (2) the ~~review~~ oversight committee has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications must occur no earlier than forty‑eight hours after the names of nominees have been initially released to members of the General Assembly.

(C) No member of the General Assembly may trade anything of value, including pledges to vote for legislation or for other candidates, in exchange for another member’s pledge to vote for a candidate for the Public Service Commission.

(D)(1) Violations of this section may be considered by the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee when it considers the candidate’s qualifications.

(2) Violations of this section by members of the General Assembly must be reported by the ~~review~~ oversight committee to the House or Senate Ethics Committee, as may be applicable.

(3) Violations of this section by incumbent commissioners seeking reelection must be reported by the Public Service Commission to the State Ethics Commission.

A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days. Cases tried under this section may not be transferred from general sessions court pursuant to Section 22‑3‑545.”

SECTION 4. Section 58‑3‑5(7) of the 1976 Code is amended to read:

“(7) ‘~~Review~~ Oversight committee’ means the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee.”

SECTION 5. Section 58‑9‑280(E)(11) of the 1976 Code, as amended by Act 181 of 2016, is further amended to read:

“(11) In order to create an environment that ensures financial stability necessary to encourage long‑term investment by carriers of last resort while providing for appropriate oversight:

(a) within two years after the effective date of this subitem, the Office of Regulatory Staff shall provide a report to the ~~Public Utilities Review Committee (PURC)~~ Utility Oversight Committee as to the State Universal Service Fund, the need for funding, and the appropriate level of distributions; and

(b) every four years thereafter, the Office of Regulatory Staff shall provide a report to ~~PURC~~ the Utility Oversight Committee as to the status of the State Universal Service Fund, provide recommendations, and provide such other information as the ~~PURC~~ Utility Oversight Committee deems appropriate.”

SECTION 6. Section 58‑9‑285(G) of the 1976 Code is amended to read:

“(G) The ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee may request the Office of Regulatory Staff to compile information to enable the ~~review~~ oversight committee to monitor the effect of bundled offerings and contract offerings on the provision of telecommunications services in South Carolina.”

SECTION 7. Section 58‑9‑2689 of the 1976 Code is amended to read:

“Section 58‑9‑2689. No later than five years from the effective date of this act and every five years following the submission of the first report, the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee must submit to the General Assembly a report examining the effect of this act on residential and business consumers in areas served by communication providers. The reports must assess and determine the impact of the amendments to current law in this act on the availability of communications services to rural counties of the State and report whether the amendments to current law incorporated in this act have had an adverse impact on the provision of communications services in such rural areas. The reports must include data describing the extent of capital improvement and investment by communications service providers in rural counties since the adoption of the amendments to current law included in this act and present any recommendations it may have regarding the continuation, amendment, or repeal of the amendments to current law included in the act. The reports must not disclose any proprietary or confidential information about individual communications service providers.”

SECTION 8. Section 58‑27‑2630(C) of the 1976 Code is amended to read:

“(C) The Office of Regulatory Staff shall review the program established pursuant to this article and issue a report to the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee no later than December 31, 2016, relating to its review, including recommendations regarding the expansion, reduction, or continuance of the program.”

SECTION 9. Section 58‑31‑20(A) and (B) of the 1976 Code is amended to read:

“(A) The Public Service Authority consists of a board of twelve directors who reside in South Carolina and who have the qualifications stated in this section, as determined by the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee pursuant to Section 58‑3‑530(14), before being appointed by the Governor with the advice and consent of the Senate as follows: one from each congressional district of the State; one from each of the counties of Horry, Berkeley, and Georgetown who reside in authority territory and are customers of the authority; and two from the State at large, one of whom must be chairman. Two of the directors must have substantial work experience within the operations of electric cooperatives or substantial experience on an electric cooperative board, including one of the two who must have substantial experience within the operations or board of a transmission or generation cooperative. A director shall not serve as an employee or board member of an electric cooperative during his term as a director. Each director shall serve for a term of seven years, except as provided in this section. At the expiration of the term of each director and of each succeeding director, the Governor, with the advice and consent of the Senate, must appoint a successor, who shall hold office for a term of seven years or until his successor has been appointed and qualified. In the event of a director vacancy due to death, resignation, or otherwise, the Governor must appoint the director’s successor, with the advice and consent of the Senate, and the successor‑director shall hold office for the unexpired term. A director may not receive a salary for services as director until the authority is in funds, but each director must be paid his actual expense in the performance of his duties, the actual expense to be advanced from the contingent fund of the Governor until the time the Public Service Authority is in funds, at which time the contingent fund must be reimbursed. After the Public Service Authority is in funds, the compensation and expenses of each member of the board must be paid from these funds, and the compensation and expenses must be fixed by the advisory board established in this section. Members of the board of directors may be removed for cause, pursuant to Section 1‑3‑240(C), by the Governor of the State, the advisory board, or a majority thereof. A member of the General Assembly of the State of South Carolina is not eligible for appointment as Director of the Public Service Authority during the term of his office. No more than two members from the same county may serve as directors at any time.

(B) Candidates for appointment to the board must be screened by the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee and, prior to confirmation by the Senate, must be found qualified by meeting the minimum requirements contained in subsection (C). The ~~review~~ oversight committee must submit a written report to the Clerk of the Senate setting forth its findings as to the qualifications of each candidate. A candidate must not serve on the board, even in an interim capacity, until he is screened and found qualified by the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee.”

SECTION 10. Section 58‑39‑140(E) of the 1976 Code is amended to read:

“(E) No later than July 31, 2016, the Office of Regulatory Staff shall prepare and submit to the General Assembly with copies to all members of the ~~State Regulation of Public Utilities Review~~ Utility Oversight Committee a report on the implementation of this chapter and Chapter 40 of this title. The Office of Regulatory Staff shall update this report no later than July 31, 2017, and each two years thereafter. Upon receipt and review of these reports, and in consultation with the General Assembly, the ~~Public Utilities Review~~ Utility Oversight Committee shall make recommendations to the Office of Regulatory Staff as to any changes in implementation that may be needed.”

SECTION 11. Upon the effective date of this act, any reference to the ‘State Regulation of Public Utilities Review Committee’ must be construed to mean the ‘Utility Oversight Committee.’ The Code Commissioner is directed to make appropriate conforming changes to the 1976 Code of Laws reflecting the provisions of this act.

Part 3

Miscellaneous Provisions and Effective Date

SECTION 12. (A) Except as provided in subsection (B), this act takes effect ten days after approval by the Governor. The oversight committee shall meet as soon as practicable to organize itself pursuant to Section 58‑3‑620(B).

(B) To ensure a seamless transition, upon approval by the Governor, the appointing authorities may make their appointments to the oversight committee.

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