~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

May 8, 2019

**H. 3145**

Introduced by Reps. Ott, Clary, Cobb‑Hunter, Collins, Jefferson, Kirby, Willis, Cogswell, D.C. Moss, G.R. Smith, Elliott, Sandifer, Lucas, Ballentine, Caskey, Simrill, West, Murphy, McKnight, Mace, Kimmons, Davis, Magnuson, Sottile, Hewitt, Hiott, B. Newton, Pope, Forrest, Bales, Rutherford, R. Williams, Gilliam, Norrell, Funderburk, G.M. Smith, Weeks, Ridgeway, Yow, W. Newton, Bamberg, Stavrinakis, McCoy, Erickson, Blackwell, Wheeler, Fry, Bannister, Calhoon, Huggins, Gilliard and Taylor

S. Printed 5/8/19--S.

Read the first time March 26, 2019.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 33‑49‑150 SO AS TO PROVIDE THAT THE OFFICE OF REGULATORY STAFF IS VESTED WITH THE AUTHORITY AND JURISDICTION TO CONDUCT AUDITS OF ELECTRIC COOPERATIVES IN THE SAME MANNER, TERMS, AND CONDITIONS IT IS AUTHORIZED TO CONDUCT AUDITS OF REGULATED PUBLIC UTILITIES AS PROVIDED BY LAW; TO AMEND SECTION 33‑49‑420, RELATING TO ANNUAL MEETINGS OF MEMBERS OF AN ELECTRIC COOPERATIVE, SO AS TO REVISE THE NOTICE REQUIREMENTS FOR CERTAIN MEETINGS; TO AMEND SECTION 33‑49‑430, RELATING TO A QUORUM AT MEETINGS OF ELECTRIC COOPERATIVES, SO AS TO ALLOW PERSONS CASTING EARLY VOTING BALLOTS FOR THE ELECTION OF TRUSTEES TO BE COUNTED FOR PURPOSES OF DETERMINING A QUORUM AT THE MEETING FOR THE ELECTION, AND TO PROHIBIT VOTING BY PROXY; TO AMEND SECTION 33‑49‑440, RELATING TO VOTING BY MEMBERS AND SECTION 33‑49‑620, RELATING TO VOTING DISTRICTS FROM WHICH SOME MEMBERS OF THE BOARD OF TRUSTEES MAY BE ELECTED, SO AS TO PERMIT EARLY VOTING FOR MEETINGS AT WHICH TRUSTEES ARE TO BE ELECTED AND THE PROCEDURES FOR EARLY VOTING; TO AMEND SECTION 33‑49‑610, RELATING TO THE BOARD OF TRUSTEES OF A COOPERATIVE, SO AS TO REVISE THE MANNER IN WHICH VACANCIES OCCURRING FOR ANY REASON OTHER THAN EXPIRATION OF A TERM ARE FILLED WHICH MUST BE FOR THE REMAINDER OF THE UNEXPIRED TERM ONLY; BY ADDING SECTION 33‑49‑615 SO AS TO REQUIRE ANNUAL PUBLIC DISCLOSURE OF COMPENSATION AND BENEFITS PAID TO OR PROVIDED FOR MEMBERS OF THE BOARD OF TRUSTEES; BY ADDING SECTION 33‑49‑625 SO AS TO REQUIRE SPECIFIED NOTICE OF MEETINGS TO THE COOPERATIVE MEMBERSHIP, TO REQUIRE VOTES OF TRUSTEES TO BE TAKEN IN OPEN SESSION WITH CERTAIN EXCEPTIONS, TO REQUIRE VOTES TAKEN IN EXECUTIVE SESSION TO BE RATIFIED IN OPEN SESSION, AND TO REQUIRE MINUTES OF ALL MEETINGS TO BE PROVIDED TO COOPERATIVE MEMBERS; AND BY ADDING SECTION 33‑49‑645 SO AS TO PROVIDE THAT IN THE CONDUCT OF ELECTIONS BY A COOPERATIVE, IT MUST PROHIBIT ADVOCACY OR CAMPAIGNING WITHIN A CERTAIN DISTANCE OF THE POLLING PLACE.

Amend Title To Conform

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

SECTION 1. Section 33‑49‑50 of the 1976 Code is amended to read:

“Section 33‑49‑50. Cooperatives and foreign corporations transacting business in this State pursuant to this chapter, except for the provisions of Sections 58‑27‑40, 58‑27‑610 through 58‑27‑670, 58‑27‑820, 58‑27‑840, 58‑27‑1210, 58‑27‑1270, 58‑27‑1280, ~~and~~ 58‑27‑210, and 33‑49‑150 ~~shall be~~ are exempt from the jurisdiction and control of the Public Service Commission of this State.”

SECTION 2. Article 1, Chapter 49, Title 33 of the 1976 Code is amended by adding:

“Section 33‑49‑150. The Office of Regulatory Staff under the provisions of this section is hereby vested with the authority and jurisdiction to make inspections, audits, and examinations of electric cooperatives pursuant to the provisions of Chapter 4, Title 58 relating to the compliance of electric cooperatives with the provisions of Sections 33‑49‑255, 33‑49‑280, 33‑49‑420, 33‑49‑430, 33‑49‑440, 33‑49‑450, 33‑49‑610, 33‑49‑615, 33‑49‑620, 33‑49‑625, 33‑49‑630, 33‑49‑640, 33‑49‑645, 33‑49‑1410, 33‑49‑1420, 33‑49‑1430, 33‑49‑1440, 58‑27‑820 and 58‑27‑840. The Office of Regulatory Staff is granted authority and jurisdiction over electric cooperatives that provide only wholesale services with regard to any of the foregoing statutory provisions to the extent that those provisions are applicable to the wholesale electric cooperatives. The Office of Regulatory Staff does not have the authority or jurisdiction to make inspections, audits, or examinations of subsidiaries of an electric cooperative provided that the subsidiary is not subsidized by, or any financial credit risk to, electric cooperative ratepayers and that the subsidiary has not taken action, on behalf of the electric cooperative, on any of the electric cooperative’s duties as provided in the sections listed above. Where an electric cooperative board of trustees has exercised its business judgment in accordance with sound business and management practices and consistent with the long‑term financial stability of the cooperative and the benefit of its members, the Office of Regulatory Staff is not authorized to disturb the resulting decisions of the electric cooperative board of trustees. Upon completion of an authorized inspection, audit, or examination, the Office of Regulatory Staff must report its findings to the management and board of the electric cooperative and attempt to resolve with the management and board any compliance issues that are identified. The Public Service Commission is vested with the authority and jurisdiction to resolve any disputed issues arising from the inspections, audits, or examinations.”

SECTION 3. Section 33‑49‑255 of the 1976 Code is amended to read:

“Section 33‑49‑255. (A) Except as provided in subsection (B) of this section, an electric cooperative must not interrupt electric service to any residential customer for nonpayment of a bill until twenty‑five days have elapsed from the date of billing.

(B) An electric cooperative may interrupt electric service to a residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of electricity and his account balance on a daily basis and the balance of that customer’s prepay account is zero, provided that the following conditions are met:

(1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his electric service may be interrupted when the balance of his prepay account reaches zero;

(2) electric service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the electric cooperative to give the customer notice of the impending interruption by telephone or electronically; and

(3) service must not be interrupted except during hours when the electric cooperative is accepting cash payments. For purposes of this subsection, a business day is any day in which the electric cooperative, or an agent, is accepting cash payments.

(C) Nothing contained ~~herein shall~~ in this section must be construed so as to relieve an electric cooperative of the requirements of Act 313 of 2006.

(D) ~~Any~~ A person aggrieved by a violation of this section ~~may petition the courts of this State~~ must make a complaint to the Office of Regulatory Staff for redress in accordance with applicable law ~~and notwithstanding Section 58‑27‑210, the Public Service Commission shall have no jurisdiction over an electric cooperative by reason of this section~~. If the matter is not resolved after making a complaint to the Office of Regulatory Staff, the person may petition the courts of this State for redress.”

SECTION 4. Section 33‑49‑420 of the 1976 Code is amended to read:

“Section 33‑49‑420. An annual meeting of the members ~~shall~~ must be held at ~~such~~ a time as ~~shall be~~ provided in the bylaws. Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per cent of the members or by the president. Meetings of members ~~shall~~ must be held at ~~such~~ a place as ~~may be~~ provided in the bylaws. In the absence of any such provision, all meetings ~~shall~~ must be held in the city or town in which the principal office of the cooperative is located.

Except as ~~herein~~ otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, ~~shall~~ must be given to each member, either personally or by mail, not less than ten nor more than ~~twenty~~forty‑five days before the date of the meeting. However, for the annual meeting and for a special meeting where the stated purpose includes an election to be voted on by the general membership, at least thirty days notice of the meeting is required in order to permit early voting in the manner required by Section 33‑49‑440. For the purposes of calculating when notice should be given, the day of the meeting should not be included in the count.”

SECTION 5. A. Section 33‑49‑430 of the 1976 Code is amended to read:

“Section 33‑49‑430. Five ~~per cent~~ percent of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members unless the bylaws prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting a majority of those present in person may adjourn the meeting from time to time without further notice. A vote cast by a member at an early voting site counts for purposes of determining the presence of a quorum at the meeting where the election is to be held. Voting by proxy for any purpose is prohibited.”

B. Section 33‑49‑440 of the 1976 Code is amended to read:

“Section 33‑49‑440. ~~Each~~ A member is entitled to one vote on each matter submitted to a vote at a meeting. Voting must be in person ~~but, if the bylaws provide, also may be by proxy. If the bylaws provide for voting by proxy they also must prescribe the conditions under which proxy voting may be exercised. A person may not vote as proxy unless he is a member of the cooperative and may not vote as proxy for more than three members at a meeting of the members~~. For meetings that include the election of cooperative trustees, polling locations must be open for a minimum of four hours.

When at least one of the races for cooperative trustee is contested prior to the annual meeting, each cooperative must provide a method by which members of the cooperative may cast a ballot in an election for trustees on a day other than, and before, the annual meeting day. The method for this alternative early voting should allow for voting by cooperative members from the hours of 7 a.m. to 7 p.m. and should include reasonable accommodations for elderly, disabled, or infirmed members as permitted by this section.”

C. Section 33‑49‑620 of the 1976 Code is amended to read:

“Section 33‑49‑620. Notwithstanding any other provision of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that, in respect of each ~~such~~ voting district:

(1) a designated number of trustees ~~shall~~ must be elected by the members residing therein;

(2) a designated number of delegates ~~shall~~ must be elected by ~~such~~ the members; or

(3) both ~~such~~ trustees and delegates ~~shall~~ must be elected by ~~such~~ the members.

~~In any such case~~ The bylaws shall prescribe the manner in which such voting districts, the members ~~thereof~~ of them and the delegates and trustees, if any, elected ~~therefrom~~ from them shall function and the powers of the delegates, which may include the power to elect trustees. ~~No~~ A member at ~~any~~ a voting district meeting and ~~no~~ a delegate at ~~any~~ a meeting shall vote in person, at the meeting or an alternative early voting site~~, or by proxy~~ ~~or by mail~~.”

SECTION 6. Section 33‑49‑610 of the 1976 Code is amended to read:

“Section 33‑49‑610. (A) The business and affairs of a cooperative must be managed by a board of not less than five trustees, each of whom must be a member of the cooperative or of another cooperative which is a member of the cooperative. Unless otherwise provided in the bylaws, each trustee’s principal residence, as determined by South Carolina voter registration law, must be served by the cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board, and the filling of vacancies on the board.

(B) The bylaws also may provide for the removal of trustees from office and for the election of their successors as follows:

(1)(a) A temporary suspension of a trustee for cause may occur upon the affirmative vote of at least two‑thirds of the members of the board until the next annual or special meeting. At that meeting the membership may remove the suspended trustee for cause from the board by an affirmative vote of a majority of the members present and voting. In the event the membership refuses to vote to remove the trustee, he must be reinstated immediately with all the powers of his office and continue to serve for the remainder of his elected term.

(b) ‘Cause’ for removal of a trustee under this section means fraudulent or dishonest acts, or gross abuse of authority in the discharge of duties to the cooperative and must be established after written notice of specific charges and opportunity to meet and refute charges.

(2) A successor may be elected as provided by the bylaws of the cooperative.

This subsection does not apply to a cooperative when a majority of its members are other cooperatives. Cooperatives which are excluded from the removal provisions of this subsection may provide any terms and conditions for removal of trustees as may be authorized in their bylaws.

(C) If a husband and wife hold a joint membership in a cooperative, one, but not both, may be elected a trustee.

(D) The board of trustees may exercise all of the powers of a cooperative except those powers conferred upon the members by this chapter, its articles of incorporation, or bylaws.

(E) Notwithstanding any provisions in the bylaws to the contrary, a vacancy in the office of trustee occurring for any reason other than expiration of a term may be filled only for the remainder of the unexpired term by a vote of the membership at the next annual meeting.

(F) If a vacancy in the office of trustee occurs more than six months from the date of the next annual meeting, a new trustee may be appointed to fill the vacancy on an interim basis by the nominations committee of the cooperative provided:

(1) the new trustee is not a ‘family member’, as defined in Section 8‑13‑100(15), of the trustee whose departure created the vacancy;

(2) the new trustee is not ‘an individual with whom he is associated’, as defined in Section 8‑13‑100(21), of the trustee whose departure created the vacancy;

(3) the new trustee cannot continue to serve as a trustee past the date of the next annual meeting occurring after his appointment, subject to annual meeting notice requirements, without being duly elected by the membership to fill the remainder of the unexpired term.”

SECTION 7. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

“Section 33‑49‑615. (A) The board of trustees must disclose at a location accessible and visible to the cooperative membership on its website by May fifteenth of each year, all compensation or benefits by category paid to or provided for board members during the previous calendar year. For purposes of this section, categories include, but are not limited to:

(1) daily per diem amount;

(2) total per diem compensation for attendance at regular meetings of the board of trustees;

(3) total per diem compensation for attendance at special meetings of the board, including board of trustee committee meetings;

(4) total per diem compensation for attendance at meetings of cooperative service originations;

(5) total per diem compensation for trustee training and certification;

(6) total expenses paid or reimbursed, including mileage, subsistence, entertainment or travel expenses paid in conjunction with subsection (A)(2) through (5);

(7) the total value of and a description of any other fringe benefits provided; and

(8) the total value of and a description of any goods or services required to be disclosed by Section 33‑49‑630(C)(3).

(B) The provisions of this section first apply to the 2019 calendar year with the unaudited disclosures required by this section to be made no later than May 15, 2020.”

SECTION 8. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

“Section 33-49-621. Within eighteen months of the effective date of this section, each distribution cooperative must put the question of single‑member voting districts to its membership at an annual meeting.”

SECTION 9. Article 7, Title 33 of the 1976 Code is amended by adding:

“Section 33‑49‑625. (A) Notwithstanding all other notice requirements, written notice of all non‑emergency meetings of the board of trustees or the membership of the cooperative, including membership meetings pursuant to the provisions of Section 33‑49‑620, must be posted at a location accessible and visible to the cooperative membership on the cooperative’s website and at the cooperative’s principal place of business at least ten days before the meeting. The notice must state the time, place, location, and purpose of the meeting.

(B) Written notice of emergency meetings of the board of trustees must be posted at a location accessible and visible to the cooperative membership on the cooperative’s website and at the cooperative’s principal place of business at least twenty‑four hours before the meeting. Emergency meetings of the board may be called when appropriate to deal with extraordinary circumstances, but the board of trustees must not make decisions regarding rates, fees, charges, board of trustees composition or board of trustees compensation at an emergency meeting.

(C) All votes cast by trustees at these meetings must be taken in open session except where discussions include:

(1) matters related to employees of the cooperative;

(2) matters related to contracts or agreements with vendors or suppliers;

(3) matters related to particular cooperative members that involve account or personal information;

(4) matters related to economic development that involve the discussion of potentially identifiable information about businesses or industries that might be locating or expanding in or near the cooperative service territory;

(5) matters related to information or physical security measures;

(6) matters related to legal advice; and

(7) matters not specifically listed but determined by the board, on the advice of counsel, to constitute a reasonable risk of damage to the cooperative membership due to the release of proprietary, personnel, member, or account information.

(D) Where votes are taken in executive session, the vote then must be ratified in open session in a manner that does not compromise the purpose of the executive session.

(E) Approved board minutes detailing the actions taken at these meetings must be provided within ten days of their approval to cooperative members in the same manner that notice of the meeting was provided.”

SECTION 10. Section 33‑49‑630 of the 1976 Code is amended to read:

“Section 33‑49‑630. (A) The bylaws may make provision for the compensation of trustees; provided, however, that compensation shall not be paid except for actual attendance upon activities authorized by the board. The bylaws may also provide for the travel, expenses and other benefits of trustees, as set by the board. A trustee~~, except in emergencies, shall~~ must not be employed by the cooperative in any other capacity involving compensation.

(B) A member of an electric cooperative’s board of trustees may not:

(1) knowingly use his position as a trustee to obtain an economic interest in addition to his compensation, if any, for serving as a member of the board of trustees for himself, a family member, an individual with whom he is associated, or a business with which he is associated;

(2) have a business relationship with the electric cooperative that is distinct from or in addition to the trustee’s mandatory cooperative membership pursuant to Section 33‑49‑610(A) or his service on the board of trustees; or

(3) appoint, direct, or cause a family member to become a member of a committee or an employee of the cooperative.

(C) A member of an electric cooperative board of trustees is not prohibited by this section from accepting goods or services such as lodging, transportation, entertainment, food, meals, beverages, or any other thing of value provided that:

(1) the value of the good or service is reasonable and the purpose relates to his duties as a trustee;

(2) the good or service is furnished on the same terms or at the same expense to a member of the general public or to general attendees of functions considered reasonable by the board for the fulfillment of his duties as a trustee; or

(3) if the good or service is of more than twenty‑five dollars in value and is furnished to the trustee by a company that the trustee knows has or seeks a business relationship other than a cooperative membership with the cooperative, on whose board the trustee serves and the cooperative is not an owner or a member of that company, the trustee must disclose the acceptance of the good or service to the board.

(D) For purposes of this section, ‘an individual with whom he is associated’ has the same meaning as provided in Section 8‑13‑100(21) and ‘family member’ has the same meaning as provided in Section 8‑13‑100(15).”

SECTION 11. Section 33‑49‑640 of the 1976 Code is amended to read:

“Section 33‑49‑640. The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors ~~shall~~ have been elected and qualified. Incumbent trustees seeking reelection shall not directly or indirectly influence the nomination or credentials process. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next following annual meeting of the members, except as ~~herein~~ otherwise provided. Each trustee shall hold office for the term for which he is elected or until his successor ~~shall have been~~ is elected and qualified.”

SECTION 12. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

“Section 33‑49‑645. (A) In the conduct of an election authorized by this chapter or in the bylaws of the cooperative, including the annual election of trustees, a cooperative must prohibit advocacy or campaigning within a distance of the polling place that reasonably ensures that cooperative members are able to vote without harassment, intimidation, or interference. The polling place, for purposes of this section, is the location where votes are collected for tabulation.

(B)(1) In the conduct of the annual election of trustees, to the extent that a cooperative’s bylaws provide for members to become candidates for the board of trustees by petition, the number of signatures required must not exceed one percent of the total cooperative membership.

(2) If the cooperative’s bylaws providing for members to become candidates for the board of trustees by petition require the collection of more than 50 signatures of cooperative members, the cooperative bylaws must also provide for a process allowing those signatures to be collected electronically.

(C) In the conduct of the annual election of trustees, any member or district information provided to an incumbent trustee for use in campaigning for the board of trustees must be provided to all candidates for the board of trustees on the same terms and conditions.”

SECTION 13. Section 58‑4‑50(A) of the 1976 Code is amended by adding an appropriately numbered subitem to read:

“( ) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, make inspections, audits, and examination of the compliance by electric cooperatives with the provisions of law specified in Section 33‑49‑150.”

SECTION 14. Section 58‑4‑55 of the 1976 Code, as last amended by Act 258 of 2018, is further amended to read:

“Section 58‑4‑55. (A) The regulatory staff, in accomplishing its responsibilities under Section 58‑4‑50, may require the production of books, records, and other information to be produced at the regulatory staff’s office, that, upon request of the regulatory staff, must be submitted under oath and without the requirement of a confidentiality agreement or protective order being first executed or sought. The regulatory staff must treat the information as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility or electric cooperative agrees that such information is no longer confidential or proprietary. Unless the commission’s order contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30‑4‑10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

If the books, records, or other information provided do not appear to disclose full and accurate information and, if such apparent deficiencies are not cured after reasonable notice, the regulatory staff may require the attendance and testimony under oath of the officers, accountants, or other agents of the parties having knowledge thereof at such place as the regulatory staff may designate and the expense of making the necessary examination or inspection for the procuring of the information must be paid by the party examined or inspected, to be collected by the regulatory staff by suit or action, if necessary. If, however, the examination and inspection and the reports thereof disclose that full and accurate information had previously been made, the expense of making the examination and inspection must be paid out of the funds of the regulatory staff.

(B) If the regulatory staff initiates an inspection, audit, or examination of a public utility or electric cooperative, the public utility or electric cooperative that is the subject of the inspection, audit, or examination may petition the commission to terminate or limit the scope of such inspection, audit, or examination. The commission must grant such petition if it finds that such inspection, audit, or examination is arbitrary, capricious, unnecessary, unduly burdensome, or unrelated to the ~~public utility’s~~ regulated operations of the public utility or electric cooperative.

(1) If such an inspection, audit, or examination is not part of a contested case proceeding, the public utility or electric cooperative may also raise objections or seek relief available under the South Carolina Rules of Civil Procedure to a party upon whom discovery is served or to a person upon whom a subpoena is served. The commission shall provide the regulatory staff reasonable notice to respond to any such objection or request. Absent the consent of the public utility or electric cooperative raising such an objection or request and the Office of Regulatory Staff, the commission must rule on such an objection or request within sixty days of the date it was filed. During the pendency of the commission’s ruling, the public utility or electric cooperative making such an objection or request is not required to produce or provide access to any documents or information that is the subject of the objection or request.

(2) If such an inspection, audit, or examination is part of a contested case proceeding, the commission shall address objections to information sought by the regulatory staff in the same manner in which it addresses objections to discovery issued by the parties to the contested case proceeding.

(C) Any public utility or electric cooperative that provides the regulatory staff with copies of or access to documents or information in the course of an inspection, audit, or examination that is not part of a contested case proceeding may designate any such documents or information as confidential or proprietary if it believes in good faith that such documents or information would be entitled to protection from public disclosure under the South Carolina Rules of Civil Procedure or any provision of South Carolina or federal law. The regulatory staff may petition the commission for an order that some or all of the documents so designated are not entitled to protection from public disclosure and it shall be incumbent on the utility to prove that such documents are entitled to protection from public disclosure under the South Carolina Rules of Civil Procedure or any provision of South Carolina or federal law. The commission shall rule on such petition after providing the regulatory staff and the utility an opportunity to be heard. Unless the commission’s order on such a petition contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30‑4‑10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information in order to rule on such a petition, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection during the pendency of the petition.

(D) Nothing in this section restricts the regulatory staff’s ability to serve discovery in a contested case proceeding that seeks the type of documents or information the regulatory staff has obtained in the course of any review, investigation, inspection, audit, or examination, nor does anything in this section restrict the ability of any public utility or electric cooperative to object to such discovery or to seek relief regarding such discovery, including without limitation, the entry of a protective order. The regulatory staff shall not be required to execute a confidentiality agreement or seek a protective order prior to accessing the ~~public utility’s~~ documents or information of a public utility or electric cooperative, and such information or documents ~~shall~~ must be treated as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility or electric cooperative agrees that such information is no longer confidential or proprietary. Unless the commission’s order contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Section 30‑4‑10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity~~; provided,~~. However, ~~that,~~ if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

(E) The Office of Regulatory Staff, in order to accomplish any of the responsibilities assigned to it by Chapter 4, Title 58 or any other provision of law, may apply to the circuit court for subpoenas to be issued to entities over which the Public Service Commission does not have jurisdiction. Such subpoenas will be issued by the circuit court in the same manner as subpoenas are issued to parties to proceedings before that court, and all rules applicable to the issuance of such subpoenas, including enforcement and penalties, shall apply to subpoenas issued at the request of the regulatory staff.

(F) The actual expenses of the Office of Regulatory Staff incurred in carrying out its duties under Section 58‑4‑50(A)(12)must be certified annually to the Public Utilities Review Committee in an itemized statement by the Office of Regulatory Staff, shown as a line item in the Office of Regulatory Staff budget, to be assessed directly to an audited electric cooperative by the Office of Regulatory Staff, and deposited with the state treasurer to the credit of the Office of Regulatory Staff.”

SECTION 15. Section 58‑27‑840 of the 1976 Code is amended to read:

“Section 58‑27‑840. (A) No electrical utility, ~~distribution electric cooperative~~ or consolidated political subdivision shall, as to rates or services, make or grant any unreasonable preference or advantage to any person, corporation, municipality or consolidated political subdivision to its unreasonable prejudice or disadvantage. No electrical utility, ~~distribution electric cooperative~~ or consolidated political subdivision shall establish or maintain any unreasonable difference as to rates or service as between localities or as between classes of service. Subject to the approval of the Commission, however, electrical utilities, ~~distribution electric cooperatives~~ and consolidated political subdivisions may establish classifications of rates and services and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered and any other reasonable consideration. The Commission may determine any question of fact arising under this section. The Commission shall not fix any rates charged by electric cooperatives or consolidated political subdivisions.

(B) No distribution electric cooperative shall, as to rates or services, make or grant any unreasonable preference or advantage to any person, corporation, municipality or consolidated political subdivision to its unreasonable prejudice or disadvantage. No distribution electric cooperative shall establish or maintain any unreasonable difference as to rates or service as between localities or as between classes of service. The Office of Regulatory Staff is granted the authority to audit, on its own initiative or in response to complaints, issues arising under this subsection, including the authority to review and examine whether the distribution electric cooperatives are maintaining any unreasonable differences as to rates or service as between localities or as between classes of service. Rate classifications established by distribution electric cooperatives may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered, and any other reasonable consideration. Upon completion of an audit, review, or examination as provided in this section, the Office of Regulatory Staff must report its findings to the board of the distribution electric cooperative and attempt to resolve any compliance issues identified in the audit.

(C) The Commission is granted authority to resolve any disputed issues arising from the audit, review or examination by the Office of Regulatory Staff of matters arising under subsection (B) of this section. The Commission shall not fix any rates charged by electric cooperatives.”

SECTION 16. Where the provisions of new or revised 1976 Code sections or subsections contained in this act conflict with provisions of the bylaws of an electric cooperative, the provisions of this act control and the cooperative, as permitted by Section 33‑49‑280, shall amend and conform its bylaw provisions accordingly.

SECTION 17. Article 1, Chapter 49, Title 33 of the 1976 is amended by adding:

“Section 33‑49‑160. (A) An association formed by a group of electric cooperatives that meets the requirements of Section 501(c)(6) of the Internal Revenue Code, is organized under the laws of this State and has as its purpose the representation of the interests of electric cooperatives in this State, must be subject to the requirements contained in this section.

(B) The board of trustees of the association must disclose at a location accessible and visible to the its member cooperatives on its website by May fifteenth of each year, all compensation or benefits by category paid to or provided for board members during the previous calendar year. For purposes of this section, categories include, but are not limited to:

(1) daily per diem amount;

(2) total per diem compensation paid for attendance at regular meetings of the board of trustees;

(3) total per diem compensation for attendance at special meetings of the board, including board of trustee committee meetings;

(4) total per diem compensation for attendance at meetings of cooperative service originations;

(5) total per diem compensation for trustee training and certification;

(6) total expenses paid or reimbursed, including mileage, subsistence, entertainment, or travel expenses paid in conjunction with subsection (B)(2) through (5);

(7) the total value of and a description of any other fringe benefits provided; and

(8) the total value of and a description of any goods or services required to be disclosed by Section 33‑49‑160(D)(3)(c).

(C) The association must include on its annual IRS Form 990 filing, information on its revenue and expenses, including but not limited to, the total revenue and spending of the association by each of its departments.

(D)(1) The bylaws of the association may make provision for the compensation of trustees; provided, however, that compensation must not be paid except for actual attendance upon activities authorized by the board. The bylaws also may provide for the travel, expenses, and other benefits of trustees, as set by the board. A trustee of the association must not be employed by the entity in any other capacity involving compensation.

(2) A member of the association’s board of trustees, or one of the association’s officers, may not:

(a) knowingly use his position as a trustee or an officer of the association to obtain an economic interest in addition to his compensation, if any, for serving as a member of the board of trustees or as an officer for himself, a family member, an individual with whom he is associated, or a business with which he is associated;

(b) have a business relationship with the association that is distinct from or in addition to his service on the board of trustees or as an officer; or

(c) appoint, direct, or cause a family member to become an employee of the association.

(3) A member of the association’s board of trustees or an officer of the association is not prohibited by this section from accepting goods or services such as lodging, transportation, entertainment, food, meals, beverages, or any other thing of value from the association provided that:

(a) the value of the good or service is reasonable and the purpose relates to his duties as a trustee or an officer;

(b) the good or service is furnished on the same terms or at the same expense to a member of the general public or to general attendees of functions considered reasonable for the fulfillment of his duties as a trustee or as an officer of the association; or

(c) if the good or service is of more than twenty‑five dollars in value and is furnished to the trustee or the officer of the association by a company that the trustee or officer knows has, or seeks, a business relationship with the association, and the company is not a member of the association, the trustee or officer must disclose the acceptance of the good or service to the board. These restrictions do not apply to the extent a cooperative has or seeks membership in the association.

(4) For purposes of this section, ‘an individual with whom he is associated’ has the same meaning as provided in Section 8‑13‑100(21) and ‘family member’ has the same meaning as provided in Section 8‑13‑100(15).

(E) The Office of Regulatory Staff under the provisions of this subsection is vested with the authority and jurisdiction to make inspections, audits, and examinations of the association pursuant to the provisions of Chapter 4, Title 58 relating to the compliance of the association with the provisions of this section and its bylaws. Where the board of trustees of the association has exercised its business judgment in accordance with sound business and management practices and consistent with the long‑term financial stability of the association and the benefit of its members, the Office of Regulatory Staff is not authorized to disturb the resulting decisions of board of trustees. Upon completion of an authorized inspection, audit, or examination, the Office of Regulatory Staff must report its findings to the management and board of the association and attempt to resolve with the management and board any compliance issues that are identified. The Public Service Commission is vested with the authority and jurisdiction to resolve any disputed issues arising from the inspections, audits or examinations.”

SECTION 18. Section 1-3-210 of the 1976 Code is amended to read:

“Section 1-3-210. (A)(1) ~~During the recess of the Senate, vacancy which occurs in an~~ If an office filled by an appointment of the Governor with the advice and consent of the Senate becomes vacant during the interim period between regular legislative sessions, then the office may be filled by an interim appointment of the Governor only if the Governor acts to fill the office during the same interim period during which the office became vacant. The Governor must report the interim appointment to the Senate and must forward a formal appointment at its next ensuing regular session. If the Senate votes to reject an interim appointee’s formal appointment during the next ensuing regular session then the office is immediately vacant and may not be filled by another interim appointment.

(2) If the Senate does not advise and consent ~~thereto~~ to the formal appointment prior to ~~sine die adjournment~~ the second Thursday in May following the interim period during which the interim appointment was made ~~of the next ensuing regular session~~, the office shall be vacant and the interim appointment shall not serve in hold over status notwithstanding any other provision of law to the contrary. The Governor may not make a subsequent interim appointment for the same vacancy. ~~A subsequent interim appointment of a different person to a vacancy created by a failure of the Senate to grant confirmation to the original interim appointment shall expire on the second Tuesday in January following the date of such subsequent interim appointment and the office shall be vacant.~~

(B) The Governor’s authority to make an interim appointment pursuant to subsection (A) terminates when the General Assembly convenes the regular legislative session following the interim period between regular legislative sessions during which the office became vacant.”

SECTION 19. Article 5, Chapter 3 of Title 1 of the 1976 Code is amended by adding:

“Section 1-3-211. (A) If a vacancy exists in the head of an agency that requires appointment by the Governor with the advice and consent of the Senate, the Governor may designate an employee of the agency as the acting head of the agency if the person designated was employed by the agency for at least twelve consecutive months prior to the date upon which the vacancy occurred. A person designated as an acting agency head pursuant to this subsection may serve as the acting agency head no longer than the second Thursday in May following date upon which the vacancy occurred.

(B)(1) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may not be designated by the Governor as the acting head of the agency to which the person was nominated.

(2) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who also had been previously designated as the acting head of the agency who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may no longer exercise any authority or duties of that agency.”

SECTION 20. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 21. The provisions of this act take effect upon approval by the Governor, except that:

(1) Sections 1, 2, 3, 13, 14, and 15 take effect January 1, 2020.

(2) Section 7 takes effect May 1, 2020.

(3) Sections 4, 5, 6, 9, and 11 take effect on the first day of the fifteenth calendar month after the month of signature by the Governor.

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