

**South Carolina General Assembly**  
115th Session, 2003-2004

**A175, R183, S208**

**STATUS INFORMATION**

General Bill

Sponsors: Senators McConnell, Moore, Malloy and Waldrep

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Introduced in the Senate on January 16, 2003

Introduced in the House on April 8, 2003

Last Amended on February 10, 2004

Passed by the General Assembly on February 10, 2004

Governor's Action: February 18, 2004, Signed

Summary: Office of Public Staff created; PSC membership, election and powers revised; Department of Consumer Affairs revisions

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
1/16/2003	Senate	Introduced and read first time <a href="#">SJ-11</a>
1/16/2003	Senate	Referred to Committee on <b>Judiciary</b> <a href="#">SJ-11</a>
3/26/2003	Senate	Committee report: Favorable with amendment <b>Judiciary</b> <a href="#">SJ-35</a>
3/27/2003	Senate	Amended <a href="#">SJ-39</a>
3/27/2003	Senate	Read second time <a href="#">SJ-39</a>
3/27/2003	Senate	Ordered to third reading with notice of amendments <a href="#">SJ-39</a>
4/1/2003	Senate	Debate interrupted <a href="#">SJ-15</a>
4/2/2003	Senate	Amended <a href="#">SJ-34</a>
4/2/2003	Senate	Debate interrupted <a href="#">SJ-36</a>
4/3/2003	Senate	Amended <a href="#">SJ-55</a>
4/3/2003	Senate	Read third time and sent to House <a href="#">SJ-55</a>
4/8/2003	House	Introduced, read first time, placed on calendar without reference <a href="#">HJ-83</a>
4/9/2003	House	Amended <a href="#">HJ-35</a>
4/9/2003	House	Read second time <a href="#">HJ-42</a>
4/10/2003	House	Read third time and returned to Senate with amendments <a href="#">HJ-14</a>
4/15/2003	Senate	House amendment amended <a href="#">SJ-5</a>
4/15/2003	Senate	Returned to House with amendments <a href="#">SJ-5</a>
4/23/2003	House	Non-concurrence in Senate amendment <a href="#">HJ-26</a>
4/23/2003	Senate	Senate insists upon amendment and conference committee appointed Sens. Moore, Alexander, Waldrep <a href="#">SJ-27</a>

4/23/2003	House	Conference committee appointed Reps. Cato, Sandifer and Jennings <a href="#">HJ-140</a>
2/10/2004	Senate	Free conference powers granted <a href="#">SJ-18</a>
2/10/2004	Senate	Free conference committee appointed Moore, Alexander, Waldrep <a href="#">SJ-18</a>
2/10/2004	Senate	Free conference report received and adopted <a href="#">SJ-18</a>
2/10/2004	House	Free conference powers granted <a href="#">HJ-19</a>
2/10/2004	House	Free conference committee appointed Reps. Cato, Sandifer and Jennings <a href="#">HJ-22</a>
2/10/2004	House	Free conference report received and adopted <a href="#">HJ-22</a>
2/11/2004	House	Ordered enrolled for ratification <a href="#">HJ-7</a>
2/12/2004		Ratified R 183
2/18/2004		Signed By Governor
3/2/2004		Copies available
3/2/2004		Effective date See Act for Effective Date
3/23/2004		Act No. 175

## **VERSIONS OF THIS BILL**

[1/16/2003](#)  
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[4/15/2003](#)  
[2/10/2004](#)

(A175, R183, S208)

**AN ACT TO AMEND SECTION 1-3-240, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REMOVAL OF PUBLIC OFFICERS BY THE GOVERNOR, SO AS TO PROVIDE THAT THE EXECUTIVE DIRECTOR OF THE OFFICE OF REGULATORY STAFF MAY BE REMOVED ONLY FOR SPECIFIED REASONS PERTAINING TO CAUSE; BY ADDING SECTION 8-13-935 SO AS TO PROVIDE PROCEDURAL AND OTHER REQUIREMENTS RELATING TO CANDIDATES FOR ELECTION TO THE PUBLIC SERVICE COMMISSION AND TO PROVIDE PENALTIES FOR VIOLATION; TO AMEND PART 6, CHAPTER 6, TITLE 37, RELATING TO THE DIVISION OF CONSUMER ADVOCACY WITHIN THE DEPARTMENT OF CONSUMER AFFAIRS, SO AS TO REVISE THE DUTIES AND FUNCTIONS OF THE DIVISION AND THE CONSUMER ADVOCATE IN REGARD TO VARIOUS MATTERS INCLUDING MATTERS BEFORE THE PUBLIC SERVICE COMMISSION; TO AMEND ARTICLE 1, CHAPTER 3, TITLE 58, RELATING TO GENERAL PROVISIONS OF THE PUBLIC SERVICE COMMISSION, SO AS TO REVISE THE MAKEUP OF THE COMMISSION, PROVIDE FOR THE QUALIFICATIONS OF MEMBERS, ELECTION PROCEDURES FOR MEMBERS, STANDARDS OF CONDUCT FOR COMMISSIONERS AND STAFF, DUTIES AND POWERS OF OFFICERS OF THE COMMISSION AND HEARING OFFICERS AND OTHER STAFF OF THE COMMISSION, AND TO FURTHER PROVIDE FOR PROCEDURES, ORDERS, AND DECREES OF THE COMMISSION; BY ADDING ARTICLE 5 TO CHAPTER 3, TITLE 58, SO AS TO ESTABLISH THE STATE REGULATION OF PUBLIC UTILITIES REVIEW COMMITTEE AND PROVIDE FOR ITS MEMBERSHIP, DUTIES, AND FUNCTIONS; BY ADDING CHAPTER 4 TO TITLE 58 SO AS TO ESTABLISH THE OFFICE OF REGULATORY STAFF AND PROVIDE FOR ITS DUTIES, FUNCTIONS, AND POWERS; TO AMEND SECTION 58-27-865, AS AMENDED, RELATING TO THE DEFINITION OF "FUEL COST" AND PROCEDURES PERTAINING TO RECOVERY OF FUEL COSTS, SO AS TO DEFINE "FUEL COSTS RELATED TO PURCHASED POWER" AS A COMPONENT OF OVERALL FUEL COST; TO DIRECT THE CODE COMMISSIONER TO DELIVER TO THE STATE REGULATION OF PUBLIC UTILITIES REVIEW**

**COMMITTEE A REPORT OF CERTAIN CODE REFERENCES;  
TO PROVIDE FOR THE ELECTION OF MEMBERS OF THE  
PUBLIC SERVICE COMMISSION ON MARCH 3, 2004, IN THE  
HALL OF THE HOUSE OF REPRESENTATIVES; AND TO  
REPEAL SECTIONS 58-3-26, 58-3-80, 58-3-95, 58-3-120, 58-3-145,  
58-3-150, 58-3-160, AND 58-3-210 ON SPECIFIED DATES, ALL  
RELATING TO GENERAL PROVISIONS OF THE PUBLIC  
SERVICE COMMISSION.**

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

**Removal**

SECTION 1. Section 1-3-240(C) of the 1976 Code, as last amended by Act 59 of 2001, is further amended to read:

“(C) Persons appointed to the following offices of the State may be removed by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity:

- (1) Workers’ Compensation Commission;
- (2) Commission of the Department of Revenue;
- (3) Ethics Commission;
- (4) Election Commission;
- (5) Professional and Occupational Licensing Boards;
- (6) Juvenile Parole Board;
- (7) Probation, Parole and Pardon Board;
- (8) Director of the Department of Public Safety;
- (9) Board of the Department of Health and Environmental Control, excepting the Chairman;
- (10) Chief of State Law Enforcement Division;
- (11) South Carolina Lottery Commission; and
- (12) Executive Director of the Office of Regulatory Staff.

Upon the expiration of an officeholder’s term, the individual may continue to serve until a successor has been appointed and qualifies.”

**Election requirements and penalties**

SECTION 2. Chapter 13, Title 8 of the 1976 Code is amended by adding:

“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 Committee, and (2) the review 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 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 Committee, and (2) the review 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 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 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."

## **Division of Consumer Advocacy duties revised**

SECTION 3. Part 6, Chapter 6, Title 37 of the 1976 Code is amended to read:

### **“Part 6**

#### **Division of Consumer Advocacy**

Section 37-6-601. There is created within the Department of Consumer Affairs the Division of Consumer Advocacy with duties and organizations as provided in this chapter.

Section 37-6-602. The Consumer Advocate may be the Administrator of Consumer Affairs or he may be appointed by the administrator with the approval of the Commission on Consumer Affairs. The Consumer Advocate must be an attorney qualified to practice in all courts of this State with a minimum of three years' practice experience.

Section 37-6-603. The Division of Consumer Advocacy must be staffed and equipped to perform the functions prescribed in Section 37-6-604. The expenses of the office must be paid from appropriations provided annually in the state General Appropriations Act.

Section 37-6-604. (A) The functions and duties of the Division of Consumer Advocacy are:

(1) to provide legal representation of the consumer interest before the state and federal regulatory agencies which undertake to fix rates or prices for consumer products or services or to enact regulations or establish policies related thereto and to provide legal representation of the consumer interest concerning insurance matters, certificates of need for health facilities and services as required for an activity under Section 44-7-160, and other health-related provisions;

(2) to monitor existing regulations, rate structures, and policies of that agency of special interest to consumers and report to the public through the news media proposed changes therein under consideration and the effect of those changes on the lives of the citizens of the State; and

(3) to evaluate and act upon requests from consumers concerning the matters set forth in items (1) and (2), except that any proceedings initiated by the Consumer Advocate must be brought on behalf of the

public at large and not for individuals; initiation or continuation of any proceedings is in the sole discretion of the Consumer Advocate.

(B) The annual report required of the Commission on Consumer Affairs must include a report on the activities of the Division of Consumer Advocacy.

(C) After January 1, 2005, the division must not represent consumers in matters arising under Title 58. Matters or appeals under Title 58 that are pending on January 1, 2005, shall be transferred to the Office of Regulatory Staff.

Section 37-6-605. In the performance of his assigned functions, the Consumer Advocate shall have reasonable access to records of all state agencies which are not classified by law as confidential, and all state agencies must cooperate with the Consumer Advocate in the performance of his duties. In addition, the Consumer Advocate must have reasonable access to confidential records and information if he enters a proprietary agreement to ensure their confidentiality. The South Carolina Department of Insurance and Consumer Advocate also shall have access to records, information, and data of the insurance companies as well as all of their sister affiliates, subsidiaries, and parent companies. During the course of a ratemaking or other proceeding initiated before the South Carolina Department of Insurance, the Consumer Advocate, as a party of record, may request in writing, in addition to all other methods of discovery as provided by law, the issuance of an order compelling a witness or company to either produce or allow inspection of documentary evidence relevant to the matter. If an order is not issued, the aggrieved party may appeal. The written request, in addition to showing a general relevance and reasonable scope of the evidence sought, must also specify with particularity the books, accounts, papers, records, or other materials of the business desired and the facts expected to be proved thereby. In lieu of a written request, the request for such an order may be made orally upon the record at the hearing, for good cause shown. Any objections to the issuance of the order must be filed within three days of being notified of the written request or the order. Any objections so filed must list the specific grounds for objection. Objections must be ruled on within ten days or the objection is denied.

Section 37-6-606. (A) Except as provided in Section 37-6-604(C), whenever the Consumer Advocate determines that it would be in the interest of consumers affected by regulatory agencies, he may file with the appropriate regulatory agency a petition requesting the regulatory agency to commence or complete a proceeding respecting any

organization whose operations substantially affect the consumer interest.

(B) The petition must state facts which claim to establish the need for the proceeding and a brief description of the substance of the order or amendment desired as a result of the proceeding.

(C) The regulatory agency may hold a public hearing or may conduct an investigation or proceeding as the regulatory agency considers appropriate in order to determine whether or not the petition should be granted.

(D) Within sixty days after the filing of the petition described in subsection (A), the regulatory agency must either grant or deny the petition. If the agency grants the petition, it must promptly commence or complete the proceeding, as requested by the petition. If the agency denies the petition, it must publish the reasons for the denial.

(E) If the regulatory agency denies the petition made under this section or, if it fails to grant or deny the petition within sixty days, the petitioner may commence a civil action in the circuit court to compel the regulatory agency to commence or complete the proceeding as requested in the petition. The action may be filed by the petitioner thirty days after the denial of the petition or, if the agency fails to grant or deny the petition within sixty days, within thirty days after the expiration of the sixty-day period.

(F) If the petitioner demonstrates to the satisfaction of the court that the failure of the agency to commence or complete the proceeding as requested in the petition was unreasonable, the court must order the agency to commence or complete the proceeding as requested in the petition.

(G) In any action under this section, the court has no authority to compel the agency to take any action other than the commencement or completion of a proceeding.

(H) The remedies under this section are in addition to and not in lieu of other remedies provided by law.

Section 37-6-607. With the exception of matters arising under Title 58, the Consumer Advocate is considered to have an interest sufficient to maintain actions for judicial review and may, as of right and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of an agency action that the Consumer Advocate determines may substantially affect the interests of consumers.

Section 37-6-608. To the extent necessary to carry out the consumer advocacy responsibilities, the Consumer Advocate may employ, in



addition to a regular staff, temporary, professional, technical, or research specialists to assist in preparing and presenting cases. The compensation paid to these persons may be commensurate with compensation generally paid by the regulated industry for these specialists but must not exceed the appropriation made for such purposes.

Section 37-6-609. Decisions of the Consumer Advocate respecting whether, when, or how to initiate, continue, or intervene in proceedings under Sections 37-6-601 to 37-6-608, are in the sole discretion of the Consumer Advocate, except as modified by order of a court of competent jurisdiction.”

**Election, qualifications, standards, and duties of commission; staff and procedures of the commission**

SECTION 4. Article 1, Chapter 3, Title 58 of the 1976 Code is amended to read:

“Article 1

General Provisions

Section 58-3-5. As used in this chapter:

(1) ‘Business with which he is associated’ means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock.

(2) ‘Immediate family’ means an individual who is:

(a) a child residing in the person’s household;

(b) a spouse of the person; or

(c) an individual claimed by the person or the person’s spouse as a dependent for income tax purposes.

(3) ‘Commission’ means the Public Service Commission.

(4) ‘Hearing officer’ means a person employed by the commission to serve as a presiding officer in an adjudicative proceeding before the commission.

(5) ‘Regulatory staff’ means the executive director or the executive director and employees of the Office of Regulatory Staff.

(6) ‘Public utility’ means public utility as defined in Section 58-5-10, telephone utility as defined in Section 58-9-10, government-owned telecommunications service provider as defined in Section 58-9-2610, radio common carrier as defined in Section 58-11-10, carriers governed by Chapter 13 of Title 58, railroads and

railways as defined in Section 58-17-10, motor vehicle carrier as defined in Section 58-23-10, or electrical utility as defined in Section 58-27-10.

(7) 'Review committee' means the State Regulation of Public Utilities Review Committee.

Section 58-3-10. (A) The commission, as constituted under law in effect before the date this act is approved by the Governor, is reconstituted to continue in existence with the appointment and qualification of the members as prescribed in this article and with the changes in duties and powers as prescribed in this title.

(B) Nothing in this act affects the commission's jurisdiction over matters pending before the commission, on or before the date this act is approved.

Section 58-3-20. (A) The commission is composed of seven members to be elected by the General Assembly in the manner prescribed by this chapter. For any term beginning after June 30, 2006, each member must have:

(1) a baccalaureate or more advanced degree from:

(a) a recognized institution of higher learning requiring face-to-face contact between its students and instructors prior to completion of the academic program;

(b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(c) an institution of higher learning chartered before 1962; and

(2) a background of substantial duration and an expertise in at least one of the following:

(a) energy issues;

(b) telecommunications issues;

(c) consumer protection and advocacy issues;

(d) water and wastewater issues;

(e) finance, economics, and statistics;

(f) accounting;

(g) engineering; or

(h) law.

(B) The review committee may find a candidate qualified although the candidate does not have a background of substantial duration and expertise in one of the eight enumerated areas contained in subsection (A)(2) of this section if three-fourths of the review committee vote to qualify such candidate and provide written justification of their decision in the report as to the qualifications of the candidates.

(C) The qualification provisions of subsection (A) of this section do not apply to the reelection of any commissioner elected by the General Assembly on March 3, 2004, so long as there is no break in service.

(D) Beginning in 2004, the members of the Public Service Commission must be elected to staggered terms. In 2004, the members representing the second, fourth, and sixth congressional districts must be elected for terms ending on June 30, 2006, and until their successors are elected and qualify. Thereafter, members representing the second, fourth, and sixth congressional districts must be elected to terms of four years and until their successors are elected and qualify. In 2004, the members representing the first, third, and fifth congressional districts and the State at-large must be elected for terms ending on June 30, 2008, and until their successors are elected and qualify. Thereafter, members representing the first, third, and fifth congressional districts and the State at-large must be elected to terms of four years and until their successors are elected and qualify.

(E) The General Assembly must provide for the election of the seven-member commission and elect its members based upon the congressional districts established by the General Assembly pursuant to the latest official United States Decennial Census. If the number of congressional districts is less than seven, additional members must be elected at large to provide for a seven-member commission.

(F) The Governor may fill vacancies in the office of commissioner until the successor in the office for a full term or an unexpired term, as applicable, has been elected by the General Assembly. In cases where a vacancy occurs on the commission when the General Assembly is not in session, the Governor may fill the vacancy by an interim appointment. The Governor must report the interim appointment to the General Assembly and must forward a formal appointment at its next ensuing regular session.

Section 58-3-24. No member of the General Assembly or member of his immediate family shall be elected to the commission while the member is serving in the General Assembly; nor shall a member of the General Assembly or a member of his immediate family be elected to the Public Service Commission for a period of four years after the member either:

- (1) ceases to be a member of the General Assembly; or
- (2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

Section 58-3-25. (A) Unless otherwise provided by law, no person may serve as a member of the commission if the commission regulates any business with which that person is associated.

(B) If the commission regulates a business with which an employee of the commission is associated, the employee must annually file a statement of economic interests notwithstanding the provisions of Section 8-13-1110.

(C) No person may be an employee of the commission if the commission regulates a business with which the employee is associated, and this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

Section 58-3-30. (A) The commissioners shall take the oath of office provided by the Constitution and the oaths prescribed by law for state officers.

(B) The commissioners and commission employees are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, except as provided in Section 58-3-260, and the State Ethics Commission must enforce and administer those rules pursuant to Section 8-13-320. In addition, commissioners and commission employees must comply with the applicable requirements of Chapter 13 of Title 8.

(C) Each year, the commissioners and their employees must attend a workshop of at least six contact hours concerning ethics and the Administrative Procedures Act. This workshop must be developed with input from the review committee.

Section 58-3-40. (A) The commission must elect one of its members as chairman for a period of two years.

(B) The chairman is the chief executive and administrative officer of the commission.

(C)(1) Upon the request of any party or any commissioner, the commission may employ a hearing officer who may hear and determine procedural motions or other matters not determinative of the merits of the proceedings and made prior to hearing; and, at the hearing, shall make all rulings on nondispositive motions and objections. If qualified pursuant to item (3), a commission staff attorney may serve as hearing officer.

(2) The hearing officer has full authority, subject to being overruled by the commission, to rule on questions concerning the conduct of the case and the admission of evidence but may not participate in the determination on the merits of any case.

(3) The hearing officer must be an attorney qualified to practice in all courts of this State with a minimum of eight years' practice experience.

Section 58-3-50. The clerk of the commission may administer oaths.

Section 58-3-60. (A) The commission is authorized and empowered to employ: a chief clerk and deputy clerk; a commission attorney and assistant commission attorneys; hearing officers; hearing reporters; and such other professional, administrative, technical, and clerical personnel as the commission determines to be necessary in the proper discharge of the commission's duties and responsibilities as provided by law. The chairman must organize and direct the work of the commission staff. The salaries of the chairman, the commissioners, and the chief clerk shall not be construed as limiting the maximum salary which may be paid to other employees of the Public Service Commission. The commission staff shall not appear as a party in commission proceedings and shall not offer testimony on issues before the commission.

(B) Subject to Section 58-3-580, the commission must be staffed and equipped to perform the functions set forth in this title except for those responsibilities and functions reserved to the Office of Regulatory Staff. The expenses must be paid from the assessments collected pursuant to Section 58-3-100. The chairman, within allowed budgetary limits and as otherwise allowed by law, must authorize and approve travel, subsistence, and related expenses of personnel incurred while traveling on official business.

(C) The commissioners shall not supervise the Office of Regulatory Staff.

(D) The commission shall not inspect, audit, or examine public utilities. The inspection, auditing, and examination of public utilities is solely the responsibility of the Office of Regulatory Staff.

Section 58-3-70. The chairman and members of the commission shall receive annual salaries payable in the same manner as the salaries of other state officers are paid. Each commissioner must devote full time to his duties as a commissioner and must not engage in any other employment, business, profession, or vocation during the normal business hours of the commission.

Section 58-3-90. The commission must meet at least once each month, and the chairman must call a meeting at any other time upon the written request of any two members of the commission. A majority of

the commissioners constitutes a quorum for the transaction of all business pertaining to their office.

Section 58-3-100. The expenses of the Transportation Department of the Public Service Commission, with the exception of the expenses incurred in its railway jurisdiction, must be borne by the revenues from license fees derived pursuant to Sections 58-23-530 through 58-23-630 and assessments to the carriers of household goods and hazardous waste for disposal carriers. The expenses of the railway section of the Public Service Commission must be borne by the railroad companies subject to the Public Service Commission's jurisdiction according to their gross income from operations in this State.

Except as specifically provided above, in Sections 58-5-940 and 58-27-50, all other expenses of the Public Service Commission must be borne by the public utilities subject to the commission's jurisdiction. On or before the first day of July in each year, the Department of Revenue must assess each public utility, railway company, household goods carrier, and hazardous waste for disposal carrier 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 of Title 12 and paid, less the department actual incremental increase in the cost of administration into the state treasury as other taxes collected by the department.

The commission must certify to the South Carolina Department of Revenue annually, but no later than May first, the amounts to be assessed.

The commission shall operate as an other-funded agency.

Section 58-3-110. The appropriation for the commission's office must be advanced by the State until it has been collected from the corporations liable therefor and, when collected, must be placed in the state treasury.

Section 58-3-130. Upon demand by the Office of Regulatory Staff, each state department, board, and commission, and each officer or agent of the State must furnish to the Office of Regulatory Staff, for inspection and confidential use, any record or information on file with the department, board, commission, or officer, as appropriate,

concerning the property values, operation, income, or other matter of any person doing business as a public utility in this State.

Section 58-3-140. (A) Except as otherwise provided in Chapter 9 of this title, the commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

(B) The commission must develop and publish a policy manual which must set forth guidelines for the administration of the commission. All procedures must incorporate state requirements and good management practices to ensure the efficient and economical utilization of resources.

(C) The commission must facilitate access to its general rate request orders in contested matters involving more than one hundred thousand dollars by publishing an order guide which indexes and cross-references orders by subject matter and case name. The order guide must be made available for public inspection.

(D) The commission must promulgate regulations to require the direct testimony of witnesses appearing on behalf of utilities and of witnesses appearing on behalf of persons having formal intervenor status, such testimony to be reduced to writing and prefiled with the commission in advance of any hearing.

(E) Nothing in this section may be interpreted to repeal or modify specific exclusions from the commission's jurisdiction pursuant to Title 58 or any other title.

(F) When required to be filed, tariffs must be filed with the office of the chief clerk of the commission and, on that same day, provided to the Executive Director of the Office of Regulatory Staff.

Section 58-3-142. No member of the General Assembly or any member of a member's law firm shall appear before the commission in any rate-fixing proceeding by representing any party in the proceeding for any purposes including political purposes, and it is the duty of the presiding commissioner or hearing officer to enforce the provisions of this section. However, this section does not apply to any member of the General Assembly appearing as a witness on either side of any hearing.

Section 58-3-170. In case of failure of common carriers and telephone and telegraph companies to agree, the commission must supervise and fix all agreements, contracts, rates, or the divisions

thereof and regulations between or among common carriers and telephone and telegraph companies, of whatever kind, placed under the control or supervision of the commission.

Except for rates, transactions affecting rates, or transactions affecting service areas, the provisions of this section do not apply to transactions between a telephone cooperative association and its subsidiary corporation or cooperative association.

Section 58-3-180. The commission must promulgate regulations as necessary to effectuate the provisions of Section 58-3-170.

Section 58-3-190. (A) The commission has the authority to require periodic written reports to be submitted by persons or entities subject to its jurisdiction. Such reports must relate to matters within the jurisdiction of the commission and must be filed with the commission and provided to the Office of Regulatory Staff.

(B) If, in the judgment of the commission, any report referred to in subsection (A) is not furnished within a reasonable time or does not satisfactorily address the matters the commission requires to be addressed in such reports, the commission must give the person or entity written notice of the reasons why the report is not satisfactory, and the person or entity shall have a reasonable time period in which to comply with the requirements of the notice.

(C) The commission may request the Office of Regulatory Staff to make, pursuant to Section 58-4-50(A)(2), an inspection, audit, or examination of the persons or entities referred to in subsection (A) regarding matters the commission requires to be addressed in the reports referred to in subsection (A).

Section 58-3-200. The commission has the authority to initiate inspections, audits, and examinations of all persons and entities subject to its jurisdiction. Such inspections, audits, and examinations must relate to matters within the commission's jurisdiction. Notwithstanding any other provision of law, the commission must not conduct such inspections, audits, and examinations itself, but must request that they be conducted by the Office of Regulatory Staff pursuant to Section 58-4-50(A)(2).

Section 58-3-220. One-half of all penalties and forfeitures collected from railroad, express, telegraph, and telephone companies for failure to comply with orders of the commission must be paid into the state treasury, and the other half into the county treasury of the county in which the suit is brought imposing the penalty or forfeiture collected.



The revenues accruing from these collections must be used for general state and county purposes.

Section 58-3-225. (A) Hearings conducted before the commission must be conducted under dignified and orderly procedures designed to protect the rights of all parties. If a commissioner is absent from or leaves the hearing for fifteen consecutive minutes or longer, the commission must recess the hearing until the commissioner is present, or the commissioner may not participate in the deliberations or vote on the matter. If a commissioner is absent from or leaves the hearing for less than fifteen consecutive minutes, the commission shall cause the record of the proceeding to reflect the absence and the duration of the absence.

(B) All persons appearing in a representative capacity before the commission in its proceedings should conform to the standards of ethical conduct required of attorneys practicing before the courts of this State.

(C) Any person, firm, or corporation who disregards commission orders after due notice or who engages in conduct calculated to bring the due and orderly course of commission proceedings into disrespect or disregard, or to interfere with or prejudice parties or their witnesses during the proceedings may, by order of the commission or its presiding officer, be ejected for the remainder of that day from the proceedings. If that person, firm, or corporation engages in further conduct resulting in ejection for a second day or portion thereof in the same proceeding, he must also be declared in contempt and cited to any circuit judge, who may punish by a fine not to exceed five hundred dollars or imprisonment not to exceed thirty days, or both. The proscribed conduct includes, but is not limited to, any person, firm, or corporation intentionally delaying the proceedings by the injection of matters determined not to be relevant after a proper warning that the matters shall not be pursued.

(D) The provisions of this section must not be construed as limiting any powers of the commission under existing law.

(E) A party may withdraw its petition, application, complaint, counterclaim, cross-claim, or third-party claim from any commission docket one time as a matter of right, and without prejudice, provided that it does so prior to the later of the date that responsive pleadings are filed or the date that the withdrawing party's direct testimony addressing such petition, application, complaint, counterclaim, cross-claim, or third-party claim is due to be filed with the commission. A party may thereafter withdraw its petition, application, complaint, counterclaim, cross-claim, or third-party claim from any commission

docket only upon order of the commission and upon such terms and conditions as the commission considers proper.

Section 58-3-240. (A) As used in this section:

(1) 'Privately-owned industrial park' means a privately-owned tract of real property which is used solely for industrial uses, in which the provider of utility services owns or operates an industrial premises and owns or operates facilities for the provision of utility services and on which there is located one or more industrial users. 'Privately-owned industrial park' also means those additional tracts as may be subsequently incorporated into the industrial park.

(2) 'Industrial premises' means a building, structure, plant, or facility which is located in a privately-owned industrial park and is owned or leased by an industrial user.

(3) 'Industrial user' means any person, corporation, or association which is engaged in the business of manufacturing, processing, assembling, fabricating, or related work.

(4) 'Provider of utility services' means a person, corporation, or association, other than a regulated public utility or its affiliates, that offers or provides, or both, utility services to the public or any portion of it outside a privately-owned industrial park, which provides any or all of those services which are defined in Chapters 5 and 7 of this title, excluding gas, and subject to regulation by the commission and where the services are provided to an industrial user in a privately-owned industrial park.

(5) 'Jurisdictional utilities' means those persons, corporations, associations, or political subdivisions which provide services subject to the jurisdiction of the commission under Chapters 5 and 7 of this title, excluding gas.

(B) The provisions of Chapters 5 and 7 of this title, excluding gas, are not applicable to the provision of utility services to industrial users of these services where the industrial users are located in a privately-owned industrial park where the provider of utility services and the industrial user have agreed in writing to the terms and conditions for the provision of utility services and where all jurisdictional utilities which would have a right to provide any or all of the utility services have agreed in writing to waive their right to further notice and opportunity for hearing with respect to the written agreement and the provision of the services under the terms of the agreement.

(C) Within twenty days after the execution of a written agreement between a provider of utility services and an industrial user pursuant to subsection (B), the provider of utility services must file with the

commission, for information only, the written agreement and all waivers executed by jurisdictional utilities pursuant to subsection (B).

Section 58-3-250. (A) All final orders and decisions of the commission must be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and must include:

- (1) findings and conclusions, and the reasons or bases therefor, upon all the material issues of fact or law presented in the record; and
- (2) the appropriate rule, order, sanction, relief, or statement of denial thereof.

(B) A copy of every final order or decision under the seal of the commission must be served by registered or certified mail upon all parties to the proceeding or their attorneys. Service upon a party or upon the attorney must be made by mailing a copy to him at his last known address. If no address is known, however, service shall be made by leaving a copy with the chief clerk of the commission. The order takes effect and becomes operative when served unless otherwise designated and continues in force either for a period designated by the commission or until changed or revoked by the commission. If, in the judgment of the commission, an order cannot be complied with within the time designated, the commission may grant and prescribe additional time as is reasonably necessary to comply with the order and, on application and for good cause shown, may extend the time for compliance fixed in its order.

Section 58-3-260. (A) For purposes of this section:

(1) 'Proceeding' means a contested case, generic proceeding, or other matter to be adjudicated, decided, or arbitrated by the commission.

(2) 'Person' means a party to a proceeding pending before the commission, a member of the Office of Regulatory Staff, a representative of a party to a proceeding pending before the commission, individuals, corporations, partnerships, limited liability companies, elected officials of state government, and other public and elected officials.

(3) 'Communication' means the transmitting of information by any mode including, but not limited to, oral, written, or electronic.

(4) 'Allowable ex parte communication briefing' means any communication that is conducted pursuant to the procedure outlined in subsection (C)(6) of this section.

(5) 'Communication of supplemental legal citation' means the submission, subsequent to the submission of post-hearing briefs or

proposed orders in a proceeding, of statutes, regulations, judicial or administrative decisions that are enacted, promulgated, or determined after the submission of post-hearing briefs or proposed orders.

(B) Except as otherwise provided herein or unless required for the disposition of ex parte matters specifically authorized by law, a commissioner, hearing officer, or commission employee shall not communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication, nor shall any person communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any commissioner, hearing officer, or commission employee without notice and opportunity for all parties to participate in the communication.

(C) The following communications are exempt from the prohibitions of subsection (B) of this section:

(1) a communication concerning compliance with procedural requirements if the procedural matter is not an area of controversy in a proceeding;

(2) statements made by a commission employee who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding, where the statements are limited to providing publicly available information about pending proceedings;

(3) inquiries relating solely to the status of a proceeding, unless the inquiry: (a) states or implies a view as to the merits or outcome of the proceeding; (b) states or implies a preference for a particular party or which states why timing is important to a particular party; (c) indicates a view as to the date by which a proceeding should be resolved; or (d) is otherwise intended to address the merits or outcome or to influence the timing of a proceeding;

(4) a communication made by or to commission employees that concerns judicial review of a matter that has been decided by the commission and is no longer within the commission's jurisdiction; however, if the matter is remanded to the commission for further action, the provisions of this section shall apply during the period of the remand;

(5) where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized provided:

(a) the commissioner, hearing officer, or commission employee reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and

(b) the commissioner, hearing officer, or commission employee makes provision promptly to notify all other parties of the substance of the ex parte communication and, where possible, allows an opportunity to respond;

(6)(a) subject to the provisions of Chapter 4 of Title 30, communications, directly or indirectly, regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding for the purposes of an allowable ex parte communication briefing if:

(i) the Executive Director of the Office of Regulatory Staff or his designee attends the briefing and files a written certification, within seventy-two hours of the briefing, attaching copies of all statements and all other matters filed by all persons pursuant to subsubitems (ii), (iii), and (iv) of this subsection, with the chief clerk of the commission that such briefing was conducted in compliance with the provisions of this section and that each party, person, commissioner, or commission employee present has complied with the reporting and certification requirements of subsubitems (ii), (iii), and (iv); and within twenty-four hours of the submission by the executive director, the commission posts on its web site the written certification, statements, and other matters filed by the executive director;

(ii) each party, person, commissioner, and commission employee present files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty-eight hours of the briefing accurately summarizing the discussions in full and attaching copies of any written materials utilized, referenced, or distributed;

(iii) each party, person, commissioner, and commission employee present, within forty-eight hours of the briefing, files a certification with the Executive Director of the Office of Regulatory Staff that no commitment, predetermination, or prediction of any commissioner's action as to any ultimate or penultimate issue or any commission employee's opinion or recommendation as to any ultimate or penultimate issue in any proceeding was requested by any person or party nor any commitment, predetermination, or prediction was given by any commissioner or commission employee as to any commission action or commission employee opinion or recommendation on any ultimate or penultimate issue;

(iv) each commissioner or commission employee present at the allowable ex parte communication briefing grants to every other

party or person requesting an allowable ex parte communication briefing on the same or similar matter that is or can reasonably be expected to become an issue in a proceeding, similar access and a reasonable opportunity to communicate, directly or indirectly, regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding under the provisions of subsection (C)(6) of this section and files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty-eight hours of the briefing stating that the commissioner or commission employee will comply with this provision;

(v) the commission posts on its web site, at least five business days prior to the proposed briefing, a notice of each request for an allowable ex parte communication briefing that includes the date and time of the proposed briefing, the name of the person or party who requested the briefing, the name of each commissioner and commission employee whom the person or party has requested to brief, and the subject matter to be discussed at the briefing;

(vi) the person or party initially seeking the briefing requests the briefing with sufficient notice, as required in subsubitem (v), to allow the initial briefing to be held at least twenty business days prior to the hearing in the proceeding at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue, and the initial briefing must be held at least twenty business days prior to the hearing in the proceeding; and

(vii) any person or party desiring to have a briefing on the same or similar matter as provided for in subsubitem (vi) requests a briefing with sufficient notice, as required in subsubitem (v), to allow the briefing to be held at least ten business days prior to the hearing in the proceeding at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue, and any such briefing must be held at least ten business days prior to the hearing in the proceeding;

(b) any person or party may object to the attendance of the Executive Director of the Office of Regulatory Staff at an allowable ex parte communication briefing on the grounds of bias or a conflict of interest on the part of the executive director. Any such objection must be made in writing and must be filed with the executive director no later than twenty-four hours prior to the scheduled briefing. If the objecting person or party and the executive director agree upon a neutral person, that person shall serve in the executive director's stead and shall comply with the reporting and certification requirements of the executive director contained in subsubitem (i) and the executive director shall comply with the requirements contained in subsubitems

(ii) and (iii). The costs of such person's services shall be charged to the party requesting the briefing and may be an allowable cost of the proceedings. If the objecting person or party and the executive director cannot agree upon a neutral person, the objecting person or party shall petition the Administrative Law Judge Division for the appointment of a neutral person to serve in the executive director's stead, and the petition shall be given priority over all other matters within the jurisdiction of the Administrative Law Judge Division. In the petition, the objecting party shall set forth the specific grounds supporting the objecting person's or party's allegation of bias or conflict on the part of the executive director and shall generally describe the matters to be discussed at the briefing. It shall not be sufficient grounds that the executive director is or is likely to be a party to a proceeding. The executive director shall be given an opportunity to respond. Part of the executive director's response shall include recommendations as to the experience required of the person to act in his stead. Upon a showing of actual bias or conflict of interest, the administrative law judge shall designate a person to act in the executive director's stead and that person shall comply with the reporting and certification requirements of the executive director contained in subsubitem (i) and the executive director shall comply with the requirements contained in subsubitems (ii) and (iii). Such person must have the expertise to act in the executive director's stead. The decision of the administrative law judge shall be considered interlocutory and not immediately appealable and may be appealed with the final order of the commission. The costs of such person's services shall be charged to the party requesting the briefing and may be an allowable cost of the proceedings;

(c) should the Executive Director of the Office of Regulatory Staff desire to conduct an allowable ex parte communication briefing, the chief clerk of the commission shall appoint a neutral person who shall serve in the executive director's stead and that person shall comply with the reporting and certification requirements of the Executive Director of the Office of Regulatory Staff contained in subsubitem (i). The Executive Director of the Office of Regulatory Staff shall comply with the requirements contained in subsubitems (ii) and (iii);

(d) nothing in subsection (C)(6) of this section requires any commissioner or commission employee to grant a request for an allowable ex parte communication briefing, except as provided in subsection (C)(6)(a)(iv) of this section;

(7) a communication of supplemental legal citation if the party files copies of such documents, without comment or argument, with the

chief clerk of the commission and simultaneously provides copies to all parties of record;

(8) subject to the provisions of Chapter 4 of Title 30, communications between and among commissioners regarding matters pending before the commission; provided, further, that any commissioner, hearing officer, or commission employee may receive aid from commission employees if the commission employees providing aid do not:

(a) receive ex parte communications of a type that the commissioner, hearing officer, or commission employee would be prohibited from receiving; or

(b) furnish, augment, diminish, or modify the evidence in the record.

(D) If before serving in a proceeding, a commissioner, hearing officer, or commission employee receives an ex parte communication of a type that may not properly be received while serving, the commissioner, hearing officer, or commission employee must disclose the communication in the following manner: a commissioner, hearing officer, or a commission employee who receives an ex parte communication in violation of this section must promptly after receipt of the communication or, in the case of a communication prior to a filing, as soon as it is known to relate to a filing, place on the record of the matter all written and electronic communications received, all written and electronic responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the commissioner, hearing officer, or commission employee, as appropriate, received an ex parte communication and must advise all parties that these matters have been placed on the record. Within ten days after receipt of notice of the ex parte communication, any party who desires to rebut the contents of the communication must request and shall be granted the opportunity to rebut the contents. Parties affected by a violation may agree to a resolution of any claim regarding such violation, including the waiver of a hearing and the waiver of the obligation to report violations under subsection (I) of this section.

(E) Any person who makes an inadvertent ex parte communication must, as soon as it is known to relate to an issue in a proceeding, disclose the communication by placing on the record of the matter the communication made, if written or electronic, or a memorandum stating the substance of an inadvertent oral communication, and the identity of each person to whom the inadvertent ex parte communication was made or given. Within ten days after receipt of notice of the ex parte communication, any party who desires to rebut



the contents of the communication must request and shall be granted the opportunity to rebut the contents. If no party rebuts the inadvertence of the ex parte communication within ten days after notice of the ex parte communication, the ex parte communication shall be presumed inadvertent. Parties affected by a violation may agree to a resolution of any claim regarding such violation, and the provisions of subsection (J) of this section shall not apply.

(F) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a commissioner, hearing officer, or commission employee who receives the communication may be disqualified by the commission, and the portions of the record pertaining to the communication may be sealed by protective order.

(G) Nothing in this section alters or amends Section 1-23-320(i).

(H) Nothing in this section prevents a commissioner, hearing officer, or commission employee from attending educational seminars sponsored by state, regional, or national organizations and seminars not affiliated with any utility regulated by the commission; however, the provisions of this section shall apply to any communications that take place outside any formal sessions.

(I) Subject to any privilege under Rule 501 of the South Carolina Rules of Evidence, any commissioner, hearing officer, commission employee, party, or any other person must report any wilful violation of this section on the part of a commissioner, hearing officer, or commission employee to the review committee.

(J) Any commissioner, hearing officer, commission employee, or person who wilfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty dollars or imprisoned for not more than six months. If a commissioner wilfully communicates with any party or person or if any person or party wilfully communicates with a commissioner regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten business days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the commissioner shall be removed from office. If a hearing officer or commission employee wilfully communicates with any party or person or any party or person wilfully communicates with a hearing officer or commission employee regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten days prior to the scheduled hearing on the merits, during the hearing or after the

hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the hearing officer or commission employee shall be terminated from employment by the commission. For purposes of this section: (1) 'wilful' means an act done voluntarily and intentionally with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or disregard the law, and (2) a violation of the provisions of this section must be proved by clear and convincing evidence before a commissioner, hearing officer, or commission employee can be removed from office or terminated from employment.

Section 58-3-270. (A) Any party seeking remedial relief from alleged violations of Section 58-3-260 may file a complaint with the Administrative Law Judge Division.

(B) A complaint seeking sanctions must include the following:

- (1) the name and address of the complainant;
- (2) the name and address of complainant's counsel, if any;
- (3) the name and address of each person alleged to have violated the ex parte prohibition, hereinafter referred to as respondent;
- (4) the name and address of each respondent's counsel, if known;
- (5) the facts constituting the alleged violation; and
- (6) the sanctions sought by the complainant.

(C) A complaint filed under this section must be served on the commission, each respondent, respondent's counsel, if known, and all persons on the commission's service list for the proceeding that is the subject of the ex parte complaint.

(D) Within seven days of service of the complaint, a respondent must file an answer with the Administrative Law Judge Division and serve it on the complainant, the commission, and all persons on the commission's service list for the proceeding that is the subject of the ex parte complaint.

(E) The administrative law judge assigned to the ex parte communication complaint proceeding by the Administrative Law Judge Division may issue an order tolling any deadlines imposed by any state statute for a decision by the commission on the proceeding that is the subject of the ex parte communication complaint. The administrative law judge assigned to the ex parte communication complaint proceeding by the Administrative Law Judge Division must conduct a hearing and must issue a decision within sixty days after the complaint is filed.

(F) The decision of the administrative law judge must describe the relevant facts of the case and must set forth the judge's findings as to whether the ex parte communication was in violation of Section 58-3-260. The judge also must impose sanctions in accordance with subsection (G) of this section. In imposing these sanctions, the judge, as a matter of equity, must protect: (1) the rights and interests of parties who are not alleged to have violated Section 58-3-260, and (2) the public interest in general.

(G) In his decision, the administrative law judge may impose the following sanctions:

(1) dismiss the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider the matter impartially;

(2) issue an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication if other parties are prejudiced by the prohibited ex parte communication;

(3) strike evidence or pleadings if the evidence or pleadings are tainted by the prohibited ex parte communication;

(4) issue a public statement of censure or explanation, if it is determined that the prohibited ex parte communication occurred but mitigating circumstances exist that:

(a) negate the need for a more severe sanction;

(b) indicate that the proceeding was not prejudiced to the extent that the commission is unable to consider the matter in the proceeding impartially;

(c) indicate that the ex parte communication did not prejudice other parties; or

(d) indicate that the ex parte communication did not taint the evidence or pleadings.

(H) If the administrative law judge finds the complainant's allegation of an ex parte violation was interposed for any improper purpose, such as to harass or cause unnecessary delay or increase the cost of the proceeding, the administrative law judge may issue an appropriate sanction against the complainant.

(I) Any decision of an administrative law judge pursuant to this section shall be considered interlocutory in nature and is not immediately appealable until a final order of the commission has been issued. Any appeal of a decision of an administrative law judge pursuant to this section must be included in and made in the same manner as an appeal of the final order of the commission in the subject proceeding.

Section 58-3-280. A commissioner must not be employed or retained by a public utility for a period of at least one year following his service as a commissioner. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.”

### **State Regulation of Public Utilities Review Committee**

SECTION 5. Chapter 3, Title 58 of the 1976 Code is amended by adding:

#### “Article 5

##### State Regulation of Public Utilities Review Committee

Section 58-3-510. There is hereby established a committee to be known as the State Regulation of Public Utilities Review Committee, hereinafter called the review committee, which must exercise the powers and fulfill the duties described in this article.

Section 58-3-520. (A) The review committee shall be composed of ten members, three of whom shall be members of the House of Representatives, including the Chairman of the Labor, Commerce and Industry Committee, or his designee, three of whom shall be members of the Senate, including the Chairman of the Judiciary Committee or his designee, two of whom shall be appointed by the Chairman of the Senate Judiciary Committee from the general public at large, and two of whom appointed by the Speaker of the House of Representatives from the general public at large. The Speaker of the House of Representatives shall determine how its legislative members shall be selected. The Chairman of the Senate Judiciary Committee will select the members of the Senate. Provided, however, that in making appointments to the joint 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 appointed by the Speaker and the Chairman of the Senate Judiciary Committee must be representative of all citizens of this State and must not be members of the General Assembly.

(B) The review committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and such other officers as the review committee may consider

necessary. Thereafter, the review 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 review 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.

Section 58-3-530. The review 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 review 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 review committee. If the Governor rejects a person nominated for the position of executive director by the review committee, the review 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 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 review 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;

(4) 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;

(5) 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;

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

(7) 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 review committee before the final draft of the performance review is submitted to the General Assembly;

(8) to submit to the General Assembly, on an annual basis, the review 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 prior to submission to the General Assembly, and the Office of Regulatory Staff must be given an opportunity to be heard before the review committee prior to the completion of the evaluation and its submission to the General Assembly;

(9) to assist 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;

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

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

(12) to appoint a committee from the general public at large to advise the review 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; and

(13) to undertake such additional studies or evaluations as the review committee considers necessary.

Section 58-3-540. (A) The review 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 review 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 review 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 of 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 review committee must certify to the Department of Revenue annually on or before May first the amounts to be assessed. The expenses of the review 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 58-3-550. (A) The review committee must use clerical and professional employees of the General Assembly for its staff, who must be made available to the review committee.

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

(C) The review 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 review committee must be funded in the annual state General Appropriations Act.

Section 58-3-560. (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 review 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 review 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 review 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 58-3-570. The review committee may conduct a comprehensive study of other states' commissions' structures, responsibilities, qualifications, and compensation. The review committee may prepare and deliver this report along with its recommendations to the General Assembly on or before January 15, 2006.

Section 58-3-580. No later than June 30, 2004, the review committee must allocate personal service positions within the commission to either the commission or the Office of Regulatory Staff. The review 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 review 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 review committee's authority to reorganize the agencies and assign personal service positions supersedes any provision of law to the contrary. In effectuating the review committee's assignment of positions between agencies, the Budget and Control Board 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. On and after June 30, 2004, 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."

### **Office of Regulatory Staff**

SECTION 6. Title 58 of the 1976 Code is amended by adding:

#### **"CHAPTER 4**

#### **Office of Regulatory Staff**

Section 58-4-5. As used in this chapter:

- (1) 'Business with which he is associated' means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock.
- (2) 'Immediate family' means an individual who is:
  - (a) a child residing in the person's household;
  - (b) a spouse of the person; or
  - (c) an individual claimed by the person or the person's spouse as a dependent for income tax purposes.
- (3) 'Commission' means the Public Service Commission.
- (4) 'Hearing officer' means a person employed by the commission to serve as a presiding officer in an adjudicative proceeding before the commission.
- (5) 'Regulatory staff' means the executive director or the executive director and employees of the Office of Regulatory Staff.

(6) 'Public utility' means public utility as defined in Section 58-5-10, telephone utility as defined in Section 58-9-10, government-owned telecommunications service provider as defined in Section 58-9-2610, radio common carrier as defined in Section 58-11-10, carriers governed in Chapter 13 of Title 58, railroads and railways as defined in Section 58-17-10, motor vehicle carrier as defined in Section 58-23-10, or electrical utility as defined in Section 58-27-10.

(7) 'Review committee' means the State Regulation of Public Utilities Review Committee.

Section 58-4-10. (A) There is hereby created the Office of Regulatory Staff as a separate agency of the State with the duties and organizations as hereinafter provided.

(B) Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before the commission. The regulatory staff must represent the public interest of South Carolina before the commission. For purposes of this chapter, 'public interest' means a balancing of the following:

(1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;

(2) economic development and job attraction and retention in South Carolina; and

(3) preservation of the financial integrity of the state's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

(C) The Office of Regulatory Staff is subject to the provision of Section 58-3-260 prohibiting ex parte communications with the commission, and any advice given to the commission by the regulatory staff must be given in a form, forum, and manner as may lawfully be given by any other party or person.

Section 58-4-20. (A) The Office of Regulatory Staff shall consist of the executive director, transportation inspectors, pipeline safety inspectors, railway safety inspectors, and other professional, administrative, technical, and clerical personnel as may be necessary in order for the regulatory staff to represent the public interest, as hereinafter provided. All such personnel must be appointed, supervised, and directed by the executive director.

(B) The regulatory staff is not subject to the supervision, direction, or control of the commission, the chairman, or members of the commission.

(C) The Office of Regulatory Staff must not be physically housed in the same location as the Public Service Commission. The review committee must approve the location of the Office of Regulatory Staff.

Section 58-4-30. (A) The Executive Director of the Office of Regulatory Staff must be an attorney qualified to practice in all courts of this State with a minimum of eight years' practice experience and must be appointed pursuant to the procedure set forth in Section 58-3-530(1)(b).

(B) The review committee must nominate one candidate as qualified to serve as executive director for the Governor's consideration.

(1) A person must not be appointed to serve as Executive Director of the Office of Regulatory Staff unless the review committee nominates the person.

(2) If the Governor rejects a person nominated by the review committee for executive director, the review committee must nominate another candidate for the Governor to consider, until the Governor makes an appointment.

(C) The executive director must be appointed by the Governor for a term of six years and until his successor is appointed.

(D) The executive director must be initially appointed by the Governor on or before May 1, 2004. Thereafter, the executive director must be appointed by the Governor on or before April first of the year in which the term of the executive director begins.

(E) The initial term of office for the executive director begins July 1, 2004.

(F) The executive director may be removed from office by the Governor in the event of his incapacity to serve. In addition, the executive director may be removed for cause from office by the Governor pursuant to Section 1-3-240(C).

(G) In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of a nominee for the executive director's successor must be submitted by the review committee to the Governor.

(H) The executive director must take the oath of office provided by the Constitution and the oaths prescribed by law for state officers.

(I) The Office of Regulatory Staff shall be subject to annual review by the review committee; however, decisions of the Office of Regulatory Staff with respect to duties and responsibilities contained in Section 58-4-50 are in the sole discretion of the executive director, except as modified by order of a court of competent jurisdiction.

(J) The salary of the executive director must be set by the review committee.

Section 58-4-40. (A) Unless otherwise provided by law, no person may serve as the Executive Director of the Office of Regulatory Staff if the commission regulates any business with which that person is associated.

(B) If the commission regulates a business with which an employee of the Office of Regulatory Staff is associated, the employee must annually file a statement of economic interests notwithstanding the provisions of Section 8-13-1110.

(C) No person may be an employee of the Office of Regulatory Staff if the Public Service Commission regulates a business with which he is associated and this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

Section 58-4-50. (A) It is the duty and responsibility of the regulatory staff to:

(1) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, review, investigate, and make appropriate recommendations to the commission with respect to the rates charged or proposed to be charged by any public utility;

(2) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, make inspections, audits, and examinations of public utilities regarding matters within the jurisdiction of the commission. The regulatory staff has sole responsibility for this duty but shall also make such inspections, audits, or examinations of public utilities as requested by the commission;

(3) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, review, investigate, and make appropriate recommendations to the commission with respect to the service furnished or proposed to be furnished by any public utility;

(4) represent the public interest in commission proceedings, hearings, rulemakings, adjudications, arbitrations, and other regulatory matters unless the Executive Director of the Office of Regulatory Staff chooses to opt out as a participant under the provisions of item 10;

(5) investigate complaints affecting the public interest generally, including those which are directed to the commission, commissioners, or commission employees, and where appropriate, make recommendations to the commission with respect to these complaints;

(6) upon request by the commission, make studies and recommendations to the commission with respect to standards,

regulations, practices, or service of any public utility pursuant to the provisions of this title;

(7) make recommendations to the commission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of this title;

(8) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, provide legal representation of the public interest before state courts, federal regulatory agencies, and federal courts in proceedings that could affect the rates or service of any public utility;

(9) to serve as a facilitator or otherwise act directly or indirectly to resolve disputes and issues involving matters within the jurisdiction of the commission;

(10) when considered appropriate by the Executive Director of the Office of Regulatory Staff and not adverse to the public interest, choose to not participate in any commission proceeding; and

(11) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, educate the public on matters affecting public utilities which are of special interest to consumers.

(B) Subject to the provisions of Section 58-3-260 and, upon request, the Executive Director of the Office of Regulatory Staff must employ the resources of the regulatory staff to furnish to the commission, or its members, such information and reports or conduct such investigations and provide other assistance as may reasonably be required in order to supervise and control the public utilities of the State and to carry out the laws providing for their regulation.

(C) Each year, the Executive Director of the Office of Regulatory Staff and the regulatory staff employees must attend a workshop of at least six contact hours concerning ethics and the Administrative Procedures Act. This workshop must be developed with input from the review committee.

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 that, upon request of the regulatory staff, must be submitted under oath. 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, the public utility 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.

(1) If such an inspection, audit, or examination is not part of a contested case proceeding, the public utility 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 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 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 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 to object to such discovery or to seek relief regarding such discovery, including without limitation the entry of a protective order.

Section 58-4-60. (A) The Office of Regulatory Staff must be staffed and equipped to perform the functions described in Section 58-4-50. The expenses of the office must be paid as set forth in Section 58-3-100 and this section. The executive director, within established budgetary limits and as allowed by law, must authorize and approve travel, subsistence, and related necessary expenses of the executive director or regulatory staff incurred while traveling on official business.

(B) The expenses of the Transportation Department of the Office of Regulatory Staff, with the exception of the expenses incurred in its railway jurisdiction, must be borne by the revenues from license fees derived pursuant to Sections 58-23-530 through 58-23-630, and assessments to the carriers of household goods and hazardous waste for disposal carriers. The expenses of the railway section of the Office of Regulatory Staff must be borne by the railroad companies subject to the commission's jurisdiction according to their gross income from operations in this State.

All other expenses of the Office of Regulatory Staff must be borne by the public utilities subject to the jurisdiction of the commission. On or before the first day of July in each year, the Department of Revenue

must assess each public utility, railway company, household goods carrier, and hazardous waste for disposal carrier 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 of 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.

(C) The Office of Regulatory Staff must certify to the Department of Revenue annually on or before May first the amounts to be assessed.

(D) The Office of Regulatory Staff shall operate as an other-funded agency.

(E) The appropriation for the Office of Regulatory Staff shall be advanced by the State until such time as funds have been collected from the corporations liable therefor and, when collected, must be placed in the state treasury.

Section 58-4-80. The executive director representing the regulatory staff is considered to have an interest sufficient to maintain actions for judicial review from commission orders or decisions and may, as of right and in a manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of commission action that the executive director determines may substantially affect the public interest. This right includes intervention in any action for judicial review from commission orders or decisions that are pending at any stage of the action. The executive director representing the regulatory staff has the same rights of appeal from commission orders or decisions as other parties to commission proceedings.

Section 58-4-90. Except as required by Section 58-4-50, decisions relating to whether, when, or how to initiate, continue, participate, or intervene in proceedings pursuant to Section 58-4-50 are in the sole discretion of the executive director, except as modified by order of a court of competent jurisdiction.

Section 58-4-100. To the extent necessary to carry out regulatory staff responsibilities, the executive director is authorized to employ expert witnesses and other professional expertise as the executive



director may consider necessary to assist the regulatory staff in its participation in commission proceedings. The compensation paid to these persons may not exceed compensation generally paid by the regulated industry for such specialists. The compensation and expenses therefor must be paid by the public utility or utilities participating in the proceedings upon order of the commission or from the regulatory staff's budget. If paid by the public utility or utilities, the compensation and expenses must be treated by the commission, for ratemaking purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before the commission. An accounting of compensation and expenses must be reported annually to the review committee, the Speaker of the House of Representatives, and the Chairman of the Senate Judiciary Committee.

Section 58-4-110. The regulatory staff must make and publish annual reports to the General Assembly on its activities in the interest of the using and consuming public.

Section 58-4-120. Rules governing the internal administration and operations of the Office of the Regulatory Staff must be promulgated by the office and subject to review by the General Assembly as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution. After submission to the House of Representatives, the Speaker shall refer the rules to the Labor, Commerce and Industry Committee. After submission to the Senate, the President shall refer the rules to the Judiciary Committee.

Section 58-4-130. The executive director must not interview or seek employment with a public utility while serving as executive director. The executive director may not represent or appear on behalf of a public utility in any proceeding before the commission in any matter within the commission's jurisdiction for one year after serving as executive director. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or be imprisoned for not more than one year, or both."

### **Fuel costs related to purchased power**

SECTION 7. Section 58-27-865(A) of the 1976 Code, as last amended by Act 348 of 1996, is further amended to read:

“(A)(1) The words ‘fuel cost’ as used in this section include the cost of fuel, fuel costs related to purchased power, and the cost of SO2 emission allowances as used and must be reduced by the net proceeds of any sales of SO2 emission allowances by the utility.

(2) In order to clarify the intent of this section, ‘fuel costs related to purchased power’, as used in subsection (A)(1) shall include:

(a) costs of ‘firm generation capacity purchases’, which are defined as purchases made to cure a capacity deficiency or to maintain adequate reserve levels; costs of firm generation capacity purchases include the total delivered costs of firm generation capacity purchased and shall exclude generation capacity reservation charges, generation capacity option charges, and any other capacity charges;

(b) the total delivered cost of economy purchases of electric power including, but not limited to, transmission charges; ‘economy purchases’ are defined as purchases made to displace higher cost generation, at a price which is less than the purchasing utility’s avoided variable costs for the generation of an equivalent quantity of electric power.”

## **Report**

SECTION 8. (A) On or before January 1, 2005, the Code Commissioner must prepare and deliver to the State Regulation of Public Utilities Review Committee, a report of all code references and other references and provisions in Title 58 which he considers in need of correction or modification as a result of the provisions of this act.

(B) The Code Commissioner is directed to insert the date this act is approved in place of the language “the date this act is approved” as used in Section 58-3-10.

## **Election**

SECTION 9. The Senate and the House of Representatives shall meet in joint assembly in the Hall of the House of Representatives on Wednesday, March 3, 2004, at 12:00 noon, to elect successors to the seven-member Public Service Commission whose current terms expired June 30, 2002. All nominations must be made by the Committee to Review Candidates for the Public Service Commission and no further nominating or seconding speeches may be made by members of the General Assembly on behalf of any candidate.

## **Repeal**

SECTION 10. Section 58-3-80, Section 58-3-145, and Section 58-3-160 are repealed on the date this act is approved. Section 58-3-26 is repealed March 4, 2004. Section 58-3-95, Section 58-3-150, and Section 58-3-210 are repealed January 1, 2005. Section 58-3-120 is repealed January 1, 2005; however, the repeal of this provision will not affect any pending cases in which the Attorney General is a party before the commission or otherwise affect the authority of the Attorney General.

## **Severability**

SECTION 11. 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 thereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

## **Time effective**

SECTION 12. (1) Section 8-13-935, as contained in SECTION 2, Section 37-6-601, as contained in SECTION 3, Section 37-6-602, as contained in SECTION 3, Section 37-6-603, as contained in SECTION 3, Section 37-6-608, as contained in SECTION 3, Section 37-6-609, as contained in SECTION 3, Section 58-3-5, as contained in SECTION 4, Section 58-3-10, as contained in SECTION 4, Section 58-3-20(A), as contained in SECTION 4, Section 58-3-20(B), as contained in SECTION 4, Section 58-3-20(C), as contained in SECTION 4, Section 58-3-20(D), as contained in SECTION 4, Section 58-3-20(F), as contained in SECTION 4, Section 58-3-24, as contained in SECTION 4, Section 58-3-25, as contained in SECTION 4, Section 58-3-30, as contained in SECTION 4, Section 58-3-40, as contained in SECTION 4, Section 58-3-50, as contained in SECTION 4, Section 58-3-70, as contained in SECTION 4, Section 58-3-90, as contained in SECTION 4, Section 58-3-100, as contained in SECTION 4, Section 58-3-110, as contained in SECTION 4, Section 58-3-142, as contained in SECTION 4, Section 58-3-170, as contained in SECTION 4, Section 58-3-180, as

contained in SECTION 4, Section 58-3-220, as contained in SECTION 4, Section 58-3-240, as contained in SECTION 4, Section 58-3-250, as contained in SECTION 4, Section 58-3-280, as contained in SECTION 4, Section 58-27-865, as contained in SECTION 7, SECTION 8, SECTION 9, SECTION 10, and SECTION 11 take effect upon approval by the Governor.

(2) Section 1-3-240(C), as contained in SECTION 1, Article 5 of Chapter 3 of Title 58, as contained in SECTION 5, Section 58-4-30, as contained in SECTION 6, Section 58-4-40, as contained in SECTION 6, take effect March 4, 2004.

(3) Section 58-3-20(E), as contained in SECTION 4, Section 58-3-225, as contained in SECTION 4, Section 58-4-5, as contained in SECTION 6, Section 58-4-10(A), as contained in SECTION 6, Section 58-4-10(C), as contained in SECTION 6, Section 58-4-20, as contained in SECTION 6, Section 58-4-60, as contained in SECTION 6, Section 58-4-90, as contained in SECTION 6, Section 58-4-100, as contained in SECTION 6, Section 58-4-110, as contained in SECTION 6, Section 58-4-120, as contained in SECTION 6, and Section 58-4-130, as contained in SECTION 6, take effect July 1, 2004.

(4) Section 37-6-604, as contained in SECTION 3, Section 37-6-605, as contained in SECTION 3, Section 37-6-606, as contained in SECTION 3, Section 37-6-607, as contained in SECTION 3, Section 58-3-60, as contained in SECTION 4, Section 58-3-130, as contained in SECTION 4, Section 58-3-140, as contained in SECTION 4, Section 58-3-190, as contained in SECTION 4, Section 58-3-200, as contained in SECTION 4, Section 58-3-260, as contained in SECTION 4, Section 58-3-270, as contained in SECTION 4, Section 58-4-10(B), as contained in SECTION 6, Section 58-4-50, as contained in SECTION 6, Section 58-4-55, as contained in SECTION 6, Section 58-4-80, as contained in SECTION 6, take effect January 1, 2005.

Ratified the 12<sup>th</sup> day of February, 2004.

Approved the 18<sup>th</sup> day of February, 2004.