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COMMITTEE REPORT

May 12, 2011

**S. 766**

Introduced by Senators McConnell, Leatherman, Alexander, Anderson, Scott, Coleman, O’Dell, Verdin, L. Martin, Ford, Massey, Knotts, Grooms, Nicholson, Shoopman, Elliott and Setzler

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Read the first time April 26, 2011.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 766) to amend Section 33-49-460, Code of Laws of South Carolina, 1976, relating to distribution of excess revenue to South Carolina’s electric cooperatives’ members, so as to allow, etc., respectfully

**REPORT:**

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

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND SECTION 33-49-460, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DISTRIBUTION OF EXCESS REVENUE TO SOUTH CAROLINA’S ELECTRIC COOPERATIVES’ MEMBERS, SO AS TO ALLOW SOUTH CAROLINA ELECTRIC COOPERATIVES TO ADVOCATE ENERGY EFFICIENCY AND RENEWABLE ENERGY INITIATIVES IN THIS STATE AND TO PROVIDE CLARITY TO PATRONAGE CAPITAL PROCEDURES; TO AMEND SECTION 27-18-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS OF TERMS USED IN THE UNIFORM UNCLAIMED PROPERTY ACT, SO AS TO EXEMPT ELECTRIC COOPERATIVE PATRONAGE CAPITAL FROM THE UNIFORM UNCLAIMED PROPERTY ACT; AND TO AMEND SECTION 27-18-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY THAT IS PRESUMED ABANDONED PURSUANT TO THE UNIFORM UNCLAIMED PROPERTY ACT, SO AS TO REMOVE ELECTRIC COOPERATIVE PATRONAGE CAPITAL FROM THE STATUTE.

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

SECTION 1. The General Assembly determines it is in the best interest of South Carolina, the electric cooperatives, and their members to advocate energy efficiency and renewable energy initiatives in South Carolina.

The General Assembly determines it is prudent to update and clarify procedures for South Carolina’s electric cooperatives to contribute, allocate, and retire patronage capital.

The General Assembly determines it is prudent to clarify that South Carolina’s electric cooperatives may utilize the defense known as the “business judgment rule”.

The General Assembly determines it is in the best interest of South Carolina’s electric cooperatives and their members that unclaimed patronage credits are hereafter exempt from the Uniform Unclaimed Property Act.

SECTION 2. Section 33-49-460, Code of Laws of South Carolina, 1976, is amended to read:

“Section 33-49-460. ~~Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:~~

~~(1) To defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;~~

~~(2) To pay interest and principal obligations of the cooperative coming due in such fiscal year;~~

~~(3) To finance or to provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;~~

~~(4) To provide a reasonable reserve for working capital;~~

~~(5) To provide a reserve for the payment of indebtedness of the cooperative maturing more than one year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and~~

~~(6) To provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative;~~

~~Shall unless otherwise determined by a vote of the members be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.~~

(A) Each cooperative’s bylaws shall provide for patronage capital contributions, allocations, and retirements in the manner provided by this section.

(B) Patronage capital shall be determined by a cooperative on an annual basis and shall be the amount by which the cooperative’s electric revenues exceed its costs of doing business.

(C) On an annual basis, patronage capital shall be allocated on the books of the cooperative to each member based upon and in proportion to:

(1) the revenue from each member or group of similar members;

(2) the contribution of each member or group of similar members to the cooperative’s overall patronage capital; or

(3) any combination of items (1) and (2) as determined by the board of trustees.

The allocation of patronage capital to a member’s account does not vest until such time that the board determines that retirement is proper pursuant to subsection (D).

(D) Retirement of patronage capital is the actual payment, as provided by subsection (E), of patronage capital to the cooperative members to whom it has previously been allocated. The board of trustees of a cooperative may, in its discretion, utilize its business judgment to retire patronage capital as allocated on the books of the cooperative when the retirement is consistent with sound business and management practices and the long-term financial stability of the cooperative. If the board of trustees, in its discretion, utilizes its business judgment to retire patronage capital to members either upon their death, termination of electric service, or bankruptcy, then the retirement may be discounted from the board’s approved retirement cycle to present-day value when deemed appropriate by the board of trustees in the exercise of its business judgment.

(E) When the board of trustees of the cooperative has determined, pursuant to subsection (D), that patronage capital shall be retired, the retirement may be accomplished by a bill credit or by the mailing of payment or notice of payment to the person’s last known address of record on file with the cooperative. No interest shall be paid or payable by the cooperative on any patronage capital furnished by its members.

(F) Notwithstanding the provisions of the Uniform Unclaimed Property Act, S.C. Code of Laws Section 27-18-10, et seq., patronage capital that has been retired by a cooperative but remains unclaimed for a period of seven years shall become abandoned patronage capital. The cooperative shall, nonetheless, pay any validated claims by members or former members for unclaimed or abandoned patronage capital. With respect to abandoned patronage capital, the cooperative must follow the procedures set forth in subsection (G). Each year, the cooperative may impose a reasonable administrative fee for abandoned or unclaimed patronage capital and may offset the fee against such abandoned or unclaimed patronage capital. Abandoned patronage capital shall be designated as equity and, at the board’s direction, can be used only by the cooperative for:

(1) energy efficiency programs and education;

(2) renewable energy initiatives; or

(3) educational or charitable purposes.

(G) Notwithstanding the provisions of the Uniform Unclaimed Property Act, S.C. Code of Laws Sections 27-18-10 et seq., electric cooperatives must pay any validated claims from members or former members for abandoned patronage capital in accordance with the provisions of this subsection.

(1) Patronage capital, presumed abandoned, which is due to members or former members of electric cooperatives organized pursuant to Section 33-49-10 and whose last known address is in South Carolina, may be retained by the electric cooperative provided that the electric cooperative performs the following due diligence duties to locate the rightful owners:

(a) The cooperative shall publish, for two consecutive years, in a newspaper of general circulation in the county of the cooperative’s principal place of business, the names and addresses of each person appearing from the cooperative’s records to be the owner of the unclaimed patronage capital of fifty dollars or more, together with instructions on how to claim such property. Such publication will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed;

(b) The cooperative shall publish, no less than annually, in its official publication, either in print or electronically, the names and addresses of each person appearing from the cooperative’s records to be the owner of unclaimed patronage capital of fifty dollars or more, together with instructions on how to claim such property. Such publication will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed and will continue for the earlier of two consecutive years or until the patronage capital has been paid to the rightful owner; and

(c) The cooperative shall maintain a searchable website on which will be listed the names and addresses of each person appearing from the cooperative’s records to be the owner of unclaimed and abandoned patronage capital of fifty dollars or more, together with instructions on how to claim the property. The listings will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed and will continue until the patronage capital has been paid to the rightful owner. The State Treasurer’s Office shall maintain a link on the state’s Unclaimed Property Website to the cooperative’s searchable website to increase public awareness and access.

(2) A person aggrieved by a decision of the cooperative or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the court of common pleas of the county of the cooperative’s principal place of business. The action must be brought within ninety days after the decision of the cooperative or within one hundred eighty days after the filing of the claim if the cooperative has failed to act on it.

(3) The patronage capital accounts still unpaid that were included on previously filed annual unclaimed property reports for which no property was delivered will be returned to the respective cooperatives and will be treated in the same manner as provided by this section for patronage capital.

(4) The administrator, as defined in Section 27-18-20(1), shall not be responsible or held liable for any unclaimed patronage capital accounts retained by a cooperative pursuant to this section.

(5) The cooperative shall consider each claim filed by a person claiming an interest in patronage capital within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. If a claim is allowed, the cooperative shall pay over or deliver to the claimant the patronage capital owed to the claimant at the time the patronage capital became abandoned.”

SECTION 3. Section 27-18-20 of the 1976 Code, as last amended by Act 161 of 2005, is further amended to read:

“As used in this chapter, unless the context otherwise requires:

(1) ‘Administrator’ means the State Treasurer, his agents, or representatives.

(2) ‘Apparent owner’ means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) ‘Attorney ~~general~~ General’ means the chief legal officer of this State.

(4) ‘Banking organization’ means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) ‘Business association’ means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) ‘Domicile’ means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) ‘Financial organization’ means a savings and loan association, cooperative bank, building and loan association, or credit union.

(8) ‘Holder’ means a person, wherever organized or domiciled, who is:

(a) in possession of property belonging to another;

(b) a trustee; or

(c) indebted to another on an obligation.

(9) ‘Insurance company’ means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(10) ‘Intangible property’ includes:

(a) monies, checks, drafts, deposits, interest, dividends, and income;

(b) credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances except that intangible property does not include trading stamps and electronic entries representing trading stamps that are awarded to retail customers incident to the purchase of goods;

(c) stocks and other intangible ownership interests in business associations;

(d) monies deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(e) amounts due and payable under the terms of insurance policies;

(f) amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits; and

(g) tax refund checks issued by this State and returned to the Department of Revenue by the Post Office for an unknown, undeliverable, or insufficient address.

(11) ‘Last known address’ means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(12) ‘Lawful charge’ means a charge for which there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose the charge and the issuer regularly imposes the charge and does not regularly reverse or otherwise cancel the charge.

(13) ‘Owner’ means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

~~(14)~~ “~~Patronage allocations” means any patronage capital accounts, patronage dividends, capital accounts, capital credits, capital reserves, or any distribution of excess revenue to members.~~

~~(15)~~(14) ‘Person’ means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

~~(16)~~(15) ‘State’ means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

~~(17)~~(16) ‘Utility’ means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

~~(18)~~(17) ‘Unclaimed’ property includes:

(a) checks or drafts mailed to an owner and returned as undeliverable, or

(b) checks or drafts mailed to an owner and not presented for payment.”

SECTION 4. The General Assembly determines it is in the best interests of South Carolina, the telephone cooperatives, and their members to assist with educational, charitable, and economic development efforts in the rural areas of South Carolina.

The General Assembly determines it is prudent to update and clarify the procedures for South Carolina’s telephone cooperatives to contribute, allocate, and retire patronage capital.

The General Assembly determines it is prudent to clarify that the “business judgment rule” applies to South Carolina’s telephone cooperatives.

The General Assembly determines it is in the best interest of South Carolina’s telephone cooperatives and their members that unclaimed patronage credits are hereafter exempt from the Uniform Unclaimed Property Act.

SECTION 5. Section 33‑46‑460 of the 1976 Code, as last amended by Act 392 of 1994, is further amended to read:

“Section 33‑46‑460. (A) The bylaws of a telephone cooperative shall provide for the distribution of excess revenue to its members. Excess revenues do not include amounts:

(1) necessary to defray expenses of the telephone cooperative and for the operation and maintenance of its facilities during such fiscal year;

(2) to pay interest and principal obligations of the telephone cooperative coming due in such fiscal year;

(3) to finance or to provide a reserve for the financing of the construction or acquisition by the telephone cooperative of additional facilities to the extent determined by the board of directors;

(4) to provide a reasonable reserve for working capital; and

(5) to retire shares of the telephone cooperative to the extent determined by the board of directors.

Sums in excess of those specified above must, unless otherwise determined by a vote of the membership, be assigned by the telephone cooperative to its members as patronage capital. Nothing herein shall be construed so as to designate the method, manner, and time of distribution of excess revenue to the members, which must be governed by the cooperative bylaws, so long as the cooperative’s distribution policies and procedures comply with acceptable practices under the procedures for corporations exempt from income tax pursuant to Title 26, Section 501(c)(12) of the United States Code or Subchapter T of the United States Internal Revenue Code.

(B) On an annual basis, patronage capital shall be allocated on the books of the cooperative to each member based upon and in proportion to:

(1) the revenue from each member or group of similar members;

(2) the contribution of each member or group of similar members to the cooperative’s overall patronage capital; or

(3) any combination of items (1) and (2) as determined by the board of directors.

The allocation of patronage capital to a member’s account does not vest until such time that the board determines that retirement is proper pursuant to subsection (C).

(C) Retirement of patronage capital is the actual payment, as provided by subsection (D), of patronage capital to the cooperative members to whom it has previously been allocated. The board of directors of a cooperative may, in its discretion, utilize its business judgment to retire patronage capital as allocated on the books of the cooperative when the retirement is consistent with sound business and management practices and the long‑term financial stability of the cooperative. If the board of directors, in its discretion, utilizes its business judgment to retire patronage capital to members either upon their death, termination of telephone service, or bankruptcy, then the retirement may be discounted from the board’s approved retirement cycle to present‑day value when deemed appropriate by the board of directors in the exercise of its business judgment.

(D) When the board of directors of the cooperative has determined, pursuant to subsection (C), that patronage capital shall be retired, the retirement may be accomplished by a bill credit or by the mailing of payment or notice of payment to the person’s last known address of record on file with the cooperative. No interest shall be paid or payable by the cooperative on any patronage capital furnished by its members.

(E) Notwithstanding the provisions of the Uniform Unclaimed Property Act, S.C. Code of Laws Section 27‑18‑10, et seq., or other law, patronage capital that has been retired by a cooperative but remains unclaimed for a period of five years shall become abandoned patronage capital. The cooperative shall, nonetheless, pay any validated claims by members or former members for unclaimed or abandoned patronage capital. With respect to abandoned patronage capital, the cooperative must follow the procedures set out in subsection (F). Each year, the cooperative may impose a reasonable administrative fee for abandoned or unclaimed patronage capital and may offset the fee against such abandoned or unclaimed patronage capital. Abandoned patronage capital shall be designated as equity and, at the board’s discretion, can be used only by the cooperative for:

(1) educational purposes;

(2) charitable purposes; or

(3) economic development purposes in the telephone cooperative’s service area.

(F) Notwithstanding the provisions of the Uniform Unclaimed Property Act, S.C. Code of Laws Section 27‑18‑10, et seq., telephone cooperatives must pay any validated claims from members or former members for abandoned patronage capital in accordance with the provisions of this subsection.

(1) Patronage capital, presumed abandoned, which is due to members or former members of telephone cooperatives and whose last known address is in South Carolina, may be retained by the telephone cooperative provided that the telephone cooperative performs the following due diligence duties to locate the rightful owners:

(a) The cooperative shall publish, for two consecutive years, in a newspaper of general circulation in the county of the cooperative’s principal place of business, the names and addresses of each person appearing from the cooperative’s records to be the owner of the unclaimed patronage capital of fifty dollars or more, together with instructions on how to claim such property. Such publication will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed;

(b) The cooperative shall maintain a searchable website on which will be listed the names and addresses of each person appearing from the cooperative’s records to be the owner of unclaimed patronage capital of fifty dollars or more, together with instructions on how to claim the property. The listings will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed and will continue until the patronage capital has been paid to the rightful owner. The State Treasurer’s Office shall maintain a link on the state’s Unclaimed Property Website to the cooperative’s searchable website to increase public awareness and access.

(2) A person aggrieved by a decision of the cooperative or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the court of common pleas of the county of the cooperative’s principal place of business. The action must be brought within ninety days after the decision of the cooperative or within one hundred eighty days after the filing of the claim if the cooperative has failed to act on it.

(3) The patronage capital accounts still unpaid that were included on previously filed annual unclaimed property reports for which no property was delivered will be returned to the respective cooperatives and will be treated in the same manner as provided by this section for patronage capital.

(4) The administrator, as defined in Section 27-18-20(1), shall not be responsible or held liable for any unclaimed patronage capital accounts retained by a cooperative pursuant to this section.

(5) The cooperative shall consider each claim filed by a person claiming an interest in patronage capital within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. If a claim is allowed, the cooperative shall pay over or deliver to the claimant the patronage capital owed to the claimant at the time the patronage capital became abandoned.”

SECTION 6. Section 27-18-30 of the 1976 Code, as last amended by Act 658 of 1988, is further amended to read:

“(A) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder’s business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned.

(B) Property is payable or distributable for the purpose of this chapter notwithstanding the owner’s failure to make demand or to present any instrument or document required to receive payment.

~~(C) Except as otherwise provided by this chapter, all patronage allocations less lawful charges that are held, issued, or owing by entities organized under the provisions of Chapter 49 of Title 33 that remain unclaimed by the owner for more than seven years after becoming payable or distributable are presumed abandoned.~~”

SECTION 7. This act takes effect upon the signature of the Governor and applies to patronage capital determined to be unclaimed as of the effective date of the act.

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