**South Carolina General Assembly**

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**H. 4414**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. J.E. Smith and Clyburn

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Companion/Similar bill(s): 4415

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Currently residing in the House Committee on **Judiciary**

Summary: Public Service Commission

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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11/9/2017 House Referred to Committee on **Judiciary**

1/9/2018 House Introduced and read first time ([House Journal‑page 100](file:///h:\hj\20180109.docx))

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View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=4414&session=122&summary=B) at the website

**VERSIONS OF THIS BILL**

[11/9/2017](file:///p:\pprever\2017-18\4414_20171109.docx)

**A** **BILL**

TO AMEND SECTION 58‑3‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CONTINUATION OF THE PUBLIC SERVICE COMMISSION AFTER RECONSTITUTION, SO AS TO CHANGE THE APPLICABLE DATE; TO AMEND SECTIONS 58‑3‑20 AND 58‑3‑24, BOTH RELATING TO MEMBERSHIP ON THE COMMISSION, SO AS TO PROVIDE FOR THE APPOINTMENT OF MEMBERS BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE AND TO CHANGE CERTAIN REQUIREMENTS FOR QUALIFICATION; TO AMEND SECTION 58‑3‑140, RELATING TO THE POWER OF THE COMMISSION TO REGULATE PUBLIC UTILITIES, SO AS TO REQUIRE THE COMMISSION TO ACT IN THE PUBLIC INTEREST; TO AMEND SECTION 58‑3‑260, RELATING TO THE PROHIBITION OF CERTAIN COMMUNICATIONS IN MATTERS BEFORE THE COMMISSION, SO AS TO REQUIRE VIOLATIONS TO BE REPORTED TO THE HOUSE JUDICIARY COMMITTEE AND SENATE JUDICIARY COMMITTEE; TO AMEND SECTIONS 58‑3‑520 AND 58‑3‑530, BOTH RELATING TO THE PUBLIC UTILITIES REVIEW COMMITTEE, SO AS TO ELIMINATE THE COMMITTEE’S ROLE IN SELECTION OF COMMISSION MEMBERS; AND TO REPEAL SECTION 58‑3‑560 RELATING TO THE ELECTION OF COMMISSION MEMBERS.

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

SECTION 1. Section 58‑3‑10 of the 1976 Code is amended to read:

“Section 58‑3‑10. (A) The commission, as constituted under law in effect before ~~February 18, 2004, by the Governor~~ July 1, 2018, 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 ~~February 18, 2004~~ July 1, 2018.”

SECTION 2. Section 58‑3‑20 of the 1976 Code is amended to read:

“Section 58‑3‑20. (A)(1) The commission is composed of ~~seven~~ five members to be ~~elected by the General Assembly~~ appointed by the Governor, with the advice and consent of the Senate in the manner prescribed by this chapter.

(2) 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)~~(3) One member shall have a background of substantial duration and an expertise in ~~at least one of the following:~~

~~(a)~~ energy issues~~;~~.

(4) One member shall have a background of substantial duration and an expertise in

~~(b)~~ telecommunications issues~~;~~.

(5) One member shall have a background of substantial duration and an expertise in

~~(c)~~ consumer protection and advocacy issues~~;~~.

(6) One member shall have a background of substantial duration and an expertise in

~~(d)~~ water and wastewater issues~~;~~.

(7) One general member shall have a background of substantial duration and an expertise in any of the issues outlined in item (3), (4), (5), or (6), or background of substantial duration and an expertise in

~~(e)~~ finance, economics, ~~and~~ statistics~~;~~,

~~(f)~~ accounting~~;~~,

~~(g)~~ engineering~~;~~, or

~~(h)~~ law to provide sufficient expertise on the commission for carrying out its duties.

~~(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 the 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 a commissioner elected by the General Assembly on March 3, 2004, so long as there is no break in service.~~

~~(D)(1)~~(B) Beginning in ~~2004~~ 2018, the members of the Public Service Commission must be ~~elected~~ appointed to staggered terms. In ~~2004~~ 2018, the members ~~representing the Second, Fourth, and Sixth Congressional Districts~~ appointed pursuant to subsection (A)(3), (5), and (7) must be ~~elected~~ appointed for terms ending on June 30, ~~2006~~ 2020, and until their successors are ~~elected~~ appointed and qualify. Thereafter, members ~~representing the Second, Fourth, and Sixth Congressional Districts~~ appointed pursuant to subsection (A)(3), (5), and (7) must be ~~elected~~ appointed to terms of ~~four~~ six years and until their successors are ~~elected~~ appointed and qualify. In ~~2004~~ 2018, the members ~~representing the First, Third, and Fifth Congressional Districts and the State at large~~ appointed pursuant to subsection (A)(4) and (6) must be ~~elected~~ appointed for terms ending on June 30, ~~2008~~ 2022, and until their successors are ~~elected~~ appointed and qualify. Thereafter, members ~~representing the First, Third, and Fifth Congressional Districts and the State at large~~ appointed pursuant to subsection (A)(4) and (A)(6) must be ~~elected~~ appointed to terms of ~~four~~ six years and until their successors are ~~elected~~ appointed and qualify. ~~Notwithstanding the provisions of this section, members representing the First, Third, and Fifth Congressional Districts shall serve until the expiration of their terms, and in 2013, members representing the First, Third, and Fifth Congressional Districts must be elected for terms ending on June 30, 2016, and until their successors are elected and qualified.~~

~~(2)~~ ~~In the event there are Seven Congressional Districts, the member elected from the State at large shall serve until the expiration of his term, and in 2013, a member representing the Seventh Congressional District must be elected for a term ending on June 30, 2016, and until his successor is elected and qualified. Thereafter, the member representing the Seventh Congressional District must be elected to terms of four years and until his successor is elected and qualified. Upon the election and qualification of the member representing the Seventh Congressional District, the at large member elected to satisfy the requirements of subsection (E) immediately shall cease to be a member of the commission.~~

~~(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. In the event the congressional districts established by the General Assembly are under review by a court for compliance with statutory or constitutional requirements, an election scheduled pursuant to this section shall not be held until a final determination is made by the courts regarding the congressional districts. The inability to hold an election due to judicial review of the congressional districts does not constitute a vacancy on the commission and the commissioners serve until their successors are elected and qualify.~~

~~(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.~~

(C) 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 3. Section 58‑3‑24 of the 1976 Code is amended to read:

“Section 58‑3‑24. No member of the General Assembly or member of his immediate family shall be ~~elected~~ appointed 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~~ appointed 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 4. Section 58‑3‑140(A) of the 1976 Code is amended to read:

“(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, to act in the public interest, 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.”

SECTION 5. Section 58‑3‑260(I) of the 1976 Code is amended to read:

“(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~~ House Judiciary Committee and the Senate Judiciary Committee.”

SECTION 6. Section 58‑3‑520(C) of the 1976 Code is amended to read:

“(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 7. Section 58‑3‑530 of the 1976 Code is amended to read:

“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)~~(4) 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)~~(5) 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)~~(6) to make reports and recommendations to the General Assembly on matters relating to the powers and duties set forth in this section;

~~(11)~~(7) to submit a letter with the annual budget ~~proposals~~ proposal of the Office of Regulatory Staff ~~and the Public Service Commission~~, indicating the review committee has reviewed and approved the ~~proposals~~ proposal;

~~(12)~~(8) 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;

~~(13)~~(9) to undertake such additional studies or evaluations as the review committee considers necessary;

~~(14)~~ ~~to review candidates for appointment to the South Carolina Public Service Authority Board of Directors as submitted by the Governor to determine whether the candidates meet the qualifications set forth in Section 58‑31‑20;~~ and

~~(15)~~(10) to submit to the General Assembly, on an annual basis, a review of the state energy action plan of the State Energy Office as required by Section 48‑52‑430.”

SECTION 8. Section 58‑3‑560 of the 1976 Code is repealed.

SECTION 9. This act takes effect upon approval by the Governor.

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