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Indicates New Matter

AMENDED

April 3, 2018

**H. 4376**

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

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Read the first time January 9, 2018.

**A** **BILL**

TO AMEND SECTION 58‑31‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BOARD OF DIRECTORS OF THE SOUTH CAROLINA PUBLIC SERVICE AUTHORITY, SO AS TO PROVIDE THAT THE TERMS OF ALL PRESENT MEMBERS OF THE BOARD SHALL EXPIRE ON THE EFFECTIVE DATE OF THIS SECTION AT WHICH TIME NEW MEMBERS OF THE BOARD WITH SPECIFIED QUALIFICATIONS SHALL BE APPOINTED IN THE MANNER PROVIDED IN THE SECTION, AND TO PROVIDE FOR RELATED MATTERS PERTAINING TO THE RECONSTITUTED BOARD; BY ADDING SECTION 58‑31‑25 SO AS TO PROVIDE THAT NEW OR REVISED ELECTRIC RATES AND CHARGES OF THE PUBLIC SERVICE AUTHORITY AS PROPOSED BY THE AUTHORITY MUST BE SUBMITTED TO THE PUBLIC SERVICE COMMISSION FOR APPROVAL AND DETERMINED BY THE COMMISSION IN THE MANNER PROVIDED BY ARTICLE 7, CHAPTER 27, TITLE 58 AS SUPPLEMENTED BY ANY OTHER APPLICABLE PROVISIONS OF LAW; TO AMEND SECTION 58‑31‑30, RELATING TO THE POWERS AND DUTIES OF THE PUBLIC SERVICE AUTHORITY AND ITS BOARD OF DIRECTORS, SO AS TO REVISE THE POWER OF THE AUTHORITY TO FIX RATES AND CHARGES SO THAT NEW AND REVISED RATES AND CHARGES SHALL BE SUBJECT TO THE JURISDICTION AND APPROVAL OF THE PUBLIC SERVICE COMMISSION AND THAT NO NEW RATES OR REVISED CHARGES MAY BE IMPOSED OR APPROVED FOR THE PURPOSE OF PAYING ANY OF THE ABANDONMENT COSTS OF THE TWO NEW NUCLEAR REACTORS CONSTRUCTED PURSUANT TO THE BASE LOAD REVIEW ACT; AND TO AMEND SECTION 58‑31‑360, RELATING TO THE STATE OF SOUTH CAROLINA’S COVENANTS WITH HOLDERS OF BONDED OR OTHER INDEBTEDNESS OF THE AUTHORITY, SO AS TO CLARIFY AND FURTHER PROVIDE FOR THESE COVENANTS AS A RESULT OF THE ABANDONMENT OF THE TWO NUCLEAR REACTORS REFERRED TO ABOVE.

Amend Title To Conform

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

SECTION 1. Section 58‑31‑20 of the 1976 Code is amended to read:

“Section 58‑31‑20. (A) The Public Service Authority consists of a board of twelve directors who reside in South Carolina and who have the qualifications stated in this section, as determined by the State Regulation of Public Utilities Review Committee pursuant to Section 58‑3‑530(14), before being appointed by the Governor with the advice and consent of the Senate as follows: one from each congressional district of the State; one from each of the counties of Horry, Berkeley, and Georgetown who reside in authority territory and are customers of the authority; and two from the State at large, one of whom must be chairman. ~~Two of the directors must have substantial work experience within the operations of electric cooperatives or substantial experience on an electric cooperative board, including one of the two who must have substantial experience within the operations or board of a transmission or generation cooperative~~ All members must meet the qualifications prescribed in subsection (C). A director shall not serve as an employee or board member of an electric cooperative during his term as a director. Each director shall serve for a term of seven years, except as provided in this section. At the expiration of the term of each director and of each succeeding director, the Governor, with the advice and consent of the Senate, must appoint a successor, who shall hold office for a term of seven years or until his successor has been appointed and qualified. In the event of a director vacancy due to death, resignation, or otherwise, the Governor must appoint the director’s successor, with the advice and consent of the Senate, and the successor‑director shall hold office for the unexpired term. ~~A director may not receive a salary for services as director until the authority is in funds, but~~ Each director must be paid his actual expense in the performance of his duties~~, the actual expense to be advanced from the contingent fund of the Governor until the time the Public Service Authority is in funds, at which time the contingent fund must be reimbursed. After the Public Service Authority is in funds,~~. Directors shall serve until their successors are appointed and qualify. The compensation and expenses of each member of the board must be paid from ~~these~~ authority funds, and the compensation and expenses must be fixed by the advisory board established in this section. Members of the board of directors may be removed for cause, pursuant to Section 1‑3‑240(C), by the Governor of the State, the advisory board, or a majority thereof. A member of the General Assembly of the State of South Carolina is not eligible for appointment as Director of the Public Service Authority during the term of his office. No more than two members from the same county may serve as directors at any time.

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

(C) ~~Each member must possess abilities and experience that are generally found among directors of energy utilities serving this State and that allow him to make valuable contributions to the conduct of the authority’s business. These abilities include substantial business skills and experience, but are not limited to:~~

~~(1) general knowledge of the history, purpose, and operations of the Public Service Authority and the responsibilities of being a director of the authority;~~

~~(2) the ability to interpret legal and financial documents and information so as to further the activities and affairs of the Public Service Authority;~~

~~(3) with the assistance of counsel, the ability to understand and apply federal and state laws, rules, and regulations including, but not limited to, Chapter 4 of Title 30 as they relate to the activities and affairs of the Public Service Authority; and~~

~~(4) with the assistance of counsel, the ability to understand and apply judicial decisions as they relate to the activities and affairs of the Public Service Authority.~~ Each member of the board of directors of the Public Service Authority must have the following qualifications:

(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) water and wastewater issues;

(c) finance, economics, and statistics;

(d) accounting;

(e) engineering; or

(f) law.

In addition to the above qualifications, two of the directors must have substantial work experience within the operations of electric cooperatives or substantial experience on an electric cooperative board with one of these two directors also having substantial experience within the operations or board of a transmission or generation cooperative.

(D) For the assistance of the board of directors of the Public Service Authority, there is hereby established an advisory board to be known as the advisory board of the South Carolina Public Service Authority, to be composed of the Governor of the State, the Attorney General, the State Treasurer, the Comptroller General, and the Secretary of State, as ex officio members, who must serve without compensation other than necessary traveling expenses. The advisory board must perform any duties imposed on it pursuant to this chapter, and must consult and advise with the board of directors on any and all matters which by the board of directors may be referred to the advisory board. The board of directors must make annual reports to the advisory board, which reports must be submitted to the General Assembly by the Governor, in which full information as to all of the acts of ~~said~~ the board of directors shall be given, together with financial statement and full information as to the work of the authority. On July first of each year, the advisory board must designate a certified public accountant or accountants, resident in the State, for the purpose of making a complete audit of the affairs of the authority, which must be filed with the annual report of the board of directors. The Public Service Authority must submit the audit to the General Assembly.

(E)(1) The terms of all twelve present members of the board of directors of the Public Service Authority serving in office on the effective date of this subsection expire on the effective date of this subsection. However, the present members of the board shall continue to serve in a holdover capacity after the effective date of this subsection until their successors appointed in the manner provided in this section qualify and take office.

(2) The terms of all members of the board appointed to succeed the present members of the board whose terms expire as provided in item (1), notwithstanding any other provision of this section, shall be for four years each and until their successors are appointed and qualify.

(3) Members of the board, notwithstanding their terms of office or any other provision of law, may be removed or replaced by the Governor at any time at the Governor’s sole discretion.

(4) Members of the board must:

(A) implement and oversee compliance with the Rate Reduction and Stabilization Fund as mandated in Sections 58‑31‑105 and 58‑31‑106, and fully comply with their duties and responsibilities under Section 58‑31‑106; and

(B) cooperate fully with the Santee Cooper Evaluation and Recommendation Committee in the performance of the board’s duties and responsibilities as provided by law.

(F) A member of the General Assembly or a member of his immediate family may not be appointed to the Public Service Authority 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 appointed to the authority 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.

(G) In making appointments to the authority, the Governor shall ensure that race, color, gender, national origin, and other demographic factors are considered to ensure the geographic and political balance of the appointments, and shall strive to ensure that the membership of the authority will represent, to the greatest extent possible, all segments of the population of the State.

SECTION 2. A. Chapter 31, Title 58 of the 1976 Code is amended by adding:

“Section 58‑31‑105. When used in Article 1, Chapter 31:

(1) ‘Abandoned project’ means the Public Service Authority’s interest in the two abandoned partially completed nuclear generating units located at the V.C. Summer Nuclear Station in Fairfield County, South Carolina.

(2) ‘Surplus moneys’ means, for any fiscal year, those funds of the Public Service Authority remaining at the end of such fiscal year after the payment of:

(a) all necessary operating expenses and all annual debt requirements on bonds, notes or other obligations at any time outstanding from time to time and the discharge of all obligations arising under finance agreements, indentures, resolutions or other instruments under which bonds or obligations have been or may be issued, or to fulfill the terms and provisions of any agreements made with the purchasers or holders thereof or others,

(b) all other amounts required to be paid under this chapter, and

(c) deposits to such reserves as the board of directors of the Public Service Authority shall determine necessary and prudent conduct and operation of its business.

(3) ‘Termination date’ means the date on which the board of directors of the Public Service Authority finds that it has fully mitigated the impact on electric rates and charges of the Public Service Authority attributable to the undertaking of the Abandoned Project. This finding shall fully state the basis therefor and be provided to the President Pro Tempore of the Senate, Speaker of the House of Representatives, and the Chairmen of the Labor, Commerce and Industry Committees for the Senate and House of Representatives no later than ten days of the finding by the board of directors. In determining whether the impact on electric rates and charges has been so mitigated, the board of directors may take into account maintenance and operation cost savings and efficiencies.”

B. Chapter 31, Title 58 of the 1976 Code is amended by adding:

“Section 58‑31‑106. (A) Within ten days of the effective date of this section, the Public Service Authority shall create an interest bearing account known as the Rate Reduction and Stabilization Fund. The account shall be held and maintained by the Public Service Authority with an accounting of the balance of the Rate Reduction and Stabilization Fund provided to the President Pro Tempore of the Senate, Speaker of the House of Representatives, and the Chairmen of the Labor, Commerce and Industry Committees for the Senate and House of Representatives each fiscal year. The Rate Reduction and Stabilization Fund shall be funded, at the time of the creation of the account, with the deposit by the Public Service Authority of the full amount of the funds received by the Public Service Authority from the Toshiba Corporation guarantee related to the Abandoned Project, known as the Toshiba Settlement monetization funds, the amount of which is eight hundred ninety‑five million dollars, together with any earnings thereon. Any other guarantees, damages, settlements, or other recoveries, whenever received, also shall be deposited into the Rate Reduction and Stabilization Fund within ten days of receipt by the Public Service Authority.

(B) Within sixty days of the receipt of its audited financial statements for a fiscal year and until the termination date, the Public Service Authority shall deposit all surplus monies to the Rate Reduction and Stabilization Fund. The Public Service Authority also shall deposit any monies realized from cost savings undertaken to mitigate the rate impact of the abandoned project.

(C) Any and all funds received by the Public Service Authority from asset and salvage sales from the abandoned project shall be deposited into the Rate Reduction and Stabilization Fund within ten days of receipt by the Public Service Authority.

(D) Funds deposited to the Rate Reduction and Stabilization Fund shall be applied annually for the purposes of reducing or stabilizing electric rates and charges to mitigate the impact on electric rates and charges of the Public Service Authority attributable to the abandoned project. To that end the Public Service Authority by resolution, not less than annually and until the termination date, shall set forth the manner in which and the specific purposes for which the moneys in the Rate Reduction and Stabilization Fund shall be expended for debt reduction, and the debt reduction may include cash‑funding debt service through redemption or defeasance of bonds, notes, or other evidences of indebtedness, paying off existing debt, or avoiding debt issuance. Funds deposited to the Rate Reduction and Stabilization Fund shall be applied annually for the purposes of reducing or stabilizing electric rates and charges.

The resolution shall include a finding of the authority that the manner and purpose of the use of the moneys in reducing or stabilizing rates constitutes the most effective and efficient manner of providing rate relief for customers for rates related to the abandoned project. The resolution also shall set forth the amount of surplus monies and other money deposited to the Rate Reduction and Stabilization Fund in the prior fiscal year, the current fiscal year, and provide an itemization of reduction or stabilization of rates achieved by such action. The resolution and any amendment thereto shall be provided to the President Pro Tempore of the Senate, Speaker of the House or Representatives, and the Chairmen of the Labor, Commerce and Industry Committees for the Senate and House of Representatives upon adoption.

SECTION 3. (A) There is hereby created the Santee Cooper Evaluation and Recommendation Committee to be composed of nine members as hereinafter provided. Three members shall consist of the Speaker of the House of Representatives or his designee, the Majority Leader of the House of Representatives or his designee, and the Minority Leader of the House of Representatives or his designee. Three members shall consist of the President Pro Tempore of the Senate or his designee, the Majority Leader of the Senate or his designee, and the Minority Leader of the Senate or his designee. Three members shall consist of the Governor or his Designee, and two persons appointed by the Governor from the state at large. No person shall be appointed by the Governor to the committee if such person is employed by, receives compensation from, or accepts retirement or other benefits from a publicly owned utility, an investor‑owned utility, an electric cooperative, or any association or organization that represents a publicly owned utility, an investor‑owned utility, or an electric cooperative or otherwise participates in the energy industry or marketplace. Vacancies shall be filled by appointment in the manner of original appointment.

(B) The members of the committee shall elect a chairman and such other officers as they consider necessary. The committee shall meet upon the call of the chairman or a majority of its members. A member shall receive per diem, mileage, and subsistence as provided by law for members of legislative or other state committees as appropriate to be paid from the approved accounts of the office or House of their appointing authority. Meeting space and staff support shall be provided by the General Assembly as needed and required. The committee shall render recommendations to the General Assembly as soon as practicable, at which time the committee is dissolved, unless otherwise continued as provided by law.

(C) The committee shall evaluate the following non‑exhaustive list of objectives:

(1) determine the manner in which the General Assembly may best protect ratepayers and taxpayers in regard to Santee Cooper;

(2) analyze whether selling Santee Cooper is in the best interests of South Carolina taxpayers, the ratepayers of Santee Cooper, and the Ratepayers of the Electric Cooperatives of South Carolina;

(3) determine whether the assets of Santee Cooper should be considered for sale as a whole or in parts, and which assets of Santee Cooper, if any, should be retained by the State;

(4) obtain a valuation of Santee Cooper and its assets;

(5) develop a transparent and public process to conduct hearings, receive bids from potential purchasers, and evaluate a potential sale of Santee Cooper; and

(6) determine the future role of Santee Cooper, whether sold or retained by the State.

(D) To assist with meeting those objectives, it is recommended that the committee consider, but is not limited to, the following:

(1) determine the criteria necessary to assess the viability and feasibility of the potential sale of Santee Cooper;

(2) identify all assets of Santee Cooper and then determine which assets if any of Santee Cooper should be considered for sale;

(3) evaluate whether Santee Cooper water system or the Santee Cooper lakes, or both, should be part of any sale;

(4) obtain valuation of Santee Cooper assets, both collectively and separately, with specific valuation for the transmission, distribution, and generation assets of Santee Cooper;

(5) establish the criteria, parameters, and process to receive bid proposals from potential purchasers of Santee Cooper assets;

(6) evaluate whether the Procurement Code or other state law or regulation impacts the sale parameters, and if so, determine the best course of action to address same in their requests for proposals;

(7) as allowed by the Procurement Code or other state law or regulation, conduct public hearings to receive a bid from each potential prospective bidder and set time for same;

(8) analysis of a potential sale of Santee Cooper on current employees and retirees and whether bidders must maintain current workforce levels and pension commitments for a set period post sale;

(9) develop or cause to be developed the request for proposals to be used by potential bidders;

(10) establish the time frame for receipts for proposals from potential bidders, evaluation of proposals by committee, and make a recommendation to the General Assembly on whether a sale is in the best interests of ratepayers and taxpayers;

(11) require that all bid proposals shall be made as the best and final offer from each bidder;

(12) identify legislation needed to complete any potential sale;

(13) determine whether the committee should hire an investment bank or other third-party expert to assist with evaluation of offers received;

(14) determine the impact of Santee Cooper debt, including all bonded indebtedness, in the sale of Santee Cooper assets and including a requirement that all bids must satisfy indebtedness of Santee Cooper existing at close of sale;

(15) identify potential risks to South Carolina taxpayers and ratepayers that could result from sale of Santee Cooper either in whole or in part including, but not limited to, loss of tax exempt status of buyer, impact on economic development, and whether sale at this time would not preclude South Carolina from recovering full value of Santee Cooper;

(16) determine what course of action, whether a sale or nonsale of Santee Cooper or other option, provides maximum rate relief to Santee Cooper ratepayers, customers of the Electric Cooperatives of South Carolina, and industrial customers of Santee Cooper;

(17) determine the total assets of Santee Cooper and identify those not necessary for generation, transmission, or distribution needs so such assets can be sold without violating Section 58‑31‑360;

(18) evaluate Santee Cooper’s plan and strategy for future generation facilities in order to meet future electric demand, Santee Cooper’s timeline for same, and costs for such projects to the ratepayers;

(19) ascertain future economic development projects for Santee Cooper and the projected revenue estimated from same and whether an investor‑owned utility can provide the same economic development impact as Santee Cooper;

(20) calculate the revenue to Santee Cooper from the industrial and other nonresidential ratepayers, excluding revenue derived from the Electric Cooperatives of South Carolina;

(21) evaluation of whether diversification of Santee Cooper’s generation portfolio, including purchases of generation from outside Santee Cooper, provides a more cost effective manner to service customer need;

(22) obtain information on current amounts of cash on hand and in reserve of Santee Cooper;

(23) obtain current estimate of Santee Cooper pension liabilities;

(24) evaluation of projected revenue growth and impact on same on the ability of Santee Cooper to meet debt obligations;

(25) quantify current amounts of long‑term and short‑term debt of Santee Cooper;

(26) identify the structure of each of Santee Cooper’s bond offerings;

(27) review proposed rate schedules in both the long and short terms to determine full impact of V.C. Summer on ratepayers;

(28) determine whether Santee Cooper’s debt to equity ratio comports with market ratios of other electric utilities;

(29) determine whether Santee Cooper has obtained efficiency or performance studies related to expenses for workforce management and how Santee Cooper’s ratios relate to industry standards;

(30) evaluate the electric cooperative structure, including the role of the Central Electric Power Cooperative;

(31) evaluation of options to provide maximum rate relief to electric cooperative customers either through sale or retention of Santee Cooper;

(32) analysis of the central contract between Santee Cooper and the electric cooperatives to determine the impact of that agreement on any sale or management agreement involving Santee Cooper;

(33) solicit input from the electric cooperatives and other industrial customers on potential sale or long-term viability of Santee Cooper;

(34) direct Santee Cooper to inventory all assets at V.C. Summer site and obtain a salvage or sale valuation for those assets and that any monies received from such salvage or sale be used as directed in the Rate Relief and Stabilization Fund;

(35) determine whether Santee Cooper should be subject to oversight by the Public Service Commission or Joint Bond Review Committee;

(36) provide alternative governance structures for Santee Cooper other than a board of directors based on other state-owned utilities; and

(37) any other factors that the committee finds relevant to the objectives contained in this section.

SECTION 4. This act takes effect upon approval by the Governor.

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