**South Carolina General Assembly**

123rd Session, 2019-2020

**S. 760**

**STATUS INFORMATION**

General Bill

Sponsors: Senator M.B. Matthews

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Companion/Similar bill(s): 539, 3145

Introduced in the Senate on April 10, 2019

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

Summary: Electric coops

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/10/2019 Senate Introduced and read first time ([Senate Journal‑page 10](file:///h:\sj\20190410.docx))

4/10/2019 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 10](file:///h:\sj\20190410.docx))

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**VERSIONS OF THIS BILL**

[4/10/2019](file:///p:\pprever\2019-20\760_20190410.docx)

**A** **BILL**

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

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

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

“Section 33‑49‑150. The Office of Regulatory Staff under the provisions of this section is hereby vested with the authority and jurisdiction to conduct audits of electric cooperatives in the same manner, terms, and conditions it is authorized to conduct audits of regulated utilities as provided by law.”

SECTION 2. Section 33‑49‑420 of the 1976 Code is amended to read:

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

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

SECTION 3. Section 33‑49‑430 of the 1976 Code is amended to read:

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

SECTION 4. Section 33‑49‑440 of the 1976 Code is amended to read:

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

Each cooperative must provide a method by which members of the cooperative can cast a ballot in an election for trustees on a day other than, and before, the annual meeting day. The method for this alternative early voting should allow for voting by cooperative members prior to and after regular working hours and should include reasonable accommodations for elderly, disabled, or infirmed members as permitted by this section.”

SECTION 5. Section 33‑49‑610 of the 1976 Code is amended to read:

“Section 33‑49‑610. (A) The business and affairs of a cooperative must be managed by a board of not less than five trustees, each of whom must be a member of the cooperative or of another cooperative which is a member of the cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board, and the filling of vacancies on the board. Additionally, for the purpose of electing trustees, the bylaws must divide the area of the cooperative into separate voting districts equal to the number of board of trustee members to be elected; provided that the requirement that all board members be elected from specific voting districts must be phased-in as the terms of existing board members expire. Members of the cooperative residing in these voting districts shall elect a member of the board residing in the district to represent the voting district on the board.

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

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

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

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

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

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

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

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

SECTION 6. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

“Section 33‑49‑615. (A) The board of trustees must disclose on its website or through another available public medium by March fifteenth of each year, all compensation or benefits by category paid to or provided for board members during the previous calendar year. For purposes of this section, categories include:

(1) daily per diem amount;

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

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

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

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

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

(7) the total amount of fringe benefits provided.

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

SECTION 7. Section 33‑49‑620 of the 1976 Code is amended to read:

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

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

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

~~(3) Both such trustees and delegates shall be elected by such members.~~

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

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

“Section 33‑49‑625. (A) In addition to all other notice requirements, written notice of all annual, regular, or special meetings of the board of trustees or the membership of the cooperative, including membership meetings pursuant to the provisions of Section 33‑49‑620, must be posted at a location accessible and visible to the cooperative membership at the cooperative’s principal place of business at least ten days before the meeting.

(B) All meetings of the membership or the board, whether annual, regular or special, must be public meetings, except for those reasons specified in subsection (C). The notice must state at a minimum the time, place, location, and purpose of the meeting. If the cooperative has an electronic website, the notice must be posted on its website as well.

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

(1) matters related to employees of the cooperative;

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

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

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

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

(6) matters related to legal advice; and

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

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

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

SECTION 9. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

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

SECTION 10. Where the provisions of new or revised 1976 Code sections or subsections contained in this act conflict with provisions of the bylaws of an electric cooperative, the provisions of this act shall control and the cooperative, as permitted by Section 33‑49‑280, shall amend and conform its bylaw provisions accordingly.

SECTION 11. This act takes effect upon approval by the Governor.

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