~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 18, 2021

**H. 4062**

Introduced by Reps. Sandifer and West

S. Printed 3/18/21--H.

Read the first time March 11, 2021.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4062) to amend the Code of Laws of South Carolina, 1976, by adding Section 58‑3‑65 so as to allow the Public Service Commission to hire, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Article 1, Chapter 3, Title 58 of the 1976 Code is amended by adding:

“Section 58‑3‑65. (A) To the extent necessary to carry out commission responsibilities, the commission is authorized to employ in an advisory capacity, through contract, qualified, independent third‑party experts and consultants in carrying out its duties under this title. When the commission determines that the assistance of an expert or consultant will materially aid the commission in carrying out its duties under this title, the commission is authorized to retain professional expertise to provide advisory assistance to the commission for the purposes of a specific proceeding. Such professional expertise must be retained through a process that is transparent and designed to identify an expert who will be fair and unbiased and who will provide the commission with advice on an issue or issues as requested by the commission. Any experts or consultants retained pursuant to this section are subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as other commission employees. Experts retained pursuant to this item shall not testify in the proceeding for which they are retained, and shall not be subject to discovery or to deposition. The commission must inform the expert of the expert’s duties. The commission may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The commission is exempt from complying with the State Procurement Code in the selection and hiring of professional expertise authorized by this subsection. The expenses for the third‑party consultant 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 third‑party consultants incurred while traveling on commission business. The commission shall provide an accounting of compensation and expenses incurred for third‑party consultants in a report provided annually to the review committee, the Speaker of the House of Representatives, and the Chairman of the Senate Judiciary Committee. The commission and the Office of Regulatory Staff may not hire the same third‑party consultant or expert or independent third‑party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings.”

SECTION 2. Section 58‑3‑200 of the 1976 Code is amended to read:

“Section 58‑3‑200. Inspections, audits and examinations.

(A) 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).

(B) In the course of a proceeding and at least ten days prior to the commencement of a hearing or, when no hearing is held, at least ten days after the completion of filing testimony by the parties, the commission may raise any issue not previously raised by the parties to the proceeding that the commission determines is necessary to address in order to develop a full and complete record in such proceeding. The commission may, on its own motion or directive, approved by a majority vote of the commission, direct the parties to present legal argument, legal briefing, or the filing of supplemental testimony, which can include a request for written or oral fact witness testimony or written or oral expert witness testimony on any issue raised by the commission pursuant to this section. Nothing in this subsection restricts the commission’s authority to request a late filed exhibit during the course of a hearing. Any request made pursuant to this subsection, or a request for late filed exhibits, must provide sufficient time for the parties to fully respond to the request and the responses of other parties to the request.”

SECTION 3. Article 1, Chapter 3, Title 58 of the 1976 Code is amended by adding:

“Section 58‑3‑21. While hearing cases or any other matter within the commission’s jurisdiction or on other official business outside the county in which he resides, within fifty miles of his residence, a public service commissioner is entitled to a subsistence allowance in the amount of thirty‑five dollars per day plus such mileage allowance for travel as is provided for other employees of the State. While hearing cases or any other matter within the commission’s jurisdiction or on other official business at a location fifty miles or more from his residence, a public service commissioner is entitled to a subsistence allowance in the amount as provided for members of the General Assembly plus such mileage allowance for travel as is provided for other employees of the State.

Section 58‑3‑22. Members of the Public Service Commission are not prohibited from deliberating together in closed session in a manner consistent with the appellate courts in this State.”

SECTION 4. Section 58‑3‑20 of the 1976 Code is amended to read:

“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. 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 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) 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. 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)~~(C) 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)~~(D) 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 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 58‑3‑65 SO AS TO ALLOW THE PUBLIC SERVICE COMMISSION TO HIRE QUALIFIED, INDEPENDENT THIRD‑PARTY EXPERTS AND CONSULTANTS; AND TO AMEND SECTION 58‑41‑20, RELATING TO REVIEW AND APPROVAL PROCEEDINGS FOR ELECTRICAL UTILITIES, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. Article 1, Chapter 3, Title 58 of the 1976 Code is amended by adding:

“Section 58‑3‑65. (A) To the extent necessary to carry out commission responsibilities, the commission is authorized to employ, through contract, qualified, independent third‑party experts and consultants in carrying out its duties under this title. When the commission determines that the assistance of an expert or consultant will materially aid the commission in carrying out its duties under this title, such expert or consultant may be retained for purposes of a specific proceeding in either an advisory role, pursuant to item (1), or in a commission‑appointed expert witness role, pursuant to item (2), as provided in this section. The commission may employ both advisory professional expertise and commission‑appointed expert witnesses in the same proceeding; however, an expert or consultant may not serve in both capacities in the same proceeding.

(1) The commission is authorized to retain professional expertise to provide advisory assistance to the commission for the purposes of a specific proceeding. Such professional expertise must be retained through a process that is transparent and designed to identify an expert who will be fair and unbiased and who will provide the commission with advice on an issue or issues to be addressed in the specific proceeding. For the purposes of compliance with the communications restrictions contained in Section 58‑3‑260, experts retained pursuant to this item must be treated like staff of the commission. Experts retained pursuant to this item shall not testify in the proceeding for which they are retained, and shall not be subject to discovery or to deposition.

(2) The commission is authorized to employ a commission‑appointed expert witness in a specific proceeding when, in the commission’s discretion, it appears that such expert witness will materially aid the commission in carrying out their duties and in developing a full and complete record in such proceeding. The commission may appoint one or more experts to investigate, to render a report as may be ordered by the commission, or to testify as an expert at a proceeding relative to the fact or matter as to which the expert evidence is or may be required. The commission must inform the expert of the expert’s duties. The commission may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. Such expert must be selected through a process that is transparent and designed to identify an expert who will be fair and unbiased and who will offer testimony and exhibits, including any report requested by the commission, on issues identified by the commission to be addressed in the specific proceeding. For purposes of compliance with the communications restrictions contained in Section 58‑3‑260, any expert witness appointed by the commission pursuant to this item must be treated like a party to the proceeding. An expert only may communicate with parties to the proceeding through discovery under the commission’s rules governing discovery or through public questioning at a related hearing. An expert retained pursuant to this item has both: (a) the right to submit discovery requests to parties in the proceeding, and (b) the obligation to respond to discovery propounded by the parties, pursuant to the commission’s rules governing discovery. Any testimony and exhibits, including any report requested by the commission, to be offered by a commission‑appointed expert witness pursuant to this item must be prefiled in the proceeding at least twenty‑five days prior to the hearing scheduled in the proceeding and parties to the proceeding must be allowed an opportunity to file testimony and exhibits responding to the testimony and exhibits submitted by the commission‑appointed expert witness. The testimony and exhibits to be offered by the commission‑appointed expert witness retained pursuant to this item are subject to the rules of evidence applicable in proceedings before the commission.

(B) Except as otherwise indicated within this subsection, the commission is exempt from complying with the State Procurement Code in the selection and hiring of professional expertise authorized by this subsection. The expenses for the third‑party consultant 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 third‑party consultants incurred while traveling on commission business. The commission shall provide an accounting of compensation and expenses incurred for third‑party consultants in a report provided annually to the review committee, the Speaker of the House of Representatives, and the Chairman of the Senate Judiciary Committee. The commission and the Office of Regulatory Staff may not hire the same third‑party consultant or expert or independent third‑party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings.”

SECTION 2. Section 58‑41‑20(I) of the 1976 Code, as added by Act 62 of 2019, is amended to read:

“(I) The commission is authorized to employ, through contract or otherwise, third‑party consultants and experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section pursuant to Section 58‑3‑65. ~~The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third‑party consultant or expert authorized by this subsection.~~ The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party’s independently derived conclusions as to that third party’s opinion of each utility’s calculation of avoided costs for purposes of proceedings conducted pursuant to this section. ~~The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties.~~ The qualified independent third party shall submit all requests for documents and information necessary to their analysis under the authority of the commission and the commission shall have full authority to compel response to the requests. The qualified independent third party’s duty will be to the commission. ~~Any conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility. The utilities may require confidentiality agreements with the independent third party that do not impede the third‑party analysis.~~ The utilities shall be responsive in providing all documents, information, and items necessary for the completion of the report. The independent third party shall also include in the report a statement assessing the level of cooperation received from the utility during the development of the report and whether there were any material information requests that were not adequately fulfilled by the electrical utility. ~~Any party to this proceeding shall be able to review the report including the confidential portions of the report upon entering into an appropriate confidentiality agreement. The commission and the Office of Regulatory Staff may not hire the same third‑party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings~~ The commission and the Office of Regulatory Staff may not hire the same third‑party consultant or expert in the same proceeding.”

SECTION 3. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑