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COMMITTEE AMENDMENT ADOPTED AND AMENDED

May 11, 2022

**H. 4062**

Introduced by Reps. Sandifer and West

S. Printed 5/11/22--S. [SEC 5/12/22 12:40 PM]

Read the first time April 7, 2021.

**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.

Amend Title To Conform

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 58‑3‑21. 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 may meet together to receive technical and legal advice from the commission’s staff on matters pending on the commission’s docket, provided that the:

(1) advice is to aid the members in carrying out their responsibilities on the commission;

(2) advice is provided in a manner consistent with the South Carolina Code of Judicial Conduct; and

(3) members who attend such a meeting are not authorized to make recommendations to or transact any business for the Public Service Commission.

A meeting between the members of the Public Service Commission and commission staff pursuant to this section does not constitute a ‘public meeting’ for purposes of the Freedom of Information Act.”

SECTION 2. 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 3. A. The General Assembly hereby finds and declares that:

(1) the economic and financial well-being of South Carolina and its citizens depends upon continued economic development and opportunities for employment;

(2) the cost of electricity and the availability of renewable energy sources for electricity are important factors in the decision for a commercial and industrial entity to locate or expand their existing establishments in South Carolina;

(3) competitive electric rates, terms, and conditions and the ability to utilize renewable energy sources for electric power generation are necessary to attract prospective commercial or industrial entities to invest in South Carolina and to encourage and incent robust economic growth in the State;

(4) the Public Service Commission of South Carolina should weigh and consider any quantifiable net benefits that may result from economic development opportunities resulting from prospective commercial or industrial entities in determining whether rates, terms, and conditions proposed by an electrical utility as defined by Section 58-27-10(7) are reasonable, prudent, and in the best interest of the electrical utility’s general body of retail customers; and

(5) rates proposed by electrical utilities for prospective commercial or industrial entities that are at or greater than the electrical utility’s marginal cost should be presumed reasonable.

B. For the purposes of SECTION 3 unless otherwise specified:

(1) “Commission” means Public Service Commission of South Carolina.

(2) “Electrical utility” has the same meaning as provided in Section 58-27-10(7).

(3) “Prospective manufacturing entity” means a commercial or industrial entity that proposes to:

(a) request new, permanent electric service to a new establishment or location in an electrical utility’s service territory;

(b) expand an existing establishment in an electrical utility’s service territory that has existing permanent electric service and which expansion will result in additional electrical load on the electrical utility’s system; or

(c) locate in an existing establishment and establish a new customer service account with the electrical utility for which expansion will result in additional electrical load on the electrical utility’s system;

(4) “Marginal cost” means the electrical utility’s marginal cost for producing energy.

(5) “Rate proposal” means a written document that identifies the rates, terms, and conditions for electric service offered by an electrical utility to a prospective manufacturing entity.

(6) “Contracts” shall have the same meaning as the term is used in Section 58-27-980.

(7) “Qualifying customer” means a commercial or industrial customer that agrees to locate its operations in South Carolina; or expand its existing establishment; and such location or expansion results in the addition of a minimum of:

(a) 500 kilowatts at one point of delivery;

(b) one hundred new employees; and

(c) capital investment of four hundred thousand dollars following the electrical utility’s approval for service.

(8) “Renewable energy facility” means a solar array or other facility constructed by or on behalf of a qualifying customer for the exclusive purpose of supplementing electric power generation from a renewable energy source for its economic development location or expansion.

C. (A) Notwithstanding any other provision of law, an electrical utility may provide the South Carolina Department of Commerce or a prospective manufacturing entity with a rate proposal containing terms and conditions that would incentivize and encourage the prospective manufacturing entity to employ additional workforce and to make capital investments in the electrical utility’s service territory. The rate proposal provided by an electrical utility may differ from the final contract, rate, terms, and conditions with the qualifying customer.

(B) The electrical utility shall file the rate proposal with the commission for review and acceptance. The rate proposal is determined to be presumptively reasonable if the rates, terms, and conditions are equal to or greater than the electrical utility’s marginal cost.

D. (A) Nothing in this act shall restrict the commission’s authority to regulate rates and charges or review contracts entered into by or supervise the operations of electrical utilities.

(B) An electrical utility may offer economic development rates to a qualifying customer that may be lower than the rate or rates that the qualifying customer otherwise would be or is subject to under the electrical utility’s commission approved tariffs in effect at the time; provided, however, that the economic development rate must not be lower than the electrical utility’s marginal cost of providing service to the qualifying customer.

(C) An electrical utility may negotiate and enter into agreements that contain economic development rates with a qualifying customer, which agreements and rates shall be subject to commission approval, and which shall be for a term not exceeding ten years. The electrical utility may offer the qualifying customer real time pricing options or riders for other clean energy attributes which may support the qualifying customer’s sustainability goals.

(D) In the commission’s determination of the public interest for any economic development rate or contract, the electrical utility bears the burden of proof to establish that:

(1) the rates or charges assessed to the electrical utility’s other customers do not subsidize the cost of providing economic development rates to a qualifying customer;

(2) the rates of other electrical utility operations do not increase; and

(3) other customers of the electrical utility do not experience a rate increase due to a rate or rates offered to a qualifying customer.

E. (1) The construction of a proposed renewable energy facility by or on behalf of a qualifying customer to support electric power generation at its economic development location or expansion must comply with federal, state, and local laws and ordinances.

(2) In compliance with federal, state, and local laws and ordinances, the utility may expedite interconnection of a proposed renewable energy facility to be constructed by a qualifying customer to support electric power generation at its economic development location or expansion where high quality and reliable electric service are not adversely impacted.

F. The provisions of SECTION 3 must be liberally construed to effectuate the purposes of this SECTION.

SECTION 4. This act takes effect upon approval by the Governor. The provisions of SECTION 3 expire on July 1, 2026.

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