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Summary: Public Service Authority

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/10/2015](file:///p:\pprever\2015-16\4541_20151210.docx)

[1/14/2016](file:///p:\pprever\2015-16\4541_20160114.docx)

**A** **JOINT RESOLUTION**

TO PROVIDE THAT ON OR BEFORE JULY 1, 2016, THE STATE FISCAL ACCOUNTABILITY AUTHORITY SHALL ISSUE A REQUEST FOR PROPOSALS (RFP) SOLICITING BIDS FOR THE COMPLETE PURCHASE OF OR A NONCONTROLLING PERCENTAGE OWNERSHIP INTEREST IN THE SOUTH CAROLINA PUBLIC SERVICE AUTHORITY BY A THIRD PARTY FROM THE STATE OF SOUTH CAROLINA, TO STIPULATE THE REQUIREMENTS OF THIS REQUEST FOR PROPOSALS, TO PROVIDE THAT THE STATE FISCAL ACCOUNTABILITY AUTHORITY ON OR BEFORE JANUARY 1, 2017, SHALL OPEN THE BIDS AND MAY ACCEPT THE HIGHEST SUITABLE BID, TO REQUIRE THE PUBLIC SERVICE AUTHORITY TO CERTIFY ITS ASSETS AND LIABILITIES, AND PROVIDE ITS CERTIFIED INCOME STATEMENTS FOR THE LAST FIVE YEARS AND BALANCE SHEET TO THE STATE FISCAL ACCOUNTABILITY AUTHORITY FOR THE PURPOSES OF THIS SOLICITATION, TO ALSO REQUIRE THE PUBLIC SERVICE AUTHORITY TO COOPERATE WITH INTERESTED BIDDERS IN THE PREPARATION OF THEIR BID, AND TO PROVIDE CIVIL REMEDIES AND PENALTIES FOR FAILURE TO PERFORM THESE REQUIREMENTS, TO PROVIDE THAT IF A SUITABLE BID IS ACCEPTED, FIFTY PERCENT OF THE REVENUE FROM THE SALE MUST BE DEPOSITED IN THE STATE HIGHWAY FUND AND USED FOR THE SOLE PURPOSE OF REPAIRING STATE ROADS, BRIDGES, AND HIGHWAYS IN THE STATE HIGHWAY SYSTEM AND FIFTY PERCENT OF THE REVENUE FROM THE SALE MUST BE USED FOR THE SUPPORT AND DEVELOPMENT OF NEW OR EXISTING K‑12 EDUCATIONAL PROGRAMS FOR SCIENCE, TECHNOLOGY, ENGINEERING, AND MATH (STEM) INSTRUCTION, AND TO FURTHER THE PURPOSES OF THE SOUTH CAROLINA EDUCATION AND ECONOMIC DEVELOPMENT ACT OF 2005, AND TO REPEAL CHAPTER 31, TITLE 58, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PUBLIC SERVICE AUTHORITY UPON FINAL CONSUMMATION OF A COMPLETE PURCHASE AND SALE.

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

SECTION 1. (A) On or before July 1, 2016, a request for proposals (RFP) must be issued by the State Fiscal Accountability Authority soliciting bids for the complete purchase of or a percentage ownership interest in the South Carolina Public Service Authority by a third party from the State of South Carolina. The request for proposals shall contain that criteria as the Accountability Authority specifies but at a minimum the criteria must include, but is not limited to, the following:

(1) all bids must be either for the full and complete purchase of the Public Service Authority including all assets and liabilities and all generation, transmission, and distribution facilities, or for the purchase of a noncontrolling percentage ownership interest in the Public Service Authority;

(2) if the bid is for a complete purchase, the following provisions apply:

(a) all bids must provide for the full payment by the bidder of the bid price or the assumption without recourse by the bidder, of all liabilities of the Public Service Authority including revenue bonds and other indebtedness issued by it to date of the bid, or a combination of payment and assumption;

(b) all bids must include a full and complete release of the State of South Carolina, and its agents, employees, or entities including the Public Service Authority from any and all liability present or contingent of the Public Service Authority including that which may arise from the operation or decommissioning of any nuclear generation plants owned in whole or in part or operated by the Public Service Authority;

(c) existing contracts for the providing of electricity, water, fuel, or other services or products must be honored by any bidder but are renegotiable at the option of the parties if both agree;

(d) supervision of the waters of Lakes Moultrie and Marion and any other recreational waters of the Santee Cooper Hydroelectric and Navigation Project including jurisdiction for purposes of civil and criminal process must be vested in the Department of Natural Resources with the general public retaining the same rights to use these waters for recreational purposes as is now provided;

(e) an acceptable minimum bid is considered to be the full payment of all liabilities and bonded indebtedness of the Public Service Authority or the assumption of those liabilities and bonded indebtedness without recourse, or a combination of payment and assumption, plus cash or other consideration in that amount considered sufficient by the Fiscal Accountability Authority;

(3) if the bid is for a noncontrolling percentage ownership interest, the following provisions apply:

(a) a noncontrolling percentage ownership interest is defined as a percentage ownership interest in the net income from enterprise operations of the Public Service Authority but not in any specific assets and not to exceed forty‑nine percent; provided, however, that upon a later complete sale of the Public Service Authority or the sale of any of its assets or facilities, a successful bidder is entitled to have its stipulated percentage applied to the net total proceeds of the sale including assets and facilities, and receive its pro rata share of the proceeds;

(b) if a bidder submits a bid to purchase a noncontrolling percentage ownership interest in the Public Service Authority, the Fiscal Accountability Authority is authorized to negotiate further terms and conditions of the purchase, including a reduction or increase in the percentage ownership interest purchased so long as the percentage ownership purchased does not become a controlling interest, and also the number of new directors on the board to which the successful bidder may be entitled, not to exceed a majority of the board. These new directors have a fiduciary duty to the Public Service Authority and may not disclose or otherwise use any confidential or proprietary information they may obtain in their capacity as a director to the detriment or disadvantage of the Public Service Authority or its customers;

(c) the successful bidder may be entitled to seats on the board of directors of the Public Service Authority as may be determined pursuant to subitem (b). For this purpose, the board of directors of the Authority as provided for in Section 58‑31‑20, on the date of purchase, is hereby expanded by that number of directors necessary to effectuate the determination made under subitem (b). These new directors are considered to be public officials of this State just as are the existing directors. The new directors must be appointed by the Governor from a list of nominees submitted by the successful bidder and also must be qualified electors of this State. The Governor in making these appointments may reject any nominee submitted, in which case a new nominee must be submitted until the seat is filled. These directors shall serve for terms of seven years each and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment. Nothwithstanding any other provision of law, no screening or Senate confirmation of these new directors is required;

(d) if more than one bidder submits a bid for a noncontrolling percentage ownership interest, the Fiscal Accountability Authority may select which bid it considers most beneficial to the State considering the terms and conditions attached to it, or may reject all bids; and

(e) bids for a noncontrolling percentage ownership interest must be for cash or other consideration acceptable to the Fiscal Accountability Authority and do not require, but may include, an assumption of any portion or a designated portion of the liabilities of the Public Service Authority;

(4) the transaction must be contingent on compliance by the State with all provisions of law pertaining to the purchase and sale prior to the final consummation of this transaction, and the State must agree to use its best efforts in regard to this compliance; and

(5) all bids must be sealed and submitted on or before 12:00 noon on October 1, 2016, together with a performance bond as may be required by the Fiscal Accountability Authority.

(B) On or before January 1, 2017, the Fiscal Accountability Authority shall open the bids and accept the most suitable bid which meets the requirements of this section, or alternatively may reject all bids.

(C) No request for proposals may be issued for the sale of a noncontrolling percentage ownership interest in the Public Service Authority to a third party or a complete sale to a third party if the Fiscal Accountability Authority determines that such a sale would violate the constitution of this State or federal law.

(D) The Public Service Authority and its officers and employees designated by the Public Service Authority shall cooperate with the Fiscal Accountability Authority and with any interested bidder in regard to the request for proposals. The Public Service Authority for this purpose shall certify its assets and liabilities, its income statements for the last five years, and its balance sheet to the Fiscal Accountability Authority by June 1, 2016, in order for the request for proposals to be issued by July 1, 2016. The Public Service Authority shall provide to any interested bidder all information the bidder requires to make an informed bid; provided, that all proprietary or confidential information of the Public Service Authority or of its customers in possession of the Public Service Authority must be protected by appropriate confidentiality agreements. If the Public Service Authority fails to perform the requirements imposed upon it by the provisions of this subsection in the opinion of the Fiscal Accountability Authority, the Fiscal Accountability Authority may request a court of competent jurisdiction to issue a writ of mandamus requiring the Public Service Authority or its designated officers and employees to perform the requirements imposed upon it or them by the provisions of this subsection or to cite the Public Service Authority or its designated officers and employees for civil contempt for failure to perform.

(E) The Fiscal Accountability Authority on or before January 1, 2017, shall accept a suitable bid or reject all bids. If a bid is accepted:

(1) one‑half of the revenues derived from the sale must be deposited in the State Highway Fund and used for the sole purpose of repairing and refurbishing state roads, bridges, and highways in the state highway system;

(2) one‑half of the revenues derived from the sale must be used for the support and development of new or existing K‑12 programs for science, technology, engineering, and math (STEM) instruction as the General Assembly may provide, and to further the purposes of the South Carolina Education and Economic Development Act of 2005; and

(3) the State Fiscal Accountability Authority, however, is authorized to withhold a portion of the sale proceeds and establish a reserve fund from which future liabilities and obligations of the Public Service Authority not known or identified at the time of the sale may be paid.

(F) Upon the final consummation of a complete purchase and sale of the South Carolina Public Service Authority as authorized by this section and certified to by the State Fiscal Accountability Authority, Chapter 31, Title 58 of the 1976 Code is repealed.

SECTION 2. This joint resolution takes effect upon approval by the Governor.

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