**South Carolina General Assembly**

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**H. 4756**

**STATUS INFORMATION**

General Bill

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Summary: Department of Transportation Commissioners

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/9/2012 House Introduced and read first time ([House Journal‑page 13](file:///h:\hj%20archive\2012\02-09-12.docx))

2/9/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 13](file:///h:\hj%20archive\2012\02-09-12.docx))

**VERSIONS OF THIS BILL**

[2/9/2012](file:///p:\pprever\2011-12\4756_20120209.docx)

**A** **BILL**

TO AMEND SECTIONS 57‑1‑310, 57‑1‑320, 57‑1‑330, AND 57‑1‑740, ALL AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DUTIES, RESPONSIBILITIES, ELECTION, AND APPOINTMENT OF THE DEPARTMENT OF TRANSPORTATION COMMISSIONERS, SO AS TO PROVIDE THAT COMMISSIONERS MUST BE APPOINTED BY THE GOVERNOR FROM EACH JUDICIAL CIRCUIT WITH THE ADVICE AND CONSENT OF THE SENATE INSTEAD OF BEING SCREENED BY A SCREENING COMMITTEE AND ELECTED BY THE MEMBERS OF THE GENERAL ASSEMBLY FROM THEIR RESPECTIVE CONGRESSIONAL DISTRICTS, TO PROVIDE THAT THE GOVERNOR’S AT‑LARGE APPOINTEE MUST BE APPOINTED WITH THE ADVICE AND CONSENT OF THE SENATE, AND TO PROVIDE THAT A MEMBER OF THE GENERAL ASSEMBLY OR A MEMBER OF HIS IMMEDIATE FAMILY MAY NOT BE APPOINTED TO THE COMMISSION FOR A PERIOD OF ONE YEAR AFTER THE MEMBER CEASES TO BE A MEMBER OF THE GENERAL ASSEMBLY OR FAILS TO FILE FOR ELECTION TO THE GENERAL ASSEMBLY; AND TO REPEAL SECTIONS 57‑1‑325, 57‑1‑730, AND 57‑1‑750 RELATING TO THE MEMBERS OF THE GENERAL ASSEMBLY MEETING TO ELECT COMMISSIONERS, AND THE POWERS, DUTIES, AND COMPENSATION OF THE JOINT TRANSPORTATION REVIEW COMMITTEE.

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

SECTION 1. Section 57‑1‑310 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 57‑1‑310. (A) The ~~congressional districts~~ judicial circuits of this State are constituted and created Department of Transportation Districts of the State, designated by numbers corresponding to the numbers of the respective ~~congressional districts~~ judicial circuits. The Commission of the Department of Transportation shall be composed of one member from each transportation district ~~elected by the delegations of the congressional district~~ appointed by the Governor with the advice and consent of the Senate and one member appointed by the Governor from the State at large with the advice and consent of the Senate. Such ~~elections or~~ appointment~~, as the case may be,~~ shall take into account race and gender so as to represent, to the greatest extent possible, all segments of the population of the State~~; however~~ . However, consideration of these factors in making an appointment ~~or in an election~~ in no way creates a cause of action or basis for an employee grievance for a person appointed or elected or for a person who fails to be appointed ~~or elected~~.

(B)~~(1)~~ ~~Candidates for election to the commission must be screened by the Joint Transportation Review Committee, as provided in Article 7 of this chapter, and determined to meet the qualifications contained in subsection (C) in order to be eligible for election.~~

~~(2)~~ ~~The at‑large appointment made by the Governor must be transmitted to the Joint Transportation Review Committee. The Joint Transportation Review Committee must determine whether the at‑large appointee meets the qualifications in subsection (C) and report its findings to the General Assembly and the Governor. Until the Joint Transportation Review Committee finds a gubernatorial appointee qualified, the appointee must not take the oath of office and the full rights and privileges and powers of the office shall not vest.~~

~~(C)~~ The qualifications that each commission member must possess, include, but are not limited to:

(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; or

(2) a background of at least five years in any combination of the following fields of expertise:

(a) transportation;

(b) construction;

(c) finance;

(d) law;

(e) environmental issues;

(f) management; or

(g) engineering.

~~(D)~~(C) No member of the General Assembly or member of his immediate family shall be ~~elected or~~ appointed to the commission 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 elected or appointed to the commission for a period of ~~four years~~ one year 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.”

SECTION 2. Section 57‑1‑320 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 57‑1‑320. ~~(A)~~ ~~A county that is divided among two or more Department of Transportation districts, for purposes of electing a commission member, is deemed to be considered in the district which contains the largest number of residents from that county.~~

~~(B)~~ No county within a Department of Transportation district shall have a resident commission member for more than one consecutive term and in no event shall any two persons from the same county serve as a commission member simultaneously except as provided hereinafter.”

SECTION 3. Section 57‑1‑330 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 57‑1‑330. (A) ~~For the purposes of electing a commission member, a legislator shall vote only in the congressional district in which he resides.~~ All commission members are ~~elected~~ appointed to a term of office of four years which expires on February fifteenth of the appropriate year. Commissioners shall continue to serve until their successors are elected and qualify, provided that a commissioner may only serve in a hold‑over capacity for a period not to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by ~~election or~~ appointment in the manner provided in this article for the unexpired term only. No person is eligible to serve as a commission member who is not a resident of that district at the time of his appointment. Failure by an ~~elected~~ appointed commission member to maintain residency in the district for which he is elected shall result in the forfeiture of his office.

(B) ~~The at‑large commission member shall serve at the pleasure of the Governor.~~ The at‑large commission member may be appointed from any county in the State unless another commission member is serving from that county. Failure by the at‑large commission member to maintain residence in the State shall result in a forfeiture of his office.

(C) All ~~elected~~ commission members may be removed from office as provided in Section 1‑3‑240(C)(1).”

SECTION 4. Section 57‑1‑740 of the 1976 Code, as last amended by Act 253 of 2010, is further amended to read:

“Section 57‑1‑740. ~~(A) For purposes of this section, a~~ A vacancy is created on the commission when a term expires, a new ~~congressional district~~ judicial circuit is created, or a commission member resigns, dies, or is removed from office as provided in Section 57‑1‑330(C). ~~If known in advance, the review committee may provide notice of a vacancy and begin screening prior to the actual date of the vacancy.~~

~~(B) Whenever a commission member must be elected to fill a vacancy:~~

~~(1) The review committee must forward a notice of the transportation commission district member vacancy to:~~

~~(a) a newspaper of general circulation within the congressional district from which a commission member must be elected with a request that it be published at least once a week for four consecutive weeks;~~

~~(b) any person who has informed the committee that he desires to be notified of the vacancy; and~~

~~(c) to each member of the congressional district delegation.~~

~~The committee may provide such additional notice that it deems appropriate.~~

~~(2) The review committee may not accept a notice of intention to seek the office from any candidate until the review committee certifies to the clerk of the Senate and the clerk of the House of Representatives that the proper notices, required by this section, have been requested to be published or provided as required in this subsection.~~

~~(3) The cost of the notification process required by this section must be absorbed and paid from the approved accounts of the Senate and the House of Representatives as contained in the annual appropriations act.~~

~~(C) Any person desiring to be a candidate for election to fill a vacancy on the commission must file a notice of intention with the review committee no later than five business days after the last date the published notice appeared in a newspaper of general circulation. Upon the expiration of the notice of intention filing period, the review committee must provide every member of the affected congressional district delegation with a complete list of the people who filed a notice.~~

~~(D)(1) When the notice of intention filing period closes, the review committee shall begin to conduct an investigation of candidates, as it considers appropriate, and may utilize the services of any agency of state government to assist in the investigation. Upon request of the review committee for assistance, an agency shall cooperate fully.~~

~~(2)(a)(i) Upon completion of the candidate investigations, the chairman of the review committee shall schedule a public hearing concerning the qualifications of the candidates. Any person who desires to testify at the hearing, including the candidates, must furnish a written statement of his proposed testimony to the chairman of the review committee. This statement shall be furnished no later than forty‑eight hours prior to the date and time set for the hearing. The review committee shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the review committee, shall be submitted under oath and persons knowingly furnishing false information either orally or in writing shall be subject to the penalties provided by law for perjury and false swearing.~~

~~(ii) During the course of the investigation, the review committee may schedule an executive session at which the candidates, and other persons who the review committee wishes to interview, may be interviewed on matters pertinent to the candidate’s qualification for the office to be filled.~~

~~(iii) The review committee shall render its tentative findings as to whether the candidates are qualified to serve on the commission as a district member and its reasons for making the findings within a reasonable time after the hearing. If only one person applies to fill a vacancy or if the review committee concludes there are fewer candidates qualified for a vacancy than those who initially filed, it shall submit to the congressional district delegation for election only the names and qualifications of those who are considered to be qualified. The nominations of the review committee for any candidate for the election to the commission are binding on the congressional district delegation, and it shall not elect a person not nominated by the review committee. Nothing shall prevent the congressional district delegation from rejecting all persons nominated. In this event, the review committee shall submit another group of names and qualifications for that position. Further nominations in the manner required by this chapter must be made until the office is filled.~~

~~(b) As soon as possible after the completion of the hearing, a verbatim copy of the testimony, documents submitted at the hearing, and findings of fact shall be transcribed and published in the journals of both houses or otherwise made available in a reasonable number of copies to the members of both houses and a copy must be furnished to each candidate.~~

~~(c)(i) The review committee must transmit to the congressional district delegation the names of all qualified candidates.~~

~~(ii) No member of the congressional district delegation may pledge his vote to elect a candidate until the review committee has released its written report concerning the qualifications of the candidate to the members of the appropriate congressional district delegation. The release of the written report of qualifications shall occur no earlier than forty‑eight hours after the names of the qualified candidates have been initially released to members of the appropriate congressional district delegation.~~

~~(iii) No candidate may directly or indirectly seek the pledge of a vote from a member of the candidate’s congressional delegation or, directly or indirectly, contact a statewide constitutional officer, a member of the General Assembly, or the Joint Transportation Review Committee regarding screening for the commission until the review committee has released its written report as to the qualifications of all candidates in a particular congressional district. For purposes of this section, "indirectly seek the pledge" means the candidate, or someone acting on behalf of and at the request of the candidate, requests another person to contact a member of the General Assembly, a statewide constitutional officer, or a member of the review committee on behalf of the candidate before the review committee’s release of the written report of qualifications.~~

~~(iv) The prohibitions of this section do not extend to an announcement of candidacy by the candidate and statements by the candidate detailing the candidate’s qualifications.~~

~~(d) A candidate may withdraw at any stage of the proceedings, and in this event no further inquiry, report on, or consideration of his candidacy shall be made.~~

~~(3) All records, information, and other material that the review committee has obtained or used to make its findings of fact, except materials, records, and information presented under oath at the public hearing, shall be kept strictly confidential. After the review committee has reported its findings of fact, or after a candidate withdraws his name from consideration, all records, information, and material required to be kept confidential must be destroyed.~~

~~(4)(a) The review committee may, in the discharge of its duties, administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the investigation of the review committee.~~

~~(b) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the review committee on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any criminal penalty based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self‑incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed during testimony.~~

~~(c) In case of contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the review committee, may issue to the person an order requiring him to appear before the review committee to produce evidence, if so ordered, or to give testimony concerning the matter under investigation. Any failure to obey an order of the court may be punished as contempt. Subpoenas shall be issued in the name of the review committee and shall be signed by the review committee chairman. Subpoenas shall be issued to those persons as the review committee may designate.~~

~~(5) The privilege of the floor in either house of the General Assembly may not be granted to a candidate, or any immediate family member of a candidate unless the family member is serving in the General Assembly, during the time the candidate’s application is pending before the review committee and during the time the candidate’s election is pending.~~”

SECTION 5. Sections 57‑1‑325, 57‑1‑730, and 57‑1‑750 of the 1976 Code are repealed.

SECTION 6. This act takes effect upon approval by the Governor.

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