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**S. 492**

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Summary: Gas user fee among counties

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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3/1/2017 Senate Referred to Committee on **Transportation** ([Senate Journal‑page 7](file:///h:\sj\20170301.docx))

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**VERSIONS OF THIS BILL**

[3/1/2017](file:///p:\pprever\2017-18\492_20170301.docx)

**A** **BILL**

TO AMEND SECTION 57-1-370(B) OF THE 1976 CODE, RELATING TO THE DEVELOPMENT OF THE STATEWIDE TRANSPORTATION PLAN, TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION COMMISSION SHALL ESTABLISH PROJECT PRIORITY LISTS FOR EACH PROGRAM CATEGORY PROPOSED TO BE INCLUDED IN THE STATEWIDE TRANSPORTATION INFRASTRUCTURE PLAN AND THE STATE NON-FEDERAL AID PROGRAM; TO REPEAL SECTION 57-1-460, RELATING TO THE DEPARTMENT OF TRANSPORTATION SECRETARY’S EVALUATION AND APPROVAL OF ROUTINE OPERATION, MAINTENANCE, AND EMERGENCY REPAIRS; TO REPEAL SECTION 57-1-470, RELATING TO THE COMMISSION’S REVIEW OF ROUTINE MAINTENANCE AND EMERGENCY REPAIR REQUESTS APPROVED BY THE SECRETARY; TO AMEND SECTION 57-1-310(A) AND (B), RELATING TO THE COMPOSITION OF THE COMMISSION, TO INCREASE THE NUMBER OF AT-LARGE SEATS TO TWO; TO AMEND SECTION 57-1-360(B), RELATING TO THE STANDARDS FOR AUDITS, TO REQUIRE THAT FINAL AUDIT REPORTS MUST BE PUBLISHED ON THE DEPARTMENT’S AND STATE AUDITOR’S WEBSITES; TO AMEND SECTION 57-1-430, RELATING TO THE SECRETARY’S DUTIES, TO REQUIRE THE SECRETARY TO PREPARE AND PUBLISH ON THE DEPARTMENT’S WEBSITE AN ANNUAL REPORT OUTLINING THE DEPARTMENT’S ANNUAL EXPENDITURES, A LIST OF ALL COMPANIES DOING BUSINESS WITH THE DEPARTMENT, AND THE AMOUNT SPENT ON THESE CONTRACTS; AND TO AMEND SECTION 12‑28‑2740, RELATING TO THE DISTRIBUTION OF THE GASOLINE USER FEE AMONG COUNTIES, REQUIREMENTS FOR THE EXPENDITURES OF THESE FUNDS, AND COUNTY TRANSPORTATION COMMITTEES, TO CHANGE THE AMOUNT THAT THE DEPARTMENT OF TRANSPORTATION ANNUALLY TRANSFERS FROM THE STATE HIGHWAY FUND TO THE DONOR COUNTIES FROM NINE AND ONE HALF MILLION DOLLARS TO SIXTEEN MILLION DOLLARS, AND TO RENUMBER SECTIONS AS APPROPRIATE.

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

SECTION 1. Section 57-1-370(B) of the 1976 Code is amended to read:

“(B) Concerning the development, content, and implementation of the Statewide Transportation Improvement Program, the commission must:

(1) develop a process for consulting with nonmetropolitan local officials, with responsibility for transportation, that provides an opportunity for their participation in the development of the long‑range Statewide Transportation Plan and the Statewide Transportation Improvement Program;

(2) approve the Statewide Transportation Improvement Program and ensure that it is developed pursuant to federal laws and regulations and approve an updated Statewide Transportation Improvement Program from time to time as permitted by and in the manner required by federal laws or regulations;

(3) develop and revise the transportation plan for inclusion in the Statewide Transportation Improvement Program, for each nonmetropolitan planning area in consultation with local officials with responsibility for transportation;

(4) work in consultation with each metropolitan planning organization to develop and revise a transportation improvement program for each metropolitan planning area;

(5) select from the approved Statewide Transportation Improvement Program the transportation projects undertaken in nonmetropolitan areas in consultation with the affected nonmetropolitan local officials with responsibility for transportation;

(6) select projects to be undertaken, in consultation with each metropolitan planning organization, from the metropolitan planning organization’s approved transportation improvement plan in metropolitan areas not designated as a transportation management area;

(7) consult with each metropolitan planning organization, in metropolitan areas designated as transportation management areas, concerning the projects selected to be undertaken from the approved transportation improvement program and in accordance with the priorities approved by the transportation improvement program; and

(8) when selecting projects to be undertaken from nontransportation management area metropolitan planning organizations’ transportation improvement programs, or selecting the nonmetropolitan area projects to be undertaken that are included in the Statewide Transportation Improvement Program, and when consulting with metropolitan planning organizations designated as transportation management areas, the commission shall establish a priority list of projects to the extent permitted by federal laws or regulations, taking into consideration at least the following criteria:

(a) financial viability including a life cycle analysis of estimated maintenance and repair costs over the expected life of the project;

(b) public safety;

(c) potential for economic development;

(d) traffic volume and congestion;

(e) truck traffic;

(f) the pavement quality index;

(g) environmental impact;

(h) alternative transportation solutions; and

(i) consistency with local land use plans.

(9) establish project priority lists for each program category proposed to be included in the Statewide Transportation Improvement Program and the State Non-Federal Aid Highway Program. The projects on the list shall be in the order in which those projects will be placed in the Statewide Transportation Improvement Program, unless the commission provides written justification for circumstances requiring deviation from the list order. The commission may deviate from the list if there are significant financial or engineering considerations, which include:

(a) delayed permitting;

(b) acts of God, governmental acts, acts of terrorism, war, fire, flood, earthquake, hurricane, or other natural disasters, explosion, or civil commotion;

(c) pending legal actions directly related to the proposed project;

(d) economic growth; or

(e) federal law or regulation.”

SECTION 2. Section 57-1-460 of the 1976 Code, relating to the Department of Transportation Secretary’s evaluation and approval of routine operation, maintenance, and emergency repairs, is repealed.

SECTION 3. Section 57-1-470 of the 1976 Code, relating to the Department of Transportation Commission’s review of routine maintenance and emergency repair requests approved by the secretary, is repealed.

SECTION 4. Section 57-1-310(A) and (B) of the 1976 Code are amended to read:

“Section 57-1-310. (A) The congressional districts 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. The Commission of the Department of Transportation shall be composed of one member from each transportation district and ~~one~~ two ~~member~~ members from the State at large, all appointed by the Governor, upon the advice and consent of the Senate, subject to the provisions of Section 57‑1‑325. In making appointments to the commission, the Governor shall take into account race, gender, and other demographic factors, such as residence in rural or urban areas, so as to represent, to the greatest extent possible, all segments of the population of the State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

(B) The at‑large ~~appointment~~ appointments made by the Governor must be transmitted to the Joint Transportation Review Committee.”

SECTION 5. Section 57-1-360(B) of the 1976 Code is amended to read:

“(B)(1) The chief internal auditor must be a Certified Public Accountant and possess any other experience the State Auditor may require. The chief internal auditor must establish, implement, and maintain the exclusive internal audit function of all departmental activities. The State Auditor shall set the salary for the chief internal auditor as allowed by statute or applicable law.

(2) The audits performed by the chief internal auditor must comply with recognized governmental auditing standards. The department and any entity contracting with the department must fully cooperate with the chief internal auditor in the discharge of his duties and responsibilities and must timely produce all books, papers, correspondence, memoranda, and other records considered necessary in connection with an internal audit. All final audit reports must be submitted to the commission and the Chairman of the Senate Transportation Committee, the Chairman of the Senate Finance Committee, the Chairman of the House of Representatives Education and Public Works Committee, and the Chairman of the House of Representatives Ways and Means Committee before being made public. All final audit reports shall be published on the department and State Auditor’s websites.

(3) The State Auditor is vested with the exclusive management and control of the chief internal auditor.”

SECTION 6. Section 57‑1‑430 of the 1976 Code is amended to read:

“Section 57-1-430. (A) The secretary is charged with the affirmative duty to carry out the policies of the commission, to administer the day‑to‑day affairs of the department, to direct the implementation of the Statewide Transportation Improvement Program and the Statewide Mass Transit Plan, and to ensure the timely completion of all projects undertaken by the department, and routine operation and maintenance requests, and emergency repairs. He must represent the department in its dealings with other state agencies, local governments, special districts, and the federal government. The secretary must prepare an annual budget for the department that must be approved by the commission before becoming effective.

(B) For each division, the secretary may employ such personnel and prescribe their duties, powers, and functions as he considers necessary and as may be authorized by statute and for which funds have been authorized in the annual general appropriations act.

(C) The secretary shall prepare and publish on the department’s website an annual report outlining the department’s annual expenditures. The report must include a statewide summary and a detailed expenditure report for each county.

(D) The secretary shall prepare and publish on the department’s website an annual report that includes a list of all companies doing business with the department and the amount spent on these contracts.”

SECTION 7. Section 12‑28‑2740 of the 1976 Code is amended to read:

“Section 12-28-2740. (A) The proceeds from two and sixty‑six one‑hundredths cents a gallon of the user fee on gasoline only as levied and provided for in this chapter must be deposited with the State Treasurer and expended for purposes set forth in this section. The monies must be apportioned among the counties of the State in the following manner:

(1) one‑third distributed in the ratio which the land area of the county bears to the total land area of the State;

(2) one‑third distributed in the ratio which the population of the county bears to the total population of the State as shown by the latest official decennial census;

(3) one‑third distributed in the ratio which the mileage of all rural roads in the county bears to the total rural road mileage in the State as shown by the latest official records of the Department of Transportation. The Department of Revenue shall collect the information required pursuant to Section 12‑28‑1390 regarding the number of gallons sold in each county for use in making allocations of donor funds as provided in subsection (H). The Department of Revenue shall submit the percentage of the total represented by each county to the Department of Transportation and to each county transportation committee annually by May first of the following calendar year. Upon request of a county transportation committee, the Department of Transportation shall continue to administer the funds allocated to the county.

(B) All interest earnings on the County Transportation Fund in the State Treasury must be added to the distribution to counties under this section in proportion to each county’s portion of the entire County Transportation Fund. Except for those funds being used in connection with highway projects administered by the Department of Transportation on behalf of counties administering their own ‘C’ funds, these distributions of earnings and the calculation required to determine the appropriate amount shall not include those counties administering their own ‘C’ funds.

~~(B)~~(C)(1) The funds expended must be approved by and used in furtherance of a countywide transportation plan adopted by a county transportation committee. The county transportation committee must be appointed by the county legislative delegation and must be made up of fair representation from municipalities and unincorporated areas of the county.

(2) County transportation committees may join in approving a regional transportation plan, and the funds must be used in furtherance of the regional transportation plan. This subsection does not prohibit the county legislative delegation from making project recommendations to the county transportation committee.

(3) A county transportation committee may expend from the funds allocated under this section an amount not to exceed two thousand dollars for reasonable administrative expenses directly related to the activities of the committee. Administrative expenses may include costs associated with copying, mailings, public notices, correspondence, and recordkeeping but do not include the payment of per diem or salaries for members of the committee.

~~(C)~~(D) At least twenty‑five percent of a county’s apportionment of ‘C’ funds, based on a biennial averaging of expenditures, must be expended on the state highway system for construction, improvements, and maintenance. The Department of Transportation shall administer all funds expended on the state highway system unless the department has given explicit authority to a county or municipal government or other agent acting on behalf of the county transportation committee to design, engineer, construct, and inspect projects using their own personnel. The county transportation committee, at its discretion, may expend up to seventy‑five percent of ‘C’ construction funds for activities including other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects.

~~(D)~~(E) The funds allocated to the county also may be used to issue county bonds or state highway bonds as provided in subsection (J), pay directly for appropriate highway projects, including engineering, contracting, and project supervision, and match federal funds available for appropriate projects. Beginning July 1, 2002, for any new ‘C’ fund allocations received on or after this date, the balance of uncommitted funds carried forward from one year into the next may not exceed three hundred percent of the county’s total apportionment for the most recent year. Expenditures must be documented on a per‑project basis upon the completion of each project in reports to the respective county transportation committees. This documentation must be provided by the agency or local government actually expending the funds and it shall include a description of the completed project and a general accounting of all expenditures made in connection with the project summaries of these reports then must be forwarded by each county transportation committee to the department using guidelines established by the department and the department shall compile these reports into an annual statewide report to be submitted to the General Assembly by the second Tuesday of January of each year. The documentation and reporting requirements of this subsection apply only to counties administering their own ‘C’ funds. For purposes of this section, ‘uncommitted funds’ means funds held in the county’s ‘C’ fund account that have not been designated for specific projects.

~~(E)~~(F) All unexpended ‘C’ funds allocated to a county remain in the account allocated to the county for the succeeding fiscal year and must be expended as provided in this section.

~~(F)~~(G) The countywide and regional transportation plans provided for in this section must be reviewed and approved by the Department of Transportation. Before the expenditure of funds by a county transportation committee, the committee shall adopt specifications for local road projects. In counties electing to expend their allocation directly pursuant to subsection (A), specifications of roads built with ‘C’ funds are to be established by the countywide or regional transportation committee. In counties in which the county transportation committee elects to have ‘C’ funds administered by the Department of Transportation, primary and secondary roads built using ‘C’ funds must meet Department of Transportation specifications.

~~(G)~~(H) This section must not be construed as affecting the plans and implementation of plans for a Statewide Surface Transportation System as developed by the Department of Transportation.

~~(H)~~(I) For purposes of this subsection, ‘donor county’ means a county that contributes to the ‘C’ fund an amount in excess of what it receives under the allocation formula as stated in subsection (A). In addition to the allocation to the counties pursuant to subsection (A), the Department of Transportation annually shall transfer from the state highway fund to the donor counties an amount equal to ~~nine and one‑half~~ sixteen million dollars in the ratio of the individual donor county’s contribution in excess of ‘C’ fund revenue allocated to the county under subsection (A) to the total excess contributions of all donor counties.

~~(I)~~(J)(1) In expending funds pursuant to this section, counties that administer their own ‘C’ funds shall use a procurement system that requires competitive sealed bids, no bid preferences not required by state or federal law, and public advertisement of all projects. All bids for contracts in excess of one hundred thousand dollars must be accompanied by certified bid bonds, and all work awarded under the contracts must be covered by performance and payment bonds for one hundred percent of the contract value. Bid summaries must be published in a newspaper of general distribution following each award.

(2) The requirement of a bond for bid security or a bond for payment and performance may not include the requirement that the surety bond be furnished by a particular surety company or through a particular agent or broker.

~~(J)~~(K) State highway bonds may be issued for the completion of projects for which ‘C’ funds may be expended for projects as determined by the county transportation committee. The applicable source for payment of principal and interest on the bonds is the share of ‘C’ fund revenues available for use by the county transportation committee. The application for the bonds must be filed by the county transportation committee with the Commission of the Department of Transportation and the State Treasurer, which shall forward the application to the State Fiscal Accountability Authority. The State Fiscal Accountability Authority shall consider the application in the same manner that it considers state highway bonds, mutatis mutandis.

~~(K)~~(L) Members of the committee are insulated from all personal liability arising out of matters related directly to and within the scope of the performance of official duties and functions conferred upon the committee pursuant to this section.

~~(L)~~(M) In Berkeley County, appointments made pursuant to this section are governed by the provisions of Act 159 of 1995.

~~(M)~~(N) In Dorchester County, appointments made pursuant to this section are governed by the provisions of Act 512 of 1996.

~~(N)~~(O) In Georgetown County, appointments made pursuant to this section are governed by the provisions of Act 515 of 1996 and Section 2, Act 141 of 2001.

~~(O)~~(P) Notwithstanding other provisions of this section, the legislative delegation of a county may by delegation resolution abolish the county transportation committee and devolve its powers and duties on the governing body of the county. This devolution may be reversed and the county transportation committee reestablished by a subsequent delegation resolution. The exercise of county transportation committee powers and duties by a county governing body is not deemed to constitute dual office holding.

~~(P)~~(Q) The Department of Transportation shall perform reviews to ensure compliance with subsections (C), (D), (F), and (I). A county failing to comply with these subsections must have all subsequent ‘C’ fund allocations withheld until the requirements of those subsections are met. If a county fails to comply with those subsections within twenty‑four months, the county forfeits fifty percent of its allocations for the following year and the forfeited amount must be divided among the other counties as provided in subsection (A).

~~(Q)~~(R) A county subject to a proposed withholding or forfeiture of ‘C’ fund allocations pursuant to this section must be notified in writing of the department’s decision. The county, within sixty days of receipt of notice of the decision, may request a review of the decision by a panel consisting of the state highway engineer or his designee, the chairman of the affected county’s transportation committee or his designee, and a third person named by mutual agreement between the state highway engineer and the county transportation committee chairman. The panel shall meet and render a decision within ninety days of the request by the county transportation committee. The decision of the panel may be appealed by requesting a contested case hearing before the Administrative Law Court pursuant to Section 1‑23‑600 and the rules of procedure for the Administrative Law Court. The request for a hearing must be made within thirty days of receipt of the panel’s decision.

~~(R)~~(S) The legislative delegation of the county, by resolution, may rename the county transportation committee established by this section as the (insert name of county) Legislative Delegation transportation committee. Upon the adoption of such a resolution, all references in this section and any other provisions of law to the county transportation committee, for purposes of that county, are deemed references to that county’s legislative delegation transportation committee.”

SECTION 8. This act takes effect upon approval by the Governor.

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