CHAPTER 11

Department of Administration

ARTICLE 1

General Provisions

Editor’s Note

1988 Act No. 658, Part II, Section 18A directed that Sections 1‑11‑10 through 1‑11‑420 be designated as Article 1 of Chapter 11, Title 1, and be entitled “General Provisions”.

**SECTION 1‑11‑10.** Department of Administration established; transfer of offices, divisions, other agencies.

 (A) There is hereby created, within the executive branch of the state government, the Department of Administration, headed by a director appointed by the Governor upon the advice and consent of the Senate who only may be removed pursuant to Section 1‑3‑240(B). Effective July 1, 2015, the following offices, divisions, or components of the former State Budget and Control Board, Office of the Governor, or other agencies are transferred to, and incorporated into, the Department of Administration:

 (1) the Division of General Services, including Business Operations, Facilities Management, State Building and Property Services, and Agency Services, including surplus property, intrastate mail, parking, state fleet management, except that the Division of General Services shall not be transferred to the Department of Administration until the Director of the Department of Administration enters into a memorandum of understanding with appropriate officials of applicable legislative and judicial agencies or departments meeting the requirements of this subsection. There shall be a single memorandum of understanding involving the Department of Administration and the legislative and judicial branches with appropriate officials of each to be signatories to the memorandum of understanding.

 (a) The memorandum of understanding shall provide for:

 (i) continued use of existing office space;

 (ii) a method for the allocation of new, additional, or different office space;

 (iii) adequate parking;

 (iv) a method for the allocation of new, additional, or different parking;

 (v) the provision of appropriate levels of electrical, mechanical, maintenance, energy management, fire protection, custodial, project management, safety and building renovation, and other services currently provided by the General Services Division of the State Budget and Control Board;

 (vi) the provision of water, electricity, steam, and chilled water to the offices, areas, and facilities occupied by the applicable agencies;

 (vii) the ability for each agency or department to maintain building access control for its allocated office space; and

 (viii) access control for the Senate and House chambers and courtrooms as appropriate.

 (b) The parties may modify the memorandum of understanding by mutual consent at any time.

 (c) The General Services Division must provide the services described in subsection (a) and any other maintenance and support, at a level that is greater than or equal to what is provided prior to the effective date of this act, to each building on the Capitol Complex, including the Supreme Court, without charge. The General Services Division must coordinate with the appropriate officials of applicable legislative and judicial agencies or departments when providing these services to the buildings and areas controlled by those agencies;

 (2) the State Office of Human Resources;

 (3) the Guardian Ad Litem Program as established in Article 5, Chapter 11, Title 63;

 (4) the Office of Economic Opportunity, the office designated by the Governor to be the state administering agency that is responsible for the receipt and distribution of the federal funds as allocated to South Carolina for the implementation of Title VI, Public Law 97‑35;

 (5) the Developmental Disabilities Council as established by Executive Order in 1971 and reauthorized in 2010;

 (6) the Continuum of Care for Emotionally Disturbed Children as established in Article 13, Chapter 11, Title 63;

 (7) the Division for Review of the Foster Care of Children as established by Article 7, Chapter 11, Title 63;

 (8) the Children’s Case Resolution System as established by Article 11, Chapter 11, Title 63;

 (9) Reserved;

 (10) the Division of Veterans’ Affairs as established by Chapter 11, Title 25;

 (11) the Commission on Women as established by Chapter 15, Title 1;

 (12) the Governor’s Office of Ombudsman;

 (13) the Division of Small and Minority Business Contracting and Certification, as established pursuant to Article 21, Chapter 35, Title 11, formerly known as the Small and Minority Business Assistance Office;

 (14) the Division of State Information Technology, including the Data Center, Telecommunications and Information Technology Services, the South Carolina Enterprise Information System, and the Division of Information Security; and

 (15) the Nuclear Advisory Council as established in Article 9, Chapter 7, Title 13.

 (B)(1) The Division of State Information Technology must submit the Statewide Strategic Information Technology Plan to the Director of the Department of Administration by September 1, 2015, and biennially thereafter. The director shall review the Statewide Strategic Information Technology Plan and recommend to the Governor priorities for state government enterprise information technology projects and resource requirements. The director also shall review information technology spending by state agencies and evaluate whether greater efficiencies, more effective services, and cost savings can be achieved through streamlining, standardizing, and consolidating agency information technology.

 (2) All oversight concerning the South Carolina Enterprise Information System must remain as provided in Chapter 53, Title 11.

 (C) The Department of Administration shall use the existing resources of each division, insofar as it promotes efficiency and effectiveness, transferred to the department including, but not limited to, funding, personnel, equipment, and supplies from the board’s administrative support units, including, but not limited to, the Office of the Executive Director, Office of General Counsel, and the Office of Internal Operations. “Funding” means state, federal, and other funds. Vacant FTEs at the State Budget and Control Board also may be used to fill needed positions at the department. No new FTEs may be assigned to the department without authorization from the General Assembly.

 (D) No later than December 31, 2015, the department’s director shall submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives that contains an analysis of and recommendations regarding the most appropriate organizational placement for each component of the Office of Executive Policy and Programs as of the effective date of this act. The department shall solicit input from and consider the recommendation of affected constituencies while developing its report.

 (E) The Department of Administration shall, during the absence of the Governor from Columbia, be placed in charge of the records and papers in the executive chamber kept pursuant to Section 1‑3‑30.

HISTORY: 1962 Code Section 1‑351; 1952 Code Section 1‑351; 1950 (46) 3605; 2014 Act No. 121 (S.22), Pt III, Section 4.A, eff July 1, 2015; 2017 Act No. 52 (S.325), Section 8, eff May 19, 2017; 2017 Act No. 96 (S.289), Section 3, eff July 1, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner, the amendments made by 2017 Act No. 52 and 2017 Act No. 96 were read together.

Effect of Amendment

2014 Act No. 121, Section 4A, rewrote the section.

2017 Act No. 52, Section 8, reserved (A)(9), which had related to “the Client Assistance Program”.

2017 Act No. 96, Pt. I Section 3, in (A), deleted (12) and (13), relating to the Office of Victims Assistance and the Crime Victims’ Ombudsman, and redesignated accordingly.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k45; 360k121.

States 45, 121.

C.J.S. States Sections 79, 82, 136, 203, 223.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 55, State Budget and Control Board, Division of Human Resource Management.

Attorney General’s Opinions

There is no statute which specifically provides for a particular method of accounting for the State or its agencies. The Board is vested with authority to determine the proper method of accounting to be utilized as to the various sources of revenues, including sales tax revenues. Thus, it would be inappropriate for this Office to comment as to any particular method of accounting utilized by the Board, as such would involve a question of policy rather than one of law. 1992 Op Atty Gen No. 92‑22.

The First Vice‑Chairman of the Ways and Means Committee automatically succeeds to membership on the Budget and Control Board upon the absence or incapacity of the Chairman of the Committee. 1976‑77 Op Atty Gen, No 77‑48, p 48.

The constitutionality of the State Budget and Control Board is a question which should be submitted to the Courts for determination, since it may create an overlap of executive and legislative duties. 1976‑77 Op Atty Gen, No 77‑153, p 128.

The State Workmen’s Compensation Fund cannot pay benefits in excess of its appropriation without approval of the State Budget and Control Board. 1974‑75 Op Atty Gen, No 4207, p 253.

The Budget and Control Board was most probably acting within its scope of authority when taking certain actions to reduce expenditures in previous fiscal years to prevent a year‑end deficit. 1992 Op Atty Gen No. 92‑22.

NOTES OF DECISIONS

In general 1

1. In general

None of constitutional powers granted Governor in Article 4 are limited in any way by composition of State Budget and Control Board including legislators. State ex rel. McLeod v. Edwards (S.C. 1977) 269 S.C. 75, 236 S.E.2d 406.

Prior judicial construction of separation of powers clause of State Constitution as permitting inclusion of legislators on State Budget and Control Board is binding where nothing appears to indicate that in readopting precise language of Section 14 of prior State Constitution as Section 8 in new Article I (1971) there was any intent by General Assembly to ascribe to it meaning different from prior judicial construction. State ex rel. McLeod v. Edwards (S.C. 1977) 269 S.C. 75, 236 S.E.2d 406.

**SECTION 1‑11‑20.** Transfer of offices, divisions, other agencies from State Budget and Control Board to appropriate entities.

 (A) The South Carolina Confederate Relic Room and Military Museum is transferred from the State Budget and Control Board and is governed by the South Carolina Confederate Relic Room and Military Museum Commission, as established in Section 60‑17‑10.

 (B) The State Energy Office is transferred from the State Budget and Control Board to the Office of Regulatory Staff.

 (C) The offices, divisions, or components of the State Budget and Control Board named in this subsection are transferred to, and incorporated into, the Rural Infrastructure Authority as established in Section 11‑50‑30. All functions, powers, duties, responsibilities, and authority vested in the agencies and authorities, including their governing boards, if any, named in this subsection are devolved upon the Rural Infrastructure Authority and the authority shall constitute the agencies and authorities, including their governing boards, if any, named in this subsection:

 (1) Local Government Division in support of the local government loan program as established in Section 1‑11‑25;

 (2) Water Resources Coordinating Council as established in Section 11‑37‑200(A); and

 (3) Division of Regional Development as established in Section 11‑42‑40.

 (D) The regulation of minerals and mineral interests on public land, and the regulation of Geothermal Resources as provided in Chapter 9, Title 10 is transferred to, and incorporated into, the Department of Health and Environmental Control.

 (E) The Procurement Services Division of the State Budget and Control Board is transferred to, and incorporated into, the State Fiscal Accountability Authority.

 (F) The State Auditor is transferred to, and incorporated into, the State Fiscal Accountability Authority.

 (G) South Carolina Infrastructure Facilities Authority as established in Chapter 40, Title 11 and the South Carolina Water Quality Revolving Fund Authority in support of water quality projects and federal loan programs as established in Chapter 5, Title 48 are transferred to, and incorporated into, the State Fiscal Accountability Authority.

HISTORY: 1962 Code Section 1‑352; 1952 Code Section 1‑352; 1950 (46) 3605, 3608; 2005 Act No. 164, Section 2, eff June 10, 2005; 2014 Act No. 121 (S.22), Pt III, Section 4.B, eff July 1, 2015.

Effect of Amendment

The 2005 amendment made nonsubstantive changes in the first sentence and rewrote the second sentence which formerly read “The State Auditor shall be the director of the Finance Division, ex officio, and the directors of the other divisions shall be employed by the State Budget and Control Board for such time and compensation, not greater than the term and compensation for the State Auditor, as shall be fixed by the Board in its judgment”.

2014 Act No. 121, Section 4.B, rewrote the section.

CROSS REFERENCES

Authority of director of Division of General Services to authorize use of State House steps, lobbies and other public buildings and grounds for functions other than normal operations of state government, see Section 10‑1‑30.

Duties of director of Division of General Services in connection with records of personal property of state departments, agencies and institutions, see Section 10‑1‑140.

Recycling programs of state government, state procurement policy, report of the Department of Transportation, see Section 44‑96‑140.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k45; 360k121.

States 45, 121.

C.J.S. States Sections 79, 82, 136, 203, 223.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 55, State Budget and Control Board, Division of Human Resource Management.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Constitutional Law: Separation of powers. 30 S.C. L. Rev. 27.

Attorney General’s Opinions

Personnel Division may disclose salary of State employees to (1) Comptroller General, (2) State Auditor, (3) Budget and Control Board, (4) Legislators, (5) State Reorganization Commission, and (6) Legislative Audit Council. 1978 Op Atty Gen, No 78‑199, p 223.

**SECTION 1‑11‑22.** Organization of staff.

 Notwithstanding any other provision of law, the Department of Administration may organize its staff as it deems most appropriate to carry out the various duties, responsibilities and authorities assigned to it and to its various divisions.

HISTORY: 1983 Act No. 151, Part II, Section 27.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k45.

States 45.

C.J.S. States Sections 79, 82, 136.

**SECTION 1‑11‑23.** Filling vacancy in position of Director of Budget Division.

 Vacancies in the position of Director of the Budget Division of the State Budget and Control Board must be filled by appointment of the Budget and Control Board.

HISTORY: 1992 Act No. 501, Part II Section 13E.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k51.

States 51.

C.J.S. States Sections 61, 87, 92.

**SECTION 1‑11‑25.** Local Government Division.

 There is hereby established a Local Government Division within the Rural Infrastructure Authority to act as a liaison for financial grants from the funds available to the authority. The division shall be under the supervision of a director who shall be appointed by and who shall serve at the pleasure of the Director of the Rural Infrastructure Authority. He may employ such staff as may be approved by the Director of the Rural Infrastructure Authority. The division shall be responsible for certifying grants to local governments from both federal and state funds. The term “local government” shall mean any political entity below the state level. Notwithstanding the fact that the Local Government Division is now a part of the Rural Infrastructure Authority, where certain grants of the division depending upon their funding source require additional approvals other than the division and the authority before they may be made, those additional approvals also must be secured.

 The division shall establish guidelines and procedures which public entities shall follow in applying for grants. The director shall make known to these entities the availability of all grants available through the authority and shall make periodic reports to the General Assembly and the Office of the Governor. The reports shall contain information concerning the amount of funds available from both federal and state sources, requests for grants and the status of such requests and such other information as the director may deem appropriate. The director shall maintain such records as may be necessary for the efficient operation of the office.

HISTORY: 1978 Act No. 632, Part II, Section 6; 2014 Act No. 121 (S.22), Pt VI, Section 16.A, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 16.A, rewrote the section.

CROSS REFERENCES

Division of Local Government to assist South Carolina Infrastructure Facilities Authority, see Section 11‑40‑250.

Regulations pertaining to Rural Improvement funds, see S.C. Code of Regulations R. 19‑501 et seq.

Transfer of offices, divisions, other agencies from State Budget and Control Board to appropriate entities, see Section 1‑11‑20.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k45.

States 45.

C.J.S. States Sections 79, 82, 136.

NOTES OF DECISIONS

In general 1

1. In general

State Budget and Control Board was not a proper defendant in a suit seeking injunctive relief from alleged segregation of schools, since the board and its members had no authority over education matters and no authority to appropriate money. Stanley v. Darlington County School Dist., 1995, 879 F.Supp. 1341, reversed in part 84 F.3d 707. Federal Courts 2377; Federal Courts 2384

**SECTION 1‑11‑26.** Use of funds from Rural Infrastructure Authority; penalties for misuse.

 (A) Grant funds received by a public entity from the Rural Infrastructure Authority must be deposited in a separate fund and may not be commingled with other funds, including other grant funds. Disbursements may be made from this fund only on the written authorization of the individual who signed the grant application filed with the division, or his successor, and only for the purposes specified in the grant application. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined five thousand dollars or imprisoned for six months, or both.

 (B) It is not a defense to an indictment alleging a violation of this section that grant funds received were used by a grantee or subgrantee for governmental purposes other than those specified in the grant application or that the purpose for which the grant was made was accomplished by funds other than grant funds.

 (C) The Division of Local Government of the Rural Infrastructure Authority shall furnish a copy of this section to a grantee when the grant is awarded.

HISTORY: 1990 Act No. 612, Part II, Section 14A; 2014 Act No. 121 (S.22), Pt VI, Section 16.B, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 16.B, in subsection (A), substituted “public entity from the Rural Infrastructure Authority” for “county, municipality, political subdivision, or other entity from the Division of Local Government of the State Budget and Control Board”; in subsection (B), deleted “from the Division of Local Government” before “grant funds received”, and deleted “by the Division of Local Government” before “grant was made”; and in subsection (C), substituted “Rural Infrastructure Authority” for “State Budget and Control Board”.

LIBRARY REFERENCES

Westlaw Key Number Searches: 268k883; 268k887.

Municipal Corporations 883, 887.

C.J.S. Municipal Corporations Sections 1626 to 1627, 1635.

**SECTION 1‑11‑50.** Certain funds of Revenue and Fiscal Affairs Office and the Executive Budget Office carried forward.

 If funds accumulated by the Revenue and Fiscal Affairs Office and the Executive Budget Office, under contract for the provision of goods and services not covered by the offices’ appropriated funds, are not expended during the preceding fiscal years, these funds may be carried forward and expended for the costs associated with the provision of these goods and services.

HISTORY: 1995 Act No. 145, Part II, Section 26A.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

LIBRARY REFERENCES

Westlaw Key Number Search: 360k121.

States 121.

C.J.S. States Sections 203, 223.

**SECTION 1‑11‑55.** Leasing of real property for governmental bodies.

 (1) “Governmental body” means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive branch of this State. Governmental body excludes the General Assembly, Legislative Council, the Legislative Services Agency, the judicial department and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts.

 (2) The Division of General Services of the Department of Administration is hereby designated as the single central broker for the leasing of real property for governmental bodies. No governmental body shall enter into any lease agreement or renew any existing lease except in accordance with the provisions of this section. However, a technical college, with the approval by the State Board for Technical and Comprehensive Education, and a public institution of higher learning, may enter into any lease agreement or renew any lease agreement up to one hundred thousand dollars annually for each property or facility.

 (3) When any governmental body needs to acquire real property for its operations or any part thereof and state‑owned property is not available, it shall notify the Division of General Services of its requirement on rental request forms prepared by the division. Such forms shall indicate the amount and location of space desired, the purpose for which it shall be used, the proposed date of occupancy and such other information as General Services may require. Upon receipt of any such request, General Services shall conduct an investigation of available rental space which would adequately meet the governmental body’s requirements, including specific locations which may be suggested and preferred by the governmental body concerned. When suitable space has been located which the governmental body and the division agree meets necessary requirements and standards for state leasing as prescribed in procedures of the department as provided for in subsection (5) of this section, General Services shall give its written approval to the governmental body to enter into a lease agreement. All proposed lease renewals shall be submitted to General Services by the time specified by General Services.

 (4) The department shall adopt procedures to be used for governmental bodies to apply for rental space, for acquiring leased space, and for leasing state‑owned space to nonstate lessees.

 (5) Any participant in a property transaction proposed to be entered who maintains that a procedure provided for in this section has not been properly followed, may request review of the transaction by the Director of the Division of General Services of the Department of Administration or his designee.

HISTORY: 1997 Act No. 153, Section 2; 2002 Act No. 333, Section 1; 2002 Act No. 356, Section 1, Pt VI.P(1); 2011 Act No. 74, Pt VI, Section 13, eff August 1, 2011; 2013 Act No. 31, Section 1, eff May 21, 2013; 2014 Act No. 121 (S.22), Pt V, Section 7.A, eff July 1, 2015.

Code Commissioner’s Note

The last sentence in subsection (2), which was added by 2011 Act No. 74, was inadvertently omitted from 2014 Act No. 121 due to a scrivener’s error. At the direction of the Code Commissioner, this sentence has been retained in subsection (2).

Effect of Amendment

The 2011 amendment, in subsection (2), added the third sentence relating to technical colleges.

The 2013 amendment, in subsection (1), substituted “Legislative Services Agency” for “Office of Legislative Printing, Information and Technology Systems”.

2014 Act No. 121, Section 7.A, in subsection (1), substituted “agency, government corporation, or other establishment or official of the executive branch” for “legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branches”; in subsection (2), substituted “Division of General Services of the Department of Administration” for “Budget and Control Board”; in subsection (3) substituted “division” for “office” in three instances, and substituted “department” for “board”; in subsection (4), substituted “department” for “board”; and in subsection (5), substituted “Division of General Services of the Department of Administration” for “Office of General Services”.

CROSS REFERENCES

Administrative efficiency for State Board for Technical and Comprehensive Education, advisory board, see Section 59‑53‑168.

Midlands Technical College Enterprise Campus Authority, lease agreements for construction and use of campus facilities, exemption from requirements of this section, see Section 59‑53‑1784.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k85.

States 85.

C.J.S. States Section 145.

**SECTION 1‑11‑56.** Program to manage leasing; procedures.

 (A) The Division of General Services of the Department of Administration, in an effort to ensure that funds authorized and appropriated for rent are used in the most efficient manner, is directed to develop a program to manage the leasing of all public and private space of a governmental body. The department must submit regulations for the implementation of this section to the General Assembly as provided in the Administrative Procedures Act, Chapter 23, Title 1. The department’s regulations, upon General Assembly approval, shall include procedures for:

 (1) assessing and evaluating agency needs, including the authority to require agency justification for any request to lease public or private space;

 (2) establishing standards for the quality and quantity of space to be leased by a requesting agency;

 (3) devising and requiring the use of a standard lease form (approved by the Attorney General) with provisions which assert and protect the state’s prerogatives including, but not limited to, a right of cancellation in the event of:

 (a) a nonappropriation for the renting agency;

 (b) a dissolution of the agency; and

 (c) the availability of public space in substitution for private space being leased by the agency;

 (4) rejecting an agency’s request for additional space or space at a specific location, or both;

 (5) directing agencies to be located in public space, when available, before private space can be leased;

 (6) requiring the agency to submit a multiyear financial plan for review by the department with copies sent to Ways and Means Committee and Senate Finance Committee, before any new lease for space is entered into; and

 (7) requiring prior review by the Joint Bond Review Committee and the requirement of State Fiscal Accountability Authority approval before the adoption of any new or renewal lease that commits more than two hundred thousand dollars annually in rental or lease payments or more than one million dollars in such payments in a five‑year period.

 (B) Leases or rental agreements involving amounts below the thresholds provided in subsection (A)(7) may be executed by the Department of Administration without this prior review by the Joint Bond Review Committee and approval by the State Fiscal Accountability Authority.

 (C) The threshold requirements requiring review by the Joint Bond Review Committee and approval by the State Fiscal Accountability Authority as contained in subsection (A)(7) also apply to leases or rental agreements with nonstate entities whether or not the state or its agencies or departments is the lessee or lessor.

HISTORY: 1997 Act No. 153, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.B, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.B, added subsection designator (A); in subsection (A), substituted “Division of General Services of the Department of Administration” for “State Budget and Control Board”, substituted “a governmental body” for “state agencies”, and added the second sentence relating to regulations; in subsection (A)(6), substituted “department” for “board’s budget office”, and deleted text relating to prior review by the Joint Bond Review Committee; rewrote subsection (A)(7); and added subsections (B) and (C).

CROSS REFERENCES

Midlands Technical College Enterprise Campus Authority, lease agreements for construction and use of campus facilities, exemption from requirements of this section, see Section 59‑53‑1784.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k85.

States 85.

C.J.S. States Section 145.

**SECTION 1‑11‑58.** Annual inventory and report; review; sale of surplus property.

 (A)(1) Every state agency, as defined by law, shall annually perform an inventory and prepare a report of all residential and surplus real property owned by it. The report shall be submitted to the Department of Administration, Division of General Services, on or before June thirtieth and shall indicate current use, current value, and projected use of the property. Property not currently being utilized for necessary agency operations shall be made available for sale and funds received from the sale of the property shall revert to the general fund.

 (2) The Division of General Services shall review the annual reports addressing real property submitted to it and determine the real property which is surplus to the State. A central listing of such property will be maintained for reference in reviewing subsequent property acquisition needs of agencies.

 (3) Upon receipt of a request by an agency to acquire additional property, the Division of General Services shall review the surplus property list to determine if the agency’s needs may be met from existing state‑owned property. If such property is identified, the division shall act as broker in transferring the property to the requesting agency under terms and conditions that are mutually agreeable to the agencies involved.

 (4) The department may authorize the Division of General Services to sell any unassigned surplus real property. The division shall have the discretion to determine the method of disposal to be used, which possible methods include: auction, sealed bids, listing the property with a private broker or any other method determined by the division to be commercially reasonable considering the type and location of property involved.

 (B) The procedures involving surplus real property sales under this section also are subject to the approvals required in Section 1‑11‑65 for surplus real property sales above five hundred thousand dollars.

HISTORY: 1997 Act No. 153, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.B, eff July 1, 2015.

Code Commissioner’s Note

In 2012 the Code Commissioner substituted “as defined by law” for “as defined by Section 1‑19‑40 in Subsection (1).

Editor’s Note

2004 Act No. 248, Part IB, Section 73.18, subsection (A), provides as follows:

“(A) It is the intent of the General Assembly to establish a comprehensive central property and office facility management process to plan for the needs of state government agencies and to achieve maximum efficiency and economy in the use of state owned or state leased real properties. The Budget and Control Board is directed to identify all state owned properties whether titled in the name of the state or an agency or department, and all agencies and departments of state government are upon request to provide the Board all documents related to the title and acquisition of the real properties that are occupied or used by the agency or titled in the name of the agency. Except for any properties where the Board determines title should not transfer because the properties are subject to reverter clauses or other restraints upon transfer of title to the State, or where the Board determines the state would be best served by not receiving title, and with the exception of properties, highways and roadways owned by the Department of Transportation, title of any property held in a state agency or department name is effectively transferred to the state under the control of the Budget and Control Board upon the effective date of this Act. Further, the Budget and Control Board is directed to approve a long‑term plan no later than November 1, 2004, for the real property and space needs of all state agencies. Based on the plan, state owned buildings and properties that the Board determines are not needed shall be sold with the approval of the Board. Upon determination by the Board that a property should be sold, the agency is required to sell the property and remit the proceeds as directed herein. In addition existing debt on facilities and buildings may be refinanced with Board approval.

“The proceeds, net of selling expenses, from the sale of surplus properties shall be used to reduce the Fiscal Year 2001‑02 accumulated budgetary general fund operating deficit as provided in this section. A schedule of future proceeds from surplus by fiscal year shall be provided as a part of the plan.

“The property that the Board should consider for sale includes but is not limited to:

Department of Mental Health—Bull Street Complex;

Budget and Control Board—300 Gervais Street;

Budget and Control Board—Brickyard Road, 6.5 acres;

Department of Disabilities and Special Needs—Margaret Street House;

Department of Motor Vehicles—Office at old Myrtle Beach Air Force Base; and

Educational Television Commission—Closed ETV Building.

“This provision applies to all state agencies and departments except: institutions of higher learning; the Public Service Authority; the Ports Authority; the MUSC Hospital Authority; the Myrtle Beach Air Force Redevelopment Authority; the Department of Transportation; and the Charleston Naval Complex Redevelopment Authority.

“This provision is comprehensive and supersedes any conflicting provisions concerning title and acquisition and disposition of state owned real property whether in permanent law, temporary law or by provision elsewhere in this Act.

“Funds derived from sales and refinancing pursuant to this provision are to be used as provided in this section, except in those instances where the Board determines that the funds should be applied to debt payments related to the property.”

Effect of Amendment

2014 Act No. 121, Section 7.B, added subsection designator (A); in subsection (A)(1), substituted “Department of Administration, Division of” for “State Budget and Control Board, Office of”; in subsection (A)(2), substituted “Division” for “Office” and “shall review” for “will review”; in subsection (A)(3), substituted “Division” for “Office”, substituted “may be met” for “can be met”, and substituted “division” for “Office of General Services”; in subsection (A)(4), substituted “department may authorize the Division” for “Budget and Control Board may authorize the Office”, and twice substituted “division” for “Office of General Services”; and added subsection (B).

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k85; 360k88; 360k89.

States 85, 88, 89.

C.J.S. States Sections 145, 147, 149 to 150.

**SECTION 1‑11‑65.** Approval and recordation of real property transactions involving governmental bodies.

 (A) All transactions involving real property, made for or by any governmental bodies, excluding political subdivisions of the State, must be approved by and recorded with the Department of Administration for transactions of one million dollars or less. For transactions of more than one million dollars, approval of the State Fiscal Accountability Authority is required in lieu of the department, although the recording will be with the department. Upon approval of the transaction, there must be recorded simultaneously with the deed, a certificate of acceptance, which acknowledges the department’s and authority’s approval of the transaction as required. The county recording authority cannot accept for recording any deed not accompanied by a certificate of acceptance. The department and authority may exempt a governmental body from the provisions of this subsection.

 (B) All state agencies, departments, and institutions authorized by law to accept gifts of tangible personal property shall have executed by its governing body an acknowledgment of acceptance prior to transfer of the tangible personal property to the agency, department, or institution.

HISTORY: 1985 Act No. 201, Part II, Section 5; 1989 Act No. 26, Section 1; 1997 Act No. 153, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Editor’s Note

Except for designation of the paragraphs, this section and former Section 1‑11‑57 were identical. For consistency, Section 1‑11‑57 is treated as an amendment to this section.

Effect of Amendment

2014 Act No. 121, Section 7.C, rewrote subsection (A).

CROSS REFERENCES

Annual inventory and report, review, sale of surplus property, see Section 1‑11‑58.

Authorization of Department to acquire real property by gift, purchase, and condemnation, see Section 1‑11‑110.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k85; 360k89.

States 85, 89.

C.J.S. States Sections 145, 149 to 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 19, Contracts and Property.

S.C. Jur. Dedication Section 18, Title to Dedicated Land.

Attorney General’s Opinions

Under Section 1‑11‑65, a certificate of acceptance acknowledging the Budget and Control Board’s approval of the transaction must be recorded with the deeds involving real property transactions of governmental bodies not constituting political subdivisions such as counties, municipalities, school districts and special purpose districts; the Board may exempt covered governmental bodies from this provision. 1989 Op Atty Gen, No. 89‑81, p 214.

**SECTION 1‑11‑67.** Rental charges for occupancy of state‑controlled office buildings; apportionment among agency funding sources.

 The Department of Administration shall assess and collect a rental charge from all state departments and agencies that occupy space in state‑controlled office buildings under its jurisdiction. The amount charged each department or agency must be calculated on a square foot, or other equitable basis of measurement, and at rates that will yield sufficient total annual revenue to cover the annual principal and interest due or anticipated on the Capital Improvement Obligations for projects administered or planned by the department, and maintenance and operation costs of department‑controlled office buildings. The amount collected must be deposited in a special account and must be expended only for payment on Capital Improvement Obligations and maintenance and operations costs of the buildings under the supervision of the department.

 All departments and agencies against which rental charges are assessed and whose operations are financed in whole or in part by federal or other nonappropriated funds are both directed to apportion the payment of these charges equitably among all funds to ensure that each bears its proportionate share.

HISTORY: 2002 Act No. 356, Section 1, Pt XI.J; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.C, rewrote the first undesignated paragraph, generally substituting “Department of Administration” for “State Budget and Control Board” and “Office of General Services”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k88.

States 88.

C.J.S. States Section 147.

**SECTION 1‑11‑70.** Lands subject to Department’s control.

 All vacant lands and lands purchased by the former land commissioners of the State are subject to the directions of the Department of Administration.

HISTORY: 1962 Code Section 1‑357; 1952 Code Section 1‑357; 1942 Code Section 2137; 1932 Code Section 2137; Civ. C. ‘22 Section 98; Civ. C. ‘12 Section 93; Civ. C. ‘02 Section 89; G. S. 61; R. S. 83; 1878 (16) 559; 1950 (46) 3605; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.C, substituted “are subject to the directions of the Department of Administration” for “shall be subject to the directions of the State Budget and Control Board”.

CROSS REFERENCES

Department granting easements and rights of way over vacant lands or marshlands, see Sections 1‑11‑80, 1‑11‑90.

Department of Health and Environmental Control has exclusive control of the state’s phosphate interest, see Section 10‑9‑110 et seq.

Leases of gas, oil, and certain other minerals, see Section 10‑9‑10.

Permits for construction in navigable waters, Office of General Services, see S.C. Code of Regulations R. 19‑450 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k88.

States 88.

C.J.S. States Section 147.

**SECTION 1‑11‑80.** Department authorized to grant easements for public utilities on vacant State lands.

 The Department of Administration, upon approval of the State Fiscal Accountability Authority, is authorized to grant easements and rights of way to any person for construction and maintenance of power lines, pipe lines, water and sewer lines and railroad facilities over, on or under such vacant lands or marshland as are owned by the State, upon payment of the reasonable value thereof.

HISTORY: 1962 Code Section 1‑357.1; 1963 (53) 177; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.C, substituted “Department of Administration, upon approval of the State Fiscal Accountability Authority,” for “State Budget and Control Board”.

CROSS REFERENCES

Sale or donation of, or rights of way over, public lands, see SC Const, Art 3, Section 31.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k88.

States 88.

C.J.S. States Section 147.

**SECTION 1‑11‑90.** Department authorized to grant rights of way over State marshlands for roads or power or pipe lines to State agencies or political subdivisions.

 The Department of Administration, upon approval of the State Fiscal Accountability Authority, may grant to agencies or political subdivisions of the State, without compensation, rights of way through and over such marshlands as are owned by the State for the construction and maintenance of roads, streets and highways or power or pipe lines, if, in the judgment of the department, the interests of the State will not be adversely affected thereby.

HISTORY: 1962 Code Section 1‑357.2; 1963 (53) 177; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.C, substituted “Department of Administration, upon approval of the State Fiscal Accountability Authority,” for “State Budget and Control Board” and substituted “judgment of the department” for “judgment of the Budget and Control Board”.

CROSS REFERENCES

Sale or donation of, or rights of way over, public lands, see SC Const, Art 3, Section 31.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k88.

States 88.

C.J.S. States Section 147.

**SECTION 1‑11‑100.** Execution of instruments conveying rights of way or easements over marshlands or vacant lands.

 Deeds or other instruments conveying such rights of way or easements over such marshlands or vacant lands as are owned by the State shall be executed by the Governor in the name of the State, when authorized by the Department of Administration, upon approval of the State Fiscal Accountability Authority, and when duly approved by the office of the Attorney General; deeds or other instruments conveying such easements over property in the name of or under the control of State agencies, institutions, commissions or other bodies shall be executed by the majority of the governing body thereof, shall name both the State of South Carolina and the institution, agency, commission or governing body as grantors, and shall show the written approval of the Director of the Department of Administration and the State Fiscal Accountability Authority.

HISTORY: 1962 Code Section 1‑357.3; 1963 (53) 177; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.C, substituted “authorized by the Department of Administration, upon approval of the State Fiscal Accountability Authority,” for “authorized by resolution of the Budget and Control Board, duly recorded in the minutes and records of such Board” and substituted “written approval of the Director of the Department of Administration and the State Fiscal Accountability Authority” for “written approval of the majority of the members of the State Budget and Control Board”.

CROSS REFERENCES

Authority of State institutions and agencies to grant easements and rights of way, see Section 10‑1‑130.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k88.

States 88.

C.J.S. States Section 147.

**SECTION 1‑11‑110.** Authorization of Department to acquire real property by gift, purchase, and condemnation.

 (1) The Department of Administration, subject to the requirements of Section 1‑11‑65, is authorized to acquire real property, including any estate or interest therein, for, and in the name of, the State of South Carolina by gift, purchase, condemnation or otherwise.

 (2) The Department of Administration shall make use of the provisions of the Eminent Domain Procedure Act (Chapter 2, Title 28) if it is necessary to acquire real property by condemnation. The actions must be maintained by and in the name of the department. The right of condemnation is limited to the right to acquire land necessary for the development of the Capitol Complex grounds in the City of Columbia.

HISTORY: 1962 Code Section 1‑357.4; 1968 (55) 3067; 1987 Act No. 173, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.C, in subsection (1), substituted “Department of Administration, subject to the requirements of Section 1‑11‑65,” for “State Budget and Control Board”; and in subsection (2), substituted “Department of Administration” for “State Budget and Control Board”, substituted “Chapter 2, Title 28” for “Chapter 2 of Title 28”, and substituted “Capitol Complex grounds” for “capitol complex mall”.

LIBRARY REFERENCES

Westlaw Key Number Searches: 148k4; 360k85.

Eminent Domain 4.

States 85.

C.J.S. Eminent Domain Sections 5, 21.

C.J.S. States Section 145.

**SECTION 1‑11‑115.** Use of proceeds of sale of State real property.

 All proceeds from the sale of real property titled to or subject to the care and control of the Department of Administration must be deposited to the credit of the Sinking Fund and used by the department for the acquisition and maintenance of facilities owned by it for the use and occupancy of state departments and agencies.

HISTORY: 1999 Act No. 100, Part II, Section 39.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k89; 360k127.

States 89, 127.

C.J.S. States Sections 149 to 150, 228.

**SECTION 1‑11‑130.** Authorization of Authority to cooperate in handling finances of State subdivisions.

 The State Fiscal Accountability Authority may cooperate with and assist the authorities of the counties, municipalities, school districts and other subdivisions of the State in the handling, in whatever manner may be deemed by it desirable in each case, of the financial obligations of such counties, municipalities, school districts and other subdivisions. The Authority may, upon request of any such authorities, negotiate with the holders of such obligations and the authorities of the obligor to the end that such extensions and adjustments as may be desirable may be effected and may negotiate with any lending agency and perform any other act or service pursuant to the purpose hereof to the end that the credit of the subdivisions of the State and the rights of the holders of their obligations may be mutually protected.

HISTORY: 1962 Code Section 1‑358; 1952 Code Section 1‑358; 1942 Code Section 2146‑1; 1933 (38) 291; 1950 (46) 3605.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 268k879.

Municipal Corporations 879.

C.J.S. Municipal Corporations Sections 1621 to 1622.

Attorney General’s Opinions

The issuance by Oconee County of bond anticipation notes in order to renew its originally issued notes requires the prior approval of the State Budget and Control Board as provided by Section 14 of Act No. 156 of 1971 [Code 1976 Section 48‑3‑140]. 1974‑75 Op Atty Gen, No 3983, p 54.

**SECTION 1‑11‑135.** Fees for processing revenue bonds.

 To offset the costs incurred by the State in the review and processing of proposals by the governing bodies of counties and municipalities for the issuance or refunding of industrial, hospital, or pollution control revenue bonds or notes, the State Fiscal Accountability Authority may charge a single fee to cover initial processing including any amendments in accord with the following schedule:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|   | Issue or Refunding Amount |   | Fee |   |
|   | $1,000,000 or less | $ | 2,000 |   |
|   | $1,000,001 through $25,000,000 |   | 3,000 |   |
|   | $25,000,001 through $50,000,000 |   | 4,000 |   |
|   | Over $50,000,000 |   | 5,000 |   |

 The revenue received from these fees must be deposited in the General Fund.

HISTORY: 1984 Act No. 512, Part II, Section 3.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k122.

States 122.

C.J.S. States Section 224.

**SECTION 1‑11‑140.** Authorization of Fiscal Accountability Authority, through the Office of Insurance Reserve Fund, to provide insurance.

 (A) The State Fiscal Accountability Authority, through the Insurance Reserve Fund, is authorized to provide insurance for the State, its departments, agencies, institutions, commissions, boards, and the personnel employed by the State in its departments, agencies, institutions, commissions, and boards so as to protect the State against tort liability and to protect these personnel against tort liability arising in the course of their employment. The insurance also may be provided for physicians or dentists employed by the State, its departments, agencies, institutions, commissions, or boards against any tort liability arising out of the rendering of any professional services as a physician or dentist for which no fee is charged or professional services rendered of any type whatsoever so long as any fees received are directly payable to the employer of a covered physician or dentist, or to any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State; provided, any insurance coverage provided by the authority may be on the basis of claims made or upon occurrences. The insurance also may be provided for students of high schools, South Carolina Technical Schools, or state‑supported colleges and universities while these students are engaged in work study, distributive education, or apprentice programs on the premises of private companies. Premiums for the insurance must be paid from appropriations to or funds collected by the various entities, except that in the case of the above‑referenced students in which case the premiums must be paid from fees paid by students participating in these training programs. The authority has the exclusive control over the investigation, settlement, and defense of claims against the various entities and personnel for whom it provided insurance coverage and may promulgate regulations in connection therewith.

 (B) Any political subdivision of the State including, without limitations, municipalities, counties, and school districts, may procure the insurance for itself and for its employees in the same manner provided for the procurement of this insurance for the State, its entities, and its employees, or in a manner provided by Section 15‑78‑140.

 (C) The procurement of tort liability insurance in the manner provided is the exclusive means for the procurement of this insurance.

 (D) The authority, through the Insurance Reserve Fund, also is authorized to offer insurance to governmental hospitals and any subsidiary of or other entity affiliated with the hospital currently existing or as may be established; and chartered, nonprofit, eleemosynary hospitals and any subsidiary of or other entity affiliated with the hospital currently existing or as may be established in this State so as to protect these hospitals against tort liability. Notwithstanding any other provision of this section, the procurement of tort liability insurance by a hospital and any subsidiary of or other entity affiliated with the hospital currently existing or as may be established supported wholly or partially by public funds contributed by the State or any of its political subdivisions in the manner herein provided is not the exclusive means by which the hospital may procure tort liability insurance.

 (E) The authority, through the Insurance Reserve Fund, is authorized to provide insurance for duly appointed members of the boards and employees of health system agencies, and for members of the State Health Coordinating Council which are created pursuant to Public Law 93‑641.

 (F) The authority, through the Insurance Reserve Fund, is further authorized to provide insurance as prescribed in Sections 10‑7‑10 through 10‑7‑40, 59‑67‑710, and 59‑67‑790.

 (G) Documentary or other material prepared by or for the Insurance Reserve Fund in providing any insurance coverage authorized by this section or any other provision of law which is contained in any claim file is subject to disclosure to the extent required by the Freedom of Information Act only after the claim is settled or finally concluded by a court of competent jurisdiction.

 (H) The authority, through the Insurance Reserve Fund, is further authorized to provide insurance for state constables, including volunteer state constables, to protect these personnel against tort liability arising in the course of their employment, whether or not for compensation, while serving in a law enforcement capacity.

HISTORY: 1962 Code Section 1‑359.1; 1973 (58) 646; 1974 (58) 2638; 1976 Act No. 744, Section 1; 1977 Act No. 182, Section 4; 1978 Act No. 418, Section 1; 1978 Act No. 502, Section 1; 1979 Act No. 77, Section 1; 1984 Act No. 424, Section 1; 1988 Act No. 389, Section 1; 1994 Act No. 380, Section 1; 2014 Act No. 121 (S.22), Pt VII, Section 19.B, eff July 1, 2015.

Editor’s Note

2014 Act No. 121, Section 19.A, provides as follows:

“SECTION 19.A. (1) The Insurance Reserve Fund is transferred to the State Fiscal Accountability Authority on July 1, 2015, as a division of the authority.

“(2) The Insurance Reserve Fund, transferred to the authority, shall administer and perform all administrative and operational functions of the Office of Insurance Services, including the Insurance Reserve Fund, except that the Attorney General of this State must continue to approve the attorneys‑at‑law retained to represent the clients of the Insurance Reserve Fund in the manner provided by law.”

Effect of Amendment

2014 Act No. 121, Section 19.B, substituted “authority” for “board” throughout; in subsection (A), substituted “The State Fiscal Accountability Authority, through the Insurance Reserve Fund” for “The State Budget and Control Board, through the Office of Insurance Services” in the first sentence, and substituted “authority” for “Budget and Control Board” in the second sentence; in subsection (B), added the reference to Section 15‑78‑140; in subsections (D), (E), (F), substituted “The authority, through the Insurance Reserve Fund” for “The State Budget and Control Board, through the Office of Insurance Services”; in subsection (G), substituted “Insurance Reserve Fund” for “Office of Insurance Services”; and in subsection (H), substituted “The authority, through the Insurance Reserve Fund” for “The board, through the Office of Insurance Services”.

CROSS REFERENCES

Authority for tort liability insurance, information service, see S.C. Code of Regulations R. 19‑415.1.

Insurance reserve fund, see S.C. Code of Regulations R. 19‑415.6.

Insurance reserve fund defined, see Section 38‑13‑180.

Sick leave, leave where employee attacked, leave for sick family member, see Section 8‑11‑40.

Federal Aspects

Public Law 93‑641, creating the Health System Agencies and the State Health Planning and Development Agencies, appears as 42 U.S.C.A. Sections 300 l et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k67.

States 67.

C.J.S. States Sections 121, 136 to 138, 140.

RESEARCH REFERENCES

Treatises and Practice Aids

Restatement (2d) of Torts Section 895B, States.

Attorney General’s Opinions

In light of the fact that doctors and physicians are professional persons with a higher obligation to their patients than the ordinary employees of a medical facility, there is a strong factual basis for their exemption from the limitations of [1977] Act No. 182; the classification of the Act is not suspect, is not outside the scope of the legislature to regulate sovereign/charitable immunity, and therefore is not unconstitutional. 1978 Op Atty Gen, No 78‑67, p 94.

The phrase “tort liability” includes liability arising out of injuries involving automobiles when the cause of injury for the claim is based on a tort theory. 1983 Op Atty Gen, No. 83‑74, p. 117.

Political subdivisions of the State, including school districts, must purchase tort liability insurance for themselves and their employees from the Division of General Services exclusively, and from no other source. 1978 Op Atty Gen, No 78‑147, p 182.

NOTES OF DECISIONS

In general 1

Coverage 2

1. In general

Statutes authorizing State Budget and Control Board to purchase insurance for governmental entities do not provide that only risks that Board can insure against are those waived under Tort Claims Act; Board’s duty to insure against risks waived under Act is not exclusive. Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services (S.C. 1997) 326 S.C. 6, 482 S.E.2d 768, rehearing denied. Insurance 2348

The legislature’s inclusion of Sections 10‑7‑10 through 10‑7‑40, 59‑67‑710, and 59‑67‑790 within the general provisions of Section 1‑11‑140 was not intended to render all other provisions relating to insurance on public entities inapplicable, but merely delineated specific additional insurance coverage which the State Budget and Control Board was authorized to provide; finding the subsequent provisions inapplicable would lead to absurd results which would not be in the best interest of the Board. Charleston County School Dist. v. State Budget and Control Bd. (S.C. 1993) 313 S.C. 1, 437 S.E.2d 6.

2. Coverage

Factor regarding state treasury’s liability, in determination of whether university was arm of State of South Carolina and entitled to Eleventh Amendment immunity, weighed in favor of conclusion that university was arm of State, where State treasury potentially would have been liable, or otherwise would have been negatively impacted by adverse judgment against university, in spite of existence of insurance though South Carolina Budget and Control Board’s Insurance Reserve Fund. Martin v. Clemson University, 2009, 654 F.Supp.2d 410. Federal Courts 2388(3)

Pollution exclusion was valid in policy issued to county public service district under Tort Claims Act permitting political subdivisions to procure coverage from Insurance Reserve Fund for risks for which immunity was waived; regulation in existence when legislature enacted the Act contained general liability policy with pollution exclusion. South Carolina Ins. Reserve Fund v. East Richland County Public Service Dist. (S.C.App. 2016) 417 S.C. 149, 789 S.E.2d 63, rehearing denied. Insurance 2278(17)

Sheriff’s alleged sexual assaults against dispatchers, jailers, and secretary were outside the scope of his official duties and outside the course of employment, and, thus, sheriff was not an “insured” under the county’s general liability policies, even though the sheriff was working in his office and allegedly discussing county business prior to and at the time of the alleged assaults; the policies defined “insured” to include an employee only while acting in the course of employment or scope of official duties. Loadholt v. South Carolina State Budget and Control Bd., Div. of General Services, Ins. Reserve Fund (S.C.App. 2000) 339 S.C. 165, 528 S.E.2d 670, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 349 S.C. 640, 564 S.E.2d 667. Insurance 2349

**SECTION 1‑11‑141.** Insurance on state‑owned vehicles by agencies; liability of employees for cost of accident repairs.

 (A) Agencies shall insure state‑owned vehicles through the State Fiscal Accountability Authority or shall absorb the cost of accident repairs within the agency budget.

 (B) State employees who, while driving state‑owned vehicles on official business, are involved in accidents resulting in damages to the vehicles may not be held liable to the State for the cost of repairs, except in the following cases:

 (1) If the operator was convicted of driving under the influence of alcohol or illegal drugs at the time of the accident and the Accident Review Board determines that the operator’s impaired condition substantially was the cause of the accident, the operator may be assessed up to the full cost of repairs; and

 (2) In all other cases, the employee operator may be assessed for an amount not to exceed two hundred dollars for each occurrence if he is found to be at fault in the accident after a review of records conducted by a duly appointed Accident Review Board.

 (C) Employees subjected to these assessments may appeal the assessment to the following bodies, in the following order:

 (1) Agency Accident Review Board;

 (2) Agency Executive Director or governing board or commission;

 (3) State Motor Vehicle Management Council; and

 (4) State Fiscal Accountability Authority.

HISTORY: 1995 Act No. 145, Part II, Section 17.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k78; 360k79.

States 78, 79.

C.J.S. States Sections 125 to 126, 202.

**SECTION 1‑11‑145.** Employment of special agents to examine insurance risks carried by Authority.

 The State Fiscal Accountability Authority may employ special agents to examine insurance risks carried by such authority and perform any other duties which may be required of them. The cost of necessary supplies, equipment and travel expenses of the special agents shall be paid from the revenues of the Insurance Reserve Fund.

HISTORY: 1979 Act No. 199, Part II, Section 10.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k53.

States 53.

C.J.S. States Sections 81 to 83, 86, 93 to 98, 101, 136.

**SECTION 1‑11‑147.** Automobile liability reinsurance contract; letting for bid.

 To underwrite automobile liability insurance provided by the board, the State Fiscal Accountability Authority is authorized to either self‑insure, purchase reinsurance, or use a combination of self‑insurance and reinsurance. Should the authority elect to purchase automobile liability reinsurance, the reinsurance shall be procured through a bid process in accordance with the South Carolina Consolidated Procurement Code with a contract term not to exceed three years.

HISTORY: 1999 Act No. 13, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k67; 360k98.

States 67, 98.

C.J.S. States Sections 121, 136 to 138, 140, 160 to 167.

**SECTION 1‑11‑160.** Execution by General Services Division of certificates of exemption from taxation on behalf of political subdivisions.

 The General Services Division of the Department of Administration shall, when necessary, execute a certificate of exemption from taxation when a certificate is required for Federal tax purposes for or on behalf of political subdivisions that purchase property from or through the General Services Division and the certificate so executed shall then constitute the certificate of the political subdivision. The General Services Division shall accept the political subdivision’s requisition or purchase order as conclusive proof that the property so requisitioned or purchased is for the exclusive use of the political subdivision.

HISTORY: 1962 Code Section 1‑360; 1968 (55) 2697.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k73; 371k217.

States 73.

Taxation 217.

C.J.S. States Sections 130 to 136, 140.

C.J.S. Taxation Sections 295 to 298, 319.

**SECTION 1‑11‑170.** Authorization to maintain revolving funds to finance certain inventories and accounts receivable.

 The Department of Administration may maintain revolving funds adequate to finance inventories and accounts receivable for goods and services rendered by its Division of General Services on a reimbursement basis.

HISTORY: 1976 Act No. 602, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CROSS REFERENCES

Maintenance of a revolving fund for the purchase of office supplies, see Section 11‑25‑430.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k121.

States 121.

C.J.S. States Sections 203, 223.

**SECTION 1‑11‑175.** Authorization of Authority to finance construction of correctional facilities.

 The State Fiscal Accountability Authority is authorized to finance the construction of correctional facilities by issuance of capital improvement bonds or other methods of financing approved by the Board.

HISTORY: 1985 Act No. 201, Part II, Section 85.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Searches: 310k1; 360k123.

Prisons 1.

States 123.

C.J.S. Prisons and Rights of Prisoners Sections 2 to 3.

C.J.S. States Section 226.

**SECTION 1‑11‑180.** Additional powers of the Department of Administration; condition of state property; blanket bonds; energy utilization management system; regulations.

 (A) In addition to the powers granted the Department of Administration under this chapter or any other provision of law, the department may:

 (1) survey, appraise, examine, and inspect the condition of state property to determine what is necessary to protect state property against fire or deterioration and to conserve the use of the property for state purposes;

 (2) approve blanket bonds for a state department, agency, or institution including bonds for state officials or personnel. However, the form and execution of blanket bonds must be approved by the Attorney General; and

 (3) contract to develop an energy utilization management system for state facilities under its control and to assist other agencies and departments in establishing similar programs. However, this does not authorize capital expenditures.

 (B) The Department of Administration shall promulgate regulations necessary to carry out this section.

HISTORY: 1995 Act No. 145, Part II, Section 42; 2014 Act No. 121 (S.22), Pt V, Section 7.C, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.C, in subsection (A), substituted “Department of Administration” for “Budget and Control Board” and substituted “department may” for “board may”; deleted former subsections (A)(2) and (A)(3) relating to destruction of agency records and submission of plans and specifications, and redesignated accordingly; and in subsection (B), substituted “Department of Administration shall” for “Budget and Control Board may”.

LIBRARY REFERENCES

Westlaw Key Number Searches: 326k22; 360k68; 360k88.

Records 22.

States 68, 88.

C.J.S. Records Sections 32, 57 to 59.

C.J.S. States Sections 130 to 135, 139, 147.

**SECTION 1‑11‑185.** Additional powers of the Department of Administration; permanent improvement projects; regulations; goods and services to promote efficient and economical operations.

 (A) In addition to the powers granted the Department of Administration pursuant to this chapter or another provision of law, the department may require submission and approval of plans and specifications for a permanent improvement project of a cost of one million dollars or less by a state department, agency, or institution of the executive branch before a contract is awarded for the permanent improvement project. If the cost of the permanent improvement project is more than one million dollars, approval of the State Fiscal Accountability Authority is required, in lieu of the department’s approval, before the contract may be awarded and the authority may require submission of the plans and specifications for this purpose. The provisions of this subsection are in addition to any other requirements of law relating to permanent improvement projects, including the provisions of Chapter 47, Title 2.

 (B) The Department of Administration may promulgate regulations necessary to carry out its duties.

 (C) The respective divisions of the Department of Administration are authorized to provide to and receive from other governmental entities, including other divisions and state and local agencies and departments, goods and services as will in its opinion promote efficient and economical operations. The divisions may charge and pay the entities for the goods and services, the revenue from which must be deposited in the state treasury in a special account and expended only for the costs of providing the goods and services, and those funds may be retained and expended for the same purposes.

HISTORY: 2014 Act No. 121 (S.22), Pt V, Section 7.D, eff July 1, 2015.

**SECTION 1‑11‑220.** Division of General Services, Program of Fleet Management; Fleet Management Program.

 There is hereby established within the Department of Administration, Division of General Services, Program of Fleet Management headed by the “State Fleet Manager”, appointed by and reporting directly to the department. The department shall develop a comprehensive state Fleet Management Program. The program shall address acquisition, assignment, identification, replacement, disposal, maintenance, and operation of motor vehicles.

 The department shall, through its policies and regulations, seek to:

 (a) achieve maximum cost‑effectiveness management of state‑owned motor vehicles in support of the established missions and objectives of the agencies, boards, and commissions;

 (b) eliminate unofficial and unauthorized use of state vehicles;

 (c) minimize individual assignment of state vehicles;

 (d) eliminate the reimbursable use of personal vehicles for accomplishment of official travel when this use is more costly than use of state vehicles;

 (e) acquire motor vehicles offering optimum energy efficiency for the tasks to be performed;

 (f) insure motor vehicles are operated in a safe manner in accordance with a statewide Fleet Safety Program; and

 (g) improve environmental quality in this State by decreasing the discharge of pollutants.

HISTORY: 1978 Act No. 644 Part II Section 24(A); 1982 Act No. 429, Section 1; 2008 Act No. 203, Section 1, eff upon approval (became law without the Governor’s signature on April 17, 2008); 2014 Act No. 121 (S.22), Pt V, Section 7.E.1, eff July 1, 2015.

Effect of Amendment

The 2008 amendment added item (g) relating to improving the environmental quality by decreasing discharge of pollutants.

2014 Act No. 121, Section 7.E.1, in the first undesignated paragraph, substituted “Department of Administration, Division of General Services, Program of Fleet Management headed by” for “Budget and Control Board the Division of Motor Vehicle Management headed by a Director, hereafter referred to as”, substituted “department” for “Budget and Control Board, hereafter referred to as the Board”, and substituted “The department shall” for “The Board shall”; in the second undesignated paragraph, substituted “department” for “Budget and Control Board”; and made other nonsubstantive changes.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k45.

States 45.

C.J.S. States Sections 79, 82, 136.

**SECTION 1‑11‑225.** Cost allocation plan to recover cost of operating Fleet Management Program.

 The Department of Administration shall establish a cost allocation plan to recover the cost of operating the comprehensive statewide Fleet Management Program. The division shall collect, retain, and carry forward funds to ensure continuous administration of the program.

HISTORY: 2002 Act No. 356, Section 1, Pt IX.A; 2014 Act No. 121 (S.22), Pt V, Section 7.E.2, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.2, substituted “Department of Administration” for “Division of Operations”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k121.

States 121.

C.J.S. States Sections 203, 223.

**SECTION 1‑11‑250.** Division of General Services, Program of Fleet Management; definitions.

 For purposes of Sections 1‑11‑220 to 1‑11‑330:

 (a) “State agency” means all officers, departments, boards, commissions, institutions, universities, colleges, and all persons and administrative units of state government that operate motor vehicles purchased, leased, or otherwise held with the use of state funds, pursuant to an appropriation, grant or encumbrance of state funds, or operated pursuant to authority granted by the State.

 (b) “Department” means the South Carolina Department of Administration.

HISTORY: 1978 Act No. 644, Part II, Section 24(D); 2002 Act No. 311, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, rewrote subsection (b), substituting “Department” for “Board, and substituted “Department of Administration” for “State Budget and Control Board”.

**SECTION 1‑11‑260.** Division of General Services, Program of Fleet Management; annual reports; policies, procedures and regulations.

 (A) The Fleet Manager shall report annually to the General Assembly concerning the performance of each state agency in achieving the objectives enumerated in Sections 1‑11‑220 through 1‑11‑330 and include in the report a summary of the program’s efforts in aiding and assisting the various state agencies in developing and maintaining their management practices in accordance with the comprehensive statewide Fleet Management Program. This report also shall contain recommended changes in the law and regulations necessary to achieve these objectives.

 (B) The department, after consultation with state agency heads, shall promulgate and enforce state policies, procedures, and regulations to achieve the goals of Sections 1‑11‑220 through 1‑11‑330 and shall recommend administrative penalties to be used by the agencies for violation of prescribed procedures and regulations relating to the Fleet Management Program.

HISTORY: 1978 Act No. 644 Part II Section 24(E); 1982 Act No. 429, Section 3; 2002 Act No. 311, Section 3; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, in subsection (A), deleted “Budget and Control Board and the” after “report annually to the”, substituted “summary of the program’s efforts” for “summary of the division’s efforts”, and substituted “statewide Fleet Management Program” for “statewide Motor Vehicle Management Program”; and in subsection (B), substituted “department” for “board”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k73.

States 73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 1‑11‑270.** Division of General Services, Program of Fleet Management; establishment of criteria for individual assignment of motor vehicles.

 (A) The department shall establish criteria for individual assignment of motor vehicles based on the functional requirements of the job, which shall reduce the assignment to situations clearly beneficial to the State. Only the Governor, statewide elected officials, and agency heads are provided a state‑owned vehicle based on their position.

 (B) Law enforcement officers, as defined by the agency head, may be permanently assigned state‑owned vehicles by their respective agency head. Agency heads may assign a state‑owned vehicle to an employee when the vehicle carries or is equipped with special equipment needed to perform duties directly related to the employee’s job, and the employee is either in an emergency response capacity after normal working hours or for logistical reasons it is determined to be in the agency’s interest for the vehicle to remain with the employee. No other employee may be permanently assigned to a state‑owned vehicle, unless the assignment is cost advantageous to the State under guidelines developed by the State Fleet Manager. Statewide elected officials, law enforcement officers, and those employees who have been assigned vehicles because they are in an emergency response capacity after normal working hours are exempt from reimbursing the State for commuting miles. Other employees operating a permanently assigned vehicle must reimburse the State for commuting between home and work.

 (C) All persons, except the Governor and statewide elected officials, permanently assigned with automobiles shall log all trips on a log form approved by the board, specifying beginning and ending mileage and job function performed. However, trip logs must not be maintained for vehicles whose gross vehicle weight is greater than ten thousand pounds nor for vehicles assigned to full‑time line law enforcement officers. Agency directors and commissioners permanently assigned state vehicles may utilize exceptions on a report denoting only official and commuting mileage in lieu of the aforementioned trip logs.

HISTORY: 1978 Act No. 644, Part II, Section 24(F); 1982 Act No. 429, Section 4; 1995 Act No. 145, Part II, Section 18; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, in subsection (A), substituted “department” for “board”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k73.

States 73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 1‑11‑280.** Division of General Services, Program of Fleet Management; interagency motor pools.

 The department shall develop a system of agency‑managed and interagency motor pools which are, to the maximum extent possible, cost beneficial to the State. All motor pools shall operate according to regulations promulgated by the department. Vehicles shall be placed in motor pools rather than being individually assigned except as specifically authorized by the department in accordance with criteria established by the department. Agencies utilizing motor pool vehicles shall utilize trip log forms approved by the department for each trip, specifying beginning and ending mileage and the job function performed.

 The provisions of this section shall not apply to school buses and service vehicles.

HISTORY: 1978 Act No. 644, Part II, Section 24(G); 1982 Act No. 429, Section 5; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, in the first undesignated paragraph, substituted “department” for board throughout, and deleted the former second to last sentence, relating to the transfer of the motor pool operated by the Division of General Services.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k73.

States 73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 1‑11‑290.** Division of General Services, Program of Fleet Management; plan for maximally cost‑effective vehicle maintenance.

 The department in consultation with the agencies operating maintenance facilities shall study the cost‑effectiveness of such facilities versus commercial alternatives and shall develop a plan for maximally cost‑effective vehicle maintenance. The department shall promulgate rules and regulations governing vehicle maintenance to effectuate the plan.

 The State Vehicle Maintenance program shall include:

 (a) central purchasing of supplies and parts;

 (b) an effective inventory control system;

 (c) a uniform work order and record‑keeping system assigning actual maintenance cost to each vehicle; and

 (d) preventive maintenance programs for all types of vehicles.

 All motor fuels shall be purchased from state facilities except in cases where such purchase is impossible or not cost beneficial to the State.

 All fuels, lubricants, parts, and maintenance costs including those purchased from commercial vendors shall be charged to a state credit card bearing the license plate number of the vehicle serviced and the bill shall include the mileage on the odometer of the vehicle at the time of service.

HISTORY: 1978 Act No. 644, Part II, Section 24(H); 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, in the first undesignated paragraph, substituted “department” for “board” throughout, and added a comma after “parts” in the last undesignated paragraph.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k73.

States 73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 1‑11‑300.** Agencies to develop and implement uniform cost accounting and reporting system; purchase of motor vehicle equipment and supplies; use of credit cards; determination of vehicle cost per mile.

 In accordance with criteria established by the department, each agency shall develop and implement a uniform cost accounting and reporting system to ascertain the cost per mile of each motor vehicle used by the State under their control. Agencies presently operating under existing systems may continue to do so provided that departmental approval is required and that the existing systems are uniform with the criteria established by the department. All expenditures on a vehicle for gasoline and oil shall be purchased in one of the following ways:

 (1) from state‑owned facilities and paid for by the use of Universal State Credit Cards except where agencies purchase these products in bulk;

 (2) from any fuel outlet where gasoline and oil are sold regardless of whether the outlet accepts a credit or charge card when the purchase is necessary or in the best interest of the State; and

 (3) from a fuel outlet where gasoline and oil are sold when that outlet agrees to accept the Universal State Credit Card.

 These provisions regarding purchase of gasoline and oil and usability of the state credit card also apply to alternative transportation fuels where available. The department shall adjust the budgetary appropriation for “Operating Expenses—Lease Fleet” to reflect the dollar savings realized by these provisions and transfer such amount to other areas of the State Fleet Management Program. The department shall promulgate regulations regarding the purchase of motor vehicle equipment and supplies to ensure that agencies within a reasonable distance are not duplicating maintenance services or purchasing equipment that is not in the best interest of the State. The department shall develop a uniform method to be used by the agencies to determine the cost per mile for each vehicle operated by the State.

HISTORY: 1978 Act No. 644, Part II Section 24(I); 1982 Act No. 429, Section 6; 1998 Act No. 419, Part II, Section 30; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, substituted “department” for “board” throughout; in the last paragraph, substituted “adjust the budgetary appropriation” for “adjust the appropriation in Part IA, Section 63B”; and made other nonsubstantive changes.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k72; 360k121.

States 72, 121.

C.J.S. States Sections 123, 203, 223.

**SECTION 1‑11‑310.** Division of General Services, Program of Fleet Management; acquisition and disposition of vehicles; titles.

 (A) The Department of Administration shall purchase, acquire, transfer, replace, and dispose of all motor vehicles on the basis of maximum cost‑effectiveness and lowest anticipated total life cycle costs.

 (B) The standard state fleet sedan or station wagon must be no larger than a compact model and the special state fleet sedan or station wagon must be no larger than an intermediate model. The State Fleet Manager shall determine the types of vehicles which fit into these classes. Only these classes of sedans and station wagons may be purchased by the State for nonlaw enforcement use.

 (C) The State shall purchase police sedans only for the use of law enforcement officers, as defined by the Internal Revenue Code. Purchase of a vehicle under this subsection must be concurred in by the State Fleet Manager and must be in accordance with regulations promulgated or procedures adopted under Sections 1‑11‑220 through 1‑11‑340 which must take into consideration the agency’s mission, the intended use of the vehicle, and the officer’s duties. Law enforcement agency vehicles used by employees whose job functions do not meet the Internal Revenue Service definition of “Law Enforcement Officer” must be standard or special state fleet sedans.

 (D) All state motor vehicles must be titled to the State and must be received by and remain in the possession of the Program of Fleet Management pending sale or disposal of the vehicle.

 (E) Titles to school buses and service vehicles operated by the State Department of Education and vehicles operated by the South Carolina Department of Transportation must be retained by those agencies.

 (F) Exceptions to requirements in subsections (B) and (C) must be approved by the State Fleet Manager. Requirements in subsection (B) do not apply to the Department of Commerce.

 (G) Preference in purchasing state motor vehicles must be given to vehicles assembled in the United States with at least seventy‑five percent domestic content as determined by the appropriate federal agency.

 (H) Preference in purchasing state motor vehicles must be given to hybrid, plug‑in hybrid, biodiesel, hydrogen, fuel cell, or flex‑fuel vehicles when the performance, quality, and anticipated life cycle costs are comparable to other available motor vehicles.

HISTORY: 1978 Act No. 644, Part II, Section 24(J); 1992 Act No. 449, Part V, Section 2, eff July 1, 1992; 1996 Act No. 459, Section 2; 2008 Act No. 203, Section 2, eff upon approval (became law without the Governor’s signature on April 17, 2008); 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

The 2008 amendment added item (H) relating to purchase of low emission motor vehicles by the State.

2014 Act No. 121, Section 7.E.3, in subsection (A), substituted “Department of Administration” for “State Budget and Control Board”; in subsections (B) and (C), substituted “State Fleet Manager” for “director of the Division of Motor Vehicle Management”; in subsection (D), substituted “Program of Fleet Management” for “Division of Motor Vehicle Management”; and in subsection (F), substituted “State Fleet Manager” for “director of the Division of Motor Vehicle Management” and substituted “Department of Commerce” for “State Development Board”.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k85; 360k89.

States 85, 89.

C.J.S. States Sections 145, 149 to 150.

**SECTION 1‑11‑315.** Feasibility of using alternative transportation fuels for state fleet.

 The Department of Administration, Division of General Services, Program of Fleet Management, shall determine the extent to which the state vehicle fleet can be configured to operate on alternative transportation fuels. This determination must be based on a thorough evaluation of each alternative fuel and the feasibility of using such fuels to power state vehicles. The state fleet must be configured in a manner that will serve as a model for other corporate and government fleets in the use of alternative transportation fuel. By March 1, 1993, the Program of Fleet Management must submit a plan to the General Assembly for the use of alternative transportation fuels for the state vehicle fleet that will enable the state vehicle fleet to serve as a model for corporate and other government fleets in the use of alternative transportation fuel. This plan must contain a cost/benefit analysis of the proposed changes.

HISTORY: 1992 Act No. 449, Pt. V, Section 17; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, substituted “Department of Administration, Division of General Services, Program of Fleet Management,” for “State Budget and Control Board Division of Motor Vehicle Management” and substituted “Program of Fleet Management” for “Division of Motor Vehicle Management”.

**SECTION 1‑11‑320.** Division of General Services, Program of Fleet Management; plates and other identification requirements; exemptions.

 The department shall ensure that all state‑owned motor vehicles are identified as such through the use of permanent state government license plates and either state or agency seal decals. No vehicles shall be exempt from the requirements for identification except those exempted by the department.

 This section shall not apply to vehicles supplied to law enforcement officers when, in the opinion of the department after consulting with the Chief of the State Law Enforcement Division, those officers are actually involved in undercover law enforcement work to the extent that the actual investigation of criminal cases or the investigators’ physical well‑being would be jeopardized if they were identified. The department is authorized to exempt vehicles carrying human service agency clients in those instances in which the privacy of the client would clearly and necessarily be impaired.

HISTORY: 1978 Act No. 644, Part II, Section 24(K); 1982 Act No. 429, Section 7; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, substituted “department” for “board” throughout, and in the first paragraph, deleted the hyphen between “state” and “government”.

LIBRARY REFERENCES

Westlaw Key Number Searches: 48Ak41; 360k23.

Automobiles 41.

States 23.

C.J.S. Motor Vehicles Section 221.

C.J.S. States Section 39.

**SECTION 1‑11‑330.** Division of Motor Vehicle Management; State Department of Education vehicles exempted.

 The provisions of Sections 1‑11‑220 to 1‑11‑330 shall not apply to school buses and service vehicles operated by the State Department of Education.

HISTORY: 1978 Act No. 644, Part II, Section 24(N).

LIBRARY REFERENCES

Westlaw Key Number Searches: 48Ak41; 345k159.5(1).

Automobiles 41.

Schools 159.5(1).

C.J.S. Motor Vehicles Section 221.

C.J.S. Schools and School Districts Sections 744 to 751, 753 to 756.

**SECTION 1‑11‑335.** Department of Administration may provide to and receive from other governmental entities goods and services.

 The respective divisions of the Department of Administration are authorized to provide to and receive from other governmental entities, including other divisions and state and local agencies and departments, goods and services, as will in its opinion promote efficient and economical operations. The divisions may charge and pay the entities for the goods and services, the revenue from which shall be deposited in the state treasury in a special account and expended only for the costs of providing the goods and services, and such funds may be retained and expended for the same purposes.

HISTORY: 1995 Act No. 145, Part II, Section 6; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, substituted “Department of Administration” for “Budget and Control Board”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k73.

States 73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 1‑11‑340.** Department to develop and implement statewide Fleet Safety Program.

 The department shall develop and implement a statewide Fleet Safety Program for operators of state‑owned vehicles which shall serve to minimize the amount paid for rising insurance premiums and reduce the number of accidents involving state‑owned vehicles. The department shall promulgate regulations requiring the establishment of an accident review board by each agency and mandatory driver training in those instances where remedial training for employees would serve the best interest of the State.

HISTORY: 1982 Act No. 429, Section 9; 2014 Act No. 121 (S.22), Pt V, Section 7.E.3, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.E.3, twice substituted “department” for “board” and deleted “rules and” before “regulations”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k68.

States 68.

C.J.S. States Sections 130 to 135, 139.

**SECTION 1‑11‑360.** Office of Precinct Demographics; establishment and responsibilities.

 There is created within the Revenue and Fiscal Affairs Office an Office of Precinct Demographics to be staffed by personnel as determined appropriate by the office and consistent with funds appropriated for the Office by the General Assembly in the annual general appropriation act. The Office of Precinct Demographics shall:

 (1) Review existing precinct boundaries and maps for accuracy, develop and rewrite descriptions of precincts for submission to the legislative process.

 (2) Consult with members of the General Assembly or their designees on matters related to precinct construction or discrepancies that may exist or occur in precinct boundary development in the counties they represent.

 (3) Develop a system for originating and maintaining precinct maps and related data for the State.

 (4) Represent the Division at public meetings, meetings with members of the General Assembly, and meetings with other state, county, or local governmental entities on matters related to precincts.

 (5) Assist the appropriate county officials in the drawing of maps and writing of descriptions or precincts preliminary to these maps and descriptions being filed in this office for submission to the United States Department of Justice.

 (6) Coordinate with the Census Bureau in the use of precinct boundaries in constructing census boundaries and the identification of effective uses of precinct and census information for planning purposes.

 (7) Serve as a focal point for verifying official precinct information for the counties of South Carolina.

HISTORY: 1984 Act No. 512, Part II, Section 59.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k45; 360k73.

States 45, 73.

C.J.S. States Sections 79, 82, 130 to 136, 140.

**SECTION 1‑11‑370.** Determination and designation of indebtedness to be included within any limits on “private activity bonds”.

 A. By the provisions of Title 4, Chapter 29, of Title 4 (the Industrial Revenue Bond Act), Chapter 3, of Title 48 (the Pollution Control Facilities Revenue Bond Act), Article 11 of Chapter 7 of Title 44 (the Hospital Revenue Bond Act), all of the 1976 Code, and certain other provisions of South Carolina law, various political subdivisions and agencies of the State of South Carolina are authorized or enabled to issue their debt for the benefit of certain private entities in order to encourage and promote certain undertakings and activities which promote the public health, welfare, and economy of the State. There is pending in the Congress of the United States legislation which, if enacted in its present form, would impose a maximum dollar limit on the amount of the debt, referred to as “private activity bonds”, which could be issued by a state in a given year. The legislation purports to be effective, retroactively, to all the indebtedness issued subsequent to December 31, 1983. The legislation also provides that the inclusion of the indebtedness issued in any state within the limitation imposed must be determined in a manner as provided by the legislature of the state. The pendency of the legislation absent a mechanism for determining the inclusion of debt within the proposed limit has created uncertainty and difficulty in the issuance of debt to which the limitation, if imposed, might apply. In order to remove this uncertainty the General Assembly proposes to delegate to the State Fiscal Accountability Authority and the Joint Bond Review Committee, if a maximum limit upon the debt is imposed, the authority to designate which indebtedness is included within any limits on “private activity bonds”, which may be imposed by federal law or regulations and to promulgate rules and regulations as the Board with the approval of the committee may consider necessary for the purposes.

 B. The State Fiscal Accountability Authority and the Joint Bond Review Committee shall develop a plan pursuant to which the Authority shall determine which issue of indebtedness, or portions of indebtedness, issued by the State of South Carolina or any agency or political subdivision of the State must be included within any limitation on “private activity bonds” or any similar indebtedness, proposed or imposed by any federal legislation or regulations. The determination may be made without regard to the date of any agreements between the issuers and beneficiaries of any indebtedness, and no priority need be given any issue, issuer, or beneficiary based on any date.

 C. The State Fiscal Accountability Authority, after review by the Joint Bond Review Committee, shall promulgate regulations as it considers necessary or useful in connection with the authority granted in this section.

HISTORY: 1984 Act No. 512, Part II, Section 39.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CROSS REFERENCES

Creation, membership, and expenses of the Joint Bond Review Committee, as well as provision of assistance to the Committee, see Section 2‑47‑20.

LIBRARY REFERENCES

Westlaw Key Number Searches: 268k909; 360k146.

Municipal Corporations 909.

States 146.

C.J.S. Municipal Corporations Sections 1647 to 1648.

C.J.S. States Section 252.

**SECTION 1‑11‑395.** Use of vendors by state body providing health care or social services to recover reimbursement for providing services.

 Any state governmental body which provides health care or social services and which has a legal right to be reimbursed from any private or governmental source for these services may contract with any vendor on a contingent basis to recover or to assist in the recovery of funds for reimbursement of the provided services. The governmental body may pay the vendor from funds actually collected from governmental or private sources as a result of the services provided by the vendor. The vendor must be selected pursuant to Section 11‑35‑1530, 11‑35‑1560, or 11‑35‑1570 and the contract must be approved by the State Fiscal Accountability Authority.

HISTORY: 1988 Act No. 658, Part II, Section 18C.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k90.

States 90.

C.J.S. States Sections 154 to 155, 160.

**SECTION 1‑11‑400.** Authority of Budget and Control Board to enter lease purchase agreements to provide method of replacing Central Correctional Institution.

 In furtherance of the State’s interest in complying with the terms of Nelson v. Leeke, and in minimizing potential legal liability in the future, and in furtherance of achieving a cost effective and timely solution to this problem through innovative means available in the private sector, after consultation with the Joint Bond Review Committee and the State Reorganization Commission, the State Budget and Control Board is authorized to enter into lease purchase agreements consistent with the Consolidated Procurement Code of the State of South Carolina which would provide the State an economically feasible method of replacing the Central Correctional Institution (CCI), so long as these agreements (1) can be demonstrated to be comparably cost effective to traditional financing methods, (2) can result in long‑term operational cost savings, (3) are in compliance with the standards enunciated in Nelson v. Leeke, (4) can result in the provision of a new facility of sufficient bed, program, and support space more expeditiously than traditional methods, (5) that will minimize the wasteful expenditure of funds for further capital improvements to CCI, and (6) will be subject to the year‑to‑year appropriation process of the General Assembly.

HISTORY: 1985 Act No. 201, Part II, Section 28.

LIBRARY REFERENCES

Westlaw Key Number Searches: 310k1; 360k85.

Prisons 1.

States 85.

C.J.S. Prisons and Rights of Prisoners Sections 2 to 3.

C.J.S. States Section 145.

**SECTION 1‑11‑405.** Aircraft purchase, lease, or lease‑purchase by state agency.

 No aircraft may be purchased, leased, or lease‑purchased for more than a thirty‑day period by any state agency without the prior authorization of the Department of Administration or the State Fiscal Accountability Authority, as appropriate, and the Joint Bond Review Committee.

HISTORY: 1995 Act No. 145, Part II, Section 44.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k85.

States 85.

C.J.S. States Section 145.

**SECTION 1‑11‑420.** Reports to State Budget and Control Board.

 All institutions, departments, and agencies shall file an annual report with the board at the time the board specifies. The board shall prescribe specifications and deadlines as are practicable for the reports, the objective being to limit the content and style of printing, and thus keep the cost of their publication within reasonable limits. The board shall have the reports printed and made available on or before January first to each member of the General Assembly at his request and to the State Library. The board shall report annually to the General Assembly on the expenditure of appropriations for the reports showing, by departments, the number of copies and cost of publication. State agency annual reports required under the provisions of this section and reports to the General Assembly may not be printed in a multicolor format unless that format can be purchased at the cost of black and white printing, nor may these reports contain pictures of board or commission members, agency officers, or employees.

HISTORY: 1988 Act No. 307, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k72; 360k121.

States 72, 121.

C.J.S. States Sections 123, 203, 223.

**SECTION 1‑11‑425.** Cost information to be included in publications; exceptions.

 All agencies using appropriated funds shall print on the last page of all bound publications the following information:

 (1) total printing cost;

 (2) total number of documents printed; and

 (3) cost per unit.

 The President Pro Tempore of the Senate, the Speaker of the House, the Legislative Services Agency, the presidents of each institution of higher education, and the State Board for Technical and Comprehensive Education may exempt from this requirement documents published by their respective agencies. Agency publications which are produced for resale are also exempt from this requirement.

 Publications of public relations nature produced by Parks, Recreation and Tourism and the Division of State Development are exempt from this requirement.

HISTORY: 2002 Act No. 356, Section 1, Pt XI.K; 2013 Act No. 31, Section 2, eff May 21, 2013.

Effect of Amendment

The 2013 amendment substituted “the Legislative Services Agency” for “Legislative Printing, Information and Technology Systems”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k72.

States 72.

C.J.S. States Section 123.

**SECTION 1‑11‑430.** Supply and use of telecommunication systems for state Government.

 In post‑divestiture circumstances, the State, its boards, committees, commissions, councils, and agencies, and other entities excluding counties, municipalities, and special service and school districts must be treated as a single enterprise for purposes of securing and utilizing local and long distance telecommunications equipment and services.

 The Department of Administration shall secure all telecommunications equipment and services for the state government enterprise under terms it considers suitable and coordinate the supply of the equipment and services for state government use. No entity of state government may enter into an agreement or renew an existing agreement for telecommunications services unless approved by the board.

HISTORY: 1989 Act No. 189, Part II, Section 23.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k94.

States 94.

C.J.S. States Section 157.

**SECTION 1‑11‑435.** Protection of critical information technology infrastructure and data systems.

 To protect the state’s critical information technology infrastructure and associated data systems in the event of a major disaster, whether natural or otherwise, and to allow the services to the citizens of this State to continue in such an event, the Office of the State Chief Information Officer (CIO) should develop a Critical Information Technology Infrastructure Protection Plan devising policies and procedures to provide for the confidentiality, integrity, and availability of, and to allow for alternative and immediate on‑line access to critical data and information systems including, but not limited to, health and human services, law enforcement, and related agency data necessary to provide critical information to citizens and ensure the protection of state employees as they carry out their disaster‑related duties. All state agencies and political subdivisions of this State are directed to assist the Office of the State CIO in the collection of data required for this plan.

HISTORY: 2002 Act No. 339, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k73.

States 73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 1‑11‑440.** Defense of members of Fiscal Accountability Authority and the Director of the Department of Administration.

 (A) The State must defend the members of the State Fiscal Accountability Authority and the Director of the Department of Administration against a claim or suit that arises out of or by virtue of their performance of official duties on behalf of the authority or the department, as applicable, and must indemnify them for a loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State must defend officers and management employees of the authority, legislative employees performing duties for the authority’s members or the department, and the department’s officers and management employees against a claim or suit that arises out of or by virtue of the performance of official duties unless the officer, management employee, or legislative employee was acting in bad faith and must indemnify these officers, management employees, and legislative employees for a loss or judgment incurred by them as a result of such claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the authority, the authority’s officers and management employees, the department’s director and officers and management employees, and legislative employees after they have left their employment with the authority, the General Assembly, or the department, as applicable, if the claim or suit arises out of or by virtue of their performance of official duties on behalf of their employer.

 (B) The State must defend the members of the Retirement Systems Investment Panel established pursuant to Section 16, Article X of the Constitution of this State and Section 9‑16‑310 against a claim or suit that arises out of or by virtue of their performance of official duties on behalf of the panel and must indemnify these members for a loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the panel after they have left their service with the panel if the claim or suit arises out of or by virtue of their performance of official duties on behalf of the panel.

HISTORY: 2003 Act No. 13, Section 1; 2014 Act No. 121 (S.22), Pt VII, Section 20.A, eff July 1, 2015.

Editor’s Note

Section 9‑16‑310, referenced in subsection (B), was repealed by 2012 Act No. 278.

Effect of Amendment

2014 Act No. 121, Section 20.A, rewrote subsection (A).

LIBRARY REFERENCES

Westlaw Key Number Search: 360k62.

States 62.

C.J.S. States Sections 47, 106.

**SECTION 1‑11‑460.** Payment of judgments against governmental employees and officials in excess of one million dollars; limitations; recovery of amount paid by assessment against entities purchasing tort liability insurance.

 The State Fiscal Accountability Authority, through the Division of Insurance Services, is authorized to pay judgments against individual governmental employees and officials, in excess of one million dollars, subject to a maximum of four million dollars in excess of one million dollars for one employee and a maximum of twenty million dollars in excess of five million dollars in one fiscal year. These payments are limited to judgments rendered under 42 U.S.C. Section 1983 against governmental employees or officials who are covered by a tort liability policy issued by the Insurance Reserve Fund. These payments are also limited to judgments against governmental employees and officials for acts committed within the scope of employment. If a judgment is paid, the payment must be recovered by assessments against all governmental entities purchasing tort liability insurance from the Insurance Reserve Fund.

HISTORY: 1992 Act No. 509, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k62.

States 62.

C.J.S. States Sections 47, 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 76.1, Section 1983 Civil Rights Judgments.

**SECTION 1‑11‑470.** Limitations on use of funds appropriated by General Assembly.

 (A) No funds appropriated by the General Assembly may be used by a constitutional officer to purchase space including, but not limited to, notices or advertisements, in a print medium or time from a radio or television medium without unanimous prior written approval of the Budget and Control Board.

 (B) No funds appropriated by the General Assembly may be used by a constitutional officer to print on, or distribute with, official documents extraneous promotional material or to purchase plaques, awards, citations, or other recognitions without unanimous prior written approval of the Budget and Control Board.

 (C) If nonpublic funds are used for the purposes enumerated in subsection (A), the constitutional officer expending the funds must submit the source of the funds showing all contributors to the Budget and Control Board before the funds are expended.

 (D) The provisions of this section do not apply to the Governor or to the General Assembly.

HISTORY: 1997 Act No. 155, Part II, Section 42A.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k123.

States 123.

C.J.S. States Section 226.

**SECTION 1‑11‑475.** Employee benefit appropriations; transfer of funds within agency to cover overruns.

 It is the intent of the General Assembly that the amounts appropriated to each agency or institution in a fiscal year for employee benefits are sufficient to pay the employer contribution costs of that agency. The Department of Administration shall devise a plan for the expenditure of the funds appropriated for employer contributions and may require transfers of funds within an agency or institution if it becomes evident that the employer contribution costs exceed the funds available for that purpose.

HISTORY: 2002 Act No. 356, Section 1, Pt XI.F.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k64.1.

States 64.1.

C.J.S. States Sections 104 to 105, 112.

**SECTION 1‑11‑480.** Hiring consultant or management firm to assist in administration of state employee unemployment compensation fund; annual reports to General Assembly.

 The Department of Administration is authorized to hire consultants or a management firm to assist in the administration of the unemployment compensation program for state employees and, for that purpose, may use funds appropriated or otherwise made available for unemployment payments. The Department of Administration is authorized to make the transfers necessary to accomplish this purpose. The Department of Administration shall report in writing annually to the General Assembly the complete name, address, and amounts paid to the consultants or management firm.

HISTORY: 1999 Act No. 100, Part II, Section 86.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k94.

States 94.

C.J.S. States Section 157.

**SECTION 1‑11‑490.** Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division.

 (A) An agency of this State owning or licensing computerized data or other data that includes personal identifying information shall disclose a breach of the security of the system following discovery or notification of the breach in the security of the data to a resident of this State whose unencrypted and unredacted personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person when the illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to the resident. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (C), or with measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

 (B) An agency maintaining computerized data or other data that includes personal identifying information that the agency does not own shall notify the owner or licensee of the information of a breach of the security of the data immediately following discovery, if the personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person.

 (C) The notification required by this section may be delayed if a law enforcement agency determines that the notification impedes a criminal investigation. The notification required by this section must be made after the law enforcement agency determines that it no longer compromises the investigation.

 (D) For purposes of this section:

 (1) “Agency” means any agency, department, board, commission, committee, or institution of higher learning of the State or a political subdivision of it.

 (2) “Breach of the security of the system” means unauthorized access to and acquisition of computerized data that was not rendered unusable through encryption, redaction, or other methods that compromise the security, confidentiality, or integrity of personal identifying information maintained by the agency, when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to the consumer. Good faith acquisition of personal identifying information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system if the personal identifying information is not used or subject to further unauthorized disclosure.

 (3) “Personal identifying information” has the same meaning as “personal identifying information” in Section 16‑13‑510(D).

 (E) The notice required by this section may be provided by:

 (1) written notice;

 (2) electronic notice, if the person’s primary method of communication with the individual is by electronic means or is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 USC and Chapter 6, Title 26 of the 1976 Code;

 (3) telephonic notice; or

 (4) substitute notice, if the agency demonstrates that the cost of providing notice exceeds two hundred fifty thousand dollars or that the affected class of subject persons to be notified exceeds five hundred thousand or the agency has insufficient contact information. Substitute notice consists of:

 (a) e‑mail notice when the agency has an e‑mail address for the subject persons;

 (b) conspicuous posting of the notice on the agency’s web site page, if the agency maintains one; or

 (c) notification to major statewide media.

 (F) Notwithstanding subsection (E), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal identifying information and is otherwise consistent with the timing requirements of this section is considered to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

 (G) A resident of this State who is injured by a violation of this section, in addition to and cumulative of all other rights and remedies available at law, may:

 (1) institute a civil action to recover damages;

 (2) seek an injunction to enforce compliance; and

 (3) recover attorney’s fees and court costs, if successful.

 (H) An agency that knowingly and wilfully violates this section is subject to an administrative fine up to one thousand dollars for each resident whose information was accessible by reason of the breach, the amount to be decided by the Department of Consumer Affairs.

 (I) If the agency provides notice to more than one thousand persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Department of Consumer Affairs and all consumer reporting agencies that compile and maintain files on a nationwide basis, as defined in 15 USC Section 1681a(p), of the timing, distribution, and content of the notice.

HISTORY: 2008 Act No. 190, Section 4.A, eff July 1, 2009.

**SECTION 1‑11‑495.** Repealed.

HISTORY: Former Section, titled Monitoring revenues and expenditures to determine year‑end deficits; quarterly appropriations allocation; supplemental appropriations, had the following history: 2008 Act No. 353, Section 2, Pt 20A, eff July 1, 2009; 2010 Act No. 152, Section 4, eff May 6, 2010. Repealed by 2014 Act No. 121, Pt VI, Section 10.B, eff July 1, 2015.

**SECTION 1‑11‑497.** Across‑the‑board reduction in expenditures.

 If the Executive Budget Office or the General Assembly mandates an across‑the‑board reduction, state agencies are encouraged to reduce general operating expenses including, but not limited to, travel, training, procurement, hiring of temporary and contractual employees before reductions are made to programs, special line items, or local provider services critical to an agency’s mission.

HISTORY: 2008 Act No. 353, Section 2, Pt 20E, eff July 1, 2009.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

ARTICLE 3

Allocation of State Ceiling on Issuance of Private Activity Bonds

**SECTION 1‑11‑500.** Calculation and certification of state ceiling.

 The state ceiling on the issuance of private activity bonds as defined in Section 146 of the Internal Revenue Code of 1986 (the Code) established in the act must be certified annually by the State Fiscal Accountability Authority secretary based upon the provisions of the act. The board secretary shall make this certification as soon as practicable after the estimates of the population of the State of South Carolina to be used in the calculation are published by the United States Bureau of the Census but in no event later than February first of each calendar year.

HISTORY: 1987 Act No. 117, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CROSS REFERENCES

Determination and designation of indebtedness to be included within any limits on private activity bonds, see Section 1‑11‑370.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k73; 360k146.

States 73, 146.

C.J.S. States Sections 130 to 136, 140, 252.

**SECTION 1‑11‑510.** Allocation of bond limit amounts.

 (A) The private activity bond limit for all issuing authorities must be allocated by the board in response to authorized requests as described in Section 1‑11‑530 by the issuing authorities.

 (B) The aggregate private activity bond limit amount for all South Carolina issuing authorities is allocated initially to the State for further allocation within the limits prescribed herein.

 (C) Except as is provided in Section 1‑11‑540, all allocations must be made by the board on a first‑come, first‑served basis, to be determined by the date and time sequence in which complete authorized requests are received by the board secretary.

HISTORY: 1987 Act No. 117, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k149.

States 149.

C.J.S. States Section 252.

**SECTION 1‑11‑520.** Private activity bond limits and pools.

 (A) The private activity bond limit for all state government issuing authorities now or hereafter authorized to issue private activity bonds as defined in the act, to be known as the “state government pool”, is forty percent of the state ceiling less any amount shifted to the local pool as described in subsection (B) of this section or plus any amount shifted from that pool.

 (B) The private activity bond limit for all issuing authorities other than state government agencies, to be known as the “local pool”, is sixty percent of the state ceiling plus any amount shifted from the state government pool or less any amount shifted to that pool.

 (C) The board, with review and comment by the Joint Bond Review Committee, may shift unallocated amounts from one pool to the other at any time.

HISTORY: 1987 Act No. 117, Section 3.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k149.

States 149.

C.J.S. States Section 252.

**SECTION 1‑11‑530.** Authorized requests for allocation of bond limit amounts.

 (A) For private activity bonds proposed for issue by other than state government issuing authorities, an authorized request is a request included in a petition to the board that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by a copy of the Inducement Contract, Inducement Resolution, or other comparable preliminary approval entered into or adopted by the issuing authority, if any, relating to the bonds. The board shall forward promptly to the committee a copy of each petition received.

 (B) For private activity bonds proposed for issue by any state government issuing authority, an authorized request is a request included in a petition to the board that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by a bond resolution or comparable action by the issuing authority authorizing the issuance of the bonds. The board shall forward promptly to the committee a copy of each petition received.

 (C) Each authorized request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project.

HISTORY: 1987 Act No. 117, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k149.

States 149.

C.J.S. States Section 252.

**SECTION 1‑11‑540.** Limitations on allocations.

 (A) The board, with review and comment by the committee, may disapprove, reduce, or defer any authorized request. If it becomes necessary to exercise this authority, the board and the committee shall take into account the public interest in promoting economic growth and job creation.

 (B) Authorized requests for state ceiling allocations of more than ten million dollars for a single project are deferred until after July first unless the board, after review and comment by the committee, determines in any particular instance that the positive impact upon the State of approving an allocation of an amount greater than ten million dollars is of such significance that approval of the allocation is warranted.

HISTORY: 1987 Act No. 117, Section 5.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k149.

States 149.

C.J.S. States Section 252.

**SECTION 1‑11‑550.** Certificates by issuing authority and by board.

 (A) An allocation of the state ceiling approved by the board is made formal initially by a certificate which allocates tentatively a specific amount of the state ceiling to the bonds for which the allocation is requested. This tentative allocation certificate must specify the state ceiling amount allocated, the issuing authority and the project involved, and the time period during which the tentative allocation is valid. This certificate must remind the issuing authority that the tentative allocation is made final after the issuing authority chairman or other duly authorized official or agent of the issuing authority, before the issue is made, certifies the issue amount and the projected date of issue, as is required by subsection (B) of this section. It also may include other information considered relevant by the board secretary.

 (B) The chairman or other authorized official or agent of an issuing authority issuing any private activity bond for which a portion of the state ceiling has been allocated tentatively shall execute and deliver to the board secretary an issue amount certificate setting forth the exact amount of bonds to be issued and the projected bond issue date which date must not be more than ten business days after the date of the issue amount certificate and it must be before the state ceiling allocation involved expires. The issue amount certificate may be an executed copy of the appropriate completed Internal Revenue Service form to be submitted to the Internal Revenue Service on the issue or it may be in the form of a letter which certifies the exact amount of bonds to be issued and the projected date of the issue.

 (C) In response to the issuing authority’s issue amount certificate required by subsection (B) of this section, the board secretary is authorized to issue and, as may be necessary, to revise a certificate making final the ceiling allocation approved previously by the board on a tentative basis, if the secretary determines that:

 (1) the issuing authority’s issue amount certificate specifies an amount not in excess of the approved tentative ceiling allocation amount;

 (2) the issue amount certificate was received prior to the issue date projected and that the certificate is dated not more than ten days prior to the issue date projected;

 (3) the issue date projected is within the time period approved previously for the tentative ceiling allocation; and

 (4) the bonds when issued and combined with the total amount of bonds requiring a ceiling allocation included in issue amount certificates submitted previously to the board by issuing authorities do not exceed the state ceiling for the calendar year. Except under extraordinary circumstances, the board secretary shall issue this certificate within two business days following the date the issue amount certificate is received.

 (D) In accordance with Section 149(e)(2)(F) of the Code, the secretary of the State Fiscal Accountability Authority is designated as the state official responsible for certifying, if applicable, that certain bonds meet the requirements of Section 146 of the Code relating to the volume cap on private activity bonds.

 (E) Any tentative or final state ceiling allocation granted by the board before the effective date of this act remains valid as an allocation of a portion of the volume cap for South Carolina provided under Section 146 of the Code. The allocations expire in accordance with the regulations under which they were granted or extended and their validity may be extended or reinstated in accordance with the provisions of Sections 1‑11‑500 through 1‑11‑570.

HISTORY: 1987 Act No. 117, Section 6.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k149.

States 149.

C.J.S. States Section 252.

**SECTION 1‑11‑560.** Time limits on allocations.

 (A) Any state ceiling allocation approved by the board is valid only for the calendar year in which it is approved, unless eligible and approved for carry‑forward election or unless specified differently in the board certificates required by Section 1‑11‑550.

 (B) Unless eligible and approved for carry‑ forward election or unless specified differently in board certificates required by Section 1‑11‑550, each state ceiling allocation expires automatically if the bonds for which the allocation is made are not issued within ninety consecutive calendar days from the date the allocation is approved by the board.

 (C) In response to a written request by the chairman or other duly authorized official or agent of an issuing authority, the board, acting during the period an approved allocation is valid, may extend the period in which an allocation is valid in a single calendar year by thirty‑one consecutive calendar days to a total of not more than one hundred twenty‑one consecutive calendar days.

 (D) In response to a written request by the chairman or other authorized official or agent of an issuing authority, the board may reinstate for a period of not more than thirty‑one consecutive calendar days in any one calendar year part or all of an allocation approved but not extended previously in accordance with subsection (C) of this section in that same calendar year which has expired. The reinstatement request must certify that the authorized request submitted previously is still true and correct or a new authorized request must be submitted.

 (E) A tentative ceiling allocation is canceled automatically if the chairman or other authorized official or agent of the issuing authority involved fails to deliver the issue amount certificate required by Section 1‑11‑550 to the board secretary before the bonds for which the allocation is made are issued.

 (F) The chairman or other authorized official or agent of an issuing authority shall advise the board secretary in writing as soon as is practicable after a decision is made not to issue bonds for which a portion of the state ceiling has been allocated. All notices of relinquishment of ceiling allocations must be entered promptly in the board’s records by the board secretary.

 (G) Ceiling allocations which are eligible and approved for carry‑forward election are not subject to the validity limits of this section. The board shall join with the issuing authorities involved in carry‑forward election statements to meet the requirements of the Internal Revenue Service.

HISTORY: 1987 Act No. 117, Section 7.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k149.

States 149.

C.J.S. States Section 252.

**SECTION 1‑11‑570.** Fiscal Accountability Authority to adopt policies and procedures.

 The State Fiscal Accountability Authority, after review and comment by the committee, may adopt the policies and procedures it considers necessary for the equitable and effective administration of Sections 1‑11‑500 through 1‑11‑570.

HISTORY: 1987 Act No. 117, Section 8.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k68; 360k150.

States 68, 150.

C.J.S. States Sections 130 to 135, 139, 253.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 55, State Budget and Control Board, Division of Human Resource Management.

**SECTION 1‑11‑580.** Fiscal Accountability Authority to make quarterly payments on certain insurance contracts.

 The State Fiscal Accountability Authority shall make quarterly payments on insurance contracts where the annual premium exceeds fifty thousand dollars. The board shall undertake necessary negotiations to implement this requirement. Where fees may be incurred for quarterly rather than annual payments, the State Fiscal Accountability Authority shall determine whether the investment income opportunity is greater or less than proposed fees and shall make the decision which best benefits South Carolina.

HISTORY: 1995 Act No. 145, Part II, Section 20.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k123.

States 123.

C.J.S. States Section 226.

ARTICLE 5

Employees and Retirees Insurance‑Accounting for Post‑Employment Benefits

Editor’s Note

2008 Act No. 195, Section 2, provides as follows:

“Article 5, Chapter 11, Title 1 of the 1976 Code is retitled ‘Employees and Retirees Insurance‑Accounting for Post‑Employment Benefits’.”

**SECTION 1‑11‑703.** Definitions.

 As used in this article:

 (1) “Actuarial accrued liability” means that portion, as determined by a particular actuarial cost method, of the actuarial present value of fund obligations and administrative expenses which is not provided for by future normal costs.

 (2) “Actuarial assumptions” means assumptions regarding the occurrence of future events affecting costs of the SCRHI Trust Fund or LTDI Trust Fund such as mortality, withdrawal, disability, and retirement; changes in compensation; aging effects and cost trends for post‑employment benefits; benefit election rates; rates of investment earnings and asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other such relevant items.

 (3) “Actuarial cost method” means a method for determining the actuarial present value of the obligations and administrative expenses of the SCRHI Trust Fund or LTDI Trust Fund and for developing an actuarially equivalent allocation of such value to time periods, usually in the form of a normal cost and an actuarial‑accrued liability. Acceptable actuarial methods are the aggregate, attained age, individual entry age, frozen attained age, frozen entry age, and projected unit credit methods.

 (4) “Actuarial present value of total projected benefits” means the present value, at the valuation date, of the cost to finance benefits payable in the future, discounted to reflect the expected effects of the time value of money and the probability of payment.

 (5) “Actuarial valuation” means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values for the SCRHI Trust Fund or LTDI Trust Fund.

 (6) “Actuarially sound” means that calculated contributions to the SCRHI Trust Fund or LTDI Trust Fund are sufficient to pay the full actuarial cost of these trust funds. The full actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded actuarial accrued liability over a period of no more than thirty years.

 (7) “Administrative expenses” means all expenses incurred in the operation of the SCRHI Trust Fund and LTDI Trust Fund, including all investment expenses.

 (8) “LTDI Trust Fund” means the Long Term Disability Insurance Trust Fund established pursuant to Section 1‑11‑707 to fund benefits under the state’s Basic Long Term Disability (BLTD) Income Benefit Plan.

 (9) “Board” means the Board of Directors of the South Carolina Public Employee Benefit Authority.

 (10) “Employee insurance program” or “EIP” means the office of the South Carolina Public Employee Benefit Authority designated by the board to operate insurance programs pursuant to this article.

 (11) “IBNR” means unpaid health claims incurred but not reported. The liability for IBNR claims is actuarially estimated based on the most current historical claims experience of previous payments, inflation, award trends, and estimates of health care trend changes.

 (12) “Operating account” means the health insurance program’s business operating activities account maintained by the State Treasurer in which are deposited all premiums for enrollees in self‑funded health plans authorized in this article, along with employer contributions for active employees covered by such self‑funded health plans, and from which claims and administrative expenses of the self‑funded health and dental plans administered by the employee insurance program are paid.

 (13) “State‑covered entity” means state agencies and institutions, however described, and school districts. It also includes political subdivisions of the State that participate in the state health and dental plans.

 (14) “State health and dental plans” means any insurance program administered by the employee insurance program pursuant to this article.

 (15) “SCRHI Trust Fund” means the South Carolina Retiree Health Insurance Trust Fund established pursuant to Section 1‑11‑705 to fund the employer cost for health benefits for retired state employees and retired public school district employees.

 (16) “State Retirement System” or “State Retirement Systems” means all retirement systems established pursuant to Title 9 except for the National Guard Retirement System.

 (17) “Unfunded actuarial accrued liability” means for any actuarial valuation the excess of the actuarial accrued liability over the actuarial value of the assets of the fund under an actuarial cost method utilized by the fund for funding purposes.

 (18) “Trust fund paid premiums” means the employer premium for state health and dental plans coverage paid by the SCRHI Trust Fund on behalf of a retiree. When it is expressed as a percentage of trust fund paid premiums, it means that the SCRHI Trust Fund shall pay the stated percentage of the employer premiums, with the retiree paying the balance of the employer premiums and the entire employee premium.

HISTORY: 2008 Act No. 195, Section 3, eff May 1, 2008; 2012 Act No. 278, Pt IV, Subpt 2, Section 31, eff July 1, 2012.

Editor’s Note

2008 Act No. 195, Section 8, provides as follows:

“This act takes effect on the first day of the month following the month during which this act is approved by the Governor [approved April 2, 2008].”

2012 Act No. 278, Pt IV, Subpt 3, Section 65(C), provides as follows:

“(C) The Code Commissioner is directed to change or correct all references to the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission to reflect its transfer to the South Carolina Public Employee Benefit Authority. References to the name of the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references.”

Effect of Amendment

The 2012 amendment substituted “Board of Directors of the South Carolina Public Employee Benefit Authority” for “State Budget and Control Board” in subsection (9); and substituted “South Carolina Public Employee Benefit Authority” for “board” in subsection (10).

Notes of Decisions

Constitutional issues 1

1. Constitutional issues

General Assembly’s attempt to amend statutory provision that codified the Budget and Control Board’s authority to administer state health insurance plan through an appropriations act which indicated that the Board had the power to decline appropriated funds was immaterial to a determination of whether the Board violated the separation of powers when it substituted its policy for those enacted by the General Assembly with regard to how the appropriated funds were to be used, in light of the General Assembly’s clear intent that the Board was to use all appropriated funds to cover premium increases. Hampton v. Haley (S.C. 2013) 403 S.C. 395, 743 S.E.2d 258. Constitutional Law 2621; States 132

The lack of a proviso to appropriations act limiting the ability of the Budget and Control Board to raise state health insurance plan enrollee’s premiums was immaterial to a determination of whether the Board violated the separation of powers when it substituted its policy for those enacted by the General Assembly; the appropriation was clear that the Board was to use all of the appropriated funds to cover the premium increase. Hampton v. Haley (S.C. 2013) 403 S.C. 395, 743 S.E.2d 258. Constitutional Law 2621; States 132

**SECTION 1‑11‑705.** South Carolina Retiree Health Insurance Trust fund established; administration.

 (A) There is established in the State Treasury separate and distinct from the general fund of the State and all other funds the South Carolina Retiree Health Insurance Trust Fund (SCRHI Trust Fund) to provide for the employer costs of retiree post‑employment health insurance benefits for retired state employees and retired employees of public school districts. Earnings on the SCRHI Trust Fund must be credited to it and unexpended funds carried forward in it to succeeding fiscal years.

 (B) The board is the trustee of the SCRHI Trust Fund and the State Treasurer is the custodian of the funds of the SCRHI Trust Fund.

 (C) The employee insurance program shall administer the SCRHI Trust Fund.

 (D) The employee insurance program shall engage actuarial and other services as required to transact the business of the SCRHI Trust Fund. The actuary engaged by the employee insurance program shall provide technical advice to the board regarding operation of the SCRHI Trust Fund.

 (E) Upon recommendations of the actuary, the board shall adopt generally accepted and reasonable actuarial assumptions and methods for the operation and funding of the SCRHI Trust Fund as it considers necessary and prudent. The actuarial assumptions and methods adopted by the board must be appropriate for the purposes at hand and must be reasonable, individually and in the aggregate, taking into account the experience of the plan and reasonable expectations. Utilizing the actuarial assumptions most recently adopted by the board, the actuary engaged by the employee insurance program shall set the annual actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the SCRHI Trust Fund.

 (F) The board may adopt policies and procedures and promulgate regulations as necessary for the proper administration of the SCRHI Trust Fund.

 (G)(1) The funds of the SCRHI Trust Fund must be invested and reinvested by the State Treasurer in the manner allowed by law. The State Treasurer shall consult with the employee insurance program and the employee insurance program’s actuary to develop an annual investment plan for the SCRHI Trust Fund taking into account the cash flow needs of the employee insurance program with regard to payment of the employer share of premiums and claims for covered retirees.

 (2) Effective beginning with the first fiscal year after the ratification of an amendment to Section 16, Article X of the Constitution of this State allowing funds in post‑employment benefits trust funds to be invested in equity securities, the Retirement System Investment Commission (RSIC) established pursuant to Chapter 16 of Title 9, shall invest and reinvest the funds of the SCRHI Trust Fund as assets of a retirement system are invested. The chief investment officer shall consult with the employee insurance program and the employee insurance program’s actuary to develop an annual investment plan for the SCRHI Trust Fund taking into account the cash flow needs of the employee insurance program with regard to payment of the employer share of premiums and claims for covered retirees. After the initial fiscal year the RSIC assumes this investing function, the annual investment plan for the SCRHI Trust Fund must be approved by the commission no later than June first of each year for the fiscal year beginning July first of the same calendar year.

 (H) The board annually shall determine the minimum annual required contributions to the SCRHI Trust Fund on an actuarially sound basis in accordance with Governmental Accounting Standards Board Statement No. 45, or any other Governmental Accounting Standards Board statements that may be applicable to the SCRHI Trust Fund.

 (I) The board shall fund the SCRHI Trust Fund:

 (1) through the employer contributions for the South Carolina Retirement Systems as provided in Section 1‑11‑710(A)(2). The total employer contributions collected from the State and school districts for post‑employment benefits must be transferred immediately to the SCRHI Trust Fund for investment, reinvestment, and the payment of post‑employment benefits;

 (2) by transfer of the Employee Insurance Program as of January thirty‑first of each calendar year to the trust fund from the employee insurance program’s operating account, the cash balance in the operating account in excess of one hundred forty percent of the actuarially‑determined IBNR reserves of the state’s health plans as of December thirty‑first of the preceding year. On May 1, 2008, an initial transfer must take place applicable to the cash balance as of December 31, 2007; and

 (3) with funding as authorized by the General Assembly pursuant to Section 1‑11‑710(D).

 (J) Each month, the employee insurance program shall determine the monthly amount of the state‑funded employer premium with respect to retired state employees and retired public school district employees who are eligible for state‑paid employer premiums pursuant to Section 1‑11‑730, and shall transfer this amount to the operating account from the SCRHI Trust Fund. In addition, the employee insurance program shall transfer the total cost of post‑employment benefits for retirees and their dependents, net of premium contributions made on behalf of retirees and other sources of revenue attributable to retirees, in accordance with Governmental Accounting Standards Board Statements Nos. 43 and 45 and the Implementation Guide.

 (K) The funds of the SCRHI Trust Fund may only be used for the payment of employer‑provided other post‑employment benefits under the terms of the state health and dental plans. The administrative costs related to the administration of the SCRHI Trust Fund, and the investment and reinvestment of its funds, may be funded from the earnings of the SCRHI Trust Fund.

 (L) As a trust, the funds of the SCRHI Trust Fund are not assets of the State or the school districts or their respective agencies. The contributions to the SCRHI Trust Fund are irrevocable and may not revert to the employer except upon complete satisfaction of all liabilities and administrative expenses of the state health and dental plans of other post‑employment benefits provided pursuant to the state health and dental plans.

HISTORY: 2008 Act No. 195, Section 3, eff May 1, 2008.

Editor’s Note

2008 Act No. 195, Section 7, provides as follows:

“The Code Commissioner shall insert the effective date of this act [May 1, 2008] for the phrase ‘reference date’ where it appears in Section 1‑11‑705 of the 1976 Code as added by this act and in Section 1‑11‑730 of the 1976 Code as amended by this act.”

2008 Act No. 195, Section 8, provides as follows:

“This act takes effect on the first day of the month following the month during which this act is approved by the Governor [approved April 2, 2008].”

2012 Act No. 278, Pt IV, Subpt 3, Section 65(C), provides as follows:

“(C) The Code Commissioner is directed to change or correct all references to the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission to reflect its transfer to the South Carolina Public Employee Benefit Authority. References to the name of the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references.”

**SECTION 1‑11‑707.** South Carolina Long Term Disability Insurance Trust Fund established; administration.

 (A) There is established in the State Treasury separate and distinct from the general fund of the State and all other funds the South Carolina Long Term Disability Insurance Trust Fund (LTDI Trust Fund) to provide for the payment of benefits under the state’s Basic Long Term Disability Income Benefit Plan. Earnings on the LTDI Trust Fund must be credited to it and unexpended funds carry forward in it to succeeding fiscal years.

 (B) The board is the trustee of the LTDI Trust Fund and the State Treasurer is the custodian of the funds of the LTDI Trust Fund.

 (C) The employee insurance program shall administer the LTDI Trust Fund.

 (D) The employee insurance program shall engage actuarial and other services as required to transact the business of the LTDI Trust Fund. The actuary engaged by the employee insurance program shall provide technical advice to the board regarding operation of the LTDI Trust Fund.

 (E) Upon recommendations of the actuary, the board shall adopt generally accepted and reasonable actuarial assumptions and methods for the operation and funding of the LTDI Trust Fund as it considers necessary and prudent. The actuarial assumptions and methods adopted by the board must be appropriate for the purposes at hand and must be reasonable, individually and in the aggregate, taking into account the experience of the plan and reasonable expectations. Utilizing the actuarial assumptions most recently adopted by the board, the actuary engaged by the employee insurance program shall set the annual actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the LTDI Trust Fund.

 (F) The board may adopt policies and procedures and promulgate regulations as necessary for the proper administration of the LTDI Trust Fund.

 (G)(1) The funds of the LTDI Trust Fund must be invested and reinvested by the State Treasurer in the manner allowed by law. The State Treasurer shall consult with the employee insurance program and the employee insurance program’s actuary to develop an annual investment plan for the LTDI Trust Fund taking into account the cash flow needs of the employee insurance program with regard to payment of the employer share of premiums and claims for covered retirees.

 (2) Effective beginning with the first fiscal year after the ratification of an amendment to Section 16, Article X of the Constitution of this State allowing funds in post‑employment benefits trust funds to be invested in equity securities, the Retirement System Investment Commission (RSIC) established pursuant to Chapter 16 of Title 9, shall invest and reinvest the funds of the LTDI Trust Fund as assets of a retirement system are invested. The chief investment officer shall consult with the employee insurance program and the employee insurance program’s actuary to develop an annual investment plan for the LTDI Trust Fund taking into account the cash flow needs of the employee insurance program with regard to payment of the employer share of premiums and claims for covered retirees. After the initial fiscal year the RSIC assumes this investing function, the annual investment plan for the LTDI Trust Fund must be approved by the commission no later than June first of each year for the fiscal year beginning July first of the same calendar year.

 (H) The board annually shall determine the minimum annual required contributions to the LTDI Trust Fund on an actuarially sound basis in accordance with Governmental Accounting Standards Board Statement No. 45, or any other Governmental Accounting Standards Board statements that may be applicable to the LTDI Trust Fund.

 (I) The board shall increase the employer contributions used to fund the BLTD Plan by an amount equal to or greater than the minimum annual required contribution for the LTDI Trust Fund as determined in subsection (H) of this section. The increased employer contributions remitted to the employee insurance program under this subsection must be deposited in the LTDI Trust Fund.

 (J) Each month, the employee insurance program shall transfer to the operating account from the LTDI Trust Fund the amount invoiced by the third‑party administrator for the BLTD Plan for payment of LTDI claims, including reasonable expenses associated with claims administration of the BLTD Plan.

 (K) The assets of the LTDI Trust Fund may only be used for the payment of the state’s claims under the BLTD Plan along with reasonable expenses associated with the operation of the BLTD Plan, and the assets of the LTDI Trust Fund may not be used for any other purpose. The administrative costs related to the administration of the LTDI Trust Fund, and the investment and reinvestment of its funds, must be funded from the earnings of the LTDI Trust Fund.

 (L) As a trust, the funds of the LTDI Trust Fund are not assets of the State or the school districts or their respective agencies. The contributions to the LTDI Trust Fund are irrevocable and may not revert to the employer except upon complete satisfaction of all liabilities and administrative expenses of the State Basic Long Term Disability Income Benefit Plan of other post‑employment benefits provided pursuant to the State Basic Long Term Disability Income Benefit Plan.

HISTORY: 2008 Act No. 195, Section 3, eff May 1, 2008.

Editor’s Note

2008 Act No. 195, Section 8, provides as follows:

“This act takes effect on the first day of the month following the month during which this act is approved by the Governor [approved April 2, 2008].”

2012 Act No. 278, Pt IV, Subpt 3, Section 65(C), provides as follows:

“(C) The Code Commissioner is directed to change or correct all references to the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission to reflect its transfer to the South Carolina Public Employee Benefit Authority. References to the name of the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references.”

**SECTION 1‑11‑710.** Board to make insurance available to active and retired employees; Insurance Reserve Fund to provide reinsurance; cost to be paid out of appropriated and other funds.

 (A) The board shall:

 (1) make available to active and retired employees of this State and its public school districts and their eligible dependents group health, dental, life, accidental death and dismemberment, and disability insurance plans and benefits in an equitable manner and of maximum benefit to those covered within the available resources;

 (2) approve by August fifteenth of each year a plan of benefits, eligibility, and employer, employee, retiree, and dependent contributions for the next calendar year. The board shall devise a plan for the method and schedule of payment for the employer and employee share of contributions and by July first of the current fiscal year, develop and implement a plan increasing the employer contribution rates of the State Retirement Systems to a level adequate to cover the employer’s share for the current fiscal year’s cost of providing health and dental insurance to retired state and school district employees. The state health and dental plans must include a method for the distribution of the funds appropriated as provided by law which are designated for retiree insurance and also must include a method for allocating to school districts, excluding EIA funding, sufficient general fund monies to offset the additional cost incurred by these entities in their federal and other fund activities as a result of this employer contribution charge. The funds collected through increasing the employer contribution rates for the State Retirement Systems under this section must be deposited in the SCRHI Trust Fund established pursuant to Section 1‑11‑705. The amounts appropriated in this section shall constitute the State’s pro rata contributions to these programs except the State shall pay its pro rata share of health and dental insurance premiums for retired state and public school employees for the current fiscal year;

 (3) adjust the plan, benefits, or contributions, at any time to insure the fiscal stability of the system;

 (4) set aside in separate continuing accounts in the State Treasury, appropriately identified, all funds, state‑appropriated and other, received for actual health and dental insurance premiums due. Funds credited to these accounts may be used to pay the costs of administering the state health and dental plans and may not be used for purposes of other than providing insurance benefits for employees and retirees. A reserve equal to not less than one and one‑half months’ claims must be maintained in the accounts.

 (B) The board may authorize the Insurance Reserve Fund to provide reinsurance, in an approved format with actuarially developed rates, for the operation of the group health insurance or cafeteria plan program, as authorized by Section 9‑1‑60, for active and retired employees of the State, and its public school districts and their eligible dependents. Premiums for reinsurance provided pursuant to this subsection must be paid out of state appropriated and other funds received for actual health insurance or cafeteria plan premiums due.

 (C) Notwithstanding Sections 1‑23‑310 and 1‑23‑320 or any other provision of law, claims for benefits under any self‑insured plan of insurance offered by the State to state and public school district employees and other eligible individuals must be resolved by procedures established by the board, which shall constitute the exclusive remedy for these claims, subject only to appellate judicial review consistent with the standards provided in Section 1‑23‑380.

 (D) The General Assembly intends to authorize funding for the SCRHI Trust Fund in order to make progress toward reaching or maintaining the minimum annual required contribution under Governmental Accounting Standards Board Statement No. 45. The board shall determine the minimum annual required contribution pursuant to Section 1‑11‑705(H).

HISTORY: 1992 Act No. 364, Section 1; 1995 Act No. 145, Part II, Section 19; 1996 Act No. 312, Section 1; 2001 Act No. 62, Sections 1, 2; 2008 Act No. 195, Section 4, eff May 1, 2008; 2012 Act No. 278, Pt IV, Subpt 2, Section 32, eff July 1, 2012.

Editor’s Note

2008 Act No. 195, Section 8, provides as follows:

“This act takes effect on the first day of the month following the month during which this act is approved by the Governor [approved April 2, 2008].”

Effect of Amendment

The 2008 amendment, in subparagraph (A)(2), combined the second and third sentences by substituting “and” for “Provided that the Budget and Control Board,” preceding “by July first”, in the third sentence substituted “state health and dental plans” for “plan”, and added the fourth sentence referring to the SCRHI Trust Fund; in subparagraph (A)(4), in the second sentence substituted “plans” for “insurance programs” and in the third sentence deleted “an average of” preceding “one and one‑half months” and at the end “and all funds in excess of the reserve must be used to reduce premium rates or improve or expand benefits as funding permits”; and added subsection (D) relating to maintaining the minimum annual required contribution.

The 2012 amendment substituted “board” for “State Budget and Control Board” in subsection (A).

LIBRARY REFERENCES

Westlaw Key Number Searches: 345k63(5); 345k146; 360k64.1.

Schools 63(5), 146.

States 64.1.

C.J.S. Schools and School Districts Sections 141, 177 to 182, 321 to 322, 338, 340 to 343, 346.

C.J.S. States Sections 104 to 105, 112.

Attorney General’s Opinions

It is an administrative decision of the Budget and Control Board’s Division of Insurance Services to determine whether or not a particular entity is an instrumentality of a county for purposes of admission to the State Health Insurance Plan under former Section 1‑11‑142. 1989 Op Atty Gen, No. 89‑118, p 323.

Notes of Decisions

In general 1⁄2

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1⁄2. In general

Group health plan for State employees provided “health insurance coverage” within meaning of statute mandating coverage for diabetes education in every group insurance policy issued or renewed in the State, and thus plan was required to cover cost of diabetes education training session for public school district’s employee’s daughter, who had been diagnosed with diabetes and was an insured under plan. Allen v. South Carolina Public Employee Ben. Authority (S.C. 2015) 411 S.C. 611, 769 S.E.2d 666. Education 430; Public Employment 388(1)

1. Separation of powers

General Assembly’s attempt to amend statutory provision that codified the Budget and Control Board’s authority to administer state health insurance plan through an appropriations act which indicated that the Board had the power to decline appropriated funds was immaterial to a determination of whether the Board violated the separation of powers when it substituted its policy for those enacted by the General Assembly with regard to how the appropriated funds were to be used, in light of the General Assembly’s clear intent that the Board was to use all appropriated funds to cover premium increases. Hampton v. Haley (S.C. 2013) 403 S.C. 395, 743 S.E.2d 258. Constitutional Law 2621; States 132

The lack of a proviso to appropriations act limiting the ability of the Budget and Control Board to raise state health insurance plan enrollee’s premiums was immaterial to a determination of whether the Board violated the separation of powers when it substituted its policy for those enacted by the General Assembly; the appropriation was clear that the Board was to use all of the appropriated funds to cover the premium increase. Hampton v. Haley (S.C. 2013) 403 S.C. 395, 743 S.E.2d 258. Constitutional Law 2621; States 132

2. Injunctions

An injunction to compel the Budget and Control Board to utilize appropriated funds from the most recent appropriations act for premium increases in the state health insurance plan was not warranted; petitioners, who were enrollees in the state plan, did not face irreparable harm as the premiums paid could be returned, and the declaratory judgment entered by the Supreme Court provided petitioners with an adequate remedy at law. Hampton v. Haley (S.C. 2013) 403 S.C. 395, 743 S.E.2d 258. Injunction 1269

3. Class actions

Class action relief was not available in school district employee’s appeal to the Administrative Law Court (ALC) of decision of Budget and Control Board Employee Insurance Program Appeals Committee (EIP) denying benefits under State employees’ group health plan; rule of civil procedure governing class actions was inapplicable to appeals before the ALC. Allen v. South Carolina Public Employee Ben. Authority (S.C. 2015) 411 S.C. 611, 769 S.E.2d 666. Education 430; Public Employment 388(1)

4. Review

School district employee failed to preserve for appellate review the argument that Budget and Control Board Employee Insurance Program Appeals Committee erred in failing to consider his request for class certification of whether group health plan for State employees was required to cover cost of diabetes educational training session, where nothing in documents seeking review of denial of benefits from EIP was sufficient to place it on notice that employee sought to pursue a class action in proceeding before EIP, and allegation that EIP erred was not properly raised on appeal before the ALJ. Allen v. South Carolina Public Employee Ben. Authority (S.C. 2015) 411 S.C. 611, 769 S.E.2d 666. Education 430; Public Employment 388(1)

**SECTION 1‑11‑715.** Incentive program to encourage participation in health promotion and disease prevention programs.

 The Employee Insurance Program of the Public Employee Benefit Authority is directed to develop and implement, for employees and their spouses who participate in the health plans offered by the Employee Insurance Program, an incentive plan to encourage participation in programs offered by the Employee Insurance Program that promote health and the prevention of disease. The Employee Insurance Program is further directed to implement a premium reduction or other financial incentive, beginning on January 1, 2012, for those employees and their spouses who participate in these programs.

HISTORY: 2011 Act No. 31, Section 1, eff May 26, 2011.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Editor’s Note

2012 Act No. 278, Pt IV, Subpt 3, Section 65(C), provides as follows:

“(C) The Code Commissioner is directed to change or correct all references to the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission to reflect its transfer to the South Carolina Public Employee Benefit Authority. References to the name of the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references.”

**SECTION 1‑11‑720.** Entities whose employees and retirees are eligible for state health and dental insurance plans; requirements for eligibility.

 (A) In addition to the employees and retirees and their eligible dependents covered under the state health and dental insurance plans pursuant to Section 1‑11‑710, employees and retirees and their eligible dependents of the following entities are eligible for coverage under the state health and dental insurance plans pursuant to the requirements of subsection (B):

 (1) counties;

 (2) regional tourism promotion commissions funded by the Department of Parks, Recreation and Tourism;

 (3) county intellectual disability boards funded by the State Mental Retardation Department;

 (4) regional councils of government established pursuant to Article 1, Chapter 7 of Title 6;

 (5) regional transportation authorities established pursuant to Chapter 25 of Title 58;

 (6) alcohol and drug abuse planning agencies designated pursuant to Section 61‑12‑20;

 (7) special purpose districts created by act of the General Assembly that provide gas, water, fire, sewer, recreation, hospital, or sanitation service, or any combination of these services;

 (8) municipalities;

 (9) local councils on aging or other governmental agencies providing aging services funded by the Office on Aging, Office of the Lieutenant Governor;

 (10) community action agencies that receive funding from the Community Services Block Grant Program administered by the Governor’s Office, Division of Economic Opportunity;

 (11) a residential group care facility providing on‑site teaching for residents if the facility’s staff are currently members of the South Carolina Retirement System established pursuant to Chapter 1, Title 9 and if it provides at no cost educational facilities on its grounds to the school district in which it is located.

 (12) the South Carolina State Employees’ Association;

 (13) the Palmetto State Teachers’ Association;

 (14) the South Carolina Education Association;

 (15) the South Carolina Association of School Administrators;

 (16) the South Carolina School Boards Association;

 (17) the South Carolina Student Loan Corporation.

 (18) legislative caucus committees as defined in Section 8‑13‑1300(21).

 (19) soil and water conservation districts established pursuant to Title 48, Chapter 9.

 (20) housing authorities as provided for in Chapter 3, Title 31;

 (21) the Greenville‑Spartanburg Airport District;

 (22) cooperative educational service center employees.

 (23) the South Carolina Sheriff’s Association.

 (24) the Pee Dee Regional Airport District.

 (25) the Children’s Trust Fund as established pursuant to Section 63‑11‑910.

 (26) a residential group facility which provides on‑site teaching for residents if the facility’s employees are currently members of the South Carolina Retirement System or if it provides, at no cost, educational facilities on its grounds to the school district in which it is located.

 (27) a federally qualified health center.

 (28) County First Steps Partnership established pursuant to Section 59‑152‑60.

 (29) Palmetto Pride as established pursuant to paragraph 26.7, Part 1B, Act 115 of 2005.

 (30) joint agencies established pursuant to Chapter 23, Title 6.

 (31) a political subdivision of the State of South Carolina, or a governmental agency or instrumentality of such a political subdivision.

 (B) To be eligible to participate in the state health and dental insurance plans, the entities listed in subsection (A) shall comply with the requirements established by the board, and the benefits provided must be the same benefits provided to state and school district employees. These entities must agree to participate for a minimum of four years and the board may adjust the premiums during the coverage period based on experience. An entity which withdraws from participation may not subsequently rejoin during the first four years after the withdrawal date.

 (C) If an entity participating in the plans pursuant to subsection (A) is delinquent in remitting proper payments to cover its obligations, the board’s Office of Insurance Services shall certify the delinquency to the department or agency of the State holding funds payable to the delinquent entity, and that department or agency shall withhold from those funds an amount sufficient to satisfy the unpaid obligation and shall remit that amount to the Office of Insurance Services in satisfaction of the delinquency.

HISTORY: 1992 Act No. 364, Section 1; 1994 Act No. 310, Section 1; 1994 Act No. 342, Section 2; 1994 Act No. 497, Part II, Sections 42A, 42B; 1996 Act No. 458, Part II, Section 81; 1997 Act No. 62, Section 1; 1998 Act No. 317, Section 1; 1999 Act No. 100, Part II, Sections 40, 89; 2000 Act No. 377, Sections 1 to 5; 2006 Act No. 316, Section 1, eff May 31, 2006; 2008 Act No. 353, Section 2, Pt 25D.3, eff July 1, 2008; 2011 Act No. 31, Sections 2, 3, eff May 26, 2011; 2012 Act No. 278, Pt IV, Subpt 2, Section 33, eff July 1, 2012; 2017 Act No. 43 (S.61), Section 1, eff May 19, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 20‑7‑5010 in paragraph (A)(25) was changed to Section 63‑11‑910 in accordance with 2008 Act No. 361 (Children’s Code).

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mentally retarded” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded”.

Effect of Amendment

The 2006 amendment, in subsection (A), added items (25) to (29).

The 2008 amendment, in paragraph (A)(9), substituted “Office of the Lieutenant Governor” for “Department of Health and Human Services”.

The 2011 amendment, in subsection (A), in paragraph (7), inserted “, or sanitation”, and added paragraph (30).

The 2012 amendment substituted “board” for “Statute Budget and Control Board” in subsection (B).

2017 Act No. 43, Section 1, in (A), added (31), relating to political subdivisions.

LIBRARY REFERENCES

Westlaw Key Number Searches: 104k69.2; 268k220(9); 345k146; 360k64.1.

Counties 69.2.

Municipal Corporations 220(9).

Schools 146.

States 64.1.

C.J.S. Municipal Corporations Sections 649 to 660.

C.J.S. Schools and School Districts Sections 338, 340 to 343, 346.

C.J.S. States Sections 104 to 105, 112.

Attorney General’s Opinions

Discussion of whether the Public Employee Benefit Authority may legally authorize private employers to participate in the State Health Plan Provider Networks, which will allow these private employers to obtain the same rates for medical services that the State Health Plan has negotiated. S.C. Op.Atty.Gen. (May 8, 2013) 2013 WL 2121456.

Municipalities may voluntarily choose to participate in state health and dental insurance plans, but must defer to the Employee Insurance Program division with regard to the eligibility of a particular individual, and the municipality must contribute to the premiums of its eligible employees in an amount equal to what the State would contribute for State employees. S.C. Op.Atty.Gen. (August 3, 2011) 2011 WL 3918183.

The terms of Section 1‑11‑720 do not conflict with Section 5‑7‑170 because the decision as to whether or not municipal employees are covered under the state health and dental insurance plans is within the decision making authority of the municipality’s council. S.C. Op.Atty.Gen. (August 3, 2011) 2011 WL 3918183.

**SECTION 1‑11‑725.** Rating of local disabilities and special needs providers as single group.

 The board’s experience rating of all local disabilities and special needs providers pursuant to Section 1‑11‑720(A)(3) must be rated as a single group when rating all optional groups participating in the state employee health insurance program.

HISTORY: 2008 Act No. 353, Section 2, Pt 20I, eff July 1, 2009; 2012 Act No. 278, Pt IV, Subpt 2, Section 34, eff July 1, 2012.

Effect of Amendment

The 2012 amendment substituted “board’s” for “State Budget and Control Board’s”.

**SECTION 1‑11‑730.** Persons eligible for state health and dental plan coverage.

 (A) If a person began employment eligible for coverage under the state health and dental plans on or before May 1, 2008, the following eligibility provisions govern that person’s participation in state health and dental plans as a retiree:

 (1) A person covered by the state health and dental plans who terminates employment with at least twenty years’ retirement service credit by a state‑covered entity before eligibility for retirement under a state retirement system is eligible for state health and dental plans coverage, effective on the date of retirement under a state retirement system, if the last five years are consecutive and in a full‑time permanent position with a state‑covered entity. With respect to a retiree eligible for coverage pursuant to this subsection, the retiree is eligible for trust fund paid premiums and the retiree is responsible for the entire employee premium.

 (2) A member of the General Assembly who leaves office or retires with at least eight years’ credited service in the General Assembly Retirement System is eligible to participate in the state health and dental plans by paying the full premium as determined by the board.

 (3) With respect to an active employee: (a) employed by the State or a public school district, (b) retiring with ten or more years of state‑covered entity service credited under a state retirement system, and (c) with the last five years of earned service credit consecutive and in a full‑time permanent position with the State or a public school district, the retiree is eligible for trust fund paid premiums and the retiree is responsible for the entire employee premium.

 (4) A person covered by the state health and dental plans who retires with at least five years’ state‑covered entity service credited under a state retirement system is eligible to participate in the state health and dental plans by paying the full premium as determined by the board, if the last five years are consecutive and in a full‑time permanent position with a state‑covered entity.

 (5) A spouse or dependent of a person covered by the plans who is killed in the line of duty after December 31, 2001, shall receive equivalent coverage under the state health and dental plans for a period of twelve months and the State is responsible for paying the full premium. After the twelve‑month period, a spouse or dependent is eligible for trust fund paid premiums. A spouse is eligible for trust fund paid premiums under this subsection until the spouse remarries. A dependent is eligible for trust fund paid premiums under this subsection until the dependent’s eligibility for coverage under the plans would ordinarily terminate.

 (6) A former municipal or county council member of a county or municipality which participates in the state health and dental plans who served on the council for at least twelve years and who was covered under the plans at the time of termination is eligible to maintain coverage under the plans if the former member pays the full employer and employee contributions and if the county or municipal council elects to allow this coverage for former members.

 (7) A person covered by the state health and dental plans who terminated employment with at least eighteen years’ retirement service credit by a state‑covered entity before eligibility for retirement under a state retirement system before 1990 is eligible for the plans effective on the date of retirement, if this person returns to a state‑covered entity and is covered by the state health and dental plans and completes at least two consecutive years in a full‑time permanent position before the date of retirement.

 (B) If a person began employment eligible for coverage under the state health and dental plans after May 1, 2008, the following eligibility provisions govern that person’s participation in state health and dental plans as a retiree:

 (1) An active employee covered by the state health and dental plans who retires with at least five years of earned retirement service credit under a state retirement system with a state‑covered entity is eligible to participate as a retiree in the state health and dental plans if the last five years of the person’s covered employment were consecutive and in a full‑time permanent position.

 (2) A person covered by the state health and dental plans who terminates employment before the person’s date of retirement with at least twenty years of earned retirement service credit under a state retirement system with a state‑covered entity is eligible to participate as a retiree in the state health and dental plans on the person’s date of retirement under a state retirement system, if the last five years of the person’s covered employment before termination were consecutive and in a full‑time permanent position.

 (3) A retired state employee or a retired employee of a public school district who retires under a state retirement system and who is eligible for state health and dental plan coverage under the provisions of item (1) or (2) of this subsection, is eligible for trust fund paid premiums as follows:

 (a) If the retiree’s earned service credit in a state retirement system is five or more years but fewer than fifteen years with a state‑covered entity, then the retiree shall pay the full premium for health and dental plans.

 (b) If the retiree’s earned service credit in a state retirement system is more than fifteen years, but fewer than twenty‑five years with a state‑covered entity, then the retiree is eligible for fifty percent trust fund paid premiums and the retiree shall pay the remainder of the premium cost.

 (c) If the retiree’s earned service credit in a state retirement system is twenty‑five or more years with a state‑covered entity, then the retiree is eligible for trust fund paid premiums and the retiree is responsible for the entire employee premium.

 (4) If a retiree under a state retirement system was employed by an entity that participates in the state health and dental plans pursuant to the provisions of Section 1‑11‑720 and is eligible to participate in state health and dental plans as a retiree pursuant to the provisions of item (1) or (2) of this subsection, then the retiree’s employer, at its discretion, may elect to pay all or a portion of the premium for the retiree’s state health and dental plans.

 (5) A spouse or dependent of a person covered by the plans who is killed in the line of duty on or after May 1, 2008, shall continue to maintain coverage under state health and dental plans for a period of twelve months after the covered person’s death and the State is responsible for paying the full premium. After the twelve‑month period, a spouse or dependent is eligible for trust fund paid premiums and the spouse or dependent is responsible for the entire employee premium. A spouse is eligible for trust fund paid premiums under this subsection until the spouse remarries. A dependent is eligible for trust fund paid premiums pursuant to this subsection until the dependent’s eligibility for coverage under the plans would ordinarily terminate.

 (C) For employees who participate in the state health and dental plans pursuant to the provisions of Section 1‑11‑720 but who are not members of the State Retirement Systems, one year of full‑time employment or its equivalent under their employment relation equates to one year of earned retirement service credit under a state retirement system for purposes of the requirements of subsection (B)(1) and (2) of this section. The EIP shall implement the provisions of this subsection and make determinations pursuant to it. A person aggrieved by a determination of the EIP pursuant to this subsection may appeal that determination as a contested case as provided in Chapter 23 of Title 1, the Administrative Procedures Act.

 (D)(1) A person who retires from employment with a solicitor’s office under a state retirement system is eligible to participate in the state health and dental plans by paying the full premium as determined by the board if at least one county in the judicial circuit covered by that solicitor’s office participates in the state health and dental plans and the person’s last five years of employment prior to retirement are consecutive and in a full‑time permanent position with that solicitor’s office or another entity that participates in the state health and dental plans.

 (2) The provisions of this subsection must be interpreted to provide eligibility to the employee, retiree, and their eligible dependents.

HISTORY: 1992 Act No. 364, Section 1; 1994 Act No. 342, Section 1; 1996 Act No. 230, Section 1; 2000 Act No. 387, Part II, Section 67W.1; 2003 Act No. 80, Section 1; 2008 Act No. 195, Section 5, eff May 1, 2008; 2012 Act No. 278, Pt IV, Subpt 2, Section 35, eff July 1, 2012; 2014 Act No. 248 (S.897), Section 1, eff June 6, 2014.

Editor’s Note

2008 Act No. 195, Section 7, provides as follows:

“The Code Commissioner shall insert the effective date of this act [May 1, 2008] for the phrase ‘reference date’ where it appears in Section 1‑11‑705 of the 1976 Code as added by this act and in Section 1‑11‑730 of the 1976 Code as amended by this act.”

2008 Act No. 195, Section 8, provides as follows:

“This act takes effect on the first day of the month following the month during which this act is approved by the Governor [approved April 2, 2008].”

2014 Act No. 248, Section 2, provides as follows:

“SECTION 2. This act takes effect upon approval by the Governor and is retroactive to January 1, 2012.

Effect of Amendment

The 2008 amendment rewrote this section.

The 2012 amendment substituted “board” for “State Budget and Control Board”.

2014 Act No. 248, Section 1, added subsection (D).

LIBRARY REFERENCES

Westlaw Key Number Searches: 345k63(5); 345k146; 360k64.1.

Schools 63(5), 146.

States 64.1.

C.J.S. Schools and School Districts Sections 141, 177 to 182, 321 to 322, 338, 340 to 343, 346.

C.J.S. States Sections 104 to 105, 112.

**SECTION 1‑11‑740.** Division of Insurance Services authorized to develop optional long‑term care insurance program.

 The Division of Insurance Services of the board may develop an optional long‑term care insurance program for active and retired members of the various state retirement systems depending on the availability of a qualified vendor. A program must require members to pay the full insurance premium.

HISTORY: 1992 Act No. 364, Section 1; 2012 Act No. 278, Pt IV, Subpt 2, Section 36, eff July 1, 2012.

Effect of Amendment

The 2012 amendment substituted “board” for “State Budget and Control Board”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k64.1.

States 64.1.

C.J.S. States Sections 104 to 105, 112.

**SECTION 1‑11‑750.** Withholding long‑term care insurance premiums for State retirees.

 The board shall devise a method of withholding long‑term care insurance premiums offered under Section 1‑11‑740 for retirees if sufficient enrollment is obtained to make the deductions feasible.

HISTORY: 1995 Act No. 145, Part II, Section 21; 2012 Act No. 278, Pt IV, Subpt 2, Section 36, eff July 1, 2012.

Effect of Amendment

The 2012 amendment substituted “board” for “Budget and Control Board”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k64.1.

States 64.1.

C.J.S. States Sections 104 to 105, 112.

**SECTION 1‑11‑770.** South Carolina 211 Network.

 (A) Subject to appropriations, the General Assembly authorizes the board to plan, develop, and implement a statewide South Carolina 211 Network, which must serve as the single point of coordination for information and referral for health and human services. The objectives for establishing the South Carolina 211 Network are to:

 (1) provide comprehensive and cost‑effective access to health and human services information;

 (2) improve access to accurate information by simplifying and enhancing state and local health and human services information and referral systems and by fostering collaboration among information and referral systems;

 (3) electronically connect local information and referral systems to each other, to service providers, and to consumers of information and referral services;

 (4) establish and promote standards for data collection and for distributing information among state and local organizations;

 (5) promote the use of a common dialing access code and the visibility and public awareness of the availability of information and referral services;

 (6) provide a management and administrative structure to support the South Carolina 211 Network and establish technical assistance, training, and support programs for information and referral‑service programs;

 (7) test methods for integrating information and referral services with local and state health and human services programs and for consolidating and streamlining eligibility and case‑management processes;

 (8) provide access to standardized, comprehensive data to assist in identifying gaps and needs in health and human services programs; and

 (9) provide a unified systems plan with a developed platform, taxonomy, and standards for data management and access.

 (B) In order to participate in the South Carolina 211 Network, a 211 provider must be certified by the board. The board must develop criteria for certification and must adopt the criteria as regulations.

 (1) If any provider of information and referral services or other entity leases a 211 number from a local exchange company and is not certified by the agency, the agency shall, after consultation with the local exchange company and the Public Service Commission, request that the Federal Communications Commission direct the local exchange company to revoke the use of the 211 number.

 (2) The agency shall seek the assistance and guidance of the Public Service Commission and the Federal Communications Commission in resolving any disputes arising over jurisdiction related to 211 numbers.

HISTORY: 2002 Act No. 339, Section 5; 2012 Act No. 278, Pt IV, Subpt 2, Section 37, eff July 1, 2012.

Effect of Amendment

The 2012 amendment substituted “board” for “State Budget and Control Board”.

CROSS REFERENCES

South Carolina 211 Network, board certification process and requirements, see S.C. Code of Regulations R. 19‑212.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k68.

States 68.

C.J.S. States Sections 130 to 135, 139.

**SECTION 1‑11‑780.** Mental health insurance.

 The State Employee Insurance Program shall continue to provide mental health parity in the same manner and with the same management practices as included in the plan beginning in 2002, and is not under the jurisdiction of the Department of Insurance. The continuation by the State Employee Insurance Program of providing mental health parity in accordance with the plan set forth in 2002 constitutes compliance with this act.

HISTORY: 2005 Act No. 76, Section 3, eff June 30, 2006.

Code Commissioner’s Note

This section was codified at the direction of the Code Commissioner.

Editor’s Note

2012 Act No. 278, Pt IV, Subpt 3, Section 65(C), provides as follows:

“(C) The Code Commissioner is directed to change or correct all references to the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission to reflect its transfer to the South Carolina Public Employee Benefit Authority. References to the name of the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references.”

Cross References

As to mental health coverage pursuant to policies under the jurisdiction of the Department of Insurance, see Section 38‑71‑290.

ARTICLE 7

South Carolina Confederate Relic Room and Military Museum [Repealed]

Editor’s Note

This article is repealed effective July 1, 2015, by 2014 Act No. 121, Section 17.B. See Chapter 17, Title 60 for new provisions effective July 1, 2015.

**SECTIONS 1‑11‑1110 to 1‑11‑1140.** Repealed.

HISTORY: Former Section, titled Director of South Carolina Confederate Relic Room and Military Museum; appointment, had the following history: 2002 Act No. 356, Section 1, Pt IX.C. Repealed by 2014 Act No. 121, Pt VI, Section 17.B, eff July 1, 2015.

HISTORY: Former Section, titled Authority to receive donations of funds and artifacts and admission fees, had the following history: 2002 Act No. 356, Section 1, Pt IX.C. Repealed by 2014 Act No. 121, Pt VI, Section 17.B, eff July 1, 2015.

HISTORY: Former Section, titled Removal or disposition of artifacts in permanent collection, had the following history: 2002 Act No. 356, Section 1, Pt IX.C. Repealed by 2014 Act No. 121, Pt VI, Section 17.B, eff July 1, 2015.

HISTORY: Former Section, titled Legislative intent, had the following history: 2002 Act No. 356, Section 1, Pt IX.C. Repealed by 2014 Act No. 121, Pt VI, Section 17.B, eff July 1, 2015.