CHAPTER 1

General Provisions

ARTICLE 1

Department of Transportation

**SECTION 57‑1‑10.** Definitions.

 For the purposes of this title, the following words, phrases, and terms are defined as follows:

 (1) “Commission” means the administrative and governing authority of the Department of Transportation.

 (2) “Department” means the Department of Transportation (DOT).

 (3) “Secretary of Transportation” means the Chief Administrative Officer of the Department of Transportation.

HISTORY: 1962 Code Section 33‑1; 1952 Code Section 33‑1; 1951 (47) 457; 1977 Act No. 82 Sections 2, 11‑13; 1986 Act No. 383, Section 2; 1993 Act No. 181, Section 1503; 2007 Act No. 114, Section 5, eff June 27, 2007.

CROSS REFERENCES

Construction and maintenance of grade crossings, see Section 58‑15‑2110 et seq.

Construction of streets and roads on Hunting Island, Beaufort County, see Section 51‑7‑30.

Cooperation of Department of Highways and Public Transportation with railroad in regard to alteration of grade separation structure, see Section 58‑15‑1910 et seq.

Dams and reservoirs generally, see Section 49‑11‑10 et seq.

Disposition of abandoned and derelict vehicles, see Section 56‑5‑5820 et seq.

Easements and rights of way on mental health facilities, see Section 44‑11‑110.

Motor vehicles, generally, see Section 56‑1‑10 et seq.

Navigable streams and watercourses as common highways, see Section 49‑1‑10.

Railroad crossings generally, see Section 58‑17‑1310 et seq.

Regulation and elimination of railroad crossings, see Section 58‑15‑1610 et seq.

Signals to be given at crossings, see Section 58‑15‑910.

Streets and sidewalks in municipal corporations generally, see Section 5‑27‑10 et seq.

**SECTION 57‑1‑20.** Establishment of Department of Transportation; divisions.

 The Department of Transportation is established as an administrative agency of state government which is comprised of a Division of Intermodal and Freight Programs, a Division of Construction Engineering and Planning, and a Division of Finance and Administration. Each division of the Department of Transportation shall have such functions and powers as provided for by law.

HISTORY: 1962 Code Section 33‑2; 1952 Code Section 33‑2; 1951 (47) 457; 1993 Act No. 181, Section 1503; 2007 Act No. 114, Section 5, eff June 27, 2007; 2010 Act No. 206, Section 1, eff June 7, 2010.

Library References

States 45.

Westlaw Topic No. 360.

C.J.S. States Sections 164 to 165, 167 to 170, 264.

**SECTION 57‑1‑30.** Functions and purposes of department.

 (A) The department shall have as its functions and purposes the systematic planning, construction, maintenance, and operation of the state highway system and the development of a statewide intermodal and freight system that is consistent with the needs and desires of the public.

 (B) The department shall coordinate all state and federal programs relating to highways among all departments, agencies, and other bodies politic and legally constituted agencies of this State and the performance of such other duties and matters as may be delegated to it pursuant to law. The goal of the department is to provide adequate, safe, and efficient transportation services for the movement of people and goods.

HISTORY: 1962 Code Section 33‑3; 1952 Code Section 33‑3; 1951 (47) 457; 1993 Act No. 181, Section 1503; 2007 Act No. 114, Section 5, eff June 27, 2007; 2010 Act No. 206, Section 2, eff June 7, 2010.

Library References

States 67.

Westlaw Topic No. 360.

C.J.S. States Sections 235 to 238, 264 to 266, 268.

Attorney General’s Opinions

The Hunley Commission can create a 501(c)(3) corporation to further its efforts for the recovery, excavation, and conservation of the H.L. Hunley. The Programmatic Agreement does not restrict the funds raised from the exhibition of the Hunley to the general fund of the state rather than to the ongoing costs of the project to comply with the Programmatic Agreement. S.C. Op.Atty.Gen. (October 22, 2004) 2004 WL 2451471.

**SECTION 57‑1‑40.** Prohibited acts; penalties.

 (A) It is unlawful for a member of the commission or an engineer, agent, or other employee, acting for or on behalf of the department or commission, to accept or agree to accept, receive or agree to receive, or ask or solicit, either directly or indirectly, with the intent to have his decision or action on any question, matter, cause, or proceeding which at the time may be pending or which by law may be brought before him in his official capacity or in his place of trust or profit influenced, any:

 (1) money;

 (2) contract, promise, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value;

 (3) political appointment or influence, present, or reward;

 (4) employment; or

 (5) other thing of value.

 A person violating the provisions of subsection (A) is guilty of a felony and, upon conviction, must be imprisoned not more than five years and is disqualified forever from holding any office of trust or profit under the Constitution or laws of this State.

 (B) It is unlawful for a person to give or offer to give, promise, or cause or procure to be promised, offered, or given, either directly or indirectly, to a member of the commission or an engineer, agent, or other employee acting for or on behalf of the commission or department with the intent to have his decision or action on any question, matter, cause, or proceeding which at the time may be pending or which by law may be brought before him in his official capacity or in his place of trust or profit influenced, any:

 (1) money;

 (2) contract, promise, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value;

 (3) political appointment or influence, present, or reward;

 (4) employment; or

 (5) other thing of value.

 A person violating the provisions of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned not more than five years and is disqualified forever from holding any office of trust or profit under the Constitution or laws of this State.

 (C) The members and employees of the commission and employees of the department are subject to the provisions of Chapter 13, Title 8, the State Ethics Act, and the provisions of Chapter 78, Title 15, the South Carolina Tort Claims Act.

HISTORY: 1962 Code Section 33‑4; 1952 Code Section 33‑4; 1951 (47) 457; 1993 Act No. 181, Section 1503; 1993 Act No. 184, Section 83; 2007 Act No. 114, Section 5, eff June 27, 2007.

Library References

Bribery 1.

States 81.

Westlaw Topic Nos. 63, 360.

C.J.S. Bribery Sections 1 to 3, 5 to 14.

**SECTION 57‑1‑50.** Assent to federal aid for construction of highways and related transportation projects.

 The assent of the State is hereby given to the terms and provisions of any act providing for federal aid to the states for the construction of highways and other related transportation projects. The good faith of the State is hereby pledged to provide sufficient funds to meet the requirements of said federal act, so as to acquire the benefits thereof.

HISTORY: 1962 Code Section 33‑5; 1952 Code Section 33‑5; 1951 (47) 457; 1993 Act No. 181, Section 1503; 2007 Act No. 114, Section 5, eff June 27, 2007.

Library References

Highways 99.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 261 to 271, 457 to 458.

**SECTION 57‑1‑60.** Duties of Governor with respect to highway safety transportation programs and activities.

 The Governor, in addition to other duties and responsibilities conferred upon him by the Constitution and laws of this State, is charged with the responsibility for the administration of the state’s highway safety programs and is further charged with the duty of contracting and doing all other things necessary on behalf of this State and, in so doing, to work with federal and state agencies, agencies private and public, interested organizations, and with individuals to effectuate that purpose. The Governor shall be the official of this State having the ultimate responsibility for dealing with the federal government with respect to highway safety transportation programs and activities. To that end the Governor shall coordinate the activities of any and all departments and agencies of this State and its subdivisions.

HISTORY: 1962 Code Section 33‑6; 1952 Code Section 33‑6; 1951 (47) 457; 1960 (51) 1602; 1993 Act No. 181, Section 1503; 2007 Act No. 114, Section 5, eff June 27, 2007.

CROSS REFERENCES

Accepting bribes to obtain public office, see Section 16‑9‑290.

Bribery to obtain public office, see Section 16‑9‑280.

Trial of offenses consisting of bribery to obtain public office and accepting bribes to obtain public office, see Section 16‑9‑300.

Library References

States 41.

Westlaw Topic No. 360.

C.J.S. States Sections 179 to 182, 254 to 257.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 11, Agents, Servants and Employees.

S.C. Jur. Bribery Section 17, Sentence and Punishment.

S.C. Jur. Burglary Section 17, of Another.

**SECTION 57‑1‑70.** Department to act in compliance with Federal Aid Highway Act.

 It is the sense of the General Assembly that the Department of Transportation should comply with Section 105(f) of the Federal Aid Highway Act. The department is directed to effectuate and assure the compliance through contract documents and regulations as may be necessary and such input from the Office of the Governor (Office of Small and Minority Business Assistance) in the promulgation of the regulations.

HISTORY: 1962 Code Section 33‑7; 1967 (55) 208; 1993 Act No. 181, Section 1503; 2007 Act No. 114, Section 5, eff June 27, 2007.

CROSS REFERENCES

General provisions affecting governor, see Sections 1‑3‑10 et seq.

Library References

Highways 99.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 261 to 271, 457 to 458.

**SECTION 57‑1‑80.** List of all public railroad crossings and upgrades; publication on website; installation of railroad signals and crossing arms.

 The Department of Transportation shall publish on its website the list of all public railroad crossings. The department also shall publish on its website the list of railroad crossings programmed for upgrades and designate it on its website “John’s Law”. Contingent upon the receipt of additional funds for the installation of public railroad signals and gates, the department is directed to increase the number of installations of railroad signals or crossing arms, or both, utilizing all funds available for this type of work at dangerous railroad crossings throughout the State.

HISTORY: 2011 Act No. 54, Section 2, eff June 14, 2011.

Editor’s Note

2011 Act No. 54, Section 1, provides as follows:

“This act may be cited as ‘John’s Law’”.

Library References

Railroads 242.1, 243.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 788 to 789.

**SECTION 57‑1‑90.** Motorcycles.

 (A) In formulating transportation policy, promulgating regulations, allocating funds, and planning, designing, constructing, equipping, operating and maintaining transportation facilities, no action of the South Carolina Transportation Commission, or the South Carolina Department of Transportation shall have the effect of discriminating against motorcycles, motorcycle operators, or motorcycle passengers. No regulation or action of the commission, or department shall have the effect of enacting a prohibition or imposing a requirement that applies only to motorcycles or motorcyclists, and the principal purpose of which is to restrict or inhibit access or motorcycles and motorcyclists to any highway, bridge, tunnel, or other transportation facility.

 (B) The allocation of parking space square footage specifically in transportation facilities, and other projects undertaken or operated by a political subdivision of this State where state or local source funds have been used in whole or in part to plan, design, construct, equip, operate, or maintain the facility must make reasonable accommodations for motorcycle parking. In carrying forward this requirement, among other options, the facility at its discretion may comply by sectioning portions of the area where the size configuration of the space does not meet code requirements for full‑sized vehicles.

 (C) As used in this section, “reasonable accommodations” shall not be interpreted to include, require, or otherwise mandate the structural or technological modification of parking structures constructed or substantially completed before July 1, 2014.

HISTORY: 2014 Act No. 148 (H.3231), Section 1, eff April 7, 2014.

Library References

Automobiles 11, 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 36 to 37, 57 to 64, 66 to 68.

ARTICLE 3

Commission of the Department of Transportation

**SECTION 57‑1‑310.** Commission of the Department of Transportation; composition; qualifications.

 (A) The congressional districts of this State are constituted and created Department of Transportation Districts of the State, designated by numbers corresponding to the numbers of the respective congressional districts. The Commission of the Department of Transportation shall be composed of:

 (1) one member from each transportation district, all appointed by the Governor, subject to the provisions of Section 57‑1‑325; and

 (2) two members from the State at large, both appointed by the Governor, upon the advice and consent of the General Assembly. Each house must hold a separate confirmation vote.

 In making appointments to the commission, the Governor shall take into account race, gender, and other demographic factors, such as residence in rural or urban areas, so as to represent, to the greatest extent possible, all segments of the population of the State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed. The members of the commission shall represent the transportation needs of the State as a whole and may not subordinate the needs of the State to those of any particular area of the State.

 (B) The at‑large appointments made by the Governor must be transmitted to the Senate and the House of Representatives for confirmation.

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

 (1) a baccalaureate or more advanced degree from:

 (a) a recognized institution of higher learning requiring face‑to‑face contact between its students and instructors prior to completion of the academic program;

 (b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

 (c) an institution of higher learning chartered before 1962; or

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

 (a) transportation;

 (b) construction;

 (c) finance;

 (d) law;

 (e) environmental issues;

 (f) management; or

 (g) engineering.

 (D) A member of the General Assembly or member of his immediate family may not be appointed to the commission while the member is serving in the General Assembly; nor shall a member of the General Assembly or a member of his immediate family be appointed to the commission for a period of four years after the member either:

 (1) ceases to be a member of the General Assembly; or

 (2) fails to file for election to the General Assembly in accordance with Section 7‑11‑15.

HISTORY: 1993 Act No. 181, Section 1504; 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 1, eff July 1, 2016; 2017 Act No. 40 (H.3516), Section 22.A, eff July 1, 2017.

Editor’s Note

2016 Act No. 275, Section 90 (B) and (C), provide as follows:

“(B) The members of the Commission of the Department of Transportation serving on June 30, 2016, shall continue to serve until their current term expires, and until their successor is appointed and confirmed. If a vacancy occurs in the seat of a member serving on June 30, 2016, before the member’s term otherwise expires, the vacancy must be filled in the manner specified in Chapter 1, Title 57 of the 1976 Code, as amended by this act, and the member filling the vacancy shall serve until the term expires. The members serving on June 30, 2016, if otherwise eligible, may be reappointed pursuant to Section 57‑1‑310, as amended by this act.

“(C) The Secretary of Transportation serving on June 30, 2016, shall continue to serve at the pleasure of the commission as provided in this act. No further confirmation proceedings are required. Thereafter, any new appointee to the office of Secretary of Transportation must be filled in the manner specified in Chapter 1, Title 57 of the 1976 Code, as amended by this act.”

Effect of Amendment

2017 Act No. 40, Section 22.A, amended (A) and (B), adding an at‑large member and specifying the manner in which the members are approved.

Library References

States 45.

Westlaw Topic No. 360.

C.J.S. States Sections 164 to 165, 167 to 170, 264.

Attorney General’s Opinions

Service on both the Dorchester County Water Authority and the Department of Transportation Commission would constitute dual office holding. S.C. Op.Atty.Gen. (June 21, 2016) 2016 WL 3644619.

This section does not define an “immediate family member,” but a court is likely to interpret an “immediate family member” of a former legislator to include his/her son and thus it appears any son of a legislator (active or retired within the last four years) would be ineligible for commission on such a Department of Transportation board. S.C. Op.Atty.Gen. (January 15, 2013) 2013 WL 391718.

A Department of Transportation commissioner may be lawfully elected pursuant to the procedures set forth in Section 57‑1‑310 et seq. S.C. Op.Atty.Gen. (April 9, 2012) 2012 WL 1260183.

Members of the Commission of the Department of Transportation are not eligible to serve additional, consecutive, four year terms of office, and a holding over period cannot exceed six months. S.C. Op.Atty.Gen. (February 20, 1996) 1996 WL 94024.

The term of office for the initial members of the commission of the Department of Transportation from the First, Third, and Fifth congressional districts is limited to two years due to the rotating county appointments, but the current members will be eligible to serve another non‑consecutive four year term when the rotation returns to their respective counties. It is possible for a member of the State Board of Education to be elected to a second consecutive term, but for that to occur, the members of the legislative delegations comprising the appropriate Judicial Circuit would be required to consent unanimously that the representation not rotate to the other county. Further, unanimous consent of all members of the delegations would be required for the individual to succeed himself. S.C. Op.Atty.Gen. (September 20, 1995) 1995 WL 805743.

**SECTION 57‑1‑320.** Consecutive terms; limit on commissioners from same county.

 A county within a Department of Transportation district may not have a resident commission member for more than eight consecutive years and in no event shall any two persons from the same county serve as a commission member simultaneously.

HISTORY: 1993 Act No. 181, Section 1504; 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 1, eff July 1, 2016.

Library References

States 45, 46.

Westlaw Topic No. 360.

C.J.S. States Sections 164 to 165, 167 to 170, 264.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 6, Requirements for Bringing.

Attorney General’s Opinions

A person residing in the same county as a sitting commissioner or an at‑large commissioner would not be eligible for election as a commissioner on the Department of Transportation Commission. S.C. Op.Atty.Gen. (October 23, 2012) 2012 WL 5376057.

Discussion of holdover commissioners and their authority. S.C. Op.Atty.Gen. (June 5, 2003) 2003 WL 21471510.

A district commissioner of the South Carolina Department of Transportation may serve only one term unless another commissioner’s term intervenes. S.C. Op.Atty.Gen. (June 8, 1999) 1999 WL 540713.

A district commissioner of the South Carolina Department of Transportation may serve only one term unless another commissioner’s term intervenes. S.C. Op.Atty.Gen. (June 8, 1999) 1999 WL 540713; S.C. Op.Atty.Gen. (May 9, 1997) 1997 WL 323764.

NOTES OF DECISIONS

In general 1

Justiciability 2

1. In general

Statute providing that no county within a Department of Transportation (DOT) district shall have a resident commission member for “more than one consecutive term” means that a DOT commissioner may serve one term, but may not serve a succeeding, consecutive term; term “consecutive” does not permit commissioner to serve one term, consecutive to a first term. Sloan v. Hardee (S.C. 2007) 371 S.C. 495, 640 S.E.2d 457, rehearing denied. Public Employment 148; States 51

2. Justiciability

Complaint for declaratory and injunctive relief, contending that three commissioners for the Department of Transportation (DOT) were serving consecutive terms in violation of statute, did not present a nonjusticiable political question; sole issue was whether the commissioners were serving in violation of statutory terms, and defining the meaning of the statutory terms was clearly within the prerogative of the Supreme Court. Sloan v. Hardee (S.C. 2007) 371 S.C. 495, 640 S.E.2d 457, rehearing denied. Constitutional Law 2591

Issue of whether three commissioners for the Department of Transportation (DOT) were serving consecutive terms in violation of statute involved a matter of sufficient public interest to confer standing on citizen and public interest organization to file complaint for declaratory and injunctive relief in the Supreme Court’s original jurisdiction. Sloan v. Hardee (S.C. 2007) 371 S.C. 495, 640 S.E.2d 457, rehearing denied. Declaratory Judgment 300

**SECTION 57‑1‑325.** Submittal of district appointees; meeting of legislative delegation to approve or disapprove appointee.

 (A) The Governor shall submit his transportation district appointees to the Senate and the House of Representatives for referral.

 (B) Upon receipt of a referral, the legislative delegation shall meet to approve or disapprove the Governor’s appointee. The question of whether to approve an appointee may be taken up in a full delegation meeting or it may be taken up separately by the Senators in the legislative delegation and the members of the House of Representatives in the legislative delegation. To approve an appointee, the appointee must receive a majority of the weighted vote of only the senators in the legislative delegation and a majority of the weighted vote of only the members of the House of Representatives in the delegation. The legislative delegation shall report its findings to the Clerk of the House of Representatives, the Clerk of the Senate, and the Governor whether the appointee was approved by the weighted vote of the members of the legislative delegation from both the House of Representatives and the Senate. If the delegation disapproves the appointee, the Governor shall make another appointment. If the legislative delegation fails to approve of the Governor’s appointee within forty‑five days of the appointee’s referral to the delegation, the appointee is deemed to have been disapproved. An appointee must receive a majority of the weighted vote of the members of the legislative delegation from both the House of Representatives and the Senate prior to entering a term of office.

 (C) For the purposes of this article, “legislative delegation” means legislators representing any portion of the congressional district corresponding to the transportation district the appointee was appointed to represent.

HISTORY: 1993 Act No. 181, Section 1504; 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 1, eff July 1, 2016; 2017 Act No. 40 (H.3516), Section 22.B, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 22.B, rewrote the section, relating to the submission of transportation district appointments and specifying the manner in which the legislative delegation may approve transportation district appointees.

Library References

States 46.

Westlaw Topic No. 360.

Attorney General’s Opinions

To be elected, a commission member must receive a majority of votes from the delegates of the congressional district, not just a majority of the votes from the delegates of the county where the commissioner is a resident. S.C. Op.Atty.Gen. (May 15, 1997) 1997 WL 323772.

**SECTION 57‑1‑330.** Commissioners’ terms.

 (A) All commission members are appointed to a term of office of four years which expires on February fifteenth of the appropriate year. However, a commission member may not serve more than two consecutive terms, and may not serve more than twelve years, regardless of when the term was served. Commissioners shall continue to serve until their successors are appointed and confirmed, provided that a commissioner only may serve in a hold‑over capacity for a period not to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by appointment in the manner provided in this article for the unexpired term only. Except for the at‑large member, a person is not eligible to serve as a commission member who is not a resident of that district at the time of his appointment. Failure by such commission member to maintain residency in the district for which he is appointed shall result in the forfeiture of his office.

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

 Commission members may be removed from office at the discretion of the Governor.

HISTORY: 1993 Act No. 181, Section 1504; 1995 Act No. 120, Section 1; 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 1, eff July 1, 2016; 2017 Act No. 40 (H.3516), Section 26, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 26, in (B), deleted “subject to the prior approval of the appropriate legislative delegation” following “Governor”, and made nonsubstantive changes.

Library References

States 46.

Westlaw Topic No. 360.

Attorney General’s Opinions

The twelve year service limitation imposed by Section 57‑1‑330 in 2016 for commissioners of the Department of Transportation would be deemed by a court to be prospective. S.C. Op.Atty.Gen. (June 26, 2017) 2017 WL 2870105.

A person residing in the same county as a sitting commissioner or an at‑large commissioner would not be eligible for election as a commissioner on the Department of Transportation Commission. S.C. Op.Atty.Gen. (October 23, 2012) 2012 WL 5376057.

The one person, one vote requirement applies to the Dorchester County Legislative Delegation’s vote to recommend an individual to be placed on the Dorchester County Water Authority’s board. The weighted voting requirement also applies, meaning that all of the Senators who are members of the Delegation constitute half of the weighted vote. S.C. Op.Atty.Gen. (April 23, 2009) 2009 WL 1266923.

No weighted voting is required with respect to appointments of SCDOT commissioners. S.C. Op.Atty.Gen. (February 21, 2007) 2007 WL 655618.

NOTES OF DECISIONS

Justiciability 1

1. Justiciability

Issue of whether three commissioners for the Department of Transportation (DOT) were serving consecutive terms in violation of statute involved a matter of sufficient public interest to confer standing on citizen and public interest organization to file complaint for declaratory and injunctive relief in the Supreme Court’s original jurisdiction. Sloan v. Hardee (S.C. 2007) 371 S.C. 495, 640 S.E.2d 457, rehearing denied. Declaratory Judgment 300

**SECTION 57‑1‑340.** Oath of commissioner.

 Each commission member, within thirty days after his appointment and confirmation, or approval by the appropriate legislative delegation, as the case may be, and before entering upon the discharge of the duties of his office, shall take, subscribe, and file with the Secretary of State the oath of office prescribed by the Constitution of the State.

HISTORY: 1993 Act No. 181, Section 1504; 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 1, eff July 1, 2016; 2017 Act No. 40 (H.3516), Section 22.C, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 22.C, inserted “and confirmation, or approval by the appropriate legislative delegation, as the case may be”.

Library References

Public Employment 132.

Westlaw Topic No. 316P.

C.J.S. Counties Sections 159 to 160.

C.J.S. Municipal Corporations Sections 451 to 452.

C.J.S. Officers and Public Employees Sections 21 to 23, 26, 69 to 72, 199.

C.J.S. Schools and School Districts Sections 5 to 6, 92 to 95, 98 to 99, 124, 128 to 131, 145 to 146, 152, 154 to 155, 158 to 162, 164 to 175, 287 to 293, 359 to 360, 487 to 489, 557, 1044.

C.J.S. States Sections 92, 154 to 157, 159.

C.J.S. Taxation Sections 497, 501, 504 to 508.

**SECTION 57‑1‑350.** Seal; rules and procedures; officers; expenses.

 (A) The commission may adopt an official seal for use on official documents of the department.

 (B) The commission shall elect a chairman and adopt its own rules and procedures and may select such additional officers to serve such terms as the commission may designate.

 (C) Commissioners must be reimbursed for official expenses as provided by law for members of state boards and commissions as established in the annual general appropriations act.

 (D) All commission members are eligible to vote on all matters that come before the commission.

 (E) The commission shall hold a minimum of six regular meetings annually, and other meetings may be called by the chair upon giving at least one week’s notice to all members and the public. Emergency meetings may be held with twenty‑four hours’ notice. Meeting materials for the regularly scheduled meetings shall be published at least twenty‑four hours in advance of the meeting.

 (F) The commission or a member thereof may not enter into the day‑to‑day operations of the department, except in an oversight role with the Secretary of Transportation, and is specifically prohibited from taking part in:

 (1) the awarding of contracts;

 (2) the selection of a consultant or contractor or the prequalification of any individual consultant or contractor;

 (3) the selection of a route for a specific project;

 (4) the specific location of a transportation facility;

 (5) the acquisition of rights of way or other properties necessary for a specific project or program; and

 (6) the granting, denial, suspension, or revocation of any permit issued by the department.

 (G) A member of the commission may not have any interest, direct or indirect, in any contract, franchise, privilege, or other benefit granted or awarded by the department during the member’s term of appointment and for one year after the termination of the appointment.

HISTORY: 1993 Act No. 181, Section 1504; 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 1, eff July 1, 2016; 2017 Act No. 40 (H.3516), Section 23, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 23, added (E) to (G), relating to the requirement of a minimum of six regular meetings annually, prohibiting a member from being involved in the day‑to‑day operations of the department and from having an interest in a grant or award of the department.

Library References

States 23, 53.

Westlaw Topic No. 360.

C.J.S. Flags Sections 1 to 4.

C.J.S. States Section 79.

**SECTION 57‑1‑360.** Chief internal auditor; standards for audits; staff and office space.

 (A) The State Auditor shall employ an individual to serve as the chief internal auditor of the department, and other professional, administrative, technical, and clerical personnel as the State Auditor determines to be necessary. The State Auditor also must provide professional, administrative, technical, and clerical personnel, as the State Auditor determines to be necessary, for the chief internal auditor to properly discharge his duties and responsibilities authorized by the State Auditor or provided by law. Except as otherwise provided, any employees hired pursuant to this section shall serve at the pleasure of the State Auditor.

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

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

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

 (C) The department, at its own expense, must provide appropriate office space within its headquarters, building, and facility service, including janitorial, utility and telephone services, computer and technology services, and related supplies, for the chief internal auditor and his support staff.

HISTORY: 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 1, eff July 1, 2016; 2017 Act No. 40 (H.3516), Section 24, eff July 1, 2017.

Editor’s Note

2016 Act No. 275, Section 87, provides as follows:

“SECTION 87. (A) The chief internal auditor of the Department of Transportation and all associated support staff, and all authorized appropriations associated with the chief internal auditor and associated support staff are transferred to and become part of the State Auditor’s Office, State Fiscal Accountability Authority. The chief internal auditor of the Department of Transportation and all associated support staff, whether classified or unclassified personnel, employed by the Department of Transportation on the effective date of this act, either by contract or by employment at will, shall become employees of the State Auditor’s Office, State Fiscal Accountability Authority, with the same compensation, classification, and grade level, as applicable.

“(B) The chief internal auditor of the Department of Transportation on June 30, 2016, shall continue to serve until the State Auditor employs a successor. Nothing in this section shall prevent the State Auditor from retaining the chief internal auditor of the Department of Transportation as of June 30, 2016, pursuant to the provisions of Section 57‑1‑360, as amended in this act, found in SECTION 1.”

Effect of Amendment

2017 Act No. 40, Section 24, in (B)(2), added the fourth sentence, requiring all final audit reports be published on the websites maintained by the Department of Transportation and State Auditor.

Library References

States 53.

Westlaw Topic No. 360.

**SECTION 57‑1‑370.** Development of long‑range Statewide Transportation Plan; preservation and improvement of existing system.

 (A) The commission must develop the long‑range Statewide Transportation Plan, with a minimum twenty‑year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State. The plan must be developed in a manner consistent with all federal laws or regulations and in consultation with all interested parties, particularly the metropolitan planning organizations and the nonmetropolitan planning organization area local officials. The plan may be revised from time to time as permitted by and in the manner required by federal laws or regulations.

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

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

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

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

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

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

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

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

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

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

 (b) public safety;

 (c) potential for economic development;

 (d) traffic volume and congestion;

 (e) truck traffic;

 (f) the pavement quality index;

 (g) environmental impact;

 (h) alternative transportation solutions; and

 (i) consistency with local land use plans.

 (C)(1) To the extent that state funds are available to address the needs of the state highway system, the commission must develop a comprehensive plan specifying objectives and performance measures for the preservation and improvement of the existing system. The projects included in this plan must be supported solely by state funds including the Non‑Federal Aid Highway Fund or other state revenue source. When developing the plan required by this subsection, the commission must consider, but is not limited to, considering the criteria in subsection (B)(8).

 (2) When state funding is programmed for a project selected from the plan to be undertaken, the department may use federal law, regulations, or guidelines relevant to the type of project being undertaken to be eligible for federal matching funds.

 (D) The commission must approve the department’s annual budget.

 (E) The commission shall have any other rights, duties, obligations, or responsibilities as specifically provided by law.

HISTORY: 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 1, eff July 1, 2016.

Editor’s Note

2007 Act No. 114, Section 8, provides as follows:

“The Department of Transportation is authorized and directed to promulgate regulations to implement the policies and purposes of this act including, but not limited to, regulations concerning the chief internal auditor, approval of projects by the commission pursuant to Section 57‑1‑370(N), and the secretary’s approval of routine operations and maintenance and emergency repairs requests. All regulations promulgated pursuant to this section must be reviewed and approved by the Department of Transportation Commission before they are submitted to the General Assembly for consideration.”

CROSS REFERENCES

Prioritization of Transportation Infrastructure Bank projects, see Section 11‑43‑265.

Secretary of transportation approval of actions, see S.C. Code of Regulations R. 63‑100.

Transportation project prioritization, see S.C. Code of Regulations R. 63‑10.

Library References

States 73.

Westlaw Topic No. 360.

C.J.S. States Sections 240, 254, 256 to 264, 268.

**SECTION 57‑1‑380.** Transportation Asset Management Plan.

 The Department shall prepare a Transportation Asset Management Plan which includes objectives and performance measures for the preservation and improvement of the State Highway System. In addition, the Transportation Asset Management Plan shall include objectives, performance measures and innovative approaches to address high‑risk rural roads that are functionally classified as a rural Primary or Federal Aid Secondary Roads. High‑risk rural roads shall include roads in which the accidents resulting in fatalities and incapacitating injuries exceeds the statewide average, including roadway departures, for those functional classes of roadway. The Transportation Asset Management Plan shall be approved by the commission and is to establish fiscally constrained performance goals, including fifty million dollars for high‑risk rural roads, for transportation infrastructure assets such as pavements and bridges. The Department shall provide an annual update on achieving the Transportation Asset Management Plan performance goals to the General Assembly as well as publishing the results for the public to view.

HISTORY: 2017 Act No. 40 (H.3516), Section 12, eff July 1, 2017.

ARTICLE 5

Secretary of Transportation and Other Employees of the Department of Transportation

**SECTION 57‑1‑410.** Appointment of Secretary of Transportation.

 The commission shall appoint, with the advice and consent of the Senate, a Secretary of Transportation who shall serve at the pleasure of the commission. A person appointed to this position shall possess practical and successful business and executive ability and be knowledgeable in the field of transportation. The Secretary of Transportation shall receive such compensation as may be established under the provisions of Section 8‑11‑160 and for which funds have been authorized in the general appropriations act.

HISTORY: 1993 Act No. 181, Section 1505; 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 2, eff July 1, 2016.

Library References

States 53.

Westlaw Topic No. 360.

**SECTION 57‑1‑430.** Duties and powers; employment of personnel.

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

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

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

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

HISTORY: 1993 Act No. 181, Section 1505; 2007 Act No. 114, Section 5, eff June 27, 2007; 2017 Act No. 40 (H.3516), Section 25, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 25, added (C) and (D), requiring the secretary to prepare and publish certain annual reports.

Library References

States 68.

Westlaw Topic No. 360.

C.J.S. States Sections 235 to 236, 254 to 263, 267.

NOTES OF DECISIONS

In general 1

1. In general

District Court possessed jurisdiction over executive director of state department of transportation, in environmental groups’ action under National Environmental Policy Act (NEPA) against state alleging that planned roadway would harm swamp over which it would traverse, where federally funded roadway project imposed NEPA requirements against director and department, director’s broad duties made him ultimately responsible for ensuring that the agency complied with NEPA, and groups’ requested declaratory relief would have had no effect on the agency’s past financial liability, only prospective effect. South Carolina Wildlife Federation v. South Carolina Dept. of Transp., 2007, 485 F.Supp.2d 661, affirmed in part 549 F.3d 324. Federal Courts 2377; Federal Courts 2384

**SECTION 57‑1‑440.** Chief counsel; staff attorneys; independent adjusters.

 The secretary shall have the exclusive authority to employ a chief counsel and such staff attorneys and support staff as are necessary to represent the department in legal matters, condemnation procedures, and other such litigation. Any extra legal services that may be required shall be performed by attorneys selected by the secretary. The department is authorized to retain independent adjusters for purposes of investigating and adjusting claims and suits resulting from motor vehicle damage and personal injury damage programs involving department liability exposure and recovery potential. Expenses for the administration and implementation of this section shall be paid for from the state highway fund.

HISTORY: 1993 Act No. 181, Section 1505; 2007 Act No. 114, Section 5, eff June 27, 2007.

Library References

States 53.

Westlaw Topic No. 360.

**SECTION 57‑1‑450.** Appointment of directors.

 The secretary shall appoint a director for each division of the department who shall serve at the pleasure of the secretary and shall recommend the salary for each director as allowed by statute or applicable law.

HISTORY: 1993 Act No. 181, Section 1505; 1995 Act No. 145, Part II, Section 5; 2007 Act No. 114, Section 5, eff June 27, 2007.

Library References

States 53.

Westlaw Topic No. 360.

**SECTION 57‑1‑460.** Repealed.

HISTORY: Former Section, titled Evaluation and approval of routine operation and maintenance and emergency repairs by secretary; definitions, had the following history: 2007 Act No. 114, Section 5, eff June 27, 2007. Repealed by 2017 Act No. 40, Section 20, eff July 1, 2017.

**SECTION 57‑1‑470.** Repealed.

HISTORY: Former Section, titled Commission review of routine maintenance and emergency repair requests approved by secretary, had the following history: 2007 Act No. 114, Section 5, eff June 27, 2007. Repealed by 2017 Act No. 40, Section 21, eff July 1, 2017.

**SECTION 57‑1‑490.** Annual audits.

 (A) The department shall be audited by a certified public accountant or firm of certified public accountants once each year to be designated by the State Auditor. The designated accountant or firm of accountants shall issue audited financial statements in accordance with generally accepted accounting principles, and such financial statements must be made available annually by October fifteenth to the General Assembly. The costs and expenses of the audit must be paid by the department out of its funds.

 (B) The Materials Management Office of the State Fiscal Accountability Authority annually must audit the department’s internal procurement operation to ensure that the department has acted properly with regard to the department’s exemptions contained in Section 11‑35‑710. The audit must be performed in accordance with applicable state law, including, but not limited to, administrative penalties for violations found as a result of the audit. The results of the audit must be made available by October fifteenth to the Department of Transportation Commission, the State Auditor, the Governor, the Chairmen of the Senate Finance and Transportation Committees, and the Chairmen of the House of Representatives Ways and Means and Education and Public Works Committees. The costs and expenses of the audit must be paid by the department out of its funds.

 (C) The Legislative Audit Council shall contract for an independent performance and compliance audit of the department’s finance and administration division, mass transit division, and construction engineering and planning division. This audit must be completed by January 15, 2010. The Legislative Audit Council may contract for follow‑up audits or conduct follow‑up audits as needed based upon the audit’s initial findings. The costs of these audits, including related administrative and management expenses of the Legislative Audit Council, are an operating expense of the department. The department shall pay directly to the Legislative Audit Council the cost of the audits.

 (D) Copies of every audit conducted pursuant to this section must be made available to the Department of Transportation Commission, the State Auditor, the Governor, the Chairmen of the Senate Finance and Transportation Committees, and the Chairmen of the House of Representatives Ways and Means and Education and Public Works Committees.

HISTORY: 1993 Act No. 181, Section 1505; 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 4, eff July 1, 2016.

Editor’s Note

2007 Act No. 114, Section 7, provides as follows:

“The initial procurement audit required by Section 5 of this act must be transmitted to the chairmen of the Senate Finance Committee and the House of Representatives Ways and Means Committee on or before October 15, 2008, and then annually thereafter as provided in Section 57‑1‑490.”

Library References

States 121.

Westlaw Topic No. 360.

C.J.S. States Sections 340 to 341, 387.

**SECTION 57‑1‑500.** Ethics workshop.

 The secretary must provide for a workshop of at least two biennial contact hours concerning ethics and the Administrative Procedures Act for the commissioners, the secretary, the chief internal auditor, and senior management employees of the Department of Transportation; and a biennial ethics workshop of at least two contact hours for all other department employees.

HISTORY: 2007 Act No. 114, Section 5, eff June 27, 2007.

ARTICLE 7

Joint Transportation Review Committee [Repealed]

**SECTIONS 57‑1‑710 to 57‑1‑760.** Repealed.

HISTORY: Former Section 57‑1‑710, titled Joint Transportation Review Committee established, had the following history: 2007 Act No. 114, Section 5, eff June 27, 2007. Repealed by 2017 Act No. 40, Section 22.D, eff July 1, 2017.

HISTORY: Former Section 57‑1‑720, titled Membership, had the following history: 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 3.B, eff July 1, 2016. Repealed by 2017 Act No. 40, Section 22.D, eff July 1, 2017.

HISTORY: Former Section 57‑1‑730, titled Powers and duties, had the following history: 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 3.A, eff July 1, 2016. Repealed by 2017 Act No. 40, Section 22.D, eff July 1, 2017.

HISTORY: Former Section 57‑1‑750, titled Compensation of members; expenses associated with review of appointees for Department of Transportation Commission, had the following history: 2007 Act No. 114, Section 5, eff June 27, 2007; 2016 Act No. 275 (S.1258), Section 3.C, eff July 1, 2016. Repealed by 2017 Act No. 40, Section 22.D, eff July 1, 2017.

HISTORY: Former Section 57‑1‑760, titled Clerical and professional staffing, had the following history: 2007 Act No. 114, Section 5, eff June 27, 2007. Repealed by 2017 Act No. 40, Section 22.D, eff July 1, 2017.