CHAPTER 5

State Highway System

ARTICLE 1

Composition of and Change in the State Highway System

**SECTION 57‑5‑10.** Composition of state highway system in general.

The state highway system shall consist of a statewide system of connecting highways that shall be constructed to the Department of Transportation’s standards and that shall be maintained by the department in a safe and serviceable condition as state highways. The department may utilize funding sources including, but not limited to, the State Non‑Federal Aid Highway Fund and the State Highway Fund as established by Section 57‑11‑20 in carrying out the provisions of this section. The complete state highway system shall mean the system of state highways as now constituted, consisting of the roads, streets, and highways designated as state highways or designated for construction or maintenance by the department pursuant to law, together with the roads, streets, and highways added to the state highway system by the Commission of the Department of Transportation, and the roads, streets, and highways that may be added to the system pursuant to law. Roads and highways in the state highway system are classified into three classifications:

(1) interstate system of highways;

(2) state highway primary system; and

(3) state highway secondary system.

HISTORY: 1962 Code Section 33‑101; 1952 Code Section 33‑101; 1951 (47) 457; 1967 (55) 207; 1993 Act No. 181, Section 1509; 2013 Act No. 98, Section 1, eff June 24, 2013.

CROSS REFERENCES

Agritourism and Tourism‑Oriented Directional Signing, see S.C. Code of Regulations R. 63‑339.

Driving on or entering controlled‑access or other divided highways, see Section 56‑5‑1920.

Lease or sale of controlled‑access facilities for commercial use, see Section 57‑5‑350.

Prohibition of pedestrians, animals and certain vehicles on controlled‑access highways, see Sections 56‑5‑3170, 56‑5‑3860.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 37, Crossing Injuries.

S.C. Jur. Negligence Section 11, Public Duty Rule.

NOTES OF DECISIONS

Constitutional issues 2

Negligence claims 1

1. Negligence claims

Department of Transportation owed a statutory duty to the public as a whole, which duty was to construct and maintain safe and serviceable highways, and did not owe a special duty of care to automobile occupants who were killed or injured when they car fatally collided with train at railroad crossing, and therefore, negligence claims against the Department that were filed on behalf of such occupants were precluded under the public duty rule. Platt v. CSX Transportation, Inc. (S.C.App. 2008) 379 S.C. 249, 665 S.E.2d 631, rehearing denied, affirmed in part, vacated in part 388 S.C. 441, 697 S.E.2d 575. Automobiles 252

2. Constitutional issues

Federal regulations pertaining to the duties regarding malfunctioning railroad crossing signals, which placed maintenance responsibility on railroads rather than states upon credible notice or report of malfunction from the state to railroad, preempted state law making the State Department of Transportation responsible for malfunctioning signals, and therefore, negligence claims asserted against the Department by representative of automobile occupants who died or were injured in collision with train at railroad crossing, which claim were based on state statutory duties, were precluded; the railroad crossing warning devices at issue were installed with the use of federal funds. Platt v. CSX Transportation, Inc. (S.C.App. 2008) 379 S.C. 249, 665 S.E.2d 631, rehearing denied, affirmed in part, vacated in part 388 S.C. 441, 697 S.E.2d 575. Automobiles 279; States 18.21

**SECTION 57‑5‑20.** Interstate system of highways.

The interstate system of highways shall consist of the segments of highways in South Carolina in the officially designated national system of interstate and defense highways.

HISTORY: 1962 Code Section 33‑102; 1952 Code Section 33‑102; 1951 (47) 457; 1967 (55) 207; 1993 Act No. 181, Section 1509.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

**SECTION 57‑5‑30.** State highway primary system.

The state highway primary system shall consist of a connected system of principal state highways, not to exceed ten thousand miles, connecting centers of population, as determined by the Commission of the Department of Transportation.

HISTORY: 1962 Code Section 33‑103; 1952 Code Section 33‑103; 1951 (47) 457; 1967 (55) 207; 1993 Act No. 181, Section 1509.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

**SECTION 57‑5‑40.** State highway secondary system.

The state highway secondary system shall consist of all roads, streets and highways in the state highway system not otherwise designated as highways in the interstate system or the state highway primary system.

HISTORY: 1962 Code Section 33‑104; 1952 Code Section 33‑104; 1951 (47) 457; 1967 (55) 207; 1993 Act No. 181, Section 1509.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

Attorney General’s Opinions

The authority to designate roads within a county to be included within the State secondary system is an executive function and cannot constitutionally be exercised by county legislative delegations. 1976‑77 Op.Atty.Gen. No. 77‑36, p. 38 (January 28, 1977) 1977 WL 24379.

**SECTION 57‑5‑50.** Transfers between secondary and primary systems.

The commission may transfer any route or section of route from the state highway secondary system to the state highway primary system, or vice versa, when, in its judgment, such transfer is advisable to better serve the traveling public.

HISTORY: 1962 Code Section 33‑105; 1952 Code Section 33‑105; 1951 (47) 457; 1993 Act No. 181, Section 1509.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

**SECTION 57‑5‑60.** Permitted additions to primary system.

The department may add to the state highway primary system any sections or connections which, in the judgment of the department may be necessary in the proper development of the federal‑aid primary highway system or the state highway primary system.

HISTORY: 1962 Code Section 33‑106; 1952 Code Section 33‑106; 1951 (47) 457; 1993 Act No. 181, Section 1509.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

**SECTION 57‑5‑70.** Highway transfers to the state highway system.

A county or municipality and the department may by mutual consent agree to transfer a road from the county or municipal road system to the state highway system. The transfer may be of the road “as is”, without further improvement to the road or upon such terms and conditions as the parties mutually agree. Notification of the transfer must be given to the county’s legislative delegation. If the department determines that a road in the county or municipal road system is necessary for the interconnectivity of the state highway system, and the municipality or county does not consent to the transfer, the department may initiate a condemnation action to acquire the road, or a portion of it, and the county or municipality is not required to make any further improvements to it.

HISTORY: 1962 Code Section 33‑106.1; 1952 (47) 2031; 1959 (51) 33; 1993 Act No. 181, Section 1509; 2013 Act No. 98, Section 2, eff June 24, 2013.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

**SECTION 57‑5‑80.** Highway transfers from the state secondary system.

The department may transfer from the state highway secondary system any road under its jurisdiction, determined by the department to be of low traffic importance, to one of the parties indicated in this section if mutual consent is reached between the department and the party that the road is being transferred to:

(a) a county or municipality;

(b) a school;

(c) a governmental agency;

(d) a nongovernmental entity; or

(e) a person.

In all cases, the county or municipality shall have right of first refusal to accept roads into their maintenance responsibility when roads are considered for transfer from the state highway system to a nongovernmental entity or person and in no case may a state road be transferred to a nongovernmental entity unless all persons and businesses located on that road are in agreement with the transfer. Maintenance responsibility for roads transferred from the state highway system pursuant to the provisions of this section shall transfer from the jurisdiction of the department to the jurisdiction of the county or municipality, school, governmental agency, nongovernmental entity, or person, effective upon notice from the department of official action removing the road from the state highway system. Notification of the transfer must be given to the county’s legislative delegation.

HISTORY: 1962 Code Section 33‑106.2; 1952 (47) 2031; 1959 (51) 33; 1993 Act No. 181, Section 1509; 2013 Act No. 98, Section 3, eff June 24, 2013.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

**SECTION 57‑5‑90.** Belt lines and spurs.

The commission may establish such belt lines or spurs as it deems proper and construct and maintain such belt lines and spurs from funds otherwise provided by law for the construction and maintenance of the state highway system, but the total length of such belt lines and spurs to be established or constructed in any county shall not exceed two miles in any one fiscal year; provided, that should the commission fail to establish belt lines or spurs during a fiscal year the allocation to the counties shall be continued from year to year and the mileage shall be cumulative. Provided, further, that any mileage that accumulated prior to June 30, 1972, under this section shall remain to the credit of the county to which it accumulated.

HISTORY: 1962 Code Section 33‑107; 1952 Code Section 33‑107; 1951 (47) 457; 1958 (50) 1721; 1961 (52) 470; 1973 (58) 28; 1993 Act No. 181, Section 1509.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

NOTES OF DECISIONS

In general 1

1. In general

Term “belt line” construed. Summer v. State Highway Com’n of South Carolina (S.C. 1928) 143 S.C. 196, 141 S.E. 366.

**SECTION 57‑5‑100.** Other additions by department prohibited.

Except as authorized herein, or by other law, the department is hereby prohibited from adding roads to the state highway system.

HISTORY: 1962 Code Section 33‑108; 1952 Code Section 33‑108; 1951 (47) 457; 1993 Act No. 181, Section 1509.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

**SECTION 57‑5‑110.** Relocations in federal and state primary systems.

The Department of Transportation may relocate any section of highways included in the federal‑aid primary highway system or the state highway primary system when such relocation is required in order to conform to the standards adopted for the highways comprising such systems.

HISTORY: 1962 Code Section 33‑109; 1952 Code Section 33‑109; 1951 (47) 457; 1993 Act No. 181, Section 1509.

Library References

Highways 69.

Westlaw Topic No. 200.

C.J.S. Highways Sections 153 to 171.

**SECTION 57‑5‑120.** Abandonment of section of relocated highway.

The department may abandon as a part of the state highway system any section of highway which may be relocated, and every such section so abandoned as a part of the state highway system shall revert to the jurisdiction of the respective appropriate local authorities involved or be abandoned as a public way. But the department, in its discretion, may retain in the system any such relocated section when it serves as a needed connection to the new section or when it serves as a proper part of the state highway system.

HISTORY: 1962 Code Section 33‑110; 1952 Code Section 33‑110; 1951 (47) 457; 1993 Act No. 181, Section 1509.

Library References

Highways 79.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 192 to 194, 196, 198 to 199.

Attorney General’s Opinions

Local authorities, upon deciding to abandon or discontinue a road, can dispose of whatever interest is retained, if any, by quitclaim deed. S.C. Op.Atty.Gen. (September 4, 1997) 1997 WL 665424.

**SECTION 57‑5‑130.** Department shall publish description of roads.

Notwithstanding any other provision of law, when the Department of Transportation publishes the name or description of a state road or highway in a newspaper of general circulation, it shall include not only the numerical designation of such road or highway but also a general description of it. In the general description the department, where possible, shall include the designated name of the road or highway and its general location as compared to other roads and highways in the general vicinity.

HISTORY: 1962 Code Section 33‑111; 1974 (58) 2785; 1993 Act No. 181, Section 1509.

Library References

Highways 0.5.

Westlaw Topic No. 200.

C.J.S. Highways Sections 1 to 3.

**SECTION 57‑5‑140.** State highways within municipalities.

The state highways designated as parts of the state highway system shall include the sections of such highways lying within the limits of incorporated municipalities, and such sections shall be equally as eligible in all respects to receive the attention of the department for construction, reconstruction, and maintenance as are the sections of the highways lying wholly without incorporated places. But the department shall not share in the cost of any construction or improvement made by any municipality on any street or highway prior to the date the road or street so constructed or improved was added to the state highway system.

But nothing in this chapter shall prevent a municipality from undertaking any improvements or performing any maintenance work on state highways in addition to what the department is able to undertake with the available funds. The Department of Transportation shall not, however, be liable for damages to property or injuries to persons, as otherwise provided for in Section 15‑78‑10 et seq., as a consequence of the negligence by a municipality in such improvements or maintenance work by a municipality.

HISTORY: 1962 Code Section 33‑112; 1952 Code Section 33‑112; 1951 (47) 457; 1969 (56) 154; 1993 Act No. 181, Section 1509.

CROSS REFERENCES

Addition of municipal streets to the State highway secondary system, see Section 57‑5‑70.

Construction, etc., in municipalities, see Sections 57‑5‑810 et seq.

Municipal corporations, see Sections 5‑1‑10 et seq.

Library References

Highways 105(2).

Westlaw Topic No. 200.

C.J.S. Highways Sections 252 to 256, 274.

NOTES OF DECISIONS

In general 1

Sidewalk maintenance 2

1. In general

Statutes giving municipality right to review and approve plans for improvement by state highway department of state highway within municipal boundaries and providing that such approval means that municipality assumes liability for damage to private property from such improvements and that department shall not be liable for such damage did not relieve department of liability to hotel owner for allegedly raising state highway within municipal boundary, causing surface waters to flow on hotel property, and thus taking private property for public use, but only fixed liability of municipality and department inter sese. Code 1952, Sections 33‑112, 33‑172 to 33‑175; Const. art. 1, Section 17. Moseley v. South Carolina Highway Dept. (S.C. 1960) 236 S.C. 499, 115 S.E.2d 172. Eminent Domain 285

The words “incorporated municipalities” in this section [formerly Code 1962 Section 33‑112] clearly refer to cities and towns. Hinnant v. South Carolina State Highway Dept. (S.C. 1954) 226 S.C. 10, 83 S.E.2d 209.

2. Sidewalk maintenance

A city assumed the duty to maintain a sidewalk owned and maintained by the state Department of Highways and Public Transportation (DHPT) when it laid a barricade flat over a depression in the sidewalk where the city superintendent testified that (1) the sidewalk was within city limits, (2) he periodically inspected the streets and sidewalks in the city, (3) his office was the appropriate place to call with a complaint about a “city sidewalk,” (4) where a dangerous situation existed, it was not unusual for him to repair a state maintained street, and (5) that if he saw a barricade lying down, he would “set it up and correct that situation immediately”; the fact that the DHPT owns and maintains a sidewalk does not prevent the city from undertaking its maintenance. Bryant v. City of North Charleston (S.C.App. 1991) 304 S.C. 123, 403 S.E.2d 159, certiorari denied.

**SECTION 57‑5‑150.** Cost of rights‑of‑way in municipalities and of urban transportation projects shall be paid from state highway fund.

The entire cost of the rights‑of‑way for state highway construction in municipalities shall be paid for from the state highway fund, as authorized in Section 57‑5‑140, on the same basis as rights‑of‑way are paid for in rural areas, and also that the Department of Transportation shall pay from the state highway fund the entire cost of urban transportation plan projects, including all of the costs of all rights‑of‑way.

HISTORY: 1962 Code Section 33‑113; 1972 (57) 3088; 1993 Act No. 181, Section 1509.

Library References

Highways 99.1, 105(2).

Westlaw Topic No. 200.

C.J.S. Highways Sections 252 to 256, 261 to 271, 274, 457 to 458.

**SECTION 57‑5‑160.** Department authorized to enter into agreement with Atomic Energy Commission and others regarding highway within Savannah River Project.

The Department of Transportation is authorized to enter into agreement with the United States Atomic Energy Commission and such other parties as may be necessary to accept and place into the state highway system portions of the highways formerly designated as Nos. 28 and 125 lying within the boundaries of the Savannah River Project. The department, after consultation with the Atomic Energy Commission, shall promulgate rules and regulations governing the manner in which the highway within the Savannah River Project may be utilized by the traveling public, which regulations, when duly promulgated shall have the force of law.

HISTORY: 1962 Code Section 33‑241; 1967 (55) 679; 1993 Act No. 181, Section 1509.

Library References

Automobiles 13.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 38.

**SECTION 57‑5‑170.** Regulations affecting traffic on highway within Savannah River Project.

In order to protect the national security, the regulations may include provisions to restrict the area of the highway within the limits of the Savannah River Project to vehicular traffic, capable of maintaining the minimum posted speed limit; to designate any and all points of access to and from the segment of highway lying within the area and may provide for a system of closure at points upon the highway so as to enable the department or Atomic Energy Commission to identify vehicles and individuals using the highway and to enable the Department of Transportation or the Atomic Energy Commission to determine the transit time along the highway within the limits of the area.

HISTORY: 1962 Code Section 33‑242; 1967 (55) 679; 1993 Act No. 181, Section 1509.

Library References

Automobiles 13.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 38.

**SECTION 57‑5‑180.** Filing of agreement with Secretary of State regarding highway within Savannah River Project; effect of agreement.

Upon execution of an agreement with the Atomic Energy Commission, the Department of Transportation shall file with the Secretary of State a copy of the agreement and shall publicly declare the date on which the highway shall be a part of the state highway system. After such execution, the terms of the agreement shall have full force notwithstanding any other provisions of law relating to highways in this State.

HISTORY: 1962 Code Section 33‑243; 1967 (55) 679; 1993 Act No. 181, Section 1509.

CROSS REFERENCES

Private driveway entrances to highways, see S.C. Code of Regulations R. 63‑370.

**SECTION 57‑5‑190.** Penalty involving highway within Savannah River Project.

Any person convicted of violating the provisions of Sections 57‑5‑160 through 57‑5‑180 may be punished in any court of competent jurisdiction by a fine of not more than one hundred dollars or imprisonment for not more than thirty days.

HISTORY: 1962 Code Section 33‑244; 1967 (55) 679; 1993 Act No. 181, Section 1509.

Library References

Automobiles 335, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1656, 1707, 1714, 1743, 1748, 1750, 1752, 1755 to 1756.

**SECTION 57‑5‑195.** Bob Harrell Bridge and Interchange.

The I‑526 bridge and interchange that span U.S. Highway 17 and U.S. Highway 7 in Charleston County is named the “Bob Harrell Bridge and Interchange” in honor of this distinguished South Carolinian. The Department of Transportation shall install appropriate markers or signs at this bridge as the department considers appropriate that contain this designation.

HISTORY: 2002 Act No. 233, Section 1.

ARTICLE 3

Rights‑of‑Way, Lands and Condemnation

**SECTION 57‑5‑310.** Ownership of real estate.

The commission and the Department of Transportation may own such real estate, in fee simple or by lease, as shall be deemed necessary for the purpose of facilitating the proper operation of the department or for the building and maintenance of the public highways in the state highway system.

HISTORY: 1962 Code Section 33‑121; 1952 Code Section 33‑121; 1951 (47) 457; 1993 Act No. 181, Section 1510.

CROSS REFERENCES

Provision that the Department of Highways and Public Transportation shall attempt to sell real property it holds which is not necessary for the proper operation of the Department or highway system, see Section 57‑5‑340.

Library References

Highways 80.

Westlaw Topic No. 200.

C.J.S. Highways Sections 203, 206, 211.

NOTES OF DECISIONS

In general 1

1. In general

The method provided by this section [formerly Code 1962 Section 33‑121] and the following sections for condemnation of land for the construction of highways by the State Highway Department is exclusive. Johnson v South Carolina State Highway Dept. (1960) 236 SC 424, 114 SE2d 591. South Carolina State Highway Dept. v Spann (1962) 239 SC 437, 123 SE2d 648.

The statutory method provided by this article for condemnation of land for highway purposes by the State Highway Department is exclusive and the trial court has no authority to indirectly extend time for taking appeal in such case. Burnett v. South Carolina State Highway Dept. (S.C. 1969) 252 S.C. 568, 167 S.E.2d 571.

This article grants to the State Highway Department the authority to condemn lands for highway purposes and prescribes the procedure to be followed. Burnett v. South Carolina State Highway Dept. (S.C. 1969) 252 S.C. 568, 167 S.E.2d 571.

**SECTION 57‑5‑320.** Acquisition of property generally; liability for abandonment after condemnation and trial.

The department may acquire an easement or fee simple title to real property by gift, purchase, condemnation or otherwise as may be necessary, in the judgment of the department, for the construction, maintenance, improvement or safe operation of highways in this State or any section of a state highway or for the purpose of acquiring sand, rock, clay, and other material necessary for the construction of highways, including:

(a) land for drainage ditches and canals that may be needed in order to correct existing land drainage facilities impaired or interfered with by the department in connection with its road improvement work; and

(b) property, either within or without incorporated towns, to be used for borrow pits from which to secure embankment and surfacing materials.

Other property required, as determined by the department, for the construction, maintenance and safe operation of state highways may be acquired by condemnation in the manner described in this article. Provided, however, after condemnation, trial and rendition of verdict by jury there shall be no abandonment by the department without the payment of expenses incurred by the landowner including a reasonable fee to the attorney or attorneys representing the landowner, which fee and expenses shall be set and approved by the trial judge.

HISTORY: 1962 Code Section 33‑122; 1952 Code Section 33‑122; 1951 (47) 457; 1963 (53) 159; 1993 Act No. 181, Section 1510.

CROSS REFERENCES

Provision that the Department of Highways and Public Transportation shall attempt to sell real property it holds which is not necessary for the proper operation of the Department or highway system, see Section 57‑5‑340.

Library References

Eminent Domain 19.

Highways 109.

Westlaw Topic Nos. 148, 200.

C.J.S. Eminent Domain Sections 30 to 31, 50.

C.J.S. Highways Section 260.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

Attorney General’s Opinions

Effluent from private sewage treatment plant is sewage, and the South Carolina State Highway Department has no authority to permit casting of such into highway ditches. 1967‑68 Op.Atty.Gen. No. 2604, p. 327 (December 6, 1968) 1968 WL 8995.

NOTES OF DECISIONS

In general 1

Damages 3

Judgments 4

Taking 2

1. In general

The power of eminent domain may be delegated by the State to its agencies. Riley v South Carolina State Highway Dept. (1961) 238 SC 19, 118 SE2d 809, citing Smith v Greenville (1956) 229 SC 252, 92 SE2d 639.

The power of eminent domain is inherent in sovereignty. It is founded on the law of necessity. Riley v South Carolina State Highway Dept. (1961) 238 SC 19, 118 SE2d 809, citing Paris Mountain Water Co. v Greenville (1918) 110 SC 36, 96 SE 545.

Department is administrative agency of the State and is authorized to acquire by condemnation any lands necessary for construction, maintenance, improvement or safe operation of highways. South Carolina State Highway Dept. v. Schrimpf (S.C. 1963) 242 S.C. 357, 131 S.E.2d 44.

State Highway Department had authority to condemn, for highway purposes, orphanage property which was allegedly dedicated to public use. Code 1952, Sections 33‑21, 33‑71, 33‑122, 33‑127. Riley v. South Carolina State Highway Dept. (S.C. 1961) 238 S.C. 19, 118 S.E.2d 809. Eminent Domain 47(1)

Highway Department’s power to condemn land already devoted to a public use is necessarily implied from general authority granted to Department by Legislature. Code 1952, Sections 33‑21, 33‑71, 33‑122, 33‑127. Riley v. South Carolina State Highway Dept. (S.C. 1961) 238 S.C. 19, 118 S.E.2d 809. Eminent Domain 47(1)

The Highway Department, acting for and in behalf of the State, is empowered to condemn property used as an orphanage, even if such property is regarded as devoted to a public use. Riley v. South Carolina State Highway Dept. (S.C. 1961) 238 S.C. 19, 118 S.E.2d 809.

The statutory method provided for condemnation of land for the construction of highways by the State Highway Department is exclusive, and the power of condemning land for an interstate highway, even though partially financed through federal aid, is conferred by such statutes only on the State Highway Department. Code 1952, Sections 33‑21, 33‑121 et seq., 33‑122, 33‑132, 33‑139, 33‑352, 33‑352.3. Johnson v. South Carolina State Highway Dept. (S.C. 1960) 236 S.C. 424, 114 S.E.2d 591. Eminent Domain 8; Eminent Domain 167(3)

2. Taking

Reconfiguration of road that led to highway did not constitute a taking of landowner’s property, although reconfiguration situated property on cul‑de‑sac and limited landowner’s access to highway by requiring landowner to navigate series of secondary roads; no aspect of property had been physically taken. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

Reconfiguration of divided highway’s intersection did not constitute a taking of property on either side of highway’s intersection with road, although reconfiguration resulted in inability to make any left turns at intersection; landowners continued to have access to and from highway and public road system. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

There is no taking when a government entirely closes one of the roads that abuts a corner lot; so long as a landowner has access to the public road system, the landowner’s easement by necessity is intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

When only a portion of a public road abutting a landowner’s property is closed, leaving the property in a cul‑de‑sac, no taking has occurred; as long as the landowner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

In determining whether a road re‑configuration amounts to a taking of property, the focus is on how the reconfiguration affects property owner’s easements to access public road system, not on whether property owner has suffered special injury that is different in kind and not merely in degree from that suffered by public at large; overruling City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239, and Gray v. South Carolina Dep’t of Transp., 311 S.C. 144, 427 S.E.2d 899. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 91; Eminent Domain 106

The general rule that to authorize the taking of land already applied to one public use and devote it to another, where such taking will destroy or materially interfere with the former use, the mere general authority to exercise the power of eminent domain is insufficient and such authority must be given by the legislature in express terms or by necessary implication, does not apply to acts of condemnation by the Highway Department, which is an agent of the sovereign itself rather than a public service corporation or a municipality. Riley v. South Carolina State Highway Dept. (S.C. 1961) 238 S.C. 19, 118 S.E.2d 809.

3. Damages

Fact that landowners had free passage to westbound lane of highway after alleged taking via erection of median barricade on highway was a factor to be considered in estimating damages to be awarded and not in determining the existence of a valid property right, in case in which landowners’ property abutted two local roads which were joined to intersect highway. Hardin v. South Carolina Dept. of Transp. (S.C.App. 2004) 359 S.C. 244, 597 S.E.2d 814, rehearing denied, certiorari granted, reversed 371 S.C. 598, 641 S.E.2d 437. Eminent Domain 106; Eminent Domain 142

While loss of business may not be allowed as an independent element of damages in condemnation of realty for highway purposes, jury may consider such loss as it affects the market value of the remaining property. Const. art. 1, Section 17; Code 1962, Sections 33‑122, 33‑135, 33‑136. South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264. Eminent Domain 203(7)

4. Judgments

There is no statutory authority permitting clerk of common pleas court to enter and enroll as a judgment an award made by jury in a condemnation case, and property owner was not entitled to interest on award from date of verdict to the date of payment. Code 1952, Sections 8‑2, 10‑1215, 10‑1458, 25‑3, 25‑57, 25‑101 et seq., 25‑110, 25‑161 to 25‑170, 25‑169, 33‑122 et seq., 33‑139, 33‑144, 33‑145; Circuit Court Rules, rule 3. South Carolina State Highway Dept. v. Schrimpf (S.C. 1963) 242 S.C. 357, 131 S.E.2d 44. Eminent Domain 241; Eminent Domain 247(2)

This section [formerly Code 1962 Section 33‑122] and subsequent sections relating to condemnation by the Department do not provide for entry of judgment upon verdict of jury. South Carolina State Highway Dept. v. Schrimpf (S.C. 1963) 242 S.C. 357, 131 S.E.2d 44.

**SECTION 57‑5‑330.** Minimum width of rights‑of‑way.

The minimum width of the right‑of‑way required for the construction, maintenance and safe operation of state highways is hereby fixed at sixty‑six feet. But the department, in its discretion, may accept a lesser width than sixty‑six feet within incorporated towns or where existing structures of a permanent nature would necessarily be moved or damaged in order to afford the full minimum width of sixty‑six feet. And the department may acquire such additional width above the minimum herein fixed as in its judgment may be necessary to meet the exigencies of construction, maintenance, and safe operation of any particular highway.

HISTORY: 1962 Code Section 33‑123; 1952 Code Section 33‑123; 1951 (47) 457; 1961 (52) 502; 1993 Act No. 181, Section 1510.

Library References

Highways 47.

Westlaw Topic No. 200.

C.J.S. Highways Section 103.

**SECTION 57‑5‑340.** Sale or other disposition of real estate.

The department shall continuously inventory all of its real property. When, in the judgement of the department any real estate acquired as provided in this chapter is no longer necessary for the proper operation of the department or highway systems, the department shall vigorously attempt to sell the property by advertising for competitive bids in local newspapers or by direct negotiations, but in every case of the sale or transfer of any real estate by the commission or the department, the sale or transfer shall be made public by publishing notice of it in the minutes of the next succeeding meeting of the commission. The commission and the department shall convey by deed, signed by the Secretary of the Department of Transportation and the Deputy Director of the Division of Finance and Administration, any real estate disposed of under this section. Any funds derived from the sale of surplus property by authority of this section shall be credited to the funding category from which funds were drawn to finance the department’s acquisition of the property. However, any funds derived from the sale of right‑of‑way, which the department has purchased, in excess of the department’s cost shall be distributed among the counties as C funds pursuant to Section 12‑28‑2740.

HISTORY: 1962 Code Section 33‑124; 1952 Code Section 33‑124; 1951 (47) 457; 1983 Act No. 151 Part II Section 53; 1986 Act No. 383, Section 2; 1993 Act No. 181, Section 1510.

Library References

States 89.

Westlaw Topic No. 360.

C.J.S. States Sections 279 to 281.

NOTES OF DECISIONS

In general 1

1. In general

Department of Transportation’s (DOT) sale of the tract of land that was former route for toll road for consideration of $1.00 was sufficient to satisfy the requisite statutory procedure for disposition of surplus real estate; although DOT did not advertise for competitive bids for the property, it entered into direct negotiations with the property purchaser. K & A Acquisition Group, LLC v. Island Pointe, LLC (S.C. 2009) 383 S.C. 563, 682 S.E.2d 252. States 89

Conveyed property on which a toll road was formerly routed was not subject to a public easement; Department of Transportation (DOT) had abandoned the road well before the conveyance. K & A Acquisition Group, LLC v. Island Pointe, LLC (S.C. 2009) 383 S.C. 563, 682 S.E.2d 252. Turnpikes And Toll Roads 15

**SECTION 57‑5‑350.** Certain easements shall not be sold or leased for commercial use.

The department shall neither lease nor sell any part of the state highway primary system, rights‑of‑way or any of the controlled‑access highway facilities for commercial enterprise activities, except public utilities, which were acquired by easement. This shall not serve to prevent the sale of surplus property as authorized by Section 57‑5‑340, nor shall it prevent the sale of any of the properties referred to in this section which were acquired by fee simple deed.

HISTORY: 1962 Code Section 33‑124.1; 1958 (50) 1692; 1993 Act No. 181, Section 1510.

Library References

States 89.

Westlaw Topic No. 360.

C.J.S. States Sections 279 to 281.

Attorney General’s Opinions

The scope of use of a public prescriptive highway or road easement would be inclusive of reasonably foreseeable public uses of the roadway, including the installation of utility infrastructure, without constituting an increased burden on the servient estate. S.C. Op.Atty.Gen. (June 2, 2015) 2015 WL 3636395.

The ability of utilities to obtain encroachment permits on preexisting easements and rights of ways specifically related to the operations of the public utility. S.C. Op.Atty.Gen. (March 31, 2015) 2015 WL 1593294.

**SECTION 57‑5‑370.** Condemnation for streets within municipalities or materials.

Whenever the department is required or authorized by law to construct or improve streets within municipalities, the municipality or the department may condemn additional land necessary for the improvement of the streets or property within the municipality required for materials with which to construct highway embankments and surfacing.

HISTORY: 1962 Code Section 33‑126; 1952 Code Section 33‑126; 1951 (47) 457; 1987 Act No. 173 Section 38; 1993 Act No. 181, Section 1510.

CROSS REFERENCES

Procedures for the condemnation of property, see the Eminent Domain Procedure Act, see Sections 28‑2‑10 et seq.

Purchase of land by municipal corporations for streets, see Section 5‑27‑10.

Library References

Eminent Domain 19.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Sections 30 to 31, 50.

**SECTION 57‑5‑380.** Condemnation of property of public service corporations.

The department, for the purpose of acquiring property as authorized by Section 57‑5‑320, may condemn lands, rights‑of‑way, and easements of railroad, railway, telegraph, or other public service corporations, provided that the condemnation does not impair the ability of the railroad, railway, telegraph, or other public service corporations to operate.

HISTORY: 1962 Code Section 33‑127; 1952 Code Section 33‑127; 1951 (47) 457; 1987 Act No. 173 Section 39; 1988 Act No. 443; 1993 Act No. 181, Section 1510.

CROSS REFERENCES

Procedures for the condemnation of property, see the Eminent Domain Procedure Act, see Sections 28‑2‑10 et seq.

Library References

Eminent Domain 44.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Sections 25, 51 to 56.

NOTES OF DECISIONS

In general 1

1. In general

The General Assembly deemed it desirable to give express authority to condemn the property of the public utilities named in this section [formerly Code 1962 Section 33‑127] because these public service corporations had previously been given the right of condemnation themselves. Riley v. South Carolina State Highway Dept. (S.C. 1961) 238 S.C. 19, 118 S.E.2d 809.

**SECTION 57‑5‑540.** Condemnation award shall be paid by department.

When the department condemns property, the award shall be paid by the department.

HISTORY: 1962 Code Section 33‑143; 1952 Code Section 33‑143; 1951 (47) 457; 1993 Act No. 181, Section 1510.

**SECTION 57‑5‑550.** Deeds and other instruments to be filed and indexed.

All deeds or other instruments conveying, or intended to convey, a right‑of‑way and the original papers in all condemnation proceedings to acquire a right‑of‑way for any state highway shall be filed by the department in its offices at Columbia, and a direct index of all such deeds, instruments and records shall be made and kept by the department.

The provisions of this section shall apply to all deeds, instruments and condemnation proceedings in existence on or after June 13, 1951, except such instruments as had actually been recorded prior to said date in the office of the register of deeds or clerk of court of any county of this State or had prior to said date become a permanent record in any such office.

HISTORY: 1962 Code Section 33‑144; 1952 Code Section 33‑144; 1951 (47) 457; 1993 Act No. 181, Section 1510.

CROSS REFERENCES

Indexing and filing of public records, see Sections 30‑9‑10 et seq.

**SECTION 57‑5‑570.** Records to be maintained in tax assessors’ offices.

The department shall maintain in the office of the tax assessor for each of the several counties a copy of all highway plans on which are indicated the widths of the rights‑of‑way for each road in the related district or county and an alphabetical list of property owners on each road for which rights‑of‑way have been acquired. These records must be for the convenience of persons making inquiry as to the right of the State in and to the right‑of‑way for roads constructed by the department in any county. The tax assessors of the several counties shall cooperate with the department in keeping these records current, without charge.

HISTORY: 1962 Code Section 33‑146; 1952 Code Section 33‑146; 1951 (47) 457; 1952 (47) 2041; 1986 Act No. 494; 1993 Act No. 181, Section 1510.

Library References

Records 13.

Westlaw Topic No. 326.

C.J.S. Records Sections 37 to 39.

NOTES OF DECISIONS

Admissibility of evidence 2

Constitutional issues 1

1. Constitutional issues

Department of Transportation’s failure to strictly comply with statutory duty regarding local storage of highway plans, which Department stored at its office rather than at county tax assessor’s office, did not deprive landowner of any constitutional right, as deed from landowner’s predecessor to Department, which referred to the plans, was sufficient to put landowner on notice that access rights had been conveyed to Department and to impose a duty on landowner of further inquiry. North Point Development Group, LLC v. South Carolina Dept. of Transp. (S.C.App. 2012) 397 S.C. 440, 725 S.E.2d 128, rehearing denied. Highways 85

2. Admissibility of evidence

Proposed testimony of defense witness, that he found no record in county clerk of court’s office of any rights‑of‑way pertaining to property owned by defendant’s family, was not relevant to showing defendant had a good faith belief that there was no right of way on his family’s land, in murder prosecution arising from deaths of two law enforcement officers during confrontation over road construction project; witness failed to search for record of the right‑of‑way in county tax assessor’s office, where copies were required by statute to be maintained. State v. Bixby (S.C. 2010) 388 S.C. 528, 698 S.E.2d 572, rehearing denied, certiorari denied, certiorari denied 131 S.Ct. 2154, 563 U.S. 963, 179 L.Ed.2d 940, habeas corpus dismissed 2014 WL 6969829. Homicide 955

Proposed testimony of defense witness, that he found no record in county clerk of court’s office of any rights‑of‑way across property owned by defendant’s family, was properly excluded on basis that it would have misled the jury in murder prosecution arising from deaths of two law enforcement officers during confrontation over road construction project involving that property; testimony would have led jury to believe that a right of way should have been recorded at clerk of court’s office, which was contrary to state law requiring that the record be maintained at county tax assessor’s office. State v. Bixby (S.C. 2010) 388 S.C. 528, 698 S.E.2d 572, rehearing denied, certiorari denied, certiorari denied 131 S.Ct. 2154, 563 U.S. 963, 179 L.Ed.2d 940, habeas corpus dismissed 2014 WL 6969829. Homicide 955

**SECTION 57‑5‑580.** Cost of right‑of‑way as part of cost of construction.

The department may charge, as part of the cost of construction, the costs of rights‑of‑way necessary in connection with the improvement or construction of any state highway project.

HISTORY: 1962 Code Section 33‑147; 1952 Code Section 33‑147; 1951 (47) 457; 1993 Act No. 181, Section 1510.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

**SECTION 57‑5‑590.** Rights additional to those of county authorities.

Nothing herein contained shall be construed to divest the county authorities of the right to condemn for highway purposes, but the rights herein granted are concurrent with the rights and powers of governing bodies of counties and they may still condemn property for highway purposes upon the written request of the department.

HISTORY: 1962 Code Section 33‑148; 1952 Code Section 33‑148; 1951 (47) 457; 1993 Act No. 181, Section 1510.

Library References

Eminent Domain 19.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Sections 30 to 31, 50.

NOTES OF DECISIONS

In general 1

1. In general

Equitable estoppel found not to exist even though Department of Highways failed to object to location and use of concrete island in gasoline pumps constructed within highway right of way in 1930, because state’s easement was reported in index, where contract of sale to present owner acknowledged that controversy existed concerning right of way, and where record did not reveal any action on part of state tending to misrepresent actual state of facts or evidencing intent to abandon portion of right of way. South Carolina State Highway Dept. v. Metts (S.C. 1978) 270 S.C. 73, 240 S.E.2d 816.

**SECTION 57‑5‑600.** Abandonment of right‑of‑way.

Whenever the Department of Transportation shall determine that any property previously acquired for right‑of‑way is not required for either right‑of‑way or departmental purposes, it may expressly abandon that right‑of‑way or property or any portion thereof, or may grant written permits to encroach thereon under such rules and regulations as the Department of Transportation may establish. Provided, no city street may be closed under this section without concurrence of the governing body of the municipality, except for interstate routes or controlled‑access highways.

HISTORY: 1962 Code Section 33‑149; 1967 (55) 966; 1993 Act No. 181, Section 1510.

Library References

Highways 79.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 192 to 194, 196, 198 to 199.

ARTICLE 5

Construction of System

**SECTION 57‑5‑710.** Construction of state highway system simultaneous and equitable in the several districts.

Except as otherwise provided by law, the construction of the state highway system shall be carried on simultaneously in each of the highway districts of the State, and the commission shall determine and arrange the order of the work in a fair and equitable manner among the counties within each highway district.

HISTORY: 1962 Code Section 33‑161; 1952 Code Section 33‑161; 1951 (47) 457; 1993 Act No. 181, Section 1511.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

**SECTION 57‑5‑720.** Standards of construction.

The Department of Transportation shall construct the highways in the state highway primary system and the highways in the state highway secondary system to standards commensurate with the amount and types of traffic services to be rendered by the highways in the respective systems, it being the declared policy of the State that the highways in the state highway secondary system shall be constructed by less expensive standards than the highways in the state highway primary system, thus enabling the State to construct a larger mileage of all‑weather farm‑to‑market roads from the available funds.

In recognition of budgetary restraints, the Department of Transportation, its commission, officers, and employees, are granted the discretionary authority to relax design and construction standards with respect to highway projects in the secondary state highway system. The exercise of the discretionary authority to relax design and construction standards shall not give rise to any liability on the part of the department, its commission, officers, or employees.

HISTORY: 1962 Code Section 33‑162; 1952 Code Section 33‑162; 1951 (47) 457; 1993 Act No. 181, Section 1512; 2008 Act No. 353, Section 2, Pt 26A.1, eff July 1, 2008.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

**SECTION 57‑5‑730.** Removal of view‑obstructing dirt banks at intersections.

The Department may remove, when practicable, view‑obstructing banks of dirt that exist at the intersections of any State highway with another State highway or with any other public highway.

HISTORY: 1962 Code Section 33‑163; 1952 Code Section 33‑163; 1951 (47) 457.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

**SECTION 57‑5‑740.** Construction of federal‑aid secondary or feeder highways.

The Department may construct Federal‑aid secondary or feeder highways, including farm‑to‑market roads, on such highways or sections of highways as may be necessary to comply with Federal‑aid statutes and governing regulations of the Federal Highway Administration with respect thereto, regardless of whether, at the time of construction, such highways are in the State highway system. For the purposes of this section the Department may participate in the cost of construction of roads which are not in the State highway system in the same manner as is provided by law for construction of roads which are in the State highway system.

HISTORY: 1962 Code Section 33‑164; 1952 Code Section 33‑164; 1942 Code Section 5873‑1; 1937 (40) 426; 1938 (40) 1896.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

**SECTION 57‑5‑750.** Contracts with counties for farm‑to‑market roads.

The Department may contract with any of the counties in this State for the construction and improvement by any such county of any farm‑to‑market road in the State highway system within such county and may pay for the construction and improvement of such road, provided the cost of such construction and improvement is not greater than the cost of similar work would be if performed by contract or by the Department’s forces. Any road constructed or improved under the provisions hereof shall be paid for by the Department and the cost thereof charged to the allocation of the county in which such road is constructed. The roads constructed by the counties under the provisions hereof shall be constructed and built according to standards and specifications required by the Department. Nothing herein contained shall be construed to mean that the Department shall pay the cost of the construction or improvement of roads already constructed and improved.

HISTORY: 1962 Code Section 33‑165; 1952 Code Section 33‑165; 1951 (47) 457.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

**SECTION 57‑5‑760.** Reimbursement agreements with counties for construction of farm‑to‑market and secondary roads.

The Department of Transportation is hereby authorized to enter into reimbursement agreements with the several counties of the State for the construction of farm‑to‑market and secondary roads financed through the issuance of bonds and reimbursed from funds accruing under the provisions of Section 12‑27‑400.

This reimbursement shall be made in annual installments, in amounts not exceeding the annual maturity principal on the bonds to be issued by the county, out of the apportionment of funds accruing for construction in the county under the Department of Transportation’s farm‑to‑market construction program, if so much thereof shall accrue for such construction in the county. The Department of Transportation shall not be obligated to the repayment to the county for any installment due under its reimbursement agreement unless sufficient amounts for such installments shall accrue to the credit of the county under the state farm‑to‑market construction program. The Department of Transportation shall not be required to pay any interest to the county for funds turned over to the department pursuant to the provisions of this section. If, during any year hereafter, the apportionment to which farm‑to‑market construction in the county is entitled exceeds the sum required to meet the annual installment of principal of the bonds in that year, then such excess shall be applied by the department as if no reimbursement agreement had been entered into.

The reimbursement agreement shall be upon such other terms and conditions as may be mutually agreed upon by the department and the governing bodies of the several counties.

HISTORY: 1962 Code Section 33‑166.1; 1973 (58) 1868; 1993 Act No. 181, Section 1513.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

**SECTION 57‑5‑770.** Projects in which water‑controlling device reduces cost of highway construction.

When, in the construction or repair of any State highway, a third less may be expended by the State, in conjunction with other funds herein provided for, for the approach to or the crossing of any waterway, creek or river, through the building of a dam, levee or other facility for controlling water, constructing ditches or waterways or doing some other thing to control water, the Department, in its discretion, may estimate the cost of the repair or the construction of the necessary bridge, viaduct or other approach, together with that part of the highway immediately affected thereby, such estimate to be based upon the cost without such water‑controlling device, and the Department may allot to or reimburse, or enter into contracts looking to that end, as provided in the law of this State, on account of the building of such highway immediately affected by such approach and the approach and the construction of such water‑controlling device as the Department may plan, such reimbursement, reimbursement agreement or allotment to be made to any county, municipality or other agency in the sum of two thirds of the estimated costs of the structure and the highway immediately affected thereby without such water‑controlling device, upon such county, municipality or other agency entering into such bond as the Department may consider as surety for the completion of the whole project as planned by the Department. The word “agency” shall mean any person complying with the terms of this section.

HISTORY: 1962 Code Section 33‑167; 1952 Code Section 33‑167; 1951 (47) 457.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

**SECTION 57‑5‑780.** Execution of reimbursement agreements in project involving water‑controlling device; validity.

Any such agreement executed by other than the Department shall be valid and binding when signed by such person as may agree to donate or appropriate funds for such project, and the signing by the executive officers of a private corporation, municipality or county shall be a sufficient execution of the agreement to bind the same. Reimbursement agreements entered into by the Department in such connection shall be executed according to the requirements of the statutes of force at the time of the execution thereof.

HISTORY: 1962 Code Section 33‑168; 1952 Code Section 33‑168; 1951 (47) 457.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

**SECTION 57‑5‑790.** Construction of project involving water‑controlling device.

Any such structure and all parts thereof shall be made according to plans and specifications approved by the Department.

HISTORY: 1962 Code Section 33‑169; 1952 Code Section 33‑169; 1951 (47) 457.

**SECTION 57‑5‑800.** Proportion of department’s payments for project involving water‑controlling device.

The Department, in its discretion, may expend as provided herein upon such project as is mentioned in Section 57‑5‑770, whether it be the immediate approach, bridge or highway immediately affected thereby or a water‑controlling device, two thirds of the amount estimated as necessary to cross such waterway, creek or river without such water‑controlling device. And the remainder of the cost of the entire project of the bridge or approach or both the water‑controlling device and that part of the highway immediately affected thereby shall be borne by the county or municipality in which the project may be located and any other contributors, including the Federal Government, that may see fit to donate or appropriate money therefor.

HISTORY: 1962 Code Section 33‑170; 1952 Code Section 33‑170; 1951 (47) 457.

Library References

Highways 117.

Westlaw Topic No. 200.

C.J.S. Highways Sections 289 to 290, 322.

**SECTION 57‑5‑810.** Extent of construction and maintenance of state highways in municipalities; city utilities.

The construction, reconstruction and maintenance authorized in Section 57‑5‑140 may include all necessary provisions for the operation and parking of vehicles, sidewalks for pedestrians, gutters, storm drains and such other structures within the limits of the highway right‑of‑way as may, in the judgment of the Department, be essential for highway service and to preserve and protect the highway investment. The municipalities may, however, with the approval of the Department, place and maintain such city utilities within the highway right‑of‑way as may be in accord with sound engineering practices, but the work by municipalities of placing these utilities within the highway right‑of‑way and the maintenance thereof shall be conducted so as not to interfere unduly with the traffic on the highway, and all expenses in connection therewith, including restoration of any highway surfacing or facilities damaged or impaired, shall be borne by the municipality.

The construction, reconstruction and maintenance authorized in Section 57‑5‑140 may also include any project in a municipality or urban area for area‑wide traffic control systems and other improvements which directly facilitate and control traffic flow into, along, from or across designated State highways, such as grade separation of intersections, widening of lanes and channelization of traffic. The Department of Transportation shall not, however, be liable for damages to property or injuries to persons, as otherwise provided for in The Tort Claims Act, as a consequence of the placing, maintaining, or removing of any such utilities by the municipality, or by others, pursuant to permission of the municipality.

HISTORY: 1962 Code Section 33‑171; 1952 Code Section 33‑171; 1951 (47) 457; 1956 (49) 1701; 1969 (56) 154.

Cross References

As to the South Carolina Tort Claims Act, see Sections 15‑78‑10 et seq.

Library References

Highways 105(2).

Westlaw Topic No. 200.

C.J.S. Highways Sections 252 to 256, 274.

RESEARCH REFERENCES

ALR Library

50 ALR 6th 95 , Comment Note: Governmental Liability for Failure to Reduce Vegetation Obscuring View at Railroad Crossing or at Street or Highway Intersection.

**SECTION 57‑5‑820.** Consent of municipality to work on state highways; exception; definitions.

As used in this section and Section 57‑5‑830:

“Structurally deficient” means not adequate to handle the vehicle weights authorized on roads leading to them.

“Functionally obsolete” means narrow clearances or sharp roadway approach angles that make passage difficult or hazardous, or with too few lanes for existing traffic needs.

All work to be performed by the Department on state highways within a municipality must be with the consent and approval of the proper municipal authorities, except that work performed or to be performed on a bridge and its approaches, certified by the Department as functionally obsolete or structurally deficient, to remove, replace, or improve such bridge and its approaches shall not require prior consent and approval of a municipal authority if the bridge crosses the intracoastal waterway.

HISTORY: 1962 Code Section 33‑172; 1952 Code Section 33‑172; 1951 (47) 457; 1983 Act No. 39 Section 1.

CROSS REFERENCES

General structure, organization, powers, duties, functions and responsibilities of all municipalities, see Sections 5‑7‑10 et seq.

Library References

Highways 105(2).

Westlaw Topic No. 200.

C.J.S. Highways Sections 252 to 256, 274.

Attorney General’s Opinions

1962 Code Section 33‑172 [1976 Code Section 57‑5‑820] requires that the State Highway Department receive the consent and approval of municipal authorities prior to the commencement of highway construction work within the municipality; 1962 Code Section 33‑173 [1976 Code Section 57‑5‑830] gives to municipal authorities the right to review and approve plans of the State Highway Department prior to the commencement of work on a proposed permanent improvement, construction, reconstruction or alteration of a highway or highway facility. 1975‑76 Op.Atty.Gen. No. 4463, p. 322 (September 23, 1976) 1976 WL 23080.

NOTES OF DECISIONS

In general 1

1. In general

Statutes giving municipality right to review and approve plans for improvement by state highway department of state highway within municipal boundaries and providing that such approval means that municipality assumes liability for damage to private property from such improvements and that department shall not be liable for such damage did not relieve department of liability to hotel owner for allegedly raising state highway within municipal boundary, causing surface waters to flow on hotel property, and thus taking private property for public use, but only fixed liability of municipality and department inter sese. Code 1952, Sections 33‑112, 33‑172 to 33‑175; Const. art. 1, Section 17. Moseley v. South Carolina Highway Dept. (S.C. 1960) 236 S.C. 499, 115 S.E.2d 172. Eminent Domain 285

**SECTION 57‑5‑830.** Assent of municipality to plans; exception.

In every case of a proposed permanent improvement, construction, reconstruction, or alteration by the Department of any highway or highway facility within a municipality, the municipality may review and approve the plans before the work is started; except that a municipality may not have the right to review and approve plans to remove, replace, or improve a bridge and its approaches within its limits where such bridge and its approaches have been certified by the Department to be functionally obsolete or structurally deficient and if the bridge crosses the intracoastal waterway.

HISTORY: 1962 Code Section 33‑173; 1952 Code Section 33‑173; 1951 (47) 457; 1969 (56) 154; 1983 Act No. 39 Section 2.

Library References

Highways 105(2).

Westlaw Topic No. 200.

C.J.S. Highways Sections 252 to 256, 274.

Attorney General’s Opinions

1962 Code Section 33‑172 [1976 Code Section 57‑5‑820] requires that the State Highway Department receive the consent and approval of municipal authorities prior to the commencement of highway construction work within the municipality; 1962 Code Section 33‑173 [1976 Code Section 57‑5‑830] gives to municipal authorities the right to review and approve plans of the State Highway Department prior to the commencement of work on a proposed permanent improvement, construction, reconstruction or alteration of a highway or highway facility. 1975‑76 Op.Atty.Gen. No. 4463, p. 322 (September 23, 1976) 1976 WL 23080.

NOTES OF DECISIONS

In general 1

1. In general

An initiated ordinance which would set aside the structure and administration of the statewide highway scheme by limiting the power granted to the state highway authority to consider the collection of tolls as a method of financing the construction of state roads was related to the administrative act of reviewing and approving highway plans under Section 57‑5‑830 and, as an administrative measure, was not a proper subject for an initiated ordinance since only legislative questions may be referred to a vote of the people. Town of Hilton Head Island v. Coalition of Expressway Opponents (S.C. 1992) 307 S.C. 449, 415 S.E.2d 801. Turnpikes And Toll Roads 1

1969 amendments to former Code 1962 Section 33‑173 [see now Code 1976 Section 57‑5‑830] removed former statutory authorization for suit against city for damages caused by city’s approval of state highway construction plans. Roddey v. Lyle (S.C. 1977) 268 S.C. 424, 234 S.E.2d 236.

Trial judge properly refused to bring in municipality as a party defendant in action by plaintiff against Highway Department for taking of private property for public use without just compensation. Robinson v. South Carolina State Highway Dept. (S.C. 1962) 241 S.C. 137, 127 S.E.2d 286.

**SECTION 57‑5‑840.** Alterations by municipality of state highway facilities.

A municipality may not alter any State highway facility without the approval of the Department, and any use made by the city of the highway or highway right of way for city utilities, or for other purposes shall be subject to approval of the Department.

HISTORY: 1962 Code Section 33‑175; 1952 Code Section 33‑175; 1951 (47) 457.

CROSS REFERENCES

City utilities, see Section 57‑5‑810.

Library References

Highways 105(2).

Westlaw Topic No. 200.

C.J.S. Highways Sections 252 to 256, 274.

**SECTION 57‑5‑850.** Source of funds for system.

The State highway system shall be built, constructed and maintained from any moneys derived from the automobile license tax, gasoline tax and other special imposts upon highway users, Federal aid and other grants‑in‑aid and such other moneys as may from time to time be made available.

HISTORY: 1962 Code Section 33‑176; 1952 Code Section 33‑176; 1951 (47) 457.

Library References

Highways 99.1.

Westlaw Topic No. 200.

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

**SECTION 57‑5‑860.** Construction of facilities for access to public landings; liability to users.

The Department, in its discretion, may enter into and carry out agreements with the governing body of any county providing that the Department may construct ways, spurs or ramps on any of its rights of way providing access from any State highway to any public landing on any waters whenever such landing has been or shall be constructed and maintained by any county. The costs of any such ways, spurs or ramps shall be borne by the maintenance fund allocated to any such county by the Department. Any persons using the ways, ramps, spurs, landings or facilities shall do so at their own risk, the immunity of the State, the Department and any county involved being expressly retained. The provisions of the Tort Claims Act and any laws waiving such immunity are declared inapplicable hereto.

The Department, in its discretion, may enter into and carry out agreements with the governing body of any county providing that the Department may construct ways, spurs or ramps on any of its rights of way providing access from any State highway to any public landing on any waters whenever such landing has been or shall be constructed and maintained by any county. The costs of any such ways, spurs or ramps shall be borne by the maintenance fund allocated to any such county by the Department. Any persons using the ways, ramps, spurs, landings or facilities shall do so at their own risk, the immunity of the State, the Department and any county involved being expressly retained. The provisions of the Tort Claims Act and any laws waiving such immunity are declared inapplicable hereto.

HISTORY: 1962 Code Section 33‑177; 1959 (51) 396.

Library References

Highways 118.

Westlaw Topic No. 200.

C.J.S. Highways Sections 289 to 290, 322.

**SECTION 57‑5‑870.** Construction of access roads and recreation facilities under agreements with Department of Natural Resources.

The Department of Transportation and the Department of Natural Resources are authorized to enter into cooperative agreements for the construction of access roads and recreation facilities in any county in the State.

The agreements may provide for the Department of Transportation to prepare the necessary plans; provide construction engineering and inspection; and award the necessary construction contracts, subject to the written approval of the Department of Natural Resources. All such contracts shall provide for payments for work performed to be made by the Department of Natural Resources from its funds. Upon completion of the construction work, the Department of Transportation shall reimburse the Department of Natural Resources out of farm‑to‑market construction funds apportioned to the county in which the work is performed not exceeding the actual cost of constructing any such secondary roads or one half the total cost of the project provided for in the cooperative agreement, whichever is less. The Department of Transportation shall pay from its farm‑to‑market construction funds apportioned to such county the cost of engineering and inspection. The roads shall become a part of the state highway secondary system upon their completion.

HISTORY: 1962 Code Section 33‑178; 1964 (53) 2150; 1972 (57) 2431; 1993 Act No. 181, Section 1514.

CROSS REFERENCES

Department of Parks, Recreation and Tourism, generally, see Sections 51‑1‑10 et seq.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

ARTICLE 7

Controlled‑Access Highway Facilities; Private Side Roads, Driveways and other Entrances and Exits

**SECTION 57‑5‑1010.** Definitions.

When used in this article:

(1) “Controlled‑access facility” means a State highway or section of State highway especially designed for through traffic, and over, from or to which highway owners or occupants of abutting property or others shall have only a controlled right or easement of access;

(2) “Frontage road” means a highway, road or street which is auxiliary to and located on the side of another highway, road or street for service to abutting property and adjacent areas and for the control of access to such other highway, road or street; and

(3) “Department” means the Department of Transportation.

HISTORY: 1962 Code Section 33‑211; 1956 (49) 1594; 1993 Act No. 181, Section 1515.

CROSS REFERENCES

Driving on or entering controlled‑access or other divided highways, see Section 56‑5‑1920.

Lease or sale of controlled‑access facilities for commercial use, see Section 57‑5‑350.

Prohibition of pedestrians, animals and certain vehicles on controlled‑access highways, see Sections 56‑5‑3110 et seq.

RESEARCH REFERENCES

Treatises and Practice Aids

10 Causes of Action 2d 397, Cause of Action Against Governmental Entity for Physical Injury or Property Damage Caused by Defective Design or Condition of Street or Highway.

LAW REVIEW AND JOURNAL COMMENTARIES

Control of Highway Accident—Its Prospects and Problems. 12 SCLQ 377.

NOTES OF DECISIONS

In general 1

1. In general

This article applied in South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264.

**SECTION 57‑5‑1020.** Establishment and maintenance of controlled‑access facilities.

The Department may designate, establish, abandon, improve, construct, maintain and regulate controlled‑access facilities as a part of the State highway primary system, national system of interstate highways and Federal‑aid primary system whenever the Department determines that traffic conditions, present or future, justify such controlled‑access facilities.

HISTORY: 1962 Code Section 33‑212; 1956 (49) 1594.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

**SECTION 57‑5‑1030.** Designation and establishment of new or existing highways as controlled‑access facilities.

The Department may designate and establish controlled‑access highways as new and additional facilities, or an existing highway may be designated as a controlled‑access facility, or included in a new controlled‑access facility.

HISTORY: 1962 Code Section 33‑213; 1956 (49) 1594.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

**SECTION 57‑5‑1040.** Regulation of access to controlled‑access facilities.

The Department may so design any controlled‑access facility and so regulate or prohibit access as to best serve the traffic for which such facility is intended. No person shall have any right of ingress or egress to, from or across controlled‑access facilities to or from abutting property or lands, except at such designated places at which access may be permitted, upon such terms and conditions as may be specified from time to time by the Department.

HISTORY: 1962 Code Section 33‑214; 1956 (49) 1594.

Library References

Eminent Domain 106.

Highways 85.

Westlaw Topic Nos. 148, 200.

C.J.S. Eminent Domain Section 173.

C.J.S. Highways Sections 212 to 213.

NOTES OF DECISIONS

In general 1

Jurisdiction 2

1. In general

Reconfiguration of road that led to highway did not constitute a taking of landowner’s property, although reconfiguration situated property on cul‑de‑sac and limited landowner’s access to highway by requiring landowner to navigate series of secondary roads; no aspect of property had been physically taken. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

In determining whether a road re‑configuration amounts to a taking of property, the focus is on how the reconfiguration affects property owner’s easements to access public road system, not on whether property owner has suffered special injury that is different in kind and not merely in degree from that suffered by public at large; overruling City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239, and Gray v. South Carolina Dep’t of Transp., 311 S.C. 144, 427 S.E.2d 899. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 91; Eminent Domain 106

Reconfiguration of divided highway’s intersection did not constitute a taking of property on either side of highway’s intersection with road, although reconfiguration resulted in inability to make any left turns at intersection; landowners continued to have access to and from highway and public road system. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

There is no taking when a government entirely closes one of the roads that abuts a corner lot; so long as a landowner has access to the public road system, the landowner’s easement by necessity is intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

When only a portion of a public road abutting a landowner’s property is closed, leaving the property in a cul‑de‑sac, no taking has occurred; as long as the landowner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

Section 57‑5‑1040 vests in the Department of Highways and Public Transportation the right to prohibit access to any controlled‑access facility. The Department did not fail to exercise the discretion vested in it by the statute in refusing access to a controlled‑access highway where the Department’s reasons, based on safety and traffic flow, for refusing access to such highways were testified to extensively by the Department’s director of engineering. Main v. South Carolina Dept. of Highways and Public Transp. (S.C. 1990) 300 S.C. 453, 388 S.E.2d 792.

2. Jurisdiction

Circuit court had jurisdiction to consider whether Department of Transportation’s refusal to consider landowner’s application for an encroachment permit at a controlled‑access intersection was an abandonment of discretion. North Point Development Group, LLC v. South Carolina Dept. of Transp. (S.C.App. 2012) 397 S.C. 440, 725 S.E.2d 128, rehearing denied. Highways 85

**SECTION 57‑5‑1050.** Elimination of intersections.

The Department may provide for the elimination of intersections at grades with existing State or county roads and city or town streets or other public ways, if the public interest shall be served thereby, or may provide for the elimination of intersections at grade by closing off intersecting roads or streets at the right of way boundary line of such controlled‑access facilities. No city or town street or other public way shall be opened into or connected with such controlled‑access facility without the consent of the Department, and the respective city, town, county or other political subdivision authorities may close local roads and streets in connection with the establishment of controlled‑access facilities and make all necessary agreements with the Department to fully perform and fulfill the purposes of this article.

HISTORY: 1962 Code Section 33‑215; 1956 (49) 1594.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

NOTES OF DECISIONS

In general 1

1. In general

Reconfiguration of road that led to highway did not constitute a taking of landowner’s property, although reconfiguration situated property on cul‑de‑sac and limited landowner’s access to highway by requiring landowner to navigate series of secondary roads; no aspect of property had been physically taken. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

Reconfiguration of divided highway’s intersection did not constitute a taking of property on either side of highway’s intersection with road, although reconfiguration resulted in inability to make any left turns at intersection; landowners continued to have access to and from highway and public road system. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

There is no taking when a government entirely closes one of the roads that abuts a corner lot; so long as a landowner has access to the public road system, the landowner’s easement by necessity is intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

When only a portion of a public road abutting a landowner’s property is closed, leaving the property in a cul‑de‑sac, no taking has occurred; as long as the landowner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

In determining whether a road re‑configuration amounts to a taking of property, the focus is on how the reconfiguration affects property owner’s easements to access public road system, not on whether property owner has suffered special injury that is different in kind and not merely in degree from that suffered by public at large; overruling City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239, and Gray v. South Carolina Dep’t of Transp., 311 S.C. 144, 427 S.E.2d 899. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 91; Eminent Domain 106

In inverse condemnation action, Department of Transportation’s (DOT) claim that enactment of statute, providing that DOT may provide for elimination of intersections at grades with existing state or county roads if public interest is served thereby, alleviated DOT’s necessity to compensate landowner for actionable taking of her property was not preserved for appeal; first time DOT raised this claim was in its motion for reconsideration, and in the motion, DOT asserted statute in the nature of a defense, which would abrogate requirement to pay compensation, but statute was never raised as a defense at trial. Tallent v. South Carolina Dept. of Transp. (S.C.App. 2005) 363 S.C. 160, 609 S.E.2d 544, rehearing denied, certiorari granted, reversed 371 S.C. 598, 641 S.E.2d 437. Eminent Domain 315

**SECTION 57‑5‑1060.** Establishment and maintenance of frontage roads.

The Department, in order to carry out the purposes and provisions of this article, may designate, establish, improve, construct, abandon, maintain and regulate frontage roads and exercise the same jurisdiction thereover as is authorized over controlled‑access facilities under this article. Such frontage roads shall be separated from controlled‑access facilities as may be deemed proper and necessary by the Department.

HISTORY: 1962 Code Section 33‑216; 1956 (49) 1594.

Library References

Highways 103.1.

Westlaw Topic No. 200.

C.J.S. Highways Sections 273, 275 to 278, 281.

**SECTION 57‑5‑1070.** Acquisition of property for controlled‑access facilities; rights of abutting owners.

The Department may acquire such lands and property, including rights of access, as may be needed for controlled‑access facilities, by gift, devise, purchase or condemnation, in the same manner as now or hereafter authorized by law for acquiring property or property rights in connection with other State highways. Along new highway locations abutting property owners shall not be entitled, as a matter of right, to access to such new locations, and any denial of such rights of access shall not be deemed as grounds for special damages.

HISTORY: 1962 Code Section 33‑217; 1956 (49) 1594.

CROSS REFERENCES

Acquisition of property for highway purposes, generally, and liability for abandonment after condemnation and trial, see Section 57‑5‑320.

Library References

Highways 85.

Westlaw Topic No. 200.

C.J.S. Highways Sections 212 to 213.

NOTES OF DECISIONS

In general 1

1. In general

The last sentence of this section [formerly Code 1962 Section 33‑217] denies access to new locations of controlled‑access facilities. South Carolina State Highway Dept. v. Allison (S.C. 1965) 246 S.C. 389, 143 S.E.2d 800.

This section shows a clear recognition by the legislature of the property right of access existing in property owners whose lands abut the public highways of the State and an intent that such property owners should be compensated for such rights, in accordance with established principles. South Carolina State Highway Dept. v. Allison (S.C. 1965) 246 S.C. 389, 143 S.E.2d 800.

Owner of property abutting controlled‑access highway not entitled as matter of right to direct access to new highway and denial of direct access could not within itself be considered ground for allowance of special damages, but severance of owner’s land into two tracts and depriving him of former access to unrestricted highway are elements properly considered in determining just compensation as they affect market value of remaining lands and controlled‑access character of highway relevant consideration on issue of special damages. South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264.

The power of condemning land for an interstate highway, even though partially financed through Federal aid, is conferred only on the State Highway Department. Johnson v. South Carolina State Highway Dept. (S.C. 1960) 236 S.C. 424, 114 S.E.2d 591.

**SECTION 57‑5‑1080.** Permit required to open private driveway or side‑road entrance or exit to primary highway.

On all highways or sections of highways in the State highway primary system not designated as controlled‑access facilities, it shall be unlawful for any person to open up, construct or reconstruct any private driveway or side‑road entrance or exit thereto which is intended for use by any vehicles in entering or leaving such highway unless a permit for such driveway or side‑road entrance or exit shall have been obtained from the Department.

HISTORY: 1962 Code Section 33‑218; 1956 (49) 1594.

CROSS REFERENCES

Driveways from residential rights of way onto highways requiring drainage structures other than pipe must be brought to attention of State Maintenance Engineer, see Section 57‑5‑1140.

Library References

Highways 85.

Westlaw Topic No. 200.

C.J.S. Highways Sections 212 to 213.

**SECTION 57‑5‑1090.** Issuance or denial of permits; conditions; providing access or frontage roads.

The Department may issue permits for driveways and side‑road entrances or exits as referred to in Section 57‑5‑1080, and include in such permits such requirements and restrictions for design and location of the driveways and side‑road entrances or exits as may be deemed necessary by the Department to avoid creating a hazard to the traveling public. Such requirements and restrictions may limit the width of such driveways and side‑road entrances and exits and restrict their location. The Department may deny any request for any permit for any driveway, side‑road entrance or exit which in the judgment of the Department may create a hazard to the traveling public. Reasonable frontage roads or other access roads shall be provided to serve any property for which a permit for a direct entrance thereto or exit therefrom has been denied, and the Department may construct such frontage roads as may be deemed necessary.

HISTORY: 1962 Code Section 33‑219; 1956 (49) 1594.

CROSS REFERENCES

Driveways from residential rights of way onto highways requiring drainage structures other than pipe must be brought to attention of State Maintenance Engineer, see Section 57‑5‑1140.

Library References

Highways 85.

Westlaw Topic No. 200.

C.J.S. Highways Sections 212 to 213.

**SECTION 57‑5‑1100.** Changing or closing existing private driveways or side‑road entrances or exits; providing other access to highway.

Any such existing driveway or side‑road entrance or exit constructed prior to February 16, 1956, and adjudged by the Department to be unsafe for the traveling public may be changed by the Department so as to eliminate any unsafe features or closed or displaced by substitution therefor of another driveway or side‑road entrance or exit at such place or of such design as may be deemed safe, but no such existing side road or driveway may be closed unless other reasonable access to the highway is provided by a frontage road or otherwise.

HISTORY: 1962 Code Section 33‑219.1; 1956 (49) 1594.

Library References

Highways 85.

Westlaw Topic No. 200.

C.J.S. Highways Sections 212 to 213.

NOTES OF DECISIONS

In general 1

1. In general

Proviso in statute that the procedure authorizing the highway department to change or close existing driveway or side road entrances and exits under certain conditions should be alternative method of relief and should not abrogate or deny any property owners’ rights as to relief under any existing laws relating to condemnation of property was clear recognition by legislature of existence of property right vested in abutting landowners of access in and to the existing highways of the state. Code 1962, Sections 33‑219.1, 33‑219.3. South Carolina State Highway Dept. v. Allison (S.C. 1965) 246 S.C. 389, 143 S.E.2d 800. Highways 85

**SECTION 57‑5‑1110.** Closing illegal private driveways or side‑road entrances or exits.

The Department may barricade, displace or otherwise close any side‑road or driveway entrance or exit constructed or maintained in violation of Sections 57‑5‑1080 to 57‑5‑1100 or of any of the provisions of any permit for the construction of such side‑road or driveway entrance or exit.

HISTORY: 1962 Code Section 33‑219.2; 1956 (49) 1594.

Library References

Highways 85.

Westlaw Topic No. 200.

C.J.S. Highways Sections 212 to 213.

**SECTION 57‑5‑1120.** Judicial review of Department’s decisions involving private driveways or side‑road entrances or exits.

Any abutting property owner or lessee may file an application within thirty days from a decision of the department in the administration of Sections 57‑5‑1080 to 57‑5‑1110 for a hearing in the matter before a circuit judge at chambers or in open court in the judicial circuit in which the property is located, and such court or judge is hereby vested with jurisdiction to set the matter for a hearing upon ten days’ written notice to the department of such hearing and thereupon to determine whether the action of the department is in accordance with the provisions of law. The decision of the circuit judge may be appealed in the manner provided by the South Carolina Appellate Court Rules.

Provided, however, that the above procedure shall be an alternative method of relief and shall not abrogate or deny any property owners’ rights as to relief under any existing law relating to the condemnation of property.

HISTORY: 1962 Code Section 33‑219.3; 1956 (49) 1594; 1999 Act No. 55, Section 49.

CROSS REFERENCES

Highway commission approval of actions, see S.C. Code of Regulations R. 63‑30.

Library References

Highways 85.

Westlaw Topic No. 200.

C.J.S. Highways Sections 212 to 213.

NOTES OF DECISIONS

In general 1

1. In general

Proviso in statute that the procedure authorizing the highway department to change or close existing driveway or side road entrances and exits under certain conditions should be alternative method of relief and should not abrogate or deny any property owners’ rights as to relief under any existing laws relating to condemnation of property was clear recognition by legislature of existence of property right vested in abutting landowners of access in and to the existing highways of the state. Code 1962, Sections 33‑219.1, 33‑219.3. South Carolina State Highway Dept. v. Allison (S.C. 1965) 246 S.C. 389, 143 S.E.2d 800. Eminent Domain 106; Municipal Corporations 669

**SECTION 57‑5‑1130.** Penalties.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.

HISTORY: 1962 Code Section 33‑219.4; 1956 (49) 1594.

**SECTION 57‑5‑1140.** Installation of residential rights‑of‑way entrances and aprons to state highways.

The department shall construct at its expense with its maintenance forces the portion within the right‑of‑way of entrances and aprons to state highways at any point necessary to render adequate ingress and egress to the abutting property at locations where the driveways will not constitute hazardous conditions. The driveways must be of access to existing developed property or property that is being developed for the personal use of the owner and not for speculative or resale purposes. An entrance ten feet wide (paved portion) measured at right angles to the centerline of the driveway is the maximum width for one‑way traffic. An entrance sixteen feet wide (paved portion) is the maximum width for two‑way traffic. If pipe culvert is necessary for drainage, the department shall install the amount necessary for twelve inch, fifteen inch, eighteen inch, twenty‑four inch, or thirty inch pipe. Should the driveway installation require pipe larger than thirty inches, the department may install the pipe and charge the homeowner for the difference in cost between thirty inch pipe and larger diameter pipe required. Driveways requiring drainage structures other than pipe must be brought to the attention of the State Maintenance Engineer. The entrances to be constructed as outlined in this section shall include base and surfacing as necessary to provide an all weather driveway entrance. If wider entrances or additional entrances are requested and approved, the construction may be performed by the department at the owner’s expense.

HISTORY: 1992 Act No. 501, Part II Section 48A.

Library References

Highways 85.

Westlaw Topic No. 200.

C.J.S. Highways Sections 212 to 213.

ARTICLE 9

Turnpike Projects

**SECTION 57‑5‑1310.** Statement of purpose and intent.

This article is intended to provide an additional and an alternative method for the provision of and financing of highways and appurtenant facilities to the end that such highways may be undertaken in such manner as may best be calculated to expedite relief of hazardous and congested traffic conditions on the highways in the State and provide acceptable avenues for commerce and intercommunications by vehicular traffic among the several sections of the State. In effecting this enactment, the General Assembly intends that the indebtedness herein authorized fall within the category permitted by paragraph 9 of Section 13 of Article X of the Constitution of South Carolina.

HISTORY: 1962 Code Section 33‑220.2; 1972 (57) 3013; 1980 Act No. 449.

Library References

Turnpikes and Toll Roads 1.

Westlaw Topic No. 391.

C.J.S. Turnpikes and Toll Roads Sections 1, 4, 6.

**SECTION 57‑5‑1320.** Definitions.

Unless the context indicates another meaning or intent:

(1) “Department” means the Department of Transportation;

(2) “Turnpike facility” means any express highway or limited access highway constructed under the provisions of this article by the department, whether or not financed with turnpike bonds, including any bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service station and administration and storage and other buildings and facilities which the department considers necessary or desirable. A turnpike facility constitutes a portion or extension of any existing or proposed highway in the state highway system;

(3) “Bonds or turnpike bonds” means revenue bonds of the State authorized under the provisions of this article and Paragraph (9), Section 13, Article X of the South Carolina Constitution;

(4) “Authority” means the State Fiscal Accountability Authority;

(5) “Turnpike facility revenues” means all revenues resulting from tolls or other charges derived from the operation of a turnpike facility, including revenues derived from concession leases or other concessionaire operated facilities;

(6) “Bond resolution” means the resolution of the state board making provision for the issuance of turnpike revenue bonds;

(7) “General obligation bonds” means state highway bonds issued pursuant to Paragraph (6)(a), Section 13, Article X of the South Carolina Constitution.

HISTORY: 1962 Code Section 33‑220; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84A; 1993 Act No. 181, Section 1516; 1996 Act No. 458, Part II, Section 92C.

CROSS REFERENCES

Advance refunding of bonds of public agencies, see Sections 11‑21‑10 et seq.

Borrowing by state, state agencies and political units in anticipation of issuance of bonds, see Sections 11‑17‑10 et seq.

Borrowing in anticipation of federal grants, see Sections 11‑19‑10 et seq.

Feasibility study prior to bridge construction qualifying as turnpike facility, see Section 57‑5‑1335.

Pledge of revenue to secure payment of bonds, see Sections 11‑23‑10 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Control of Highway Accident—Its Prospects and Problems. 12 SC LQ 377.

Attorney General’s Opinions

Discussion of SCDOT’s authority regarding tolls and toll roads. S.C. Op.Atty.Gen. (March 19, 1997) 1997 WL 208024.

**SECTION 57‑5‑1330.** General powers of Department; feasibility studies; acquisition of land and property; other powers granted by law; contracts.

1. The department may designate, establish, plan, improve, construct, maintain, operate, and regulate turnpike facilities as a part of the state highway system or any federal aid system whenever the department determines the traffic conditions, present or future, justify the facilities, except that the department may not designate as a turnpike facility any highway, road, bridge, or other transportation facility funded in whole or in part by a local option sales and use tax as provided in Chapter 37 of Title 4. The department may utilize funds available for the maintenance of the state highway system for the maintenance of any turnpike facility financed pursuant to this article.

2. In every highway construction project, except federal and state secondary projects, rehabilitation and widening of federal and state primary and secondary road and bridge projects and highway safety projects, the Department shall consider making all or part of the highway construction a turnpike facility and financing it by the use of turnpike bonds. It shall make an entry in the construction project file indicating whether or not it determines making all or part of the project a turnpike facility. If the Department determines it is feasible to make all or part of the construction project a turnpike facility, it may engage in the preliminary estimates and studies incident to the determination of the feasibility or practicability of constructing any toll road as it from time to time considers necessary and the cost of the preliminary estimates and studies must be paid from the general highway fund and must be reimbursed from funds provided under this authority only if the studies and estimates lead to the construction of a toll road.

3. The Department may acquire such lands and property including rights of access as may be needed for turnpike facilities by gift, devise, purchase, or condemnation by easement or in fee simple in the same manner as now or hereafter authorized by law for acquiring property or property rights in connection with other state highways.

4. In designating, establishing, planning, abandoning, improving, constructing, maintaining and regulating turnpike facilities the Department may exercise such authorizations as are granted to the Department by the provisions of other statute law applicable to the state highway system, except as they may be inconsistent with the provisions included herein.

5. The Department may contract with any person, partnership, association or corporation desiring the use of any part of the turnpike facility, including the right‑of‑way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, gas stations, garages, stores, hotels and restaurants or for any other purpose, except tracks for railroad or railway use and to fix the terms, conditions, rents and rates of charges for such use provided that a sufficient number of the aforementioned facilities shall be authorized to be established in each service area along any such turnpike project to permit reasonable competition by private business in the public interest. Revenues from these contracts would be included in turnpike facility revenues.

HISTORY: 1962 Code Section 33‑220.3; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84B; 1995 Act No. 52, Section 3.

CROSS REFERENCES

Acquisition of property for use as highway generally, see Section 57‑5‑320.

Duties and powers of Department generally, see Sections 57‑3‑600 et seq.

State Authorities Eminent Domain Act, see Sections 28‑3‑20, 28‑3‑30, 28‑3‑140.

Library References

Turnpikes and Toll Roads 1.

Westlaw Topic No. 391.

C.J.S. Turnpikes and Toll Roads Sections 1, 4, 6.

NOTES OF DECISIONS

In general 1

1. In general

Department of Transportation (DOT) properly abandoned old toll road after road was rerouted when DOT issued a quitclaim deed to property purchasers deeding portion of old route so as to allow purchasers to build home. K & A Acquisition Group, LLC v. Island Pointe, LLC (S.C. 2009) 383 S.C. 563, 682 S.E.2d 252. Turnpikes And Toll Roads 29

**SECTION 57‑5‑1335.** Department to make feasibility study prior to bridge construction qualifying as turnpike facility.

The Department of Transportation, before constructing a bridge or replacing an existing bridge which qualifies as a turnpike facility as defined in Section 57‑5‑1320, shall conduct the feasibility study required by Section 57‑5‑1330 and shall forward copies of the study to the Chairman of the Transportation and Finance Committees of the Senate and the Education and Public Works and Ways and Means Committees of the House of Representatives within fifteen days of the completion of the study.

HISTORY: 1981 Act No. 177 Section 18; 1993 Act No. 181, Section 1546.

Library References

Turnpikes and Toll Roads 17.

Westlaw Topic No. 391.

C.J.S. Turnpikes and Toll Roads Sections 21 to 22.

**SECTION 57‑5‑1340.** Additional powers.

In addition to the powers listed above, the South Carolina Department of Transportation may:

1. Request the issuance of turnpike bonds for the purpose of paying all or any part of the cost of any one or more turnpike projects;

2. Fix and revise from time to time and charge and collect tolls for transit over each turnpike facility constructed by it;

3. Combine, for the purposes of financing the facilities, any two or more turnpike facilities;

4. Control access to turnpike facilities;

5. To the extent permitted by a bond resolution, expend turnpike facility or facilities revenues in advertising the facilities and services of the turnpike facility or facilities to the traveling public;

6. Receive and accept from any federal agency grants for or in the aid of the construction of any turnpike facility;

7. Establish a separate division to administer turnpike facilities and a separate turnpike facility account.

8. Do all acts and things necessary or convenient to carry out the powers expressly granted in this article.

HISTORY: 1962 Code Section 33‑220.4; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C.

CROSS REFERENCES

Acquisition of property for highway systems, generally, and liability for abandonment after condemnation and trial, see Section 57‑5‑320.

Borrowing in anticipation of bonds by state, state agency or political unit, see Sections 11‑17‑10 et seq.

Borrowing in anticipation of federal grants, see Sections 11‑19‑10 et seq.

Duties and powers of Department generally, see Sections 57‑3‑600 et seq.

State Authorities Eminent Domain Act, see Sections 28‑3‑20, 28‑3‑30, 28‑3‑140.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

NOTES OF DECISIONS

In general 1

1. In general

State Department of Transportation (DOT) could enter into agreement with developer of proposed tollway and nonprofit corporation which would manage it, which included commitment that DOT would not construct competing highway, even though administrative bodies were generally prohibited from alienating, surrendering or abridging their duties, through contracts or otherwise; Legislature had empowered DOT to enter into agreements in furtherance of road building authority, and do “all acts or things necessary or convenient” in connection with agreements, and restriction on competing road building was reasonable request of contracting partners. Brashier v. South Carolina Dept. of Transp. (S.C. 1997) 327 S.C. 179, 490 S.E.2d 8. Public Contracts 105; States 94

**SECTION 57‑5‑1350.** Request for issuance of turnpike bonds; form and contents of request.

Whenever it becomes necessary that monies be raised for a turnpike facility, the commission may make request to the State Fiscal Accountability Authority for the issuance of turnpike bonds. The request may be in the form of resolution adopted at any regular or special meeting of the commission. The request shall set forth on the face thereof or by schedule attached thereto:

1. the turnpike facility proposed to be constructed;

2. the amount required for feasibility studies, planning, design, right‑of‑way acquisition, and construction of the turnpike facility;

3. a tentative time schedule setting forth the period of time for which the sum request must be expended;

4. a debt service table showing the estimated annual principal and interest requirements for the requested turnpike bonds;

5. any feasibility study obtained by the commission relating to the proposed turnpike facility;

6. the commission’s recommendations relating to any covenant to be made in the bond resolution of the State Fiscal Accountability Authority respecting competition between the proposed turnpike facility and possible future highways whose construction would have an adverse effect upon the turnpike revenues which would otherwise be derived by the proposed turnpike facility.

HISTORY: 1962 Code Section 33‑220.5; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C; 1993 Act No. 181, Section 1517.

CROSS REFERENCES

Request for issuance of highway bonds generally, see Section 57‑11‑220.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1360.** Power and duty of State Fiscal Accountability Authority upon receipt of request.

Following the receipt of a request pursuant to Section 57‑5‑1350, the State Fiscal Accountability Authority shall review the request and, to the extent that it approves the request, it may effect, by resolution duly adopted, the issuance of turnpike bonds, or pending their issuance, may effect the issuance of bond anticipation notes pursuant to Title 11, Chapter 17. A resolution approving any proposed turnpike bonds may not be adopted unless before approval the state board conducts, after not less than ten days’ published notice, a public hearing in the City of Columbia.

HISTORY: 1962 Code Section 33‑220.6; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C; 1996 Act No. 458, Part II, Section 92D.

CROSS REFERENCES

Borrowing by state, state agencies and political units in anticipation of issuance of bonds, see Sections 11‑17‑10 et seq.

Borrowing in anticipation of federal grants, see Sections 11‑19‑10 et seq.

Pledge of revenue to secure payment of bonds, see Sections 11‑23‑10 et seq.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1370.** Authority to issue bonds.

Turnpike bonds may be issued from time to time under the conditions prescribed by this article.

HISTORY: 1962 Code Section 33‑220.7; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1380.** Turnpike revenue pledged for payment of bonds.

For the payment of the principal of and interest on all turnpike bonds, there is irrevocably pledged all turnpike revenues derived from the turnpike facility financed by the bonds to the extent and in the manner prescribed by the bond resolution. Any interest earned on turnpike facility account balances must be credited to the turnpike facility account.

HISTORY: 1962 Code Section 33‑220.12; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C.

CROSS REFERENCES

Pledge for payment of state highway bonds, see Section 57‑11‑250.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1390.** Bond interest, maturity, and redemption.

Turnpike bonds shall bear interest, payable on occasions prescribed by the State Fiscal Accountability Authority, at a rate not exceeding the maximum prescribed by Section 11‑9‑350. Each issue of turnpike bonds shall mature on the occasion prescribed by the State Fiscal Accountability Authority, not exceeding forty years from the date the bonds bear. Turnpike bonds may, in the discretion of the State Fiscal Accountability Authority, be made subject to redemption at par and accrued interest, plus such redemption premium as it approves and on occasions and under conditions it prescribes. Turnpike bonds are not redeemable before maturity unless they contain a statement to that effect.

HISTORY: 1962 Code Section 33‑220.11; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C.

Editor’s Note

Section 11‑9‑350, which prescribed the rate of interest on obligations of the State or subdivisions, was repealed by 1989 Act No. 122, Section 1, effective May 31, 1989. Comparable provisions appear in Section 11‑9‑360.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1400.** Sale of bonds; expenses incident to sale.

Turnpike bonds must be sold at private or public sale under conditions prescribed by the State Fiscal Accountability Authority. For the purpose of bringing about successful sales of the bonds, the State Fiscal Accountability Authority may do all things ordinarily and customarily done in connection with the sale of state or municipal bonds. All expenses incident to the sales of the bonds must be paid from the proceeds of the sale of the bonds.

HISTORY: 1962 Code Section 33‑220.10; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 210, Part II, Section 84C.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1410.** Execution of bonds; authentication.

All turnpike bonds must be executed in the name of and on behalf of the State of South Carolina and must be signed by the Governor and the State Treasurer. The Great Seal of the State must be affixed to, impressed, or reproduced upon each of them and they must be attested by the Secretary of State. If approved by the State Fiscal Accountability Authority, any one or two of the officers may, in lieu of manually signing, employ the use of the facsimile of their signatures in executing any turnpike bonds.

HISTORY: 1962 Code Section 33‑220.1; 1972 (57) 3013; 1974 (58) 2292; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1420.** Application of bond proceeds.

The proceeds derived from the sale of turnpike bonds must be applied only to the purposes for which bonds are issued.

HISTORY: 1962 Code Section 33‑220.8; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C.

CROSS REFERENCES

Protection of sinking funds, see Sections 11‑15‑210 et seq.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1430.** Denominations.

Turnpike bonds must each be in the denomination of one thousand dollars or some multiple thereof.

HISTORY: 1962 Code Section 33‑220.9; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1440.** Form of bonds; to whom payable.

Turnpike bonds issued pursuant to this article may be in the form of negotiable coupon bonds, payable to bearer, with the privilege to the holder of having them registered in his name on the books of the State Treasurer as to principal only, or as to both principal and interest, and the principal or both principal and interest, as the case may be, thus made payable to the registered holder, subject to conditions the State Fiscal Accountability Authority prescribes. Turnpike bonds so registered as to principal in the name of the holder may thereafter be registered as payable to bearer and made payable accordingly.

Turnpike bonds may also be issued as fully registered bonds with both principal and interest made payable only to the registered holder. The fully registered bonds are subject to transfer under conditions the State Fiscal Accountability Authority prescribes. The fully registered bonds may, if the proceedings authorizing their issuance so provide, be convertible into negotiable coupon bonds with the attributes set forth in the first paragraph of this section.

HISTORY: 1962 Code Section 33‑220.13; 1972 (57) 3013; 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84C.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1450.** Resolution to issue bonds; terms and conditions.

(A) The State Fiscal Accountability Authority, by resolution duly adopted, may make provision for the issuance of turnpike bonds. In the resolution, the State Fiscal Accountability Authority may prescribe:

(1) the amount, denomination, and numbering of turnpike bonds to be issued;

(2) the date as of which they must be issued;

(3) the maturity schedule for the retirement of the turnpike bonds;

(4) the form or forms of the bonds of the particular issue;

(5) the redemption provisions, if any, applicable to the bonds;

(6) the maximum rate or rates of interest the bonds shall bear;

(7) the specific purposes for which the bonds must be issued;

(8) the purposes for which the proceeds of the bonds must be expended, in the discretion of the State Fiscal Accountability Authority, a portion of the proceeds may be used as capitalized interest during the period of construction and initial operation and for the creation of appropriate debt service reserves;

(9) the method and conditions by which turnpike revenues from the turnpike facility so financed must be collected and utilized;

(10) the extent to which and the conditions under which additional parity bonds may be issued;

(11) any covenant considered necessary protecting the turnpike facility so financed from possible future competition from other highways or comparable facilities;

(12) the method by which the bonds must be sold and such other matters as may be considered necessary in order to effect the sale, issuance, and delivery of the bonds.

(B) Except as otherwise provided in this article, all expenses incurred in carrying out the provisions of this article are payable solely from funds provided under the authority of this article or from any funds provided by the federal government or from other special sources and no liability or obligation may be incurred by the department beyond the extent to which money has been provided under the provisions of this article.

(C) The resolution shall set forth further a finding on the part of the State Fiscal Accountability Authority that the estimate of turnpike facility revenues made by the commission and approved by the State Fiscal Accountability Authority indicates that collection from turnpike revenues for applicable fiscal years is not less than that required for annual debt service requirements of the requested turnpike bonds.

HISTORY: 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84D; 1993 Act No. 181, Sections 1518, 1519; 1996 Act No. 458, Part II, Section 92E.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1460.** Power and duty of Governor and State Treasurer upon receipt of bond resolution.

If following presentation of a certified copy of the bond resolution it appears to the satisfaction of the Governor and the State Treasurer that the estimated collection from the sources of revenue in applicable future fiscal years are not less than that required for annual debt service requirements for the requested turnpike bonds, the Governor and State Treasurer may effect the delivery of bonds in accordance with the bond resolution.

HISTORY: 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84D.

Library References

Turnpikes and Toll Roads 4.

Westlaw Topic No. 391.

**SECTION 57‑5‑1470.** Exemption of bonds from taxation.

All turnpike bonds issued under this article, and the interest thereon, are exempt from all state, county, municipal, school district, and other taxes or assessment, direct or indirect, general or special, imposed by the State of South Carolina, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, or transfer taxes. Each turnpike facility constitutes a portion of the state highway system and as such is not subject to ad valorem or other forms of taxation by the State or any of its political subdivisions.

HISTORY: 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84D.

Library References

Taxation 3519.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1879 to 1881.

**SECTION 57‑5‑1480.** Lawful for fiduciaries and sinking fund commissions to invest in turnpike bonds.

It is lawful for all executors, administrators, guardians, and other fiduciaries and all sinking fund commissions, including the State Fiscal Accountability Authority and Public Employee Benefit Authority in their capacities as cotrustees of the funds of the South Carolina Retirement System and as manager and administrator of other state sinking funds, to invest any monies in their hands in turnpike bonds.

HISTORY: 1980 Act No. 449; 1985 Act No. 201, Part II, Section 84D.

**SECTION 57‑5‑1490.** Penalty for failure to pay toll.

Any person who uses any turnpike project and fails or refuses to pay the toll provided therefor shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than thirty days, and in addition thereto the Department shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof.

HISTORY: 1980 act No. 449.

Library References

Turnpikes and Toll Roads 43.

Westlaw Topic No. 391.

C.J.S. Turnpikes and Toll Roads Sections 36, 40.

**SECTION 57‑5‑1495.** Collection of tolls.

(A) As used in this section:

(1) “Electronic toll collection system” means a system of collecting tolls or charges which is capable of charging an account holder the appropriate toll or charge by transmission of information from an electronic device on a motor vehicle to the toll lane, which information is used to charge the account the appropriate toll or charge.

(2) “Lessor” means any person, corporation, firm, partnership, agency, association, or organization renting or leasing vehicles to a lessee under a rental agreement, lease, or otherwise wherein the said lessee has the exclusive use of the vehicle for any period of time.

(3) “Lessee” means any person, corporation, firm, partnership, agency, association, or organization that rents, leases, or contracts for the use of one or more vehicles and has exclusive use of the vehicles for any period of time.

(4) “Owner” means a person or an entity who, at the time of a toll violation and with respect to the vehicle involved in the violation, is the registrant or co‑registrant of the vehicle with the Department of Motor Vehicles of this State or another state, territory, district, province, nation, or jurisdiction.

(5) “Photo‑monitoring system” means a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of a vehicle at the time it is used or operated in violation of toll collection regulations.

(6) “Toll violation” means the passage of a vehicle through a toll collection point without payment of the required toll.

(7) “Vehicle” means a device in, upon, or by which a person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

(B) Notwithstanding another provision of law, when a vehicle is driven through a turnpike facility without payment of the required toll, the owner and operator of the vehicle is jointly and severally liable to the Department of Transportation to pay the required toll, administrative fees, and civil penalty as provided in this section. The department or its authorized agent may enforce collection of the required toll as provided for in this section.

(C) A certificate, sworn to or affirmed by an agent of the department, or a facsimile of it, that a toll violation has occurred, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo‑monitoring system, is prima facie evidence of the violation and is admissible in any proceeding charging a toll violation pursuant to this section. A photograph, microphotograph, videotape, or other recorded image evidencing a violation must be available for inspection by the party charged and is admissible into evidence in a proceeding to adjudicate liability for a violation.

(D) The department or its authorized agent may assess and collect administrative fees of:

(1) not more than ten dollars for the first toll violation within a period of one year;

(2) not more than twenty‑five dollars for each subsequent toll violation within a period of one year.

(E) Upon failure to pay the required toll and administrative fees to the department within thirty days of the notice, the owner or operator may be cited for failure to pay a toll pursuant to this subsection and, upon an adjudication of liability, is subject to a civil penalty not to exceed fifty dollars for each violation as contained in subsection (F). Upon an adjudication of liability, a judgment must be entered against the owner or operator, and the court must mail a copy of the judgment to the owner or operator. Upon failure to satisfy the judgment within thirty days, the court shall notify the Department of Motor Vehicles and the authorized agent, and the department shall suspend the registration of the vehicle that was operated when the toll was not paid and deny the vehicle’s registration or reregistration pursuant to Section 56‑3‑1335. The suspension shall remain in effect until the judgment is satisfied and evidence of its satisfaction has been presented to the Department of Motor Vehicles and the authorized agent. An owner or operator who has been convicted of a violation of Section 57‑5‑1490 is not liable for the penalty imposed by this subsection.

(F) If a magistrate or municipal judge determines that the person or entity charged with liability under this section is liable, the magistrate or municipal judge shall collect the unpaid tolls and administrative fee and forward them to the department or its authorized agent. The magistrate or municipal judge also may impose a civil penalty of up to fifty dollars for each violation, plus court costs and attorney’s fees. The civil penalty must be distributed in the same manner as other fines and penalties collected by the magistrate. Notwithstanding another provision of law:

(1) adjudication of liability pursuant to this section must be made by the magistrate’s court of the county in which the toll facility is located or the municipal court of the city in which the toll facility is located; and

(2) an imposition of liability pursuant to this section must be based upon a preponderance of evidence submitted and is not a conviction as an operator pursuant to Section 57‑5‑1490.

(G) The department or its authorized agent shall send:

(1) a “First Notice to Pay Toll” to the owner or operator of a vehicle which, on one occasion in any twelve‑month period, is identified as having been involved in a toll violation. The first notice must require payment to the department of the required toll, plus an administrative fee as provided for in subsection (D), within thirty days of the mailing of the notice;

(2) a “Second Notice to Pay Toll” to the owner or operator of a vehicle which is identified as having been involved in a second toll violation in a twelve‑month period, or who has failed to respond to a “First Notice to Pay Toll” within the required time period. The second notice must require payment to the department of the required tolls, plus an administrative fee as provided for in subsection (D) for each violation within thirty days of the mailing of the notice;

(3) a “Failure to Pay a Toll” citation to the owner or operator of a vehicle which is identified as having been involved in a third toll violation in a twelve‑month period, or who has failed to respond to the second notice within the required time period. The citation requires payment to the department of the unpaid tolls, plus an administrative fee of not more than twenty‑five dollars for each violation, within thirty days, or the recipient’s appearance in magistrate’s court of the county in which the violation occurred or the municipal court of the city in which the violation has occurred to contest the citation. A “Failure to Pay a Toll” citation constitutes the summons and complaint for an action to recover the toll and all applicable fees allowed pursuant to this section; and

(4) notwithstanding another provision of law, the notices and citation required by subsection (G) by first‑class mail to the owner or operator of the vehicle identified as being involved in the toll violation. If a vehicle is registered in two or more names, the notices or citation must be mailed to the first name listed on the registration records. Notwithstanding another provision of law, personal delivery of the notices and citation is not required. A manual or automatic record of the mailing of the notices or citation prepared in the ordinary course of business is prima facie evidence of the mailing of the notices or citation;

(5) the notices and citation required by this subsection must contain the following information:

(a) the name and address of the person or entity alleged to be liable for a failure to pay a toll pursuant to this section;

(b) the registration number of the vehicle involved in the toll violation;

(c) the location where the toll violation took place;

(d) the date and time of the toll violation;

(e) the identification number of the photo‑monitoring system which recorded the violation or other document locator number;

(f) information advising of the manner and time in which liability may be contested;

(g) warning advising that failure to contest liability in the manner and time provided in this section is an admission of liability; and

(h) information advising that failure to pay a toll may result in the suspension of vehicle registration.

(H) If a vehicle owner receives a notice or citation pursuant to this section for a period during which the vehicle involved in the toll violation was:

(1) reported to a law enforcement division as having been stolen, a valid defense to an allegation of liability for a failure to pay a toll is that the vehicle had been reported to a law enforcement division as stolen before the time the violation occurred and had not been recovered by the time of the violation. If an owner receives a notice or citation pursuant to this section for a violation which occurred during a time period in which the vehicle was stolen, but which had not been reported to a law enforcement division as having been stolen, a valid defense to an allegation of liability for a toll violation pursuant to this section is that the vehicle was reported as stolen within two hours after the discovery of the theft by the owner. For purposes of asserting the defense provided by this subitem, a certified copy of the police report on the stolen vehicle, sent by first‑class mail to the department, its agent, or the magistrate’s court or the municipal court having jurisdiction of the citation within thirty days after receipt of the notices or citation, is sufficient;

(2) leased to another person or entity, the lessor is not liable for the violation if the lessor sends to the department or to the court having jurisdiction over the citation a copy of the rental, lease, or another contract document covering the vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty days after receiving the notices or citation. Failure to send the information within the thirty‑day period renders the lessor liable for the unpaid tolls and any administrative fees or penalties assessed pursuant to this section. If the lessor complies with the provisions of this subitem, the lessee of the vehicle on the date of the violation is subject to liability for the failure to pay the toll if the department or its agent mails a notice of liability to the lessee within thirty days after receipt of a copy of the rental, lease, or other contract document.

(I) If a person or entity receives a notice or citation pursuant to this section, it is a valid defense to liability that the person or entity that receives the notice was not the owner of the vehicle at the time of the toll violation.

(J) If an owner who pays the required tolls, fees, or penalties, or all of them pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

(K) An owner of a vehicle is not liable for a penalty imposed pursuant to this section if the operator of the vehicle has been convicted of a violation of Section 57‑5‑1490 for the same incident.

(L) On turnpike facilities where electronic toll collection systems are utilized:

(1) a person who wants to make payment of tolls electronically must apply to the department or its authorized agent to become an account holder. The department or its authorized agent, in its discretion, may deny the application of a person. A person whose application is accepted must execute an account holder’s agreement. The terms of the account holder’s agreement must be established by the department;

(2) the department shall ensure that adequate and timely notice is given to all electronic toll collection system account holders to inform them when their accounts are delinquent. The owner of a vehicle who is an account holder under the electronic toll collection system is not liable for a failure to pay a toll pursuant to the provisions of this section unless the department or its authorized agent has first sent a notice of delinquency to the account holder and the account holder was delinquent at the time of the violation;

(3) the department shall not sell, distribute, or make available the names and addresses of electronic toll collection system account holders, without the account holder’s consent, to any entity that uses the information for commercial purposes. However, this restriction does not preclude the exchange of this information between entities with jurisdiction over or operating a toll highway bridge or tunnel;

(4) information or data collected by the department or its authorized agent for the purpose of establishing and monitoring electronic toll collection accounts is not subject to disclosure under the Freedom of Information Act;

(5) notwithstanding another provision of law, all information, data, photographs, microphotographs, videotape, or other recorded images prepared pursuant to this section must be for the exclusive use of the department or its authorized agent in the discharge of its duties under this section and must not be open to the public, subject to the disclosure under the Freedom of Information Act, nor used in a court in an action or a proceeding pending unless the action or proceeding relates to the imposition of or indemnification for liability pursuant to this section.

(M) Notwithstanding any other provision of law, school buses transporting school children for a school event, shall be exempt from the payment of any tolls.

HISTORY: 1998 Act No. 407, Section 1; 2006 Act No. 267, Sections 2, 3, and 4, eff nine months after approval (approved May 2, 2006).

Library References

Turnpikes and Toll Roads 43.

Westlaw Topic No. 391.

C.J.S. Turnpikes and Toll Roads Sections 36, 40.

ARTICLE 11

Construction Contracts and Purchases

**SECTION 57‑5‑1610.** Reserves provided for highway construction contracts.

Except with the approval of the State Fiscal Accountability Authority, the Department of Transportation shall not let any highway construction contracts unless reserves for such contracts shall have been provided for out of either (a) current balances in the state highway fund, (b) federal aid obligated for such contracts or (c) estimated revenue balances accruing during the period in which payments are to become due on such contracts; it being the intention of the General Assembly by the enactment of the section that the department shall not let any highway construction contracts which are contingent upon additional tax revenue legislation or upon receipt of the proceeds of anticipated bond sales for the payment of such contracts, unless the amount of highway construction contracts proposed to be let shall receive the approval of the State Fiscal Accountability Authority.

HISTORY: 1962 Code Section 33‑221; 1952 Code Section 33‑221; 1951 (47) 457; 1960 (51) 1711; 1965 (54) 270; 1972 (57) 2380; 1993 Act No. 181, Section 1520.

Library References

Highways 99.1.

Westlaw Topic No. 200.

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

**SECTION 57‑5‑1620.** Advertisement and award of certain construction contracts; emergency construction, repairs, or purchases.

Awards by the department of construction contracts for ten thousand dollars and more shall be made only after the work to be awarded has been advertised for at least two weeks in one or more daily newspapers in this State, but where circumstances warrant, the department may advertise for longer periods of time and in other publication media. Awards of contracts, if made, shall be made in each case to the lowest qualified bidder whose bid shall have been formally submitted in accordance with the requirements of the department. However, in cases of emergencies, as may be determined by the Secretary of the Department of Transportation, the department, without formalities of advertising, may employ contractors and others to perform construction or repair work or furnish materials and supplies for such construction and repair work, but all such cases of this kind shall be reported in detail and made public at the next succeeding meeting of the commission.

HISTORY: 1962 Code Section 33‑222; 1952 Code Section 33‑222; 1951 (47) 457; 1956 (49) 1752; 1959 (51) 63; 1993 Act No. 181, Section 1521.

CROSS REFERENCES

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

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 19, Moot Decisions.

Attorney General’s Opinions

By “construction contracts” it is intended to include repair work also. 1963‑64 Op.Atty.Gen. No. 1628, p. 56 (February 25, 1964) 1964 WL 8260.

Contract for modernization of lighting facilities comes within section. Contract for modernization of lighting facilities at cost on a bridge within the State Highway System comes within the purview of this section [Code 1962 Section 33‑222]. 1963‑64 Op.Atty.Gen. No. 1628, p. 56 (February 25, 1964) 1964 WL 8260.

NOTES OF DECISIONS

In general 1

Justiciability 2

1. In general

Safety concerns relating to unfinished road construction project did not constitute an “emergency,” and thus Department of Transportation (DOT) could not authorize emergency procurement for completion of the project after termination of construction contract with first contractor; safety concerns did not appear unexpectedly, thereby creating a public safety risk, but rather had existed throughout the course of the project, and any urgency felt by the DOT was, in large part, due to the delays on the project and the resultant frustration by the affected community. Sloan v. Department of Transp. (S.C. 2008) 379 S.C. 160, 666 S.E.2d 236. Highways 113(1); Public Contracts 180

No breach of implied warranty occurred where Highway Department included results of 33 test borings in bid advertisement information, with specific statement that borings were for informational purposes only, where there was no express or implied warranty or representation of any material fact upon which contractors were entitled to rely. L‑J, Inc. v. South Carolina State Highway Dept. (S.C. 1978) 270 S.C. 413, 242 S.E.2d 656.

The statute providing for advertisement by the State Highway Department before entering into contract is mandatory. Pennell & Harley v. Hearon (S.C. 1933) 169 S.C. 16, 168 S.E. 188. Highways 113(1); Public Contracts 125

A contract, entered into by the State Highway Department without public advertisement, is void so as to preclude recovery from Department for breach thereof. Pennell & Harley v. Hearon (S.C. 1933) 169 S.C. 16, 168 S.E. 188. Highways 113(1); Public Contracts 125

2. Justiciability

Taxpayer had standing to bring declaratory judgment action challenging whether Department of Transportation (DOT) properly authorized emergency procurement for road construction project, since issue was one of great public importance, and taxpayer alleged a misuse of the statutory emergency procurement provision and therefore an unlawful expenditure by public officials. Sloan v. Department of Transp. (S.C. 2008) 379 S.C. 160, 666 S.E.2d 236. States 168.5

No case law existed on authorization by Department of Transportation (DOT) of emergency procurement, and thus Supreme Court would address otherwise moot issue of whether DOT properly authorized emergency procurement as a question of imperative and manifest urgency, even though project had already been completed. Sloan v. Department of Transp. (S.C. 2008) 379 S.C. 160, 666 S.E.2d 236. Declaratory Judgment 393

Issue of whether the Department of Transportation (DOT) properly authorized emergency procurement for road construction project was one that was capable of repetition, yet would usually evade review, and thus Supreme Court would address the allegedly moot issue on appeal in declaratory judgment action challenging the procurement, even though project had been completed only a few months after suit was filed. Sloan v. Department of Transp. (S.C. 2008) 379 S.C. 160, 666 S.E.2d 236. Declaratory Judgment 393

Decision on merits of declaratory judgment action challenging whether Department of Transportation (DOT) properly authorized emergency procurement for road construction project would affect future events, and thus Supreme Court would address otherwise moot issue of whether DOT properly authorized emergency procurement, even though project had already been completed; decision on the issue would affect how DOT would decide to authorize emergency procurements in the future. Sloan v. Department of Transp. (S.C. 2008) 379 S.C. 160, 666 S.E.2d 236. Declaratory Judgment 393

**SECTION 57‑5‑1625.** Award of highway construction contracts using design‑build procedure.

(A) The department may award highway construction contracts using a design‑build procedure. A design‑build contract means an agreement that provides for the design, right‑of‑way acquisition, and construction of a project by a single entity. The design‑build contract may also provide for the maintenance, operation, or financing of the project. The agreement may be in the form of a design‑build contract, a franchise agreement, or any other form of contract approved by the department.

(B) Selection criteria shall include the cost of the project and may include contractor qualifications, time of completion, innovation, design and construction quality, design innovation, or other technical or quality related criteria.

HISTORY: 2005 Act No. 176, Section 13, eff June 14, 2005; Reenacted nunc pro tunc by 2006 Act No. 283, Section 1, eff May 23, 2006.

Editor’s Note

2006 Act No. 283, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies nunc pro tunc retroactively to June 14, 2005, the original effective date of Section 57‑5‑1625 of the 1976 Code.”

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law Section 6:41, Predominant Characteristics of Design‑Build Delivery Method‑Design‑Build Contracting in State and Local Government Procurement.

**SECTION 57‑5‑1630.** Extension of construction contracts to include additional work.

Unless approved in advance by the commission, no construction contract may be extended to include work not contemplated in the original award, except within the limitations imposed by the contract. Where in the judgment of the Secretary of the Department of Transportation it is in the public’s interest and prices advantageous to the department are obtained, the department may extend contracts to include additional work in advance of the approval of the commission, if on the other hand to delay an extension until the next commission meeting an advantage to the department would be lost, but in every case, every contract extension must be subject to approval by the commission at the next succeeding meeting. The extension of a contract to include additional work in advance of the approval of the commission may not exceed fifty percent of the total amount of the original contract being so extended or the sum of one hundred fifty thousand dollars, whichever amount is less. Advertisement in the case of extensions of contracts under this section shall consist of detailed reports of the transactions made public at open meetings of the commission.

HISTORY: 1962 Code Section 33‑222.1; 1959 (51) 63; 1976 Act No. 462; 1984 Act No. 443, Section 2; 1984; 1986 Act No. 383, Section 2; 1993 Act No. 181, Section 1522.

CROSS REFERENCES

Highway commission approval of actions, see S.C. Code of Regulations R. 63‑30.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

NOTES OF DECISIONS

In general 1

1. In general

There was no mutual mistake, and contract should not be rescinded because contractors’ excavation costs greatly exceeded bid estimate, where, in advertising for bids on highway construction project, Highway Department made no estimate of amount of solid rock to be excavated, but rather made only accurate estimate of total amount of unclassified materials to be excavated, and contractors failed to determine amount of rock present so as to arrive at intelligent, balanced bid. L‑J, Inc. v. South Carolina State Highway Dept. (S.C. 1978) 270 S.C. 413, 242 S.E.2d 656.

**SECTION 57‑5‑1640.** Contracts with railroad companies and property owners or lessees for constructing crossings and moving structures.

The Department may, without formalities of advertising, enter into lawful and appropriate agreements and contracts with railroad companies for the construction, reconstruction, or modifications of railroad‑highway grade separation crossings or track or other property rearrangement and with other persons, similarly jointly interested in particular items as property owners or lessees, for moving, clearing, rearranging or relocating public utilities, buildings and other structures.

HISTORY: 1962 Code Section 33‑222.2; 1952 Code Section 33‑222; 1951 (47) 457; 1956 (49) 1752; 1959 (51) 63.

CROSS REFERENCES

Alteration of railroad grade separation structures, see Sections 58‑15‑1910 et seq.

Construction and maintenance of railroad grade crossings of highways, see Sections 58‑15‑2110 et seq.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

**SECTION 57‑5‑1650.** Regulations as to qualifications of contractors permitted to bid on work.

The Department may establish such reasonable regulations as the Department may deem appropriate with respect to the qualifications of contractors allowed to bid on work of the Department. Such regulations may fix eligibility requirements for bidders according to available capital and with due regard to experience and records of past performance. But in no case shall the eligibility rating of any bidder be influenced by nationality or place of residence. No regulations with respect to the qualifications of bidders shall become effective until at least thirty days after such regulations shall have been formally adopted and published.

HISTORY: 1962 Code Section 33‑223; 1952 Code Section 33‑223; 1951 (47) 457.

CROSS REFERENCES

Administrative rules and regulations pertaining to prequalification of bidders, see Regulations of the Department of Highways and Public Transportation, R. 63‑300 et seq.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Sections 292 to 306.

**SECTION 57‑5‑1660.** Contractors’ bonds; amounts and actions.

(a) The Department of Transportation shall require that the contractor on every public highway construction contract, exceeding ten thousand dollars, furnish the Department of Transportation, county, or road district the following bonds, which shall become binding upon the award of the contract to such contractor:

(1) A performance and indemnity bond with a surety or sureties satisfactory to the authority awarding the contract, and in the full amount of the contract, and in no case less than ten thousand dollars, for the protection of the Department of Transportation, county, or road district.

(2) A payment bond with a surety or sureties satisfactory to the awarding authority, and in the amount of not less than fifty per cent of the contract, for the protection of all persons supplying labor and materials in the prosecution of work provided for in the contract for the use of each such person.

(b) Every person who has furnished labor, material, or rental equipment in the prosecution of the work provided for in such contract, in respect of which such a bond has been furnished under this section and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him. A remote claimant shall have a right of action upon the bond only upon giving written notice by certified or registered mail to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material or rental equipment was furnished or supplied or for whom labor was done or performed. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor must generally conform to the requirements of Section 29‑5‑20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of his business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

For purposes of this section, “bonded contractor” means the contractor or subcontractor furnishing the payment bond, and “remote claimant” means a person having a direct contractual relationship with a subcontractor or supplier, but no contractual relationship expressed or implied with the bonded contractor. No suit under this section shall be commenced after the expiration of one year after the date of the final settlement of the contract. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

(c) Nothing in this section shall be construed to limit the authority of any contracting authority to require a performance bond or other security in addition to those specified in this section.

(d) If the Department of Transportation enters into a public highway construction contract exceeding ten thousand dollars and requires that the contractor furnish a performance and indemnity bond, or a payment bond, or both of them, the department, the county, or the road district may not exact that the surety bond be furnished by a particular surety company or through a particular agent or broker.

HISTORY: 1962 Code Section 33‑224; 1952 Code Section 33‑224; 1951 (47) 457; 1963 (53) 503; 1993 Act No. 181, Section 1523; 2000 Act No. 240, Section 3; 2002 Act No. 253, Section 6; 2014 Act No. 264 (S.1026), Section 4, eff June 6, 2014.

CROSS REFERENCES

Effect of failure to file notice of project commencement, see Section 29‑5‑23.

Regulations of Department of Transportation implementing State Disadvantaged Business Enterprise Program, see S.C. Code of Regulations R. 63‑700 et seq.

Suit on payment bond required by State or political subdivision for protection of persons furnishing labor, material or rental equipment, see Section 11‑1‑120.

Library References

Highways 113(5).

Westlaw Topic No. 200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 7, Public Property Exception.

NOTES OF DECISIONS

In general 1

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1. In general

In determining whether a materialman not paid for supplies sold to a subcontractor may recover on the primary contractor’s payment bond, it is immaterial to the materialman’s right of recovery that he delivered the material to the jobsite. Syro Steel Co. v. Eagle Const. Co., Inc. (S.C. 1995) 319 S.C. 180, 460 S.E.2d 371.

A supplier was entitled to recover upon a subcontractor’s bond, although the supplier provided the material to a sub‑subcontractor, where the subcontractor entered into a direct contractual relationship with the supplier. Moore Elec. Supply, Inc. v. Ward (S.C.App. 1994) 316 S.C. 367, 450 S.E.2d 96.

In an action by a supplier of material against a subcontractor and its surety for payment on a bond, the trial court did not err in finding that all invoices constituted one contract where the record contained evidence that the supplier continuously delivered material under the line of credit requested by the subcontractor, although each shipment was separately invoiced. Moore Elec. Supply, Inc. v. Ward (S.C.App. 1994) 316 S.C. 367, 450 S.E.2d 96.

In an action by a supplier of material against a subcontractor and its surety for payment on a bond, the supplier’s notice of its intention to collect on the bond was timely where notice was given within 90 days from the last day on which material was furnished; although the supplier placed a hold on the subcontractor’s account, materials were still supplied, and consequently the date of the hold was irrelevant in determining whether the notice was timely notice. Moore Elec. Supply, Inc. v. Ward (S.C.App. 1994) 316 S.C. 367, 450 S.E.2d 96.

A contracting company is not required by this section [formerly Code 1962 Section 33‑224] to carry liability insurance or an indemnity bond to cover its negligent wrongful conduct against third parties. Bartell v. Willis Const. Co. (S.C. 1972) 259 S.C. 20, 190 S.E.2d 461.

2. Construction with other laws

State statutes requiring general contractors on state highway projects to provide department of transportation with payment bonds in order to protect subcontractors hired on such projects did not constitute a waiver of sovereign immunity, and therefore, subcontractor did not have private right of action against department in seeking contractual payment for work on highway project. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C.App. 2006) 368 S.C. 523, 629 S.E.2d 372, rehearing denied, certiorari granted, reversed 377 S.C. 108, 659 S.E.2d 158. Highways 113(4); Highways 113(5); Public Contracts 433

State tort claims act did not provide private right to sue state department of transportation for alleged violations of statutes requiring general contractors on state highway projects to provide department with payment bonds in order to protect subcontractors on such projects, precluding action brought by subcontractor against department seeking contractual payment for work on highway project; tort claims act would waive immunity for agencies that were liable for torts in same manner as private individuals, and private individuals could not be liable for the failure to require bonds in government contracts. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C.App. 2006) 368 S.C. 523, 629 S.E.2d 372, rehearing denied, certiorari granted, reversed 377 S.C. 108, 659 S.E.2d 158. Highways 113(5); Public Contracts 433

3. Interpretation

Section 57‑5‑1660 is patterned after the federal Miller Act, 40 U.S.C.A. Sections 270a and 270b; thus, absent a contrary expression of legislative intent, cases construing the federal Miller Act will be given great weight in the interpretation of its South Carolina counterpart. Syro Steel Co. v. Eagle Const. Co., Inc. (S.C. 1995) 319 S.C. 180, 460 S.E.2d 371. Highways 113(5); Public Contracts 201

The term “labor and materials” in former 1962 Code Section 33‑224 [see now Section 57‑5‑1660] was construed according to South Carolina Supreme Court decision rendered prior to enactment of subject statute, as opposed to construction rendered to same words contained in Federal Miller Act by courts in other jurisdictions, since legislature, in enacting statute, used key language of South Carolina Supreme Court decision. Rish v. Theo Bros. Const. Co., Inc. (S.C. 1977) 269 S.C. 226, 237 S.E.2d 61.

4. Construction equipment

Equipment such as bulldozers, tractors, graders, trucks, etc. of sort that would not have been used in only one contract, but would have become part of contractor’s permanent plant or repertoire of machinery, is not “labor and materials” covered by payment and performance bonds required by former 1962 Code Section 33‑224 [see now Section 57‑5‑1660]. Rish v. Theo Bros. Const. Co., Inc. (S.C. 1977) 269 S.C. 226, 237 S.E.2d 61.

5. Limitations

One‑year statute of limitations specifically provided for in state statute governing contractors’ bonds for Department of Transportation (DOT) construction projects, rather than 20‑year statute of limitations for sealed instruments, applied to subcontractor’s action against surety of general contractor’s payment bond to recover payment for pass through claims and unpaid retainage it was allegedly entitled to from final settlement issued to general contractor by DOT for bridge construction project. S and S Const., Inc. of Anderson v. Reliance Ins. Co., 1998, 42 F.Supp.2d 622. Public Contracts 229; States 101

**SECTION 57‑5‑1670.** Compensation of contractors for losses caused by injunctions.

The Department may determine losses sustained by contractors engaged on State highway projects incident to the suspension of work on such project by a court injunction order and may compensate such contractors for the amounts of the losses so determined. But this authority shall be limited to the payment of actual and unavoidable losses, not to include anticipated profits. Should any contractor be dissatisfied with the determination of his losses by the Department, such contractor may bring suit against the Department in the court of common pleas for the determination of the reasonableness of the amount of the award for such losses.

HISTORY: 1962 Code Section 33‑227; 1952 Code Section 33‑227; 1951 (47) 457.

Library References

Highways 113(4).

Westlaw Topic No. 200.

**SECTION 57‑5‑1700.** Certain sections shall not affect dealings with other government agencies.

Nothing in Sections 57‑5‑1620 to 57‑5‑1640, 57‑5‑1680 and 57‑5‑1690 shall affect the dealings of the Department with the Federal Government, the State government or any political subdivisions thereof or any agency or department of any of them.

HISTORY: 1962 Code Section 33‑227.3; 1956 (49) 1752.

Editor’s Note

Sections 57‑5‑1680 and 57‑5‑1690, which dealt with purchases of materials, were repealed by 1981 Act No. 148, Section 14, effective July 30, 1981. Comparable provisions appear in the South Carolina Consolidated Procurement Code at Title 11, Chapter 35.