**South Carolina General Assembly**

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**S. 136**

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1/31/2010 Senate Referred to Subcommittee: McConnell (ch), L.Martin, Hutto, Campbell, Nicholson

**VERSIONS OF THIS BILL**

[12/10/2008](file:///p:\pprever\2009-10\136_20081210.docx)

**A** **BILL**

TO AMEND SECTION 1‑30‑10 OF THE 1976 CODE, RELATING TO THE DEPARTMENTS OF STATE GOVERNMENT, TO MAKE TECHNICAL CORRECTIONS AND TO REQUIRE CERTAIN REPORTS FROM THE VARIOUS DEPARTMENTS; TO AMEND SECTION 8‑27‑10, RELATING TO THE DEFINITION OF REPORT FOR THE PURPOSES OF THE EMPLOYMENT PROTECTION FOR REPORTS OF VIOLATIONS OF STATE OR FEDERAL LAW OR REGULATION, BY PROVIDING THAT A REPORT MAY BE A WRITTEN OR ORAL ALLEGATION OR TESTIMONY TO A LEGISLATIVE COMMITTEE; TO AMEND CHAPTER 27 OF TITLE 8, RELATING TO EMPLOYMENT PROTECTION FOR REPORTS OF VIOLATIONS OF STATE OR FEDERAL LAW OR REGULATION, BY ADDING SECTION 8‑27‑60 TO PROVIDE THAT A SUMMARY OF THE PROVISIONS CONTAINED IN CHAPTER 27 ARE POSTED ON THE INTERNET WEBSITE OF EACH PUBLIC BODY SUBJECT TO THE PROVISIONS OF THAT CHAPTER; AND BY ADDING CHAPTER 2 TO TITLE 2, RELATING TO LEGISLATIVE OVERSIGHT OF EXECUTIVE DEPARTMENTS, TO PROVIDE THAT THE STANDING COMMITTEES OF THE GENERAL ASSEMBLY HAVE A DUTY TO REVIEW AND STUDY THE OPERATIONS OF THE STATE AGENCIES WITHIN THE COMMITTEE’S JURISDICTION, TO ESTABLISH COMMITTEE OVERSIGHT JURISDICTION, TO PROVIDE FOR THE PROCESS BY WHICH A COMMITTEE MAY INITIATE AN OVERSIGHT STUDY OR INVESTIGATION, TO PROVIDE FOR THE MANNER IN WHICH AN INVESTIGATING COMMITTEE MAY ACQUIRE EVIDENCE OR INFORMATION RELATED TO THE STUDY OR INVESTIGATION, TO PROVIDE FOR PROGRAM EVALUATION REPORTS, THE MANNER IN WHICH THEY ARE REQUESTED, AND THE CONTENTS OF THE REPORTS, TO PROVIDE THAT ALL TESTIMONY GIVEN TO AN INVESTIGATING COMMITTEE MUST BE GIVEN UNDER OATH, TO PROVIDE THAT WITNESSES TESTIFYING IN FRONT OF AN INVESTIGATING COMMITTEE MAY BE REPRESENTED BY COUNSEL, AND TO PROVIDE THAT WITNESSES ARE GIVEN THE BENEFIT OF ANY PRIVILEGE WHICH HE COULD HAVE CLAIMED IN COURT AS A PARTY TO A CIVIL ACTION.

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

SECTION 1. Subsections (B) through (H) of Section 1‑30‑10 of the 1976 Code are amended to read:

“(B)(1) The governing authority of each department shall be ~~either~~:

(i) a director~~, and in the case of the Department of Commerce, the~~ or a secretary, who must be appointed by the Governor with the advice and consent of the Senate, subject to removal from office by the Governor pursuant to provisions of Section 1‑3‑240(B); ~~or,~~

(ii) a seven member board to be appointed and constituted in a manner provided for by law; or~~,~~

(iii) in the case of the Department of Agriculture and the Department of Education, the State Commissioner of Agriculture and the State Superintendent of Education, respectively, elected to office under the Constitution of this State; or

(iv) in the case of the Department of Transportation, a seven member commission constituted in a manner provided by law, and a Secretary of Transportation appointed by and serving at the pleasure of the Governor.

(2) In making ~~appointments to boards and~~ an appointment for a governing authority of a department ~~directors~~, race, gender, and other demographic factors should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed. The Governor in making the appointments provided for by this section shall endeavor to appoint individuals who have demonstrated exemplary managerial skills in either the public or private sector.

(C) Each department shall be organized into appropriate ~~divisions~~ subdivisions by the governing authority of the department through further consolidation or further subdivision. The power to organize and reorganize the department ~~supersedes any provision of law to the contrary pertaining to individual divisions; provided, however, the~~ into divisions lies with the General Assembly in furtherance of its mandate pursuant to Article XII of the South Carolina Constitution. The dissolution of any division must ~~receive legislative approval by authorization included in the annual general appropriations act~~ likewise be statutorily approved by the General Assembly.

~~Any other approval procedures for department reorganization in effect on the effective date of this act no longer apply.~~

(D) The governing authority of a department is vested with the duty of overseeing, managing, and controlling the operation, administration, and organization of the department. The governing authority has the power to create and appoint standing or ad hoc advisory committees in its discretion or at the direction of the Governor to assist the department in particular areas of public concern or professional expertise as is deemed appropriate. Such committees shall serve at the pleasure of the governing authority and committee members shall not receive salary or per diem, but shall be entitled to reimbursement for actual and necessary expenses incurred pursuant to the discharge of official duties not to exceed the per diem, mileage, and subsistence amounts allowed by law for members of boards, commissions, and committees.

(E) The governing authority of a department ~~director~~ may appoint ~~deputy directors~~ deputies to head the divisions of their department, with each deputy ~~director~~ managing one or more of the divisions; in the case of the Department of Commerce, the Secretary of Commerce may appoint a departmental executive director and also may appoint directors to manage the various divisions of the Department of Commerce. In making appointments race, gender, and other demographic factors should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed. ~~Deputy directors~~ Deputies serve at the will and pleasure of the ~~department director~~ governing authority. The deputy ~~director~~ of a division is vested with the duty of overseeing, managing, and controlling the operation and administration of the division under the direction and control of the ~~department director~~ department’s governing authority and performing such other duties as delegated by the ~~department director~~ department’s governing authority.

(F)~~(1)~~ In the event a vacancy ~~should occur~~ occurs in the office of ~~department~~ ~~director~~ the department’s governing authority at a time when the General Assembly is not in session, the Governor may temporarily fill the vacancy pursuant to Section 1‑3‑210.

~~(2)~~ ~~Notwithstanding the provisions of subitem (F)(1), as of July 1, 1993, for each department created pursuant to the provisions of this act which must be governed by a single director, an initial interim director shall serve as the governing authority, serving until January 31, 1994. During that period the following departments must be governed by the director or interim director of the following agencies as of June 30, 1993:~~

~~(i)~~ ~~Department of Corrections, created pursuant to Section 1‑30‑30, by the director of the former Department of Corrections;~~

~~(ii)~~ ~~Department of Juvenile Justice created pursuant to Section 1‑30‑60, by the interim director of the former Department of Youth Services;~~

~~(iii)~~ ~~Department of Probation, Parole, and Pardon Services created pursuant to Section 1‑30‑85 by the director of the former Department of Probation, Pardon and Parole;~~

~~(iv)~~ ~~Department of Social Services created pursuant to Section 1‑30‑100, by the director of the former Department of Social Services;~~

~~(v)~~ ~~Department of Parks, Recreation and Tourism created pursuant to Section 1‑30‑80, by the director of the former Department of Parks, Recreation and Tourism;~~

~~(vi)~~ ~~Department of Commerce created pursuant to Section 1‑30‑25, by the Executive Director of the former State Development Board;~~

~~(vii)~~ ~~Department of Alcohol and Other Drug Abuse Services created pursuant to Section 1‑30‑20, by the director of the former South Carolina Commission on Alcohol and Drug Abuse.~~

~~(3)~~ ~~As of December 1, 1993, the Governor must submit to the Senate the names of appointees to the permanent department directorships for those departments created on July 1, 1993 and February 1, 1994. If no person has been appointed and qualified for a directorship as of February 1, 1994, the Governor may appoint an interim director to serve pursuant to the provisions of (F)(1).~~

~~(4)~~ ~~Notwithstanding provisions of (2) and (3) to the contrary, the initial interim director of the Department of Public Safety shall be appointed by the Budget and Control Board. The initial interim director may be appointed as the permanent director of the department by the Governor.~~

(G)(1) Department and agency governing authorities must, no later than the first day of the ~~1994~~ 2009 legislative session and every twelve months thereafter ~~for the following three years~~, submit to the Governor and General Assembly reports giving detailed and comprehensive recommendations for the purposes of merging or eliminating duplicative or unnecessary divisions, programs, or personnel within each department to provide a more efficient administration of government services. If an agency or department has no recommendations for restructuring of divisions, programs, or personnel, its report must contain a statement to that effect. Upon their receipt by the President of the Senate and the Speaker of the House of Representatives, these reports must be referred as information to the standing committees of the respective bodies most jurisdictionally related in subject matter to each agency. Alternatively, the House and Senate may provide by rule for the referral of these reports. ~~Thereafter,~~ The Governor ~~shall~~ must periodically consult with the governing authorities of the various departments and upon such consultation, the Governor ~~shall~~ must submit a report of any restructuring recommendations to the General Assembly for its review and consideration.

(2) ~~The Governor shall report to the General Assembly no later than the second Tuesday in January of 1994, his recommendation for restructuring the following offices and divisions presently under his direct supervision, and as to how each might be restructured within other appropriate departments or divisions amended by this act:~~

~~(i)~~ ~~Office of Executive Policy and Programs;~~

~~(ii)~~ ~~Office of Energy Programs;~~

~~(iii)~~ ~~Office of Personnel and Program Services;~~

~~(iv)~~ ~~Office of Research;~~

~~(v)~~ ~~Division of Health;~~

~~(vi)~~ ~~Division of Economic Opportunity;~~

~~(vii)~~ ~~Division of Economic of Development;~~

~~(viii)~~ ~~Division of Ombudsman and Citizens’ Services;~~

~~(ix)~~ ~~Division of Education;~~

~~(x)~~ ~~Division of Natural Resources;~~

~~(xi)~~ ~~Division of Human Services.~~

Department and agency governing authorities must, no later than the first day of the 2010 legislative session, and as part of the agency’s five‑year oversight study and investigation conducted pursuant to Chapter 2 of Title 2, submit to the Governor and the General Assembly a five‑year plan that provides initiatives and/or planned actions that implement cost savings and increased efficiencies of services and responsibilities within the projected five‑year period.

(H) ~~Department governing authorities must submit to the General Assembly by the first day of the 1994 legislative session and every five years thereafter a mission statement that must be approved by the General Assembly by Joint Resolution.~~ RESERVED”

SECTION 2. Section 8‑27‑10(4) of the 1976 Code is amended to read:

“(4) ‘Report’ means:

(a) ~~a written document alleging~~ a written or oral allegation of waste or wrongdoing that contains the following information:

(~~a~~i) the date of disclosure;

(~~b~~ii) the name of the employee making the report; and

(~~c~~iii) the nature of the wrongdoing and the date or range of dates on which the wrongdoing allegedly occurred. A report must be made within ~~sixty days~~ one hundred eighty days of the date the reporting employee first learns of the alleged wrongdoing~~.~~; or

(b) sworn testimony regarding wrongdoing, regardless of when the wrongdoing allegedly occurred, given to any standing committee, subcommittee of a standing committee, or study committee of the Senate or the House of Representatives.”

SECTION 3. Chapter 27 of Title 8 of the 1976 Code is amended by adding:

“Section 8‑27‑60. Each public body must make a summary of this chapter available on the public body’s Internet website. The summary must include an explanation of the process required to report wrongdoing, an explanation of what constitutes wrongdoing, and a description of the protections available to an employee who reports wrongdoing. If the public body does not maintain an Internet website, the public body must annually provide a written summary of this chapter to its employees and maintain copies of the summary at all times.”

SECTION 4. Title 2 of the 1976 Code is amended by adding:

“Chapter 2

Legislative Oversight of Executive Departments

Section 2‑2‑5. The General Assembly finds and declares the following to be the public policy of the State of South Carolina:

(1) Section 1 of Article XII of the State Constitution requires the General Assembly to provide for appropriate agencies to function in the areas of health, welfare, and safety and to determine the activities, powers, and duties of these agencies and departments.

(2) This constitutional duty is a continuing and ongoing obligation of the General Assembly that is best addressed by periodic review of the of the programs of the agencies and departments and their responsiveness to the needs of the state’s citizens by the standing committees of the State Senate or House of Representatives.

Section 2‑2‑10. As used in this chapter:

(1) ‘Agency’ means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive or judicial departments of state government, including administrative bodies. ‘Agency’ includes a body corporate and politic established as an instrumentality of the State. ‘Agency’ does not include:

(a) the legislative department of state government; or

(b) a political subdivision.

(2) ‘Investigating committee’ means any standing committee or subcommittee of a standing committee exercising its authority to conduct an oversight study and investigation of an agency within the standing committee’s subject matter jurisdiction.

(3) ‘Program evaluation report’ means a report compiled by an agency at the request of an investigating committee that may include, but is not limited to, a review of agency management and organization, program delivery, agency goals and objectives, compliance with its statutory mandate, and fiscal accountability.

(4) ‘Request for information’ means a list of questions that an investigating committee serves on a department or agency under investigation. The questions may relate to any matters concerning the department or agency’s actions that are the subject of the investigation.

(5) ‘Standing committee’ means a permanent committee with a regular meeting schedule and designated subject matter jurisdiction that is authorized by the Rules of the Senate or the Rules of the House of Representatives.

Section 2‑2‑20. (A) Beginning January 1, 2009, each standing committee must conduct oversight studies and investigations on all agencies within the standing committee’s subject matter jurisdiction at least once every five years in accordance with a schedule adopted as provided in this chapter.

(B) The purpose of these oversight studies and investigations is to determine if agency laws and programs within the subject matter jurisdiction of a standing committee:

(1) are being implemented and carried out in accordance with the intent of the General Assembly; and

(2) should be continued, curtailed, or eliminated.

(C) The oversight studies and investigations must consider:

(1) the application, administration, execution, and effectiveness of laws and programs addressing subjects within the standing committee’s subject matter jurisdiction;

(2) the organization and operation of state agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within the standing committee’s subject matter jurisdiction; and

(3) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within the standing committee’s subject matter jurisdiction.

Section 2‑2‑30. (A) The procedure for conducting the oversight studies and investigations is provided in this section.

(B)(1) The President Pro Tempore of the Senate, upon consulting with the chairmen of the standing committees in the Senate and the Clerk of the Senate, shall determine the agencies for which each standing committee must conduct oversight studies and investigations. A proposed five‑year review schedule must be published in the Senate Journal on the first day of session each year.

(2) In order to accomplish the requirements of this chapter, the chairman of each standing committees must schedule oversight studies and investigations for the agencies for which his standing committee is the investigating committee and may:

(a) coordinate schedules for conducting oversight studies and investigations with the chairmen of other standing committees; and

(b) appoint joint investigating committees to conduct the oversight studies and investigations including, but not limited to, joint committees of the Senate and House of Representatives or joint standing committees of concurrent subject matter jurisdiction within the Senate or within the House of Representatives.

(3) Chairmen of standing committees having concurrent subject matter jurisdiction over an agency or the programs and law governing an agency by virtue of the Rules of the Senate or Rules of the House of Representatives, may request that a joint investigating committee be appointed to conduct the oversight study and investigation for an agency.

(C)(1) The Speaker of the House of Representatives, upon consulting with the chairmen of the standing committees in the House of Representatives and the Clerk of the House of Representatives, shall determine the agencies for which each standing committee must conduct oversight studies and investigations. A proposed five‑year review schedule must be published in the House Journal on the first day of session each year.

(2) In order to accomplish the requirements of this chapter, the chairman of each standing committees must schedule oversight studies and investigations for the agencies for which his standing committee is the investigating committee and may:

(a) coordinate schedules for conducting oversight studies and investigations with the chairmen of other standing committees; and

(b) appoint joint investigating committees to conduct the oversight studies and investigations including, but not limited to, joint committees of the Senate and House of Representatives or joint standing committees of concurrent subject matter jurisdiction within the Senate or within the House of Representatives.

(3) Chairmen of standing committees having concurrent subject matter jurisdiction over an agency or the programs and law governing an agency by virtue of the Rules of the Senate or Rules of the House of Representatives, may request that a joint investigating committee be appointed to conduct the oversight study and investigation for the agency.

(D) The chairman of an investigating committee may vest the standing committee’s full investigative power and authority in a subcommittee. A subcommittee conducting an oversight study and investigation of an agency: (1) must make a full report of its findings and recommendations to the standing committee at the conclusion of its oversight study and investigation, and (2) must not consist of fewer than three members.

Section 2‑2‑40. (A) In addition to the scheduled five‑year oversight studies and investigations, a standing committee of the Senate or the House of Representatives may by one‑third vote of the standing committee’s membership initiate an oversight study and investigation of an agency within its subject matter jurisdiction. The motion calling for the oversight study and investigation must state the subject matter and scope of the oversight study and investigation. The oversight study and investigation must not exceed the scope stated in the motion or the scope of the information uncovered by the investigation.

(B) Nothing in the provisions of this chapter prohibits or restricts the President Pro Tempore of the Senate, the Speaker of the House of Representatives, or chairmen of standing committees from fulfilling their constitutional obligations by authorizing and conducting legislative investigations into agencies’ functions, duties, and activities.

Section 2‑2‑50. When an investigating committee conducts an oversight study and investigation or a legislative investigation is conducted pursuant to Section 2‑2‑40(B), evidence or information related to the investigation may be acquired by any lawful means, including, but not limited to:

(A) serving a request for information on the agency being studied or investigated. The request for information must be answered separately and fully in writing under oath and returned to the investigating committee within forty‑five days after being served upon the department or agency. The time for answering a request for information may be extended for a period to be agreed upon by the investigating committee and the agency for good cause shown. The head of the department or agency must sign the answers verifying them as true and correct. If any question contains a request for records, policies, audio or video recordings, or other documents, the question is not considered to have been answered unless a complete set of records, policies, audio or video recordings or other documents is included with the answer;

(B) deposing witnesses upon oral examination. A deposition upon oral examination may be taken from any person that the investigating committee has reason to believe has knowledge of the activities under investigation. The investigating committee must provide the person being deposed and the agency under investigation with no less than ten days notice of the deposition. The notice to the agency shall state the time and place for taking the deposition and name and address of each person to be examined. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice. The deposition must be taken under oath administered by the chairman of the investigating committee or his designee. The testimony must be taken stenographically or recorded by some other means and may be videotaped. A person may be compelled to attend a deposition in the county in which he resides or in Richland County;

(C) issuing subpoenas and subpoenas duces tecum pursuant to Title 2, Chapter 69; and

(D) requiring the agency to prepare and submit to the investigating committee a program evaluation report by a date specified by the investigating committee. The investigating committee must specify the agency program or programs or agency operations that it is studying or investigating and the information to be contained in the program evaluation report.

Section 2‑2‑60. (A) An investigating committee’s request for a program evaluation report must contain:

(1) the agency program or operations that it intends to investigate;

(2) the information that must be included in the report; and

(3) the date that the report must be submitted to the committee.

(B) An investigating committee may request that the program evaluation report contain any of the following information:

(1) enabling or authorizing law or other relevant mandate, including any federal mandates;

(2) a description of each program administered by the agency identified by the investigating committee in the request for a program evaluation report, including the following information:

(a) established priorities, including goals and objectives in meeting each priority;

(b) performance criteria, timetables, or other benchmarks used by the agency to measure its progress in achieving its goals and objectives;

(c) an assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet them in the future;

(3) organizational structure, including a position count, job classification, and organization flow chart indicating lines of responsibility;

(4) financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the last ten years;

(5) identification of areas where the agency has coordinated efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;

(6) identification of the constituencies served by the agency or program, noting any changes or projected changes in the constituencies;

(7) a summary of efforts by the agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;

(8) identification of emerging issues for the agency;

(9) a comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;

(10) agency policies for collecting, managing, and using personal information over the Internet and non‑electronically, information on the agency’s implementation of information technologies;

(11) a list of reports, applications, and other similar paperwork required to be filed with the agency by the public. The list must include:

(a) the statutory authority for each filing requirement;

(b) the date each filing requirement was adopted or last amended by the agency;

(c) the frequency that filing is required;

(d) the number of filings received annually for the last five years and the number of anticipated filings for the next five years;

(e) a description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication;

(12) any other relevant information specifically requested by the investigating committee.

(C) All information contained in a program evaluation report must be presented in a concise and complete manner.

(D) The chairman of the investigating committee may direct the Legislative Audit Council to perform a study of the program evaluation report and report its findings to the investigating committee. The chairman also may direct the Legislative Audit Council to perform its own audit of the program or operations being studied or investigated by the investigating committee.

(E) A state agency that is vested with revenue bonding authority may submit annual reports and annual external audit reports conducted by a third party in lieu of a program evaluation report.

Section 2‑2‑70. All testimony given to the investigating committee must be under oath.

Section 2‑20‑80. Any witness testifying before or deposed by the investigating committee may have counsel present to advise him. The witness or his counsel may, during the time of testimony or deposition, object to any question detrimental to the witness’ interests and is entitled to have a ruling by the chairman on any objection. In making his ruling, the chairman of the investigating committee shall follow as closely as possible the procedures and rules of evidence observed by the circuit courts of this State.

Section 2‑20‑90. A witness shall be given the benefit of any privilege which he may have claimed in court as a party to a civil action.”

SECTION 5. This act takes effect July 1, 2009.

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