

1                                   **H. 3314 - DDSN**  
2                                   **Adopted by the subcommittee 10-28-09**

3  
4  
5                                   **A BILL**

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

8  
9 SECTION 1. Section 44-20-30 of the 1976 Code is amended to  
10 read:

11  
12       “Section 44-20-30. As used in this chapter:

13       (1) ‘Applicant’ means a person who is believed to have  
14 mental retardation, one or more related disabilities, one or more  
15 head injuries, one or more spinal cord injuries, or an infant at high  
16 risk of a developmental disability who has applied for services of  
17 the South Carolina Department of Disabilities and Special Needs.

18       (2) ‘Client’ is a person who is determined by the Department  
19 of Disabilities and Special Needs to have mental retardation, a  
20 related disability, head injury, or spinal cord injury and is receiving  
21 services or is an infant at risk of having a developmental disability  
22 and is receiving services.

23       (3) ‘Commission’ means the South Carolina Commission on  
24 Disabilities and Special Needs, the policy-making and governing  
25 body of the Department of Disabilities and Special Needs.

26       (4) ‘County disabilities and special needs boards’ means the  
27 local public body administering, planning, coordinating, or  
28 providing services within a county or combination of counties for  
29 persons with mental retardation, related disabilities, head injuries,  
30 or spinal cord injuries and recognized by the department.

31       (5) ‘Day programs’ are programs provided to persons with  
32 mental retardation, related disabilities, head injuries, or spinal cord  
33 injuries outside of their residences affording development, training,  
34 employment, or recreational opportunities as prescribed by the  
35 Department of Disabilities and Special Needs.

36       (6) ‘Department’ means the South Carolina Department of  
37 Disabilities and Special Needs.

38       (7) ‘Director’ means the South Carolina Director of the  
39 Department of Disabilities and Special Needs, the chief executive  
40 director appointed by the commission.

1 (8) 'High risk infant' means a child less than thirty-six  
2 months of age whose genetic, medical, or environmental history is  
3 predictive of a substantially greater risk for a developmental  
4 disability than that ~~for~~ of the general population.

5 (9) 'Least restrictive environment' means the surrounding  
6 circumstances that provide as little intrusion and disruption from  
7 the normal pattern of living as possible.

8 (10) 'Improvements' means the construction, and  
9 reconstruction of buildings, and other permanent improvements for  
10 regional centers and other programs provided by the department  
11 directly or through contract with county boards of disabilities and  
12 special needs, including equipment and the cost of acquiring and  
13 improving lands for equipment.

14 (11) 'Mental retardation' means significantly subaverage  
15 general intellectual functioning existing concurrently with deficits  
16 in adaptive behavior and manifested during the developmental  
17 period.

18 (12) 'Disabilities and special needs services' ~~are~~ means  
19 activities designed to achieve the results specified in an individual  
20 ~~client's~~ client's plan.

21 (13) 'Obligations' means the obligations in the form of notes  
22 or bonds or contractual agreements issued or entered into by the  
23 commission pursuant to the authorization of this chapter and of  
24 Act 1377 of 1968 to provide funds with which to repay the  
25 proceeds of capital improvement bonds allocated by the State  
26 Budget and Control Board.

27 (14) 'Regional residential center' ~~is~~ means a twenty-four hour  
28 residential facility serving a multi-county area and designated by  
29 the department.

30 (15) 'Related disability' ~~is~~ means a severe, chronic condition  
31 found to be closely related to mental retardation or ~~to require a~~  
32 condition that requires treatment similar to that required for  
33 persons with mental retardation and must meet the following  
34 conditions:

35 (a) ~~It~~ it is attributable to cerebral palsy, epilepsy, autism,  
36 or any other condition other than mental illness found to be closely  
37 related to mental retardation because ~~this~~ the condition results in  
38 impairment of general intellectual functioning or adaptive behavior  
39 similar to that of persons with mental retardation and requires  
40 treatment or services similar to those required for these persons.;

41 (b) ~~It~~ it is manifested before twenty-two years of age.;

42 (c) ~~It~~ it is likely to continue indefinitely. and

1 (d) ~~It~~ it results in substantial functional limitations in three  
2 or more of the following areas of major life activity: self-care,  
3 understanding and use of language, learning, mobility,  
4 self-direction, and capacity for independent living.

5 (16) 'Residential programs' ~~are~~ means services providing  
6 dwelling places to clients for an extended period of time with  
7 assistance for activities of daily living ranging from constant to  
8 intermittent supervision as required by the individual client's  
9 needs.

10 (17) 'Revenues' or 'its revenues' means revenue derived from  
11 paying clients at regional residential centers and community  
12 residences but does not include Medicaid, Medicare, or other  
13 federal funds received with the stipulation that they be used to  
14 provide services to clients.

15 (18) 'State capital improvement bonds' means bonds issued  
16 pursuant to Act 1377 of 1968.

17 (19) 'State board' ~~shall mean~~ means the State Budget and  
18 Control Board as constituted pursuant to Chapter 11, Title 1."

19  
20 SECTION 2. Section 44-20-210 of the 1976 Code is amended to  
21 read:

22  
23 "Section 44-20-210. ~~(A)~~ There is created the South Carolina  
24 Commission on Disabilities and Special Needs. The commission  
25 consists of seven members. One member must be a resident of  
26 each congressional district and one must be from the state at large  
27 to be appointed by the Governor upon the advice and consent of  
28 the Senate. ~~They~~ Members shall serve for four years and until  
29 their successors are appointed and ~~qualify~~ qualified. Members of  
30 the commission are subject to removal by the Governor pursuant to  
31 the provisions of Section 1-3-240. A vacancy may be filled by the  
32 Governor for the unexpired portion of the term.

33 ~~(B) On July 1, 1993, the Commission on Mental Retardation~~  
34 ~~becomes the Commission on Disabilities and Special Needs. The~~  
35 ~~commissioners continue to serve until their terms expire and their~~  
36 ~~successors are appointed and qualify."~~

37  
38 SECTION 3. Section 44-20-220 of the 1976 Code is amended to  
39 read:

40  
41 "Section 44-20-220. The commission shall determine the policy  
42 and promulgate regulations governing the operation of the  
43 department and the employment of professional staff and

1 personnel. The members of the commission shall receive  
2 subsistence, mileage, and per diem as may be provided by law for  
3 members of state boards, committees, and commissions. The  
4 commission shall appoint and in its discretion remove a South  
5 Carolina Director of Disabilities and Special Needs who is the  
6 chief executive officer of the department. The commission may  
7 appoint advisory committees it considers necessary to assist in the  
8 effective conduct of its responsibilities. The commission may  
9 educate the public and state and local officials as to the need for  
10 the funding, development, and coordination of services for persons  
11 with mental retardation, related disabilities, head injuries, and  
12 spinal cord injuries and promote the best interest of persons with  
13 mental retardation, related disabilities, head injuries, and spinal  
14 cord injuries. The commission is authorized to promulgate  
15 regulations to carry out the provisions of this chapter and other  
16 laws related to mental retardation, related disabilities, head  
17 injuries, or spinal cord injuries. ~~In promulgating these regulations,~~  
18 ~~the commission must consult with the advisory committee of the~~  
19 ~~division for which the regulations shall apply.”~~

20

21

22 SECTION 4. Section 44-20-230 of the 1976 Code is amended to  
23 read:

24

25 “Section 44-20-230. Subject to the supervision, direction, and  
26 control of the commission, the director shall administer the  
27 policies and regulations established by the commission. ~~The~~  
28 ~~director may appoint and in his discretion remove all other officers~~  
29 ~~and employees of the department subject to the approval of the~~  
30 ~~commission.~~

31

32

33 SECTION 5. Section 44-20-240 of the 1976 Code is amended to  
34 read:

35

36 “Section 44-20-240. There is created the South Carolina  
37 Department of Disabilities and Special Needs which has authority  
38 over all of the state’s services and programs for the treatment and  
39 training of persons with mental retardation, related disabilities,  
40 head injuries, and spinal cord injuries. This authority does not  
41 include services delivered by other agencies of the State as  
42 prescribed by statute. The department must be comprised of a  
43 Mental Retardation Division, an Autism Division, and a Head and

1 Spinal Cord Injuries Division. The department may be divided  
2 into additional divisions as may be determined by the director and  
3 approved and named by the commission. ~~Responsibility for all~~  
4 ~~autistic services is transferred from the Department of Mental~~  
5 ~~Health to the Department of Disabilities and Special Needs.”~~  
6  
7

8 SECTION 6. Section 44-20-350(E) of the 1976 Code is amended  
9 to read:

10 “(E) The department ~~may~~ shall establish by regulation charges  
11 for other services it renders.”  
12  
13  
14

15 SECTION 7. Section 44-20-430 of the 1976 Code is amended to  
16 read:

17  
18 “Section 44-20-430. The director or his designee has the final  
19 authority over applicant eligibility, determination, or services and  
20 admission order, subject to ~~policies adopted by the commission~~  
21 regulations promulgated by the department.”  
22  
23

24 SECTION 8. Section 44-7-260(A) of the 1976 Code is amended  
25 to read:

26  
27 “(A) If they provide care for two or more unrelated persons, the  
28 following facilities or services may not be established, operated, or  
29 maintained in this State without first obtaining a license in the  
30 manner provided by this article and regulations promulgated by the  
31 department:

- 32 (1) hospitals, including general and specialized hospitals;
- 33 (2) nursing homes;
- 34 (3) residential treatment facilities for children and  
35 adolescents;
- 36 (4) ambulatory surgical facilities;
- 37 (5) chiropractic inpatient facilities;
- 38 (6) community residential care facilities;
- 39 (7) facilities for chemically dependent or addicted persons;
- 40 (8) end-stage renal dialysis units;
- 41 (9) day-care facilities for adults;
- 42 (10) any other facility operating for the diagnosis, treatment,  
43 or care of persons suffering from illness, injury or other infirmity

1 and for which the department has adopted standards of operation  
2 by regulation;  
3 (11) habilitation centers for the mentally retarded or persons  
4 with related conditions;  
5 (12) freestanding or mobile technology;  
6 (13) facilities wherein abortions are performed;  
7 (14) community-based housing operated or contracted for  
8 operation by the South Carolina Department of Disabilities and  
9 Special Needs. Community-based housing operated or contracted  
10 for operation by the South Carolina Department of Disabilities and  
11 Special Needs that serves children shall be licensed under this  
12 article rather than Article 1, Chapter 11 of Title 63;  
13 (15) day programs, as defined in Section 44-20-30(5),  
14 operated by or contracted for operation by the South Carolina  
15 Department of Disabilities and Special Needs.”  
16  
17

18 SECTION 9. Section 44-7-260(B) of the 1976 Code, as last  
19 amended by Act 233 of 2008, is further amended to read:  
20

21 “(B) The licensing provisions of this article do not apply to:  
22 (1) infirmaries for the exclusive use of the student bodies of  
23 privately-owned educational institutions which maintain  
24 infirmaries;  
25 ~~(2) community based housing sponsored, licensed, or~~  
26 ~~certified by the South Carolina Department of Disabilities and~~  
27 ~~Special Needs. The Department of Disabilities and Special Needs~~  
28 ~~shall provide to the Department of Health and Environmental~~  
29 ~~Control the names and locations of these facilities on a continuing~~  
30 ~~basis; or~~  
31 ~~(3) homeshare programs designated by the Department of~~  
32 ~~Mental Health, provided that these programs do not serve more~~  
33 ~~than two persons at each program location, the length of stay does~~  
34 ~~not exceed fourteen consecutive days for one of the two persons,~~  
35 ~~and the temporarily displaced person must be directly transferred~~  
36 ~~from a homeshare program location. The Department of Mental~~  
37 ~~Health shall provide to the Department of Health and~~  
38 ~~Environmental Control the names and locations of these programs~~  
39 ~~on a continuing basis.”~~  
40  
41

42 SECTION 10. Article 23, Chapter 7, Title 44 of the 1976 Code  
43 is amended to read:

1  
2 “Article 23  
3

4 Criminal ~~Record~~ Records Checks of Direct Care Staff  
5

6 Section 44-7-2910. (A)(1) ~~A direct care entity employing or~~  
7 ~~contracting with a direct caregiver shall conduct a criminal record~~  
8 ~~check as provided in this section prior to employing or contracting~~  
9 ~~with the direct caregiver. To be employed by a direct care entity, a~~  
10 ~~person shall first undergo a state criminal records check, supported~~  
11 ~~by fingerprints by the State Law Enforcement Division and a~~  
12 ~~national criminal records check, supported by fingerprints by the~~  
13 ~~Federal Bureau of Investigation. The results of these criminal~~  
14 ~~history background checks must be reported to the department.~~  
15 ~~The South Carolina Law Enforcement Division is authorized to~~  
16 ~~retain the fingerprints for certification purposes and for notification~~  
17 ~~of the department regarding criminal charges.~~ A direct care entity  
18 may consider all information revealed by a criminal ~~record check~~  
19 history background checks as a factor in evaluating a direct  
20 caregiver’s application to be employed by or contract with the  
21 entity.

22 (2) An employment agency may not furnish employees to a  
23 direct care entity without conducting a criminal ~~record check~~  
24 history background checks on each employee. An employee who  
25 works in multiple direct care settings must have a criminal ~~record~~  
26 ~~check~~ history background checks on file at the location of the  
27 employment agency, the home office of his employer, or at the  
28 individual’s primary place of employment.

29 (B) For purposes of this article:

30 (1) ‘Direct care entity’ means:

- 31 (a) a nursing home, as defined in Section 44-7-130;
- 32 (b) a daycare facility for adults, as defined in Section  
33 44-7-130;
- 34 (c) a home health agency, as defined in Section 44-69-20;
- 35 (d) a community residential care facility, as defined in  
36 Section 44-7-130;
- 37 (e) a residential program or a day program operated by or  
38 contracted for operation by the Department of Mental Health or the  
39 Department of Disabilities and Special Needs.

40 (2) ‘Direct caregiver’ or ‘caregiver’ means:

- 41 (a) a registered nurse, licensed practical nurse, or certified  
42 nurse assistant;

1 (b) any other licensed professional employed by or  
2 contracting with a direct care entity who provides to patients or  
3 clients direct care or services and includes, but is not limited to, a  
4 physical, speech, occupational, or respiratory care therapist;

5 (c) a person who is not licensed but provides physical  
6 assistance or care to a patient or client served by a direct care  
7 entity;

8 (d) a person employed by or under contract with a direct  
9 care entity who works within any building housing patients or  
10 clients;

11 (e) a person employed by or under contract with by a  
12 direct care entity whose duties include the possibility of patient or  
13 client contact.

14 For purposes of this article, a direct caregiver does not include a  
15 faculty member or student enrolled in an educational program,  
16 including clinical study in a direct care entity.

17 ~~(C)(1) A direct caregiver applicant shall provide verification of  
18 residency for the twelve months preceding the date of the  
19 employment application. The direct care entity shall conduct a  
20 state criminal record check if the applicant has resided in South  
21 Carolina during that twelve month period and can verify residency  
22 through:~~

23 ~~(a) a driver's license or identification card issued by the  
24 State of South Carolina;~~

25 ~~(b) rent, mortgage, or utility receipts in the applicant's  
26 name for a home within South Carolina;~~

27 ~~(c) pay stubs in the applicant's name from a business  
28 located in South Carolina; or~~

29 ~~(d) bank records in the applicant's name showing a  
30 deposit or checking account held in a South Carolina branch office  
31 of a bank.~~

32 ~~(2) A direct care entity unable to verify South Carolina  
33 residency for a direct care applicant for the preceding twelve  
34 months shall conduct a state criminal record check on the applicant  
35 prior to employment and shall commence a federal criminal record  
36 check after employment. However, if the direct care entity can  
37 verify residency in another state for the preceding twelve months,  
38 the direct care entity may conduct only a state criminal record  
39 check in the applicant's resident state or jurisdiction where the  
40 applicant previously resided.~~

41  
42 Section 44-7-2920. Criminal ~~record~~ records checks required  
43 pursuant to this article must be conducted by the State Law



1 Enforcement Division ~~or by a private business, organization, or~~  
2 ~~association which conducts background checks if that entity~~  
3 ~~utilizes current criminal records obtained from the State Law~~  
4 ~~Enforcement Division or the Federal Bureau of Investigation to~~  
5 ~~determine any criminal record. An applicant shall submit with the~~  
6 ~~application one complete set of the applicant's fingerprints on~~  
7 ~~forms specified or furnished by the State Law Enforcement~~  
8 ~~Division. Fingerprint cards submitted to the State Law~~  
9 ~~Enforcement Division pursuant to this section must be used to~~  
10 ~~facilitate a national criminal records check, as required by this~~  
11 ~~section. The criminal record check is history background checks~~  
12 ~~are not required to be repeated as long as the person remains~~  
13 ~~employed by or continues to contract with a direct care entity;~~  
14 ~~however, if a person is not employed by or is not under contract~~  
15 ~~for one year or longer with a direct care entity, the criminal record~~  
16 ~~check history background checks must be repeated before~~  
17 ~~resuming employment or contracting with a direct care entity. The~~  
18 ~~fee charged by the Federal Bureau of Investigation, if any, for the~~  
19 ~~fingerprint review Costs of conducting criminal history~~  
20 ~~background checks must be paid by the individual direct caregiver~~  
21 ~~or the direct care entity.~~  
22

23 Section 44-7-2930. A direct care entity may furnish copies of  
24 personnel records of current or former direct caregivers to another  
25 direct care entity requesting this information. Information  
26 contained in the records may include, but is not limited to,  
27 disciplinary matters and any reasons for termination. A direct care  
28 entity releasing these records pursuant to this section is presumed  
29 to be acting in good faith and is immune from civil and criminal  
30 liability which otherwise may result by reason of releasing this  
31 information. A direct care entity receiving records pursuant to this  
32 section shall conduct its own criminal ~~record check~~ history  
33 background checks pursuant to this article.  
34

35 Section 44-7-2940. The Department of Health and  
36 Environmental Control shall verify that a direct care entity is  
37 conducting criminal ~~record~~ history background checks as required  
38 in this article before the department issues a renewal license for the  
39 direct care entity. ~~The department shall act as the channeling~~  
40 ~~agency for any federal criminal record checks required by this~~  
41 ~~article.~~  
42

1 Section 44-7-2950. An individual who violates this article, or a  
2 regulation promulgated pursuant to this article, is subject to a civil  
3 fine of one hundred dollars for the first violation and five hundred  
4 dollars for each subsequent violation. A fine imposed pursuant to  
5 this section must be paid before a direct care entity's license is  
6 renewed. Fines collected pursuant to this section must be retained  
7 by the department to help offset the costs associated with carrying  
8 out the department's responsibilities under this article."

9

10 SECTION 11. Section 44-20-225 and Article 5, Chapter 20,  
11 Title 44 of the 1976 Code are repealed.

12

13

14

15 SECTION 12. A. Title 2 of the 1976 Code is amended by adding:

16

17

## “CHAPTER 2

18

### Legislative Oversight of Executive Departments

19

20

21

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

23

24

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

29

30

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

36

37

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

38

39

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

45

(a) the legislative department of state government; or

46

(b) a political subdivision.

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

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

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

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

19

20 Section 2-2-20. (A) Beginning January 1, 2011, each standing  
21 committee shall conduct oversight studies and investigations on all  
22 agencies within the standing committee's subject matter  
23 jurisdiction at least once every five years in accordance with a  
24 schedule adopted as provided in this chapter.

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

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

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

31 (C) The oversight studies and investigations must consider:

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

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

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

43

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

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

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

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

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

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

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

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

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

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

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

12 (D) The chairman of an investigating committee may vest the  
13 standing committee's full investigative power and authority in a  
14 subcommittee. A subcommittee conducting an oversight study and  
15 investigation of an agency:

16 (1) shall make a full report of its findings and  
17 recommendations to the standing committee at the conclusion of  
18 its oversight study and investigation, and

19 (2) shall not consist of fewer than three members.

20

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

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

37

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

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

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

31 (C) issuing subpoenas and subpoenas duces tecum pursuant to  
32 Chapter 69 of this title; and

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

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40 Section 2-2-60. (A) An investigating committee's request for a  
41 program evaluation report must contain:

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

1 (2) the information that must be included in the report; and  
2 (3) the date that the report must be submitted to the  
3 committee.

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

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

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

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

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

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

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

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

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

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

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

40 (8) identification of emerging issues for the agency;

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

1 (10) agency policies for collecting, managing, and using  
2 personal information over the Internet and nonelectronically,  
3 information on the agency's implementation of information  
4 technologies;

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

8 (a) the statutory authority for each filing requirement;

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

11 (c) the frequency that filing is required;

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

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

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

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

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

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

32

33 Section 2-2-70. All testimony given to the investigating  
34 committee must be under oath.

35

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



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Section 2-2-90. 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 2-2-100. A person who appears before a committee or subcommittee of either house, pursuant to this chapter, and wilfully gives false, misleading, or incomplete testimony under oath is guilty of a felony punishable by a fine within the discretion of the court or for a term of imprisonment of not more than five years, or both.

Section 2-2-110. If a person violates Section 2-2-100, it is the duty of the chair of the committee or subcommittee before which the false, misleading, or incomplete testimony was given, to notify the Attorney General of South Carolina who shall cause charges to be filed in the appropriate county.”

B. This SECTION takes effect ~~July 1, 2009~~ January 1, 2011.

SECTION 13. This act takes effect upon approval by the Governor.

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