**South Carolina General Assembly**

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**STATUS INFORMATION**

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Summary: Commission of the Department of Transportation

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[5/12/2015](file:///p:\pprever\2015-16\759_20150512.docx)

**A** **BILL**

TO AMEND SECTIONS 57‑1‑310, 57‑1‑320, 57‑1‑325, AND 57‑1‑330, ALL AS AMENDED, SECTIONS 57‑1‑730, AND 57‑1‑740, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMPOSITION OF THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION, THE BOUNDARIES OF ITS MEMBERS’ DISTRICTS, ITS MEMBERS’ TERMS OF SERVICE, THE ELECTION OF ITS MEMBERS, AND THE POWERS AND DUTIES OF THE COMMISSION, SO AS TO PROVIDE THAT THE REGIONAL COUNCILS OF GOVERNMENT CONSTITUTE THE DEPARTMENT OF TRANSPORTATION DISTRICTS, TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION DISTRICT DELEGATIONS SHALL ELECT THE MEMBERS OF THE COMMISSION, TO PROVIDE THAT NO COUNTY WITHIN A DEPARTMENT OF TRANSPORTATION DISTRICT SHALL HAVE A RESIDENT COMMISSIONER FOR MORE THAN TWO CONSECUTIVE TERMS, AND TO PROVIDE THAT VOTING FOR A COMMISSION SHALL BE BASED ON WEIGHTED VOTING THAT IS PROPORTIONAL TO THE TRANSPORTATION DISTRICT’S TOTAL POPULATION IN RELATION TO THE POPULATION OF THE DISTRICT REPRESENTED BY A MEMBER OF THE GENERAL ASSEMBLY.

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

SECTION 1. Section 57‑1‑310(A) of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“(A) The ~~congressional districts~~ regional councils of government of this State are, for the purposes of this chapter, constituted and created as Department of Transportation Districts ~~of the State, designated by numbers corresponding to the numbers of the respective congressional districts~~. The Commission of the Department of Transportation shall be composed of one member from each transportation district elected by the ~~delegations of the congressional district~~ Department of Transportation District delegation and one member appointed by the Governor from the State at large. Such elections or appointment, as the case may be, shall take into account race and gender so as to represent, to the greatest extent possible, all segments of the population of the State; however, consideration of these factors in making an appointment or in an election in no way creates a cause of action or basis for an employee grievance for a person appointed or elected or for a person who fails to be appointed or elected.”

SECTION 2. Section 57‑1‑320 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 57‑1‑320. ~~(A)~~ ~~A county that is divided among two or more Department of Transportation districts, for purposes of electing a commission member, is deemed to be considered in the district which contains the largest number of residents from that county.~~

~~(B)~~ No county within a Department of Transportation district shall have a resident commission member for more than ~~one~~ two consecutive ~~term~~ terms ~~and in no event shall any two persons from the same county serve as a commission member simultaneously except as provided hereinafter~~.”

SECTION 3. Section 57‑1‑325 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 57‑1‑325. (A) ~~Legislators residing in the congressional district~~ To elect a commissioner to represent a transportation district, the transportation district delegation shall meet upon written call of a majority of the members of the delegation ~~of each district~~ at a time and place to be designated in the call ~~for the purpose of electing a commissioner to represent the district~~. A majority present, either in person or by written proxy, of the delegation from a given ~~congressional~~ transportation district constitutes a quorum for the purpose of electing a district commissioner. No person may be elected commissioner who fails to receive a weighted majority vote of the members of the delegation.

(B) The delegation must be organized by the election of a chairman and a secretary, and the delegations of each ~~congressional~~ transportation district shall adopt such rules as they consider proper to govern the election. Any absentee may vote by written proxy. When the election is completed, the chairman and the secretary of the delegation shall immediately transmit the name of the person elected to the Secretary of State who shall issue to the person, after he has taken the usual oath of office, a certificate of election as commissioner. The Governor shall then issue a commission to the person, and pending the issuance of the commission, the certificate of election is sufficient warrant to the person to perform all of the duties and functions of his office as commissioner. Each commissioner shall serve until his successor is elected and qualified.

(C) Legislators who represent any portion of a county located within a transportation district constitute the transportation district delegation. All members of the delegation are eligible to vote on candidates to represent the district on the commission. Voting shall be conducted based upon weighted voting that is proportional to the transportation district’s total population in relation to the population of the district represented by each member.”

SECTION 4. Section 57‑1‑330 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 57‑1‑330. (A) ~~For the purposes of electing a commission member, a legislator shall vote only in the congressional district in which he resides.~~ All commission members elected by a transportation district delegation are elected to a term of office of four years which expires on February fifteenth of the appropriate year. A person may be elected by a transportation district delegation for more than two consecutive terms. Commissioners shall continue to serve until their successors are elected and qualify, provided that a commissioner may only serve in a hold‑over capacity for a period not to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by election or appointment in the manner provided in this article for the unexpired term only. No person is eligible to serve as a commission member who is not a resident of that transportation district at the time of his appointment. Failure by an elected commission member to maintain residency in the district for which he is elected shall result in the forfeiture of his office.

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

(C) All elected commission members may be removed from office as provided in Section 1‑3‑240(C)(1).”

SECTION 5. Section 57‑1‑730(4) of the 1976 Code, as added by Act 114 of 2007, is amended to read:

“(4) to submit the names of all qualified candidates to the ~~congressional~~ transportation district delegation for election.”

SECTION 6. Section 57‑1‑740 of the 1976 Code, as last amended by Act 253 of 2010, is further amended to read:

“Section 57‑1‑740. (A) For purposes of this section, a vacancy is created on the commission when a term expires, a new ~~congressional~~ transportation district is created, or a commission member resigns, dies, or is removed from office as provided in Section 57‑1‑330(C). If known in advance, the review committee may provide notice of a vacancy and begin screening prior to the actual date of the vacancy.

(B) Whenever a commission member must be elected to fill a vacancy:

(1) The review committee must forward a notice of the transportation ~~commission~~ district member vacancy to:

(a) a newspaper of general circulation within the ~~congressional~~ transportation district from which a commission member must be elected with a request that it be published at least once a week for four consecutive weeks;

(b) any person who has informed the committee that he desires to be notified of the vacancy; and

(c) to each member of the ~~congressional~~ transportation district delegation.

The committee may provide such additional notice that it deems appropriate.

(2) The review committee may not accept a notice of intention to seek the office from any candidate until the review committee certifies to the clerk of the Senate and the clerk of the House of Representatives that the proper notices, required by this section, have been requested to be published or provided as required in this subsection.

(3) The cost of the notification process required by this section must be absorbed and paid from the approved accounts of the Senate and the House of Representatives as contained in the annual appropriations act.

(C) Any person desiring to be a candidate for election to fill a vacancy on the commission must file a notice of intention with the review committee no later than five business days after the last date the published notice appeared in a newspaper of general circulation. Upon the expiration of the notice of intention filing period, the review committee must provide every member of the affected congressional district delegation with a complete list of the people who filed a notice.

(D)(1) When the notice of intention filing period closes, the review committee shall begin to conduct an investigation of candidates, as it considers appropriate, and may utilize the services of any agency of state government to assist in the investigation. Upon request of the review committee for assistance, an agency shall cooperate fully.

(2)(a)(i) Upon completion of the candidate investigations, the chairman of the review committee shall schedule a public hearing concerning the qualifications of the candidates. Any person who desires to testify at the hearing, including the candidates, must furnish a written statement of his proposed testimony to the chairman of the review committee. This statement shall be furnished no later than forty‑eight hours prior to the date and time set for the hearing. The review committee shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the review committee, shall be submitted under oath and persons knowingly furnishing false information either orally or in writing shall be subject to the penalties provided by law for perjury and false swearing.

(ii) During the course of the investigation, the review committee may schedule an executive session at which the candidates, and other persons who the review committee wishes to interview, may be interviewed on matters pertinent to the candidate’s qualification for the office to be filled.

(iii) The review committee shall render its ~~tentative~~ findings as to whether the candidates are qualified to serve on the commission as a district member and its reasons for making the findings within a reasonable time after the hearing. If only one person applies to fill a vacancy or if the review committee concludes there are fewer candidates qualified for a vacancy than those who initially filed, it shall submit to the ~~congressional~~ transportation district delegation for election only the names and qualifications of those who are considered to be qualified. The nominations of the review committee for any candidate for the election to the commission are binding on the ~~congressional~~ transportation district delegation, and it shall not elect a person not nominated by the review committee. Nothing shall prevent the ~~congressional~~ transportation district delegation from rejecting all persons nominated. In this event, the review committee shall submit another group of names and qualifications for that position. Further nominations in the manner required by this chapter must be made until the office is filled.

(b) As soon as possible after the completion of the hearing, ~~a verbatim copy of the testimony, documents submitted at the hearing, and~~ the review committee’s findings ~~of fact~~ related to a candidate’s qualifications shall be transcribed and published in the journals of both houses or otherwise made available in a reasonable number of copies to the members of both houses and a copy must be furnished to each candidate upon request.

(c)(i) The review committee must transmit to the ~~congressional~~ transportation district delegation the names of all qualified candidates.

(ii) No member of the ~~congressional~~ transportation district delegation may pledge his vote to elect a candidate until the review committee has released its written report concerning the qualifications of the candidate to the members of the appropriate ~~congressional~~ transportation district delegation. The release of the written report of qualifications shall occur no earlier than forty‑eight hours after the names of the qualified candidates have been initially released to members of the appropriate ~~congressional~~ transportation district delegation.

(iii) No candidate may directly or indirectly seek the pledge of a vote from a member of the candidate’s ~~congressional~~ transportation delegation or, directly or indirectly, contact a statewide constitutional officer, a member of the General Assembly, or the Joint Transportation Review Committee regarding screening for the commission until the review committee has released its written report as to the qualifications of all candidates in a particular ~~congressional~~ transportation district. For purposes of this section, ‘indirectly seek the pledge’ means the candidate, or someone acting on behalf of and at the request of the candidate, requests another person to contact a member of the General Assembly, a statewide constitutional officer, or a member of the review committee on behalf of the candidate before the review committee’s release of the written report of qualifications.

(iv) The prohibitions of this section do not extend to an announcement of candidacy by the candidate and statements by the candidate detailing the candidate’s qualifications.

(d) A candidate may withdraw at any stage of the proceedings, and in this event no further inquiry, report on, or consideration of his candidacy shall be made.

(3) All records, information, and other material that the review committee has obtained or used to make its findings of fact, except materials, records, and information presented under oath at the public hearing, shall be kept strictly confidential. After the review committee has reported its findings of fact, or after a candidate withdraws his name from consideration, all records, information, and material required to be kept confidential must be destroyed.

(4)(a) The review committee may, in the discharge of its duties, administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the investigation of the review committee.

(b) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the review committee on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any criminal penalty based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self‑incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed during testimony.

(c) In case of contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the review committee, may issue to the person an order requiring him to appear before the review committee to produce evidence, if so ordered, or to give testimony concerning the matter under investigation. Any failure to obey an order of the court may be punished as contempt. Subpoenas shall be issued in the name of the review committee and shall be signed by the review committee chairman. Subpoenas shall be issued to those persons as the review committee may designate.

(5) The privilege of the floor in either house of the General Assembly may not be granted to a candidate, or any immediate family member of a candidate unless the family member is serving in the General Assembly, during the time the candidate’s application is pending before the review committee and during the time the candidate’s election is pending.”

SECTION 7. (A) Members of the Department of Transportation Commission holding office as of the date that the Governor approves this act shall represent the transportation district that corresponds with the regional council of government in which the member resides. The members shall continue to hold office for the balance of the term to which they were elected. The members may be elected to serve an additional term at the expiration of the term that they are currently serving as provided by law.

(B)(1) Transportation districts that are not represented on the Department of Transportation Commission as a result of the provisions contained in this act are declared vacant and must be filled in the manner provided for in this act except as provided in items (2) and (3) of this section.

(2) To expedite the filling of vacancies created by this act, the Joint Transportation Review Committee may waive the publication notice of vacancy requirements contained in Section 57‑1‑740(B) and shorten the notice of intention filing period contained in Section 57‑1‑740(C).

(3) The Joint Transportation Review Committee shall establish new time periods related to the publication of notice of vacancy and notice of intention filing period. The new time periods must be posted on the General Assembly website as soon a practicable after adoption.

(C) The provisions contained in this section only apply to filling vacancies created by this act. Subsequent elections for those Department of Transportation districts must be held as provided by law.

SECTION 8. This act takes effect upon approval by the Governor.

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