

1 **S. 384**
2 **Subcommittee Proposal**
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4

5 **A BILL**
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8 Be it enacted by the General Assembly of the State of South
9 Carolina:

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11 SECTION 1. This act is intended to further the department's
12 mission of protecting and promoting the health of the public and
13 the environment by increasing the department's accountability. To
14 the extent that a provision of this act conflicts with an existing
15 statutes or regulation, the provisions of this act are controlling.
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17 SECTION 2. Section 44-1-20 of the 1976 Code is amended to
18 read:

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20 "Section 44-1-20. (A) There is hereby created the South
21 Carolina Department of Health and Environmental Control which
22 shall be administered under the supervision of the South Carolina
23 Board of Health and Environmental Control. The board shall
24 consist of seven members, one from each congressional district,
25 and one from the State at large to be appointed by the Governor,
26 upon the advice and consent of the Senate. The member who is
27 appointed at large shall serve as the chairman of the board. The
28 candidates for appointment to the Board shall meet the
29 qualifications contained in subsection (C) in order to be eligible for
30 appointment by the Governor. The Governor may remove the
31 chairman of the board pursuant to Section 1-3-240(B); however,
32 the Governor may only remove the other board members pursuant
33 to Section 1-3-240(C).

34 (B) The terms of the members shall be for four years and until their
35 successors are appointed and qualify, ~~except that of the original~~
36 ~~appointees, three shall be appointed for two years and four shall be~~
37 ~~appointed for four years.~~ All vacancies shall be filled in the
38 manner of the original appointment for the unexpired portion of
39 the term only.

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

42 (1) a baccalaureate or more advanced degree from:

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

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

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

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

9 (a) public health;

10 (b) environmental issues;

11 (c) law;

12 (d) finance;

13 (e) engineering;

14 (f) management

15 (D) In making these appointments, race, gender, and other
16 demographic factors should be considered to ensure
17 nondiscrimination, inclusion, and representation to the greatest
18 extent possible of all segments of the population of the State;
19 however, consideration of these factors in making an appointment
20 in no way creates a cause of action or basis for an employee
21 grievance for a person appointed or for a person who fails to be
22 appointed.

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25 SECTION 3. Section 44-1-30 of the 1976 Code is amended to
26 read:

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28 “Section 44-1-30. The Board shall meet at the department’s
29 administrative headquarters at least quarterly and the members
30 shall receive such compensation for their services as is provided by
31 law for members of boards and commissions.

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34 SECTION 4. Section 44-1-40 of the 1976 Code is amended to
35 read:

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37 “Section 44-1-40. (A) The board shall select a director for the
38 department who shall serve a four-year term and who shall have
39 such authority and perform such duties as may be directed by the
40 board. The director shall receive such compensation as may be
41 established under the provisions of Section 8-11-160 and for which
42 funds have been authorized in the general appropriations act. The

1 ~~salary of the director shall be fixed by the board, upon approval of~~
2 ~~the State Budget and Control Board.~~

3 ~~(B) For any vacancy occurring in the office of director on or after~~
4 ~~February 1, 1995, the~~ The board, after consultation with and
5 approval by the Governor, must submit the name of its appointee
6 to the Senate for ~~the Senate's~~ advice and consent. ~~On or after~~
7 ~~February 1, 1995, the~~ The board may remove a director only after
8 consultation with and approval by the Governor. The director may
9 be reappointed after consultation with and approval by the
10 Governor and upon the advice and consent of the Senate.

11 (C) The director shall possess sound moral character, superior
12 knowledge and experience concerning the promotion and
13 protection of the health of the public and the environment, and
14 proven administrative ability.”

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17 SECTION 5. Section 44-1-50 of the 1976 Code, as last amended
18 by Act 387 of 2006, is further amended to read:

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20 “Section 44-1-50. (A) The board may shall conduct such
21 ~~administrative final~~ reviews ~~as may be required by law,~~ as
22 considered necessary by the board to render a final agency
23 determination in matters involving the issuance, denial, renewal or
24 revocation of permits, licenses, or other actions of the department
25 which may give rise to a contested case pursuant to Chapter 23 of
26 Title 1

27 (B) The board shall provide for the administrative organization of
28 ~~the department and shall consolidate and merge existing duties,~~
29 ~~functions, and officers of the former agencies as may be necessary~~
30 ~~for economic and efficient administration.~~ Provided, however, that
31 the board may appoint ~~such~~ advisory boards as it considers
32 necessary ~~to carry out the functions of Sections 44-1-10 to~~
33 ~~44-1-70.~~ Members of the department's advisory boards may
34 receive mileage, per diem and subsistence, and there shall be
35 provided a compensation for their services as provided by the law
36 for members of boards and commissions.

37 (C) The board shall promulgate, by regulation, procedures not
38 inconsistent with federal laws and in accordance with state law.

39 (D) The board shall approve the department's annual budget.

40 (E) The department may not enter into any contract with a value in
41 excess of five hundred thousand dollars without prior authorization
42 of the board.

1 (F) The board shall biennially approve the South Carolina Health
2 Plan as submitted by the Health Planning Committee created
3 pursuant to Section 44-7-180.

4 (G) The board shall have any other rights, duties, obligations or
5 responsibilities as provided by law.”
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8 SECTION 6. Chapter 1, Title 44 of the 1976 Code is amended by
9 adding:

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11 “Section 44-1-55. (A) The board shall appoint a chief internal
12 auditor and other professional, administrative, technical, and
13 clerical personnel as the board determines to be necessary in the
14 proper discharge of the board’s duties and responsibilities provided
15 by law. The board also shall provide professional, administrative,
16 technical, and clerical personnel, as the board determines to be
17 necessary, for the chief internal auditor to properly discharge his
18 duties and responsibilities authorized by the board or provided by
19 law. Except as otherwise provided, any employee hired pursuant
20 to this section shall serve at the pleasure of the board.

21 (B)(1) The chief internal auditor shall serve for a term of four
22 years and may be removed by the board only for malfeasance,
23 misfeasance, incompetency, absenteeism, conflicts of interest,
24 misconduct, persistent neglect of duty in office, or incapacity. The
25 chief internal auditor shall have a baccalaureate or more advanced
26 degree in accounting or finance and possess any other experience
27 the board may require. The chief internal auditor shall establish,
28 implement, and maintain the exclusive internal audit function of all
29 departmental activities. The board shall set the salary for the chief
30 internal auditor as allowed by statute or applicable law.

31 (2) The audits performed by the chief internal auditor must comply
32 with recognized governmental auditing standards. The department
33 and any entity contracting with the department must fully
34 cooperate with the chief internal auditor in the discharge of his
35 duties and responsibilities and must timely produce all books,
36 papers, correspondence, memoranda, and other records considered
37 necessary in connection with an internal audit. All final audit
38 reports must be submitted to the board.

39 (3) The board is vested with the exclusive management and control
40 of the chief internal auditor.

41 (C) The department, at its own expense, shall provide appropriate
42 office space within its headquarters, building, and facility service,
43 including janitorial, utility and telephone services, computer and

1 technology services, and related supplies, for the chief internal
2 auditor and his support staff.

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5 SECTION 7. Section 44-1-60(E) through (J) of the 1976 Code, as
6 added by Act 387 of 2006, is amended to read:

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8 “(E)(1) Notice of ~~the~~ a department decision must be sent by
9 certified mail, returned receipt requested to the applicant,
10 permittee, licensee, and affected persons who have ~~asked~~ requested
11 in writing to be notified ~~by certified mail, return receipt requested.~~
12 Affected persons may request in writing to be notified by regular
13 mail or electronic mail in lieu of certified mail. Notice of staff
14 decisions for which a department decision is not required pursuant
15 to subsection (D) must be provided by mail, delivery, or other
16 appropriate means to the applicant, permittee, licensee, and
17 affected persons who have requested in writing to be notified.

18 (2) Except for decisions in which the staff makes a
19 determination regarding the applicability of Section 44-7-160 or a
20 request for exemption under Section 44-7-170, the ~~department~~ staff
21 decision becomes the final agency decision fifteen calendar days
22 after notice of the ~~department~~ staff decision has been mailed to the
23 applicant, unless a written request for final review is filed with the
24 department by the applicant, permittee, licensee, or affected
25 person.

26 (3) Staff decisions in which a determination is made
27 regarding the applicability of Section 44-7-160 or a request for
28 exemption under Section 44-7-170 are the final agency decision
29 and not subject to appeal.

30 (F) No later than sixty calendar days after the date of
31 receipt of a request for final review, a final review conference must
32 be conducted by the board, its designee, or a committee of three
33 members of the board appointed by the chair. If the board declines
34 in writing to schedule a final review conference or if a final review
35 conference is not conducted within sixty calendar days, the
36 department decision becomes the final agency decision, ~~and unless~~
37 an applicant, permittee, licensee, or affected person ~~may request~~
38 requests a contested case hearing before the Administrative Law
39 Court, ~~in accordance with the Administrative Procedures Act,~~
40 ~~within thirty days after the deadline for the final review~~
41 ~~conference.~~ The department shall set the place, date, and time for
42 the conference; give the applicant and affected persons at least ten
43 calendar days’ written notice of the conference; and advise the

1 applicant that evidence may be presented at the conference. The
2 final review conference must be held as follows:

3 (1) Final review conferences are open to the public;
4 however, the officers conducting the conference may meet in
5 closed session to deliberate on the evidence presented at the
6 conference. The burden of proof in a conference is upon the
7 moving party. During the course of the final review conference,
8 the ~~department staff~~ must explain the ~~department staff~~ decision and
9 the materials relied upon in the administrative record to support the
10 ~~department staff~~ decision. The applicant or affected party shall
11 state the reasons for protesting the ~~department staff~~ decision and
12 may provide evidence to support amending, modifying, or
13 rescinding the ~~department staff~~ decision. The ~~department staff~~
14 may rebut information and arguments presented by the applicant or
15 affected party and the applicant or affected party may rebut
16 information and arguments presented by the ~~department staff~~. Any
17 final review conference officer may request additional information
18 and may question the applicant or affected party, the ~~department~~
19 ~~staff~~, and anyone else providing information at the conference.

20 (2) After the ~~administrative final review conference~~, the
21 board, its designee, or a committee of three members of the board
22 appointed by the chair shall issue a written final agency decision
23 based upon the evidence presented. The decision may be
24 announced orally at the conclusion of the ~~administrative final~~
25 ~~review conference~~ or it may be reserved for consideration. The
26 written decision must explain the bases for the decision and inform
27 the parties of their right to request a contested case hearing before
28 the Administrative Law Court. In either event, the written decision
29 must be mailed to the parties no later than thirty calendar days
30 after the date of the ~~administrative final review conference~~. Within
31 thirty calendar days after the receipt of the decision an applicant,
32 permittee, licensee, or affected person desiring to contest the final
33 agency decision may request a contested case hearing before the
34 Administrative Law Court, in accordance with the Administrative
35 Procedures Act. The court shall give consideration to the
36 provisions of Section 1-23-330 regarding the department's
37 specialized knowledge.

38 (3) Prior to the initiation of the final review conference, an
39 applicant, permittee, licensee, or affected person must be notified
40 of their right to request a transcript of the proceedings of the final
41 review conference. If a transcript is requested, the applicant,
42 permittee, licensee, or affected person making the request ~~must be~~
43 is responsible for all costs

1 (G) An applicant, permittee, licensee, or affected person may
2 file a request with the Administrative Law Court for a contested
3 case hearing within thirty calendar days after:

4 (1) notice is mailed to the applicant, permittee, licensee, and
5 affected persons that the board declined to hold a final review
6 conference;

7 (2) the sixty calendar day deadline to hold the final review
8 conference lapses and no conference has been held;

9 (3) the final agency decision resulting from the final review
10 conference is mailed to the parties.

11 (H) Applicants, permittees, licensees, and affected persons are
12 encouraged to engage in mediation during the final agency review
13 process.

14 ~~(H)~~ (I) The ~~department~~ board may promulgate regulations
15 providing for procedures for final ~~administrative~~ reviews.

16 ~~(H)~~ (J) Any statutory deadlines applicable to permitting and
17 licensing programs administered by the department ~~shall~~ must be
18 extended to all for this final review process. If any deadline
19 provided for in this section falls on a Saturday, Sunday, or state
20 holiday, the deadline must be extended until the next calendar day
21 that is not a Saturday, Sunday, or state holiday.”

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24 SECTION 8. Section 44-1-80 of the 1976 Code, as last amended
25 by Act 339 of 2002, is further amended to read:

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27 “Section 44-1-80. (A) The Board of Health and Environmental
28 Control or its designated agents must investigate the reported
29 causes of communicable or epidemic disease and must enforce or
30 prescribe these preventive measures as may be needed to suppress
31 or prevent the spread of these diseases by proper quarantine or
32 other measures of prevention, as may be necessary to protect the
33 citizens of the State. The Board of Health and Environmental
34 Control or its designated agents shall declare, when the facts
35 justify it, any place as infected and, in case of hydrophobia or other
36 diseases transmitted from animals to man, must declare ~~such~~the
37 animal or animals quarantined, and must place all ~~such~~restrictions
38 upon ingress and egress of persons or animals there from as may
39 be, in ~~its~~their judgment, necessary to prevent the spread of disease
40 from the infected locality.

41 (B)(1) ~~Whenever~~ When the board learns of a case of a
42 reportable illness or health condition, an unusual cluster, or a
43 suspicious event that it reasonably believes has the potential to

1 cause a public health emergency, as defined in Section 44-4-130, it
2 is authorized to notify the appropriate public safety authority, tribal
3 authorities, and federal health and public safety authorities.

4 (2) The sharing of information on reportable illnesses, health
5 conditions, unusual clusters, or suspicious events between
6 authorized personnel must be restricted to information necessary
7 for the treatment, control, investigation, and prevention of a public
8 health emergency. Restriction of access to this information to
9 those authorized personnel for the protection of public health
10 ensures compliance with all state and federal health information
11 privacy laws.

12 (3) The board and its agents must have full access to medical
13 records and nonmedical records when necessary to investigate the
14 causes, character, and means of preventing the spread of a
15 qualifying health event or public health emergency. For purposes
16 of this item, 'nonmedical records' mean records of entities,
17 including businesses, health facilities, and pharmacies, which are
18 needed to adequately identify and locate persons believed to have
19 been potentially exposed or known to have been infected with a
20 contagious disease.

21 (4) An order of the board given to effectuate the purposes of
22 this subsection is enforceable immediately by the public safety
23 authority.

24 (5) For purposes of this subsection, the terms qualifying
25 health event, public health emergency, and public safety authority
26 have the same meanings as provided in Section 44-4-130.”

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29 SECTION 9. Section 44-1-90 of the 1976 Code is amended to
30 read:

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32 “Section 44-1-90. The State Board of Health and
33 Environmental Control or its designated agents, when it is deemed
34 necessary by the municipal officers of ~~any~~ town or city or the
35 governing body of ~~any~~ county, may:

36 ~~(a)~~(1) visit cities, towns, villages or localities where disease is
37 prevalent or threatened;

38 ~~(b)~~(2) investigate and advise with the local authorities or
39 persons as to ~~such~~ measures ~~as~~that may tend to prevent the spread
40 of disease or to remove or abate causes that may tend to cause or
41 intensify disease;

42 ~~(c)~~(3) advise, when practicable or possible, as to measures of
43 sanitation or hygiene; and

1 ~~(d)~~(4) investigate and advise as to all matters respecting water
2 supply, sewage, drainage, ventilation, heating, lighting, or other
3 measures connected with public sanitation or safety.”
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6 SECTION 10. Sections 44-1-70 and 44-1-280 of the 1976 Code
7 are repealed.
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10 SECTION 11. The repeal or amendment by this act of any law,
11 whether temporary or permanent or civil or criminal, does not
12 affect pending actions, rights, duties, or liabilities founded thereon,
13 or alter, discharge, release or extinguish any penalty, forfeiture, or
14 liability incurred under the repealed or amended law, unless the
15 repealed or amended provision shall so expressly provide. After
16 the effective date of this act, all laws repealed or amended by this
17 act must be taken and treated as remaining in full force and effect
18 for the purpose of sustaining any pending or vested right, civil
19 action, special proceeding, criminal prosecution, or appeal existing
20 as of the effective date of this act, and for the enforcement of
21 rights, duties, penalties, forfeitures, and liabilities as they stood
22 under the repealed or amended laws.
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25 SECTION 12. If any section, subsection, paragraph,
26 subparagraph, sentence, clause, phrase, or word of this act is for
27 any reason held to be unconstitutional or invalid, such holding
28 shall not affect the constitutionality or validity of the remaining
29 portions of this act, the General Assembly hereby declaring that it
30 would have passed this act, and each and every section, subsection,
31 paragraph, subparagraph, sentence, clause, phrase, and word
32 thereof, irrespective of the fact that any one or more other sections,
33 subsections, paragraphs, subparagraphs, sentences, clauses,
34 phrases, or words hereof may be declared to be unconstitutional,
35 invalid, or otherwise ineffective.
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38 SECTION 13. This act takes effect January 1, 2011.
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