

SCDOT Recommended Legislative/Proviso Changes for House Oversight Committee

Item 3: Municipal Approval of Projects

SCDOT is required to obtain municipal approval of plans and projects being constructed within municipal boundaries. This requirement can frequently delay projects, as municipalities may desire aesthetic improvements to plans at the last minute. SCDOT recommends that the statute be amended to require the municipalities to submit comments during the environmental process and to give approval prior to the project going into the STIP.

Proposed legislation

SECTION 57-5-820. Consent of municipality to work on State highways; exception; definitions.

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

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

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

All work to be performed by the Department on state highways within a municipality must be ~~with the consent and approval of the proper municipal authorities,~~ approved by the municipality prior to a project's inclusion in the Statewide Transportation Improvement Program, and subject to the mutually agreed upon design features and typical section found in the final environmental document for the project, except that work performed or to be performed on a bridge and its approaches, certified by the Department as functionally obsolete or structurally deficient, to remove, replace, or improve such bridge and its approaches shall not require prior consent and approval of a municipal authority if the bridge crosses the intracoastal waterway, or the bridge qualifies for federal emergency bridge replacement funds.

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

~~In every case of a proposed permanent improvement, construction, reconstruction, or alteration by the Department of any highway or highway facility within a municipality, the municipality may review and approve the plans before the work is started; except that a municipality may not have the right to review and approve plans to remove, replace, or improve a bridge and its approaches within its limits~~

~~where such bridge and its approaches have been certified by the Department to be functionally obsolete or structurally deficient and if the bridge crosses the intracoastal waterway.~~

Item 7: Advertising on SCDOT Facilities

SCDOT would like to clarify that the Department may sell advertising on its facilities in order to create a new revenue source to offset operations costs. The existing statutes are not clear if the department is allowed to do this.

Proposed Legislation

SECTION 57-3-110. Powers and duties of Department of Transportation.

The Department of Transportation shall have the following duties and powers:

- (1) lay out, build, and maintain public highways and bridges, including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges;
- (2) acquire such lands, road building materials, and rights-of-way as may be needed for roads and bridges by purchase, gift, or condemnation;
- (3) cause the state highways to be marked with appropriate directions for travel and regulate the travel and traffic along such highways, subject to the laws of the State;
- (4) number or renumber state highways;
- (5) initiate and conduct such programs and pilot projects to further research and development efforts, and to promote training of personnel in the fields of planning, construction, maintenance, and operation of the state highway system;
- (6) cooperate with the federal government in the construction of federal-aid highways in the development of improved mass transit service, facilities, equipment, techniques, and methods and in planning and research in connection therewith; and seek and receive such federal aid and assistance as may from time to time become available except for funds designated by statute to be administered by the Chief Executive Officer of the State;
- (7) instruct, assist, and cooperate with the agencies, departments, and bodies politic and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the

attention to be given the highways in the state highway system;

(8) promulgate such rules and regulations in accordance with the Administrative Procedures Act for the administration and enforcement of the powers delegated to the department by law, which shall have the full force and effect of law;

(9) grant churches the right to cross over, under, along, and upon any public roads or highways and rights-of-way related thereto;

(10) enter into such contracts as may be necessary for the proper discharge of its functions and duties and may sue and be sued thereon;

(11) erect such signs as requested by a local governing body, if the department deems the signs necessary for public safety and welfare, including "Deaf Child" signs and "Crime Watch Area" signs; and

(12) do all other things required or provided by law.

(13) sell advertising space on its facilities, vehicles, electronic services, and website. The revenue from such advertising shall be deposited in the State Highway Fund.

Item 8: Collection of toll violations from out of state drivers

The statute governing toll collections does not provide a mechanism for collecting toll violations from out of state drivers. Also, SCDOT is required to go to Magistrate's Court to collect toll violations from in-state violators, which is expensive and time consuming. SCDOT recommends that the department be allowed to enter into reciprocity agreements with other states to collect from out of state violators. SCDOT also recommends that for in-state violators, that vehicle registrations be suspended when violations are over \$300, and that the Magistrate requirement be replaced with an in-house SCDOT appeals process.

Proposed legislation

SECTION 57-5-1495. Collection of tolls.

(A) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) a "Failure to Pay a Toll" citation to the owner or operator of a vehicle which is identified as having been involved in a third toll violation in a twelve-month period, or who has failed to respond to the second notice within the required time period. The citation requires payment to the department of the unpaid tolls, plus an administrative fee of not more than twenty-five dollars for each violation, within thirty days, ~~or the recipient's appearance in magistrate's court of the county in which the violation occurred or the municipal court of the city in which the violation has occurred to contest the citation. A "Failure to Pay a Toll" citation constitutes the summons and complaint for an action to recover the toll and all applicable fees allowed pursuant to this section; and~~ Once a recipient has accumulated at least \$300.00 in unpaid citations, the department or its authorized agent may notify the Department of Motor Vehicles to suspend the registration of the vehicle that was operated when the toll was not paid and deny the vehicle's registration or reregistration pursuant to Section 56-3-1335. The suspension shall remain in effect until the judgment is satisfied and evidence of its satisfaction has been presented to the Department of Motor Vehicles and the authorized agent.

(a) The department will offer the recipient a due process opportunity to contest responsibility for the toll violation, without appearing in person, including an opportunity to present information in the recipient's favor and an opportunity for a record review by a hearing officer.

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

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

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

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

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

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

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

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

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

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

(F) The department may enter into reciprocal collection arrangements with away agencies in accordance with this subsection. When an away agency certifies with supporting evidence that the operator of a motor vehicle registered in this State has failed to pay a toll, the department may collect the tolls and administrative fees properly imposed by the away agency as though those penalties and tolls were imposed by the authority if:

(1) The away agency has its own effective reciprocal procedures for collecting penalties and tolls imposed by the department and does, in fact, reciprocate in collecting administrative fees and tolls of the department by employing sanctions that include denial of a person's right to register or reregister a motor vehicle;

(2) The penalties, exclusive of tolls, claimed by the away agency against an owner of an automobile registered in this State do not exceed \$100 for a first violation or \$600 for all pending violations;

(3) The away agency provides due process and appeal protections to avoid the likelihood that a false, mistaken or unjustified claim will be pursued against an owner;

(4) An owner of an automobile registered in this State may present evidence to the away agency or to the department by mail, telephone, electronic means or other means to invoke rights of due process without having to appear personally in the jurisdiction where the violation occurred; and

(5) The reciprocal collection arrangement between the department and the away agency provides that each party may charge the other a fee sufficient to cover the costs of collection services, including costs incurred by an agency that registers motor vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

Item 9: State roads and rights of way subject to zoning ordinances

State agencies, including SCDOT, are subject to local zoning ordinances. This is reasonable for buildings and other types of structures. However, subjecting state roads and rights of way to zoning ordinances can affect safety and efficient operation of the state highway system. An example is that of local tree ordinances. A local zoning ordinance may restrict SCDOT from removing trees of a certain size from the right of way, even though these trees may constitute a safety hazard. SCDOT recommends exempting state roads and rights of way from local zoning ordinances.

Proposed legislation

SECTION 6-29-770. Governmental entities subject to zoning ordinances; exceptions.

(A) Agencies, departments, and subdivisions of this State that use real property, as owner or tenant, in any county or municipality in this State are subject to the zoning ordinances, except for state roads and the adjacent rights of way.

(B) A county or agency, department or subdivision of it that uses any real property, as owner or tenant, within the limits of any municipality in this State is subject to the zoning ordinances of the municipality.

(C) A municipality or agency, department or subdivision of it, that uses any real property, as owner or tenant, within the limits of any county in this State but not within the limits of the municipality is subject to the zoning ordinances of the county.

(D) The provisions of this section do not require a state agency, department, or subdivision to move from facilities occupied on June 18, 1976, regardless of whether or not their location is in violation of municipal or county zoning ordinances.

(E) The provisions of this section do not apply to a home serving nine or fewer mentally or physically handicapped persons provided the home provides care on a twenty-four hour basis and is approved or licensed by a state agency or department or under contract with the agency or department for that purpose. A home is construed to be a natural family or such similar term as may be utilized by any county or municipal zoning ordinance to refer to persons related by blood or marriage. Prior to locating the home for the handicapped persons, the appropriate state agency or department or the private entity operating the home under contract must first give prior notice to the local governing body administering the pertinent zoning laws, advising of the exact site of any proposed home. The notice must also identify the individual representing the agency, department, or private entity for site selection purposes. If the local governing body objects to the selected site, the governing body must notify the site selection representative of the entity seeking to establish the home within fifteen days of receiving notice and must appoint a representative to assist the entity in selection of a comparable alternate site or structure, or both. The site selection representative of the entity seeking to establish the home and the representative of the local governing body shall select a third mutually agreeable person. The three persons have forty-five days to make a final selection of the site by majority vote. This final selection is binding on the entity and the governing body. In the event no selection has been made by the end of the forty-five day period, the entity establishing the home shall select the site without further proceedings. An application for variance or special exception is not required. No person may intervene to prevent the establishment of a community residence without reasonable justification.

(F) Prospective residents of these homes must be screened by the licensing agency to ensure that the placement is appropriate.

(G) The licensing agency shall conduct reviews of these homes no less frequently than every six months for the purpose of promoting the rehabilitative purposes of the homes and their continued compatibility with their neighborhoods.

(H) The governing body of a county or municipality whose zoning ordinances are violated by the provisions of this section may apply to a court of competent jurisdiction for injunctive and such other relief as the court may consider proper.

Item 11: Interest Rate on Condemnation Cases

Current law gives 8% interest on the judgment in condemnation cases while the case is contested, which is significantly higher than the current Federal Reserve interest rate.

Proposed legislation

SECTION 28-2-420. Interest on amount found to be just compensation; return of excess funds deposited with clerk of court.

(A) A condemnor shall pay interest at the ~~rate of eight percent a year~~ current federal reserve prime rate at the time of filing upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict or judgment by the court. Interest accruing on funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest shall not accrue during the twenty-day period commencing upon the date of verdict or order of judgment. If the judgment is not paid within the twenty-day period, interest at the rate provided by law for interest on judgments must be added to the judgment. Thereafter, the entire judgment shall earn interest at the rate provided by law for interest on judgments.

(B) In the event the court determines that just compensation is due the landowner in an amount less than the funds held by the clerk of court, the clerk of court shall refund to the condemnor the balance of the excess deposit with accrued interest.

Item 12: Expediting Inverse Condemnation Cases.

Current law allows for standard condemnation cases, but not inverse condemnation cases, to take precedence over other cases on the civil roster for trial. Condemnation cases can greatly slow down the ability of SCDOT to advance a project to construction. It is therefore important that both types of condemnation cases be quickly resolved. SCDOT recommends that the statute be amended to allow for expediting inverse condemnation cases over other civil cases.

Proposed legislation

SECTION 28-11-30. Reimbursement of property owners for certain expenses.

To the extent that Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) makes certain requirements pertaining to the acquisition of real property by states prerequisites to federal aid to such states in programs or projects involving the acquisition of real property for public uses, state agencies and instrumentalities and political subdivisions and local government agencies and instrumentalities involved in these programs or projects may expend available public funds as provided in this section, whether or not the program or project is federally aided.

(1) A person, agency, or other entity acquiring real property for public use in a project or program shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent the State deems fair and reasonable, for expenses he necessarily incurred for:

(a) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the State;

(b) penalty costs for prepayment for preexisting recorded mortgage entered into in good faith encumbering such real property; and

(c) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the agency concerned, or the effective date of possession of such real property by such agency, whichever is the earlier.

(2) Where a condemnation proceeding is instituted by the agency to acquire real property for such use and:

(a) the final judgment is that the real property cannot be acquired by condemnation; or

(b) the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be paid such sum as will, in the opinion of the agency, reimburse such owner for his reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. The award of these sums will be paid by the person, agency, or other entity which sought to condemn the property.

(3) Where an inverse condemnation proceeding is instituted by the owner of a right, title, or interest in real property because of use of his property in a program or project, the court, rendering a judgment for the plaintiff in the proceeding and awarding compensation for the taking of property, or the attorney effecting a settlement of a proceeding, shall determine and award or allow to the plaintiff, as a part of

the judgment or settlement, a sum that will, in the opinion of the court or the agency's attorney, reimburse the plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding.

(4) Reestablishment expenses related to the moving of a small business, farm, or nonprofit organization payable for transportation projects pursuant to federal guidelines and regulations may be paid in an amount up to fifty thousand dollars, notwithstanding a lower limitation imposed by federal regulations.

(5) If either party to an inverse condemnation proceeding so demands, the action must be given precedence over other civil cases for trial.

Item 13: Penalties for obstructions in the right of way without a permit

Placing obstructions on the right of way or road without a permit is currently only subject to a \$100 penalty or up to 30 days imprisonment. Unpermitted obstructions may cause delays for projects, in addition to the danger of possible safety hazards on the road and the adjacent right of way. SCDOT believes that a \$100 fine is insufficient to discourage the placement of an obstruction on the road or right of way, and that the fine should be significantly higher.

Proposed legislation

SECTION 57-7-50. Cutting trenches or laying pipes or tracks in State highways or bridges; permit.

It shall be unlawful for any person to cut trenches or lay pipes or tracks through, under, over or on any State highway or bridge without first obtaining a permit from the State Highway Engineer. A violation of this section shall be punishable by a fine of not more than ~~one hundred~~ five thousand dollars or imprisonment for not more than thirty days.

SECTION 57-7-210. Obstructions in highways.

It shall be unlawful for any person wilfully to obstruct ditches and drainage openings along any highway, to place obstructions upon any such highway or to throw or place on any such highway any objects likely to cut or otherwise injure vehicles using them. A violation of this section shall be punishable by a fine of not more than ~~one hundred~~ five thousand dollars or imprisonment for not more than thirty days

Item 16: State set-asides for Disadvantaged Business Enterprises

SCDOT currently has a set-aside program on state highway contracts for firms owned by disadvantaged ethnic minorities or women. The statutory language, which requires a set-aside 5% for MBE's and 5%

for WBE's, only allows for the set-aside on construction and renovation projects. SCDOT faces difficulty in reaching the statutory goals for construction and renovation projects due to the lack of available MBE or WBE companies capable of being prime contractors. Changing this program to a goals-based program that mirrors the federal program and also allowing the use of consultant contracts will greatly facilitate the intent of this program, which is to encourage a broad base of qualified MBE and WBE companies.

Proposed legislation

SECTION 12-28-2930. Allocation of state source highway funds for contracts with contractors or consultants on transportation construction and renovation projects to firms owned and controlled by disadvantaged ethnic minorities or women.

(A)(1) Of total state source highway funds, including revenues generated by Section 12-28-2740, expended in a fiscal year on contractors or consultants for highway, bridge, and building construction and maintenance, and building renovation contracts, the Department of Transportation and counties shall ensure that not less than:

(a) five percent are expended through direct contracts with estimated values of two hundred fifty thousand dollars or less, or subcontracts, with small business concerns owned and controlled by socially and economically disadvantaged ethnic minorities (MBEs);

(b) five percent are expended through direct contracts with estimated values of two hundred fifty thousand dollars or less, or subcontracts, with firms owned and controlled by disadvantaged females (WBEs).

(2) The two hundred fifty thousand dollars value limits may be raised in the discretion of the department as MBEs/WBEs are able to provide bondability.

(3) The Department of Transportation and counties are authorized to set MBE and WBE subcontracting goals on individual contracts where such participation is feasible and to require prime contractors to show good faith efforts to meet the subcontracting goals.

(B) The department shall certify eligible firms under this section and shall give at least thirty days' notice to certified firms of contracts to be let. ~~The department shall take into consideration the location and availability of MBE or WBE firms in the State when designating projects to be set aside.~~ No certified MBE or WBE may participate after June 30, 1999, or nine years from the date of the firm's first contract, whichever is later, if that firm performed at least three million dollars in highway contracts for four consecutive years while certified as a WBE or MBE. Firms performing less than three million dollars in highway contracts for four consecutive years may be recertified for additional five-year periods based upon recertification reviews by the department. WBE or MBE firms must be certified in their area of work prior to advertisement for letting of a project upon which the WBE or MBE wishes to bid.

~~(C) To achieve the set-asides set forth in subsection (A), the department shall advertise a number of highway construction projects at each regularly scheduled highway letting to be bid exclusively by MBEs~~

~~and WBEs. The total annual value of those projects awarded must equal at least ten percent of total state source highway funds expended in each fiscal year, or otherwise documented as described in subsection (D). Projects must be awarded when the lowest responsive and responsible bidder submits a bid within ten percent of the official engineer's estimate. If the lowest responsive bid exceeds the engineer's estimate by more than ten percent, the department may enter into negotiation with the low bidder making reasonable changes in the plans and specifications as necessary to bring the contract price within the ten percent range. If the low bidder agrees to the changes and the revised contract price, the contract must be awarded to the low bidder at the revised price. If the low bidder can show just cause for his bid exceeding the ten percent range, the department may award the contract without making any changes in the plans and specifications or the contract price. If the department fails to award any advertised project, that project may be readvertised through the normal bid process and must not be readvertised for the purpose of achieving the set-asides.~~

~~(D)~~ (C) If no MBE or WBE firms certified pursuant to this section are available to perform a contract, the department shall verify and record this fact, and the verification must be preserved in department records.

~~(E)~~ (D) To facilitate implementation of this section, the department may waive bonding requirements for contracts let pursuant to this section with estimated construction costs not exceeding two hundred fifty thousand dollars a contract, and any contract ~~set aside and~~ awarded to any MBE or WBE contractor without bonding shall provide expressly that termination of the contract for default of the contractor renders the contractor ineligible for any further department nonbonded contracts for a minimum period of two years from the date of the notice. The department shall act as bonding company when bonding requirements have been waived. Any claims brought by subcontractors or suppliers in connection with nonbonded projects must be heard by the Department Claims Committee and all legitimate claims must be paid by the department. The committee shall take into account circumstances such as unsettled payments and disputes with the department or other circumstances that are beyond the MBE/WBEs control. Claims resulting in monetary settlements shall render the MBE/WBEs ineligible for any further department nonbonded projects until the MBE/WBE has reimbursed or has made acceptable arrangements to reimburse the department for the amount due as a result of the settlement.

~~(F)~~ (E) In awarding any contract pursuant to this section, preference must be given to an otherwise eligible South Carolina contractor submitting a responsible bid not exceeding an otherwise eligible out-of-state contractor's low bid by two and one-half percent.

~~(G)~~ (F) The department shall establish written guidelines to be used in the selection and design of projects awarded under this section. Those guidelines shall outline the types of projects best suited for this program and other related criteria.

~~(H)~~ (I) When a MBE or WBE receives a contract, the department shall furnish a letter, upon request, stating the dollar value and duration of, and other information about the contract, which may be used by the MBE or WBE in negotiating lines of credit with lending institutions.

~~(I)~~ (H) The department shall issue an annual report listing all contracts awarded pursuant to this section. That report must also include a listing of all contracts and subcontracts awarded pursuant to Section 106(C) of the Federal Surface Transportation Act of 1987 (STAA-1987; P.L. 100-17, Section 106(c)). The listings must be both chronological and by name of participating firms. Entries must include file numbers, locations, and dollar amounts. The report must also contain information relating to canceled

contracts and subcontracts, subcontractor substitutions, and final payments to MBE/WBEs.

~~(J) Any MBE or WBE acting as a prime contractor shall perform at least thirty percent of the work with his own forces. If thirty percent of the work is performed with his own forces, the total amount of the contract is counted toward the MBE/WBE set-asides. If less than thirty percent is performed by the MBE/WBE, then only that portion performed by the MBE/WBE is counted toward the set-asides.~~

(I) The department shall specify the minimum percentage of work that a prime contractor must perform with its own forces, excluding any specialty items. The percentage of this work shall be set by the Department between twenty and thirty percent, based on the project's risk to the public.

~~(K) (J)~~ The department shall make available technical assistance for MBEs and WBEs for not less than three hundred thousand dollars. Any of these funds awarded to small consulting firms owned and controlled by MBEs or WBEs may count toward the ~~set-asides~~ goals established in subsection (A) of this section. The selected firms must be South Carolina based and experienced in assisting with the development of minority firms.

~~(L) (K)~~ Technical assistance provided under subsection (K) must include written and verbal instruction on competitive bidding, management techniques, and general business operations. Firms certified under this section must be represented by a company officer in at least twenty hours of continuing education a year in order to remain certified. The department shall implement a system that will designate a lead engineer to work with MBE/WBEs. This engineer shall work with the office of compliance, the supportive services contractor, and with the department's engineers to provide early technical assistance to MBE/WBEs with contracts in each highway district. The support must include professional and technical assistance aimed toward meeting the standards, the specifications, the timing, quality, and other requirements of their contracts. The department also shall endeavor to utilize the expertise of established highway, bridge, and building contractors when providing technical and support services.

(M) Any contracts awarded through the normal bid process to certified MBEs or WBEs may count toward the ~~set-asides~~ goals. Subcontracts entered into between prime contractors and certified MBE/WBEs without regard to these provisions may be counted toward the ~~set-asides~~ goals outlined in subsection (A) of this section if these subcontracts are verified through the department records.

(N) If any part or provision of this section is declared to be unconstitutional or unenforceable by a court of competent jurisdiction of this State, the court's decision, nevertheless, has no effect on the constitutionality, validity, and enforceability of the other parts and provisions of this section which are considered severable.

(O) Within one hundred twenty days of the effective date of this section the department shall promulgate and implement regulations to administer the provisions of this section.

Item 22: Expenditure Limitation

Proviso 84.1 allows SCDOT the flexibility needed to deal with cash balances from the previous year. Due to the construction cycle and multiple years across which some projects take, the ability to bridge fiscal

years is important to SCDOT. The proviso was established in the 1950's and was amended to current language in 1993. SCDOT recommends codification.

Proposed legislaton

~~**84.1** The Department of Transportation is hereby authorized to expend all cash balances brought forward from the previous year and all income including all federal funds, unexpended general funds and proceeds from bond sales accruing to the Department of Transportation, but in no case shall the expenditures of the Department of Transportation exceed the amount of cash balances brought forward from the preceding year plus the amount of all income including federal funds, general funds and proceeds from bond sales.~~

Section 57-3-205. Department of Transportation authorized to expend funds from previous fiscal year.

The Department of Transportation is authorized to expend all cash balances brought forward from the previous year and all income including all federal funds, unexpended general funds and proceeds from bond sales accruing to the Department of Transportation, but in no case shall the expenditures of the Department of Transportation exceed the amount of cash balances brought forward from the preceding year plus the amount of all income including federal funds, general funds and proceeds from bond sales.

Items 23 and 24: Special Fund Authorization and Securing Bonds and Insurance

Proviso 84.2 allows SCDOT to set up special funds with the Treasurer for accounting purposes. The proviso was introduced in 1951 with the current language.

Proviso 84.3 allows SCDOT to obtain bonds and insurance to cover SCDOT operations. The Proviso was introduced in 1951 with the current language.

SCDOT recommends codification.

~~**84.2** (DOT: Special Fund Authorization) The Department of Transportation with the approval of the State Treasurer, is hereby authorized to set up with the State Treasurer such special funds out of the Department of Transportation funds as may be deemed advisable for proper accounting purposes.~~

~~**84.3.** (DOT: Secure Bonds & Insurance) The Department of Transportation is hereby authorized to secure bonds and insurance covering such activities of the department as may be deemed proper and advisable, due consideration being given to the security offered and the service of claims.~~

Proposed legislation

SECTION 57-3-110. Powers and duties of Department of Transportation.

The Department of Transportation shall have the following duties and powers:

(1) lay out, build, and maintain public highways and bridges, including the exclusive authority to

establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges;

(2) acquire such lands, road building materials, and rights-of-way as may be needed for roads and bridges by purchase, gift, or condemnation;

(3) cause the state highways to be marked with appropriate directions for travel and regulate the travel and traffic along such highways, subject to the laws of the State;

(4) number or renumber state highways;

(5) initiate and conduct such programs and pilot projects to further research and development efforts, and to promote training of personnel in the fields of planning, construction, maintenance, and operation of the state highway system;

(6) cooperate with the federal government in the construction of federal-aid highways in the development of improved mass transit service, facilities, equipment, techniques, and methods and in planning and research in connection therewith; and seek and receive such federal aid and assistance as may from time to time become available except for funds designated by statute to be administered by the Chief Executive Officer of the State;

(7) instruct, assist, and cooperate with the agencies, departments, and bodies politic and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system;

(8) promulgate such rules and regulations in accordance with the Administrative Procedures Act for the administration and enforcement of the powers delegated to the department by law, which shall have the full force and effect of law;

(9) grant churches the right to cross over, under, along, and upon any public roads or highways and rights-of-way related thereto;

(10) enter into such contracts as may be necessary for the proper discharge of its functions and duties and may sue and be sued thereon;

(11) erect such signs as requested by a local governing body, if the department deems the signs necessary for public safety and welfare, including "Deaf Child" signs and "Crime Watch Area" signs; and

(12) to establish special funds with the State Treasurer out of the Department funds as may be deemed advisable for proper accounting purposes, with the approval of the State Treasurer.

(13) to secure bonds and insurance covering such activities of the department as may be deemed proper and advisable, due consideration being given to the security offered and the service of the claims.

~~(12)~~ (14) do all other things required or provided by law.

Item 25: Benefits

Proviso 84.4 in the FY 14-15 Appropriations bill provides that SCDOT employees receive equivalent raises, benefits, and bonuses as other state employees, and that such compensation and benefits are funded from SC DOT funding sources. The proviso was introduced in 1996 with the current language. SCDOT recommends codification.

~~84.4 (DOT: Benefits) Employees of the Department of Transportation shall receive equal compensation increases, health insurance benefits and employee bonuses provided in this act for employees of the State generally. The amount will be funded from Department of Transportation funding sources.~~

Proposed legislation

~~84.4 (DOT: Benefits) Employees of the Department of Transportation shall receive equal compensation increases, health insurance benefits and employee bonuses provided in this act for employees of the State generally. The amount will be funded from Department of Transportation funding sources.~~

Section 57-3-790. Employees of the Department of Transportation shall receive equal compensation increases, health insurance benefits and employee bonuses provided in this act for employees of the State generally. The amount will be funded from Department of Transportation funding sources.

Item 26: Document Fees

Proviso 84.5 allows SCDOT to recover the costs of producing the many documents that are requested from SCDOT by businesses and the public. The proviso was introduced in 1992 with the current language. SCDOT recommends codification.

Proposed legislation

~~84.5. (DOT: Document Fees) The Department of Transportation is hereby authorized to establish an appropriate schedule of fees to be charged for copies of records, lists, bidder's proposals, plans, maps, etc. based upon approximate actual costs and handling costs of producing such copies, lists, bidder's proposals, plans, maps, etc.~~

Section 57-3-795. The Department of Transportation is authorized to establish an appropriate schedule of fees to be charged for copies of records, lists, bidder's proposals, plans, maps, and other documents based upon approximate actual costs and handling costs of producing such copies, lists, bidder's proposals, plans, maps, and other documents.

Item 27: Meals in Emergency Operations

Proviso 84.6 in the FY 14-15 Appropriations Bill allows SCDOT to feed employees who cannot leave their work station during states of emergency or other such operations. The proviso was introduced in 2001 with the current language. SCDOT recommends codification.

Proposed legislation

~~84.6. (DOT: Meals in Emergency Operations) The Department of Transportation may provide meals to employees of the department who are not permitted to leave assigned duty stations and are required to work during deployment, emergency simulation exercises, and when the Governor declares a state of emergency.~~

Section 57-3-800. The Department of Transportation may provide meals to employees of the department who are not permitted to leave assigned duty stations and are required to work during deployment, emergency simulation exercises, and when the Governor declares a state of emergency.

Item 28: Rest Area Water Rates

Proviso 84.7 in the FY 14-15 Appropriations Bill requires water and sewer providers to charge in-district water rates for SCDOT rest areas. The proviso was introduced in 2005 with the current language. SCDOT recommends codification.

~~84.7. (DOT: Rest Area Water Rates) For the current fiscal year, rest areas of the Department of Transportation shall be charged in-district water rates by providers of water and sewer services, unless the rate currently charged by the provider is less than in-district rates.~~

Section 57-3-805. Rest areas of the Department of Transportation shall be charged in-district water rates by providers of water and sewer services, unless the rate currently charged by the provider is less than in-district rates.

Item 34: Personnel Organizational Chart

Proviso 117.52 in the FY 14-15 Appropriations Bill requires state agencies to submit a personnel organizational chart to the Office of Human Resources. SCDOT recommends deleting because the information is automatically captured in SCEIS.

117.52. (GP: Organizational Charts Except for the Department of Transportation, All agencies, departments and institutions of state government shall furnish to the Human Resources Division (1) a current personnel organizational chart annually no later than September first of the current fiscal year, or upon the request of the division and (2) notification of any change to the agency's organizational structure which impacts an employee's grievance rights within thirty days of such change. The

organizational chart shall be in a form prescribed by the Human Resources Division showing all authorized positions, class title, class code, position number and indications as to whether such positions are filled or vacant. In addition, the organizational chart shall clearly identify those employees who are exempt from the State Employee Grievance Procedure Act.

Item 37: Printed Report Requirements

Proviso 117.73 of the FY 14-15 allows SCDOT to submit several statutorily-required reports electronically rather than in printed format. With the availability of these reports in electronic format and corresponding ability to print, the printed requirement is obsolete. The proviso also allows SCDOT to combine its Annual Report and Mass Transit report with its Annual Accountability Report. SCDOT recommends codification.

Proposed legislation

117.77. (GP: Printed Report Requirements) (A) For Fiscal Year 2014-15, state supported institutions of higher learning shall not be required to submit printed reports mandated by Sections 2-47-40, 2-47-50, and 59-103-110 of the 1976 Code, and shall instead only submit the documents electronically.

Submission of the plans or reports required by Sections 59-101-350, 59-103-30, 59-103-45(4), and 59-103-160(D) shall be waived for the current fiscal year, except institutions of higher learning must continue to report student pass rates on professional examinations, and data elements otherwise required for the Commission on Higher Education Management Information System. The commission, in consultation with institutions, shall take further action to reduce data reporting burdens as possible.

(B) For Fiscal Year 2015-16, the Department of Agriculture shall not be required to submit printed reports mandated by Section 46-49-10 of the 1976 Code. The department shall provide these reports electronically and shall use any monetary savings for K5-12 agricultural education programs.

(C) For Fiscal Year 2015-16, the Department of Health and Human Services shall not be required to provide printed copies of the Medicaid Annual Report required pursuant to Section 44-6-80 of the 1976 Code and shall instead only submit the documents electronically.

~~(D) For Fiscal Year 2015-16, the Department of Transportation shall not be required to submit printed reports or publications mandated by Sections 1-11-58, 2-47-55, and 58-17-1450 of the 1976 Code.~~

~~The Department of Transportation may combine their Annual Report and Mass Transit Report into their Annual Accountability Report.~~

SECTION 57-3-760. Annual reports.

(A) The department, at the beginning of each regular session of the General Assembly, shall make a full, printed, detailed report to the General Assembly showing an analysis of:

(1) the department's accomplishments in the past year;

(2) a ten-year plan detailing future needs of the State in the fields of planning, construction, maintenance, and operation of the state highway system;

(3) a five-year plan detailing the regulation of traffic which includes the administration and enforcement of traffic, driver, and motor vehicle laws and other laws relating to such subjects, the coordination of state and federal programs relating to mass transportation among the departments, agencies, and other bodies politic and legally constituted agencies in the State; and

(4) a listing of all firms, companies, or businesses of any type doing business with the department and the amount of such contracts entered into by the department.

(B) The Department shall not be required to submit printed reports pursuant to Sections 1-11-58, 2-47-55, and 58-17-1450 of the 1976 Code

Item 38: Welcome Centers

A proviso in the FY 14-15 Appropriations Bill required SCDOT to transfer ownership of the state Welcome Centers to the Department of Parks, Recreation, and Tourism, along with the amount of funds required to operate the centers from FY13-14 (\$3.16 million). The proviso was amended at the request of SCPRT to up the funding to \$3.23 million in the FY 15-16 budget. SCDOT recommends the deletion of this proviso because SCDOT has already transferred ownership to SCPRT and has a Memorandum of Understanding as to the operation and funding of the centers.

~~**117.114.** (GP: South Carolina Welcome Centers) The Department of Parks, Recreation and Tourism and the Department of Transportation shall maintain a Memorandum of Understanding (MOU) that provides that the Department of Parks, Recreation and Tourism shall control operations of all South Carolina Welcome Centers. The MOU shall include replacement, renovation and maintenance of the facilities, daily operations, and grounds maintenance and upkeep and shall clearly define responsibility for additional portions of Welcome Centers to include paving and sidewalks. The Department of Transportation shall transfer to the Department of Parks, Recreation and Tourism the amount of \$3,313,560 less any state funds appropriated by the General Assembly for the same purpose. The Department of Parks, Recreation and Tourism assumes responsibility for this amount and the timing of the transfer of these funds shall be defined as part of the MOU. The funds transferred to the Department of Parks, Recreation and Tourism shall be placed in a separate and distinct fund and these funds shall be carried forward from the prior fiscal year into the current fiscal year and be expended for the same purposes.~~

Item 41: Non-Federal Aid Restrictions

South Carolina's 41,000 centerline mile roadway network is a state-owned, partially federally assisted system. As the owner of the state system, the State of SC is responsible for maintaining and operating all facets of it from the neighborhood streets, to the farm-to-market roads, to the US/SC Routes and to the Interstate System. While the federal-aid program does make available funding for some of these types of roadways, Congress is shifting the focus of the federal program to the National Highway System (NHS). For SC, this means the federal funds for pavement rehabilitation and reconstruction will likely be focused on the 3,603 centerline mile NHS system in the state, which includes the entire Interstate system and less than 30% of the Primary system.

That movement at the federal level coupled with the state's current restriction to use the funding only on the "Non-Federal Aid System" (neighborhood streets) will leave the bulk of the Primary system and 10,370 centerline miles of Secondary (farm-to-market) roadways essentially defunded for resurfacing at the state level. These 2 segments of the state system carry nearly 2/3 of the state's traffic and both are in very poor condition with approximately half of their pavements already in poor condition, approximately 30% in fair and approximately 20% in good condition. An investment is critically needed here in order to return this segment of our network to better condition and save repair costs by intercepting the fair condition roadways before they decay to poor condition.

SCDOT asks that it be allowed the flexibility to shift funds from the Non-Federal Aid Highway Fund to secondary and primary routes when need is demonstrated by the SCDOT Transportation Asset Management Plan and the projects are ranked according to Act 114.

Proposed legislation

Section 57-11-30. Funds from the Non-Federal Aid Highway Fund may be utilized for resurfacing secondary and primary routes when need is sufficiently determined under the Department's Transportation Asset Management Plan, and the projects to receive funds are prioritized according to Section 57-1-370.