

## *Economic Development, Transportation, and Natural Resources Subcommittee Meeting*

Tuesday, October 24, 2017

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# AGENDA

## South Carolina House of Representatives



### Legislative Oversight Committee

#### ***ECONOMIC DEVELOPMENT, TRANSPORTATION, AND NATURAL RESOURCES SUBCOMMITTEE***

*The Honorable Neal A. Collins*

*The Honorable Mandy Powers Norrell*

*The Honorable Robert L. Ridgeway III*

***Tuesday, October 24, 2017***

***10:00 a.m.***

***427 - Blatt Building***

***Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.***

### **AGENDA**

- I. Approval of Minutes**
- II. Discussion of the study of the Human Affairs Commission**
- III. Discussion of the study of the Commission for Minority Affairs**
- IV. Adjournment**

# MEETING MINUTES

*Chairman Wm. Weston J. Newton*

*First Vice-Chair:  
Laurie Slade Funderburk*

## Legislative Oversight Committee

*Katherine E. "Katie" Arrington  
Gary E. Clary  
MaryGail K. Douglas  
Phyllis J. Henderson  
Joseph H. Jefferson Jr.  
Mandy Powers Norrell  
J. Todd Rutherford  
Tommy M. Stringer  
Bill Taylor*



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## South Carolina House of Representatives

*Jennifer L. Dobson  
Research Director*

*Cathy A. Greer  
Administration Coordinator*

**Post Office Box 11867**

**Columbia, South Carolina 29211**

**Telephone: (803) 212-6810 • Fax: (803) 212-6811**

**Room 228 Blatt Building**

*Charles L. Appleby IV  
Legal Counsel*

*Carmen J. McCutcheon Simon  
Research Analyst/Auditor*

*Kendra H. Wilkerson  
Fiscal/Research Analyst*

### Economic Development, Transportation, and Natural Resources Subcommittee

Tuesday, October 17, 2017

10:00 am

Blatt Room 108

### Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.8, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly's website (<http://www.scstatehouse.gov>) and clicking on *Committee Postings and Reports*, then under *House Standing Committees* click on *Legislative Oversight*. Then, click on *Video Archives* for a listing of archived videos for the Committee.

### Attendance

- I. The Economic Development, Transportation, and Natural Resources Subcommittee meeting was called to order by Vice-Chair Laurie Slade Funderburk on Tuesday, October 17, 2017, in Room 108 of the Blatt Building. The following members of the Subcommittee were present for either all or a portion of the meeting: Representative Neal Collins, Representative Mandy Powers Norrell, and Representative Robert L. Ridgeway.

### Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not

have to be verbatim accounts of meetings. It is the practice of the Legislative Oversight Committee to provide minutes for its subcommittee meetings.

- II. Representative Ridgeway makes a motion to approve the meeting minutes from the prior Subcommittee meeting. A roll call vote is held, and the motion passes.

Rep. Ridgeway's motion to approve the minutes from the September 18, 2017 meeting:	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell			Not Present
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

#### Discussion of the Human Affairs Commission

- I. Vice-Chair Funderburk provides an update on the Subcommittee's work related to the Human Affairs Commission. She explains that the purpose of this meeting is to allow the agency to go through its responses to the Subcommittee's follow-up questions, as well as to review the agency's recommendations.
- II. Vice-Chair Funderburk reminds agency personnel who were sworn in during prior meetings that they remain under oath.
- III. Commissioner Raymond Buxton II presents the agency's responses to the questions in the Subcommittee's October 2, 2017, follow-up letter. Subcommittee members ask questions, which Commissioner Buxton and other agency representatives answer.
- IV. Vice-Chair Funderburk reviews each of the agency's 23 law recommendations, which can be found on pp. 11-34 of the agency's [Program Evaluation Report](#), p. 2 of the agency's [letter from June 1, 2017](#), and pp. 1-3 of the agency's [additional law recommendations submitted on July 31, 2017](#). Ms. Lee Ann Rice, Staff Counsel, and other agency representatives provide additional information about each recommendation. Subcommittee members ask questions, which agency representatives answer.
- V. During the discussion of the agency's law recommendations, Subcommittee members make various motions, which are listed below:

Rep. Collins' motion to approve the agency's Law Recommendation #1.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Norrell's motion to approve the agency's Law Recommendation #2.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Collins' motion to approve the agency's Law Recommendation #3.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Collins' motion to approve the agency's Law Recommendation #4.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Collins' motion to approve the agency's Law Recommendation #6.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Collins' motion to approve the agency's Law Recommendation #7.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Collins' motion to approve the agency's Law Recommendations #9 and #11 as written, and to approve Law Recommendation #8 with an amendment to end the proposed additional language at "or sex."	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Norrell's motion to include for information purposes only the agency's Law Recommendations #12-19.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Collins' motion to approve the agency's Law Recommendation #21.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Ridgeway's motion to include for information purposes only the agency's Law Recommendation #22.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Norrell's motion to include for information purposes only the agency's Law Recommendation #23.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Norrell's motion to include for information purposes only the agency's Law Recommendation #24.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

Rep. Funderburk's motion to include for information purposes only the agency's implementation of recommendations from the 2014 Legislative Audit Council review of the agency.	Yea	Nay	Not Voting
Rep. Collins	✓		
Rep. Norrell	✓		
Rep. Ridgeway	✓		
Rep. Funderburk	✓		

VI. The meeting is adjourned.

# HUMAN AFFAIRS COMMISSION DOCUMENTS

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## STUDY TIMELINE: HUMAN AFFAIRS COMMISSION

- April 10, 2015      Agency submits its **Annual Restructuring and Seven-Year Plan Report**, which is available online.
- January 12, 2016      Agency submits its **Annual Restructuring Report**, which is available online.
- September 2016      Agency submits its 2015-16 Accountability Report/2017 Annual **Restructuring Report**.
- January 10, 2017      **Full committee votes** to make the agency the next agency for the Economic Development, Natural Resources, and Transportation Subcommittee to study. Video of the meeting is available online.
- January 17, 2017      **Agency receives notice** that it has been selected for study.
- February 9 - March 13, 2017      Committee solicits input from the public about the agency in the form of an **online public survey**. The results of the public survey are available online.
- March 9, 2017      Committee holds **public input meeting** about this and other agencies. Video of the meeting is available online.
- April 13, 2017      Agency submits its **Program Evaluation Report**, which is available online.
- June 22, 2017      Subcommittee meets with agency (**Meeting #1**).
- July 10, 2017      Subcommittee meets with agency (**Meeting #2**).
- September 2017      Agency submits its 2016-17 Accountability Report/2018 Annual **Restructuring Report**.
- September 18, 2017      Subcommittee meets with agency (**Meeting #3**).
- October 17, 2017      Subcommittee meets with agency (**Meeting #4**).
- October 24, 2017      (TODAY) Subcommittee meets with agency (**Meeting #5**).
- Ongoing      Public may submit written comments on the Oversight Committee's webpage on the General Assembly's website ([www.scstatehouse.gov](http://www.scstatehouse.gov))

# FOLLOW-UP LETTER TO AGENCY

*Chair Wm. Weston J. Newton*

*First Vice-Chair:  
Laurie Slade Funderburk*

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October 18, 2017

Chairman John Oakland  
Commissioner Raymond Buxton, II  
South Carolina Human Affairs Commission  
1026 Sumter Street  
Columbia, SC 29201

Dear Chairman Oakland and Commissioner Buxton:

The Economic Development, Transportation, and Natural Resources Subcommittee appreciates the agency's partnership in the oversight process. After our meeting on October 17, the Subcommittee has some follow up questions for the agency. Please provide this information by Friday, October 20, 2017.

### ***Agency Law Recommendation #5: Mandatory Mediation for State Agencies and Employees***

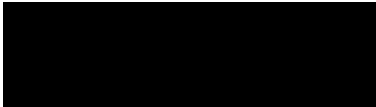
1. Does this recommendation create a situation in which employees of state agencies have more limited rights than employees of private companies in employment disputes?
2. Does the agency expect the success rate of mediations to decrease if some parties are required to complete mediation? If so, by how much?
3. Please estimate the cost of the following to (1) SCHAC; and (2) state agencies responding to complaints.
  - a. Mediation
  - b. Investigation
4. What costs, both monetary and otherwise (e.g., time), might a complainant against a state agency incur due to mediation?
5. How much does mediation delay an investigation if the mediation does not lead to a resolution?

***Agency Law Recommendation #10: Clarification of Types of Relief for Public Accommodation Discrimination***

6. Please present some options for limiting in statute the amount of damages that may be awarded to a complainant under the proposed revision of S.C. Code §45-9-60.

Thank you for your service to the citizens of South Carolina and for your continued cooperation with the legislative oversight process. The Subcommittee looks forward to continuing its discussion of the study of the Human Affairs Commission with you on Tuesday, October 24, 2017.

Sincerely,

A solid black rectangular box used to redact the signature of Laurie Slade Funderburk.

Laurie Slade Funderburk  
Committee First Vice-Chair

cc: Economic Development, Transportation, and Natural Resources Subcommittee Members

## AGENCY RECOMMENDATIONS

Statute or Regulation	Approved 10.17.17 Recommendation #1 SC Code Section 1-13-70 (i) Powers of Commission
Explanation of Revision	While Section 1-13-90(d) clearly articulates that the Agency has the power to subpoena non-state Agency employers, the language in 1-13-70 (i) has not been updated to reflect the agency's jurisdiction.
Recommended Language	(i) To require from any <del>employer state agency or department or local subdivisions of a state agency or department</del> such reports and information at such times as it may deem reasonably necessary to effectuate the purposes of this chapter.
Other Agencies Impacted	None
Statute or Regulation	Approved 10.17.17 Recommendation #2 SC Code Section 1-13-90 (c)(16) Complaints, investigations, hearings and orders
Explanation of Revision	State and Federal Courts, as well as the Agency's federal counterpart, award broader damages to aggrieved parties in employment discrimination litigation, and state law should contemplate the full range of damage awards available to a prevailing party. Language similar to the proposed wording below is found in Tennessee and Kentucky code sections.
Recommended Language	(16) If upon all the evidence at the hearing the panel shall find that the respondent has engaged in any unlawful discriminatory practice, it shall state its findings of fact and serve upon the respondent in the name of the Commission an opinion and order requiring <u>the Respondent to cease and desist from the discriminatory practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to such public officers and persons as the commission deems proper. Affirmative action ordered under this section may include, but is not limited to:</u> <u>(a) Hiring, reinstatement or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable;</u> <u>(b) Admission or restoration of individuals to union membership, admission to, or participation in, a guidance program, apprenticeship, training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs;</u> <u>(c) Reporting as to the manner of compliance;</u> <u>(d) Posting notices in conspicuous places in the respondent's place of business in the form prescribed by the commission and inclusion of such notices in advertising material;</u> <u>(e) Payment to the complainant of damages for an injury, including humiliation and embarrassment, caused by the discriminatory practice, and cost, including a reasonable attorney's fee; and</u> <u>(f) Such other remedies as shall be necessary and proper to eliminate all the discrimination identified by the evidence submitted at the hearing or in the record. that such unlawful discriminatory practice be discontinued and requiring such other action including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay to the persons aggrieved by such practice as, in the judgment of the panel, will effectuate the purposes of this chapter. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. The Commission may retain jurisdiction of any such case until it is satisfied of compliance by the respondent with its order.</u>
Other Agencies Impacted	Any agency that unlawfully discriminates against an employee or potential employee

Statute or Regulation	Approved 10.17.17 Recommendation # 3 SC Code Section 1-13-90 (d)(6) Complaints, investigations, hearings and orders (Discussed by agency on July 10, 2017)
Explanation of Revision	Complainants may be thrown out of court, despite abiding by all the necessary deadlines, when a complainant brings a civil suit following an investigation by the Agency, if the EEOC has waived the case to the Agency. For example, if the EEOC accepted a charge 300 days after the date of harm (the EEOC's deadline for acceptance), then subsequently waived the case immediately the Agency, the Agency would not be able to issue a Notice of Right to Sue to the Complainant until 480 days after the date of harm. Currently, the statute states that a lawsuit must be filed within a year from the date of harm, if it is earlier than the 180 days the Agency has to investigate the case.
Recommended Language	((6) If a charge filed with the commission by a complainant pursuant to this chapter is dismissed by the commission, or if within one hundred eighty days from the filing of the charge the commission has not filed an action under this chapter or entered into a conciliation agreement to which the complainant is a party, the complainant may bring an action in equity against the respondent in circuit court. The action must be brought within one year from the date of the violation alleged, or within one hundred twenty days from the date the complainant's charge is dismissed, whichever occurs <u>later</u> <del>earlier</del> , except that this period may be extended by written consent of the respondent.
Other Agencies Impacted	Any agency against which an employment discrimination lawsuit is brought

Statute or Regulation	Approved 10.17.17 Recommendation # 4 SC Code Section 1-13-100 Construction and application of chapter
Explanation of Revision	In addition to limiting the types of civil causes of action that can be brought under the Human Affairs Law, a similar limitation to the relief awarded should also be established.
Recommended Language	Nothing in this chapter may be construed to create a cause of action other than those specifically described in Section 1-13-90 of this chapter. Nothing in this chapter may be construed to create a cause of action against a person not covered by Title VII of the Civil Rights Act of 1964, as amended, 42 U. S. C. Section 2000e et seq., if the cause of action arises from discrimination on the basis of race, color, religion, sex, or national origin. Nothing in this chapter may be construed to create a cause of action against a person not covered by the Age Discrimination in Employment Act of 1967, as amended, 29 U. S. C. Section 621 et seq., if the cause of action arises from discrimination on the basis of age. Nothing in this chapter may be construed to create a cause of action against a person not covered by the Americans with Disabilities Act of 1990, as amended, Public Law 101-336. <u>Nothing in this chapter may be construed to award relief greater than Title VII of the Civil Rights Act of 1964, as amended, 42 U. S. C. Section 2000e et seq., the Age Discrimination in Employment Act of 1967, as amended, 29 U. S. C. Section 621 et seq., or the Americans with Disabilities Act of 1990, as amended, Public Law 101-336.</u>
Other Agencies Impacted	None

Statute or Regulation	No Action Taken - Additional Information Requested Recommendation # 5 SC Code Section 1-13-90 (c) Complaints, investigations, hearings and orders
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Explanation of Revision	Similar to the Office of Human Resources in holding Grievance Committee Hearings and in South Carolina Circuit Courts, State Agencies and complainants should be required to engage in a preliminary mediation at the Agency.
Recommended Language	<p>(c) For complaints asserting expressly or in substance a violation by a state agency or department or local subdivisions of a state agency or department of Section 1-13-80 the procedure shall be as follows:</p> <p><u>(1) Within sixty days of the complainant's filing of the complaint, the commissioner shall assign one or more of his employees or agents to hold a mandatory mediation conference. The mandatory mediation conference may not be used as a fact-finding conference. The mediator may hold additional mediation conferences to accommodate settlement discussions.</u></p> <p><u>(2) If the complaint is not resolved after the mandatory mediation conference, the complainant or the respondent may request the commission to hold additional mediation conferences.</u></p> <p><u>(3) The commission may dismiss the complaint if a complainant, after notice and without good cause, fails to attend a mandatory mediation conference, or the respondent has eliminated the discriminatory practice complained of, taken steps to prevent a like occurrence in the future, and offered full relief to the complainant, even though the complainant has refused the relief.</u></p> <p><u>(4) If the complaint is not resolved after the mandatory mediation conference, the commissioner shall assign one or more of the agency's employees or agents within fifteen days after the mandatory mediation conference to investigate the complaint as the designated investigator in charge of the complaint. Information gathered during an investigation under this item shall not be made public by the commission, its officers, or employees, except for information made public as a result of being offered or received into evidence in an action brought under this chapter.</u></p> <p><u>(5) The chairman of the commission or, upon the request of the chairman, the commissioner shall designate a member of the commission to supervise the processing of the complaint.</u></p> <p><u>(6) The complaint may be resolved at any time before a hearing by conference, conciliation, or persuasion, with the complainant and the respondent. The resolution must be embodied in a conciliation agreement, which shall include an agreement by the respondent to refrain from committing unlawful discriminatory practices in the future, and which may contain those further provisions as are agreed upon by the complainant and the respondent. No conciliation agreement may be considered an effective resolution by the commission unless the supervisory commission member has reviewed and approved the terms of the agreement. Positions taken by a witness in connection with these efforts toward conciliation shall not be made public or used against the interest of the witness in a subsequent proceeding.</u></p> <p><u>(7) In undertaking its investigation of a complaint, the commission shall have the authority:</u></p> <p><u>(a) to issue a subpoena or subpoena duces tecum and thereby compel attendance of witnesses or production for examination of books, papers, and records, whenever it is considered necessary to compel the attendance of witnesses, or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers, or any other evidence relating to any matter under investigation or in question before the commission. This authority may be exercised only by the joint action by the chairman of the commission and the commissioner;</u></p> <p><u>(b) to require any party or witness to answer interrogatories at any time after the complaint is filed;</u></p> <p><u>(c) to take depositions of witnesses including any party pursuant to a complaint or investigation made by the commission;</u></p> <p><u>(d) pursuant to subitems (a), (b), (c), if a person fails to permit access, fails to comply with a subpoena, refuses to have his deposition taken, refuses to answer interrogatories, or otherwise refuses to allow discovery, the commission may request an order of a court of competent jurisdiction requiring discovery and other related good faith compliance.</u></p> <p><u>(8) If not sooner resolved, the investigator shall upon completion of his investigation submit to the supervisory commission member a statement of the facts disclosed by his investigation</u></p>

and recommend either that the complaint be dismissed or that a panel of commission members be designated to hear the complaint. The supervisory commission member, after review of the case file and the statement and recommendation of the investigator, shall issue an order either of dismissal or for a hearing, which order is not subject to judicial or other further review.

(9) If the order is for dismissal, the supervisory commission member shall mail a copy of the order to the complainant and the respondent at their last known addresses.

(10) If the order is for a hearing, the supervisory commission member shall attach to the order a notice and a copy of the complaint and require the respondent to answer the complaint at a hearing at a time and place specified in the notice and shall serve upon the respondent a copy of the order, the complaint, and the notice.

(11) At any time before a hearing a complaint may be amended by the supervisory commission member upon the request of the investigator, complainant, or respondent. Complaints may be amended during a hearing only upon a majority vote of the panel of commission members for the hearing.

(12) Upon request by any party, the commissioner shall issue appropriate subpoenas or subpoenas duces tecum to any witnesses or other custodians of documents desired to be present at the hearing, or at prehearing depositions, unless the commissioner determines that issuance of the subpoenas or subpoenas duces tecum would be unreasonable or unduly burdensome.

(13) Upon notification by any party that any party or witness has failed to permit access, failed to comply with a subpoena or subpoena duces tecum, refused to have his deposition taken, refused to answer interrogatories, or otherwise refused to allow discovery, the commission, upon notice to the party or witness, shall apply to a court of competent jurisdiction for an order requiring discovery and other good faith compliance unless the commission determines that the discovery would be unreasonable or unduly burdensome.

(14) Upon request by the supervisory commission member, the chairman of the commission shall designate a panel of three members of the commission to sit as the commission to hear the complaint; provided, that no member of the commission may be a member of a panel to hear a complaint for which he has been a supervisory commission member.

(15) At any hearing held pursuant to this subsection, the case in support of the complaint shall be presented before the panel by one or more of the commission's employees or agents, and, with consent of the panel, by legal representatives of the complaining party; provided, that attempts at conciliation by the investigator must not be received into evidence nor otherwise made known to the members of the panel.

(16) The respondent shall submit a written answer to the complaint and appear at the hearing in person or by counsel and may submit evidence. The respondent shall have the power reasonably and fairly to amend his answer.

(17) The complainant is permitted to be present and submit evidence.

(18) These proceedings are subject to the Administrative Procedures Act and in case of conflict between the provisions of this chapter and the Administrative Procedures Act, the Administrative Procedures Act shall govern. A recording of the proceedings shall be made, which may be subsequently transcribed upon request and payment of a reasonable fee by the complainant or the respondent. The fee must be set by the commission or upon motion of the panel, in which case copies of this transcription shall be made available to the complainant or the respondent upon request and payment of a reasonable fee to be set by the commission.

(19) If upon all the evidence presented at the hearing the panel shall find that the respondent has engaged in any unlawful discriminatory practice, it shall state its findings of fact and serve upon the respondent in the name of the commission an opinion and order requiring that the unlawful discriminatory practice be discontinued and requiring such other action including, but not limited to, hiring, reinstating or upgrading of employees, with or without back pay to the persons aggrieved by the practice as, in the judgment of the panel, shall effectuate the

purposes of this chapter. Back pay liability shall not accrue from a date more than two years prior to the filing of the complaint with the commission. The commission may retain jurisdiction of any such case until it is satisfied of compliance by the respondent with its order.

(20) If upon all the evidence at the hearing the panel shall find that the respondent has not engaged in any unlawful discriminatory practice, the panel shall state its findings of fact and serve upon the complainant and the respondent an opinion and order dismissing the complaint as to the respondent.

(21) A copy of the opinion and order of the commission shall be delivered to the Attorney General and to those other public officers as the commission deems proper. Copies of the opinion and order shall be available to the public for inspection upon request, and copies shall be made available to any person upon payment of a reasonable fee set by the commission.

(22)(a) If an application for review is made to the commission within fourteen days from the date of the opinion and order of the commission, the commission, for good cause shown, shall review the opinion and order, the evidence, receive further evidence, rehear the parties or their representatives, and, if justified, amend the opinion and order.

(b) The opinion and order of the commission as provided in item (19), if not reviewed in due time, or an opinion and order of the commission upon review, as provided for in subitem (a), is conclusive and binding as to all questions of fact unless clearly erroneous in view of the reliable, probative, and substantive evidence in the whole record. Either party to the dispute, within thirty days after receipt of the opinion and order, may appeal the decision of the commission to the Administrative Law Court as provided in Chapter 23, Title 1. In case of an appeal from the decision of the commission, the appeal operates as a supersedeas for thirty days only, unless otherwise ordered by the administrative law judge, and the respondent is required to comply with the order involved in the appeal until the questions at issue are fully determined in accordance with the provisions of this chapter.

(c) The commission may institute a proceeding for enforcement of its order issued under item (19) or its amended order issued under subitem (a) after thirty days from the date of the order, unless otherwise prevented by the administrative law judge under subitem (b) above, by filing a request for enforcement in the court of common pleas of the county in which the hearing occurred, or where the person who is the subject of the commission's order resides or transacts business. A decree of the court for enforcement of the order may be granted upon a showing that a copy of the petition for enforcement was served upon the party subject to the dictates of the commission's order."

(1) The Commissioner shall assign one or more of his employees or agents to investigate the complaint, in which case one shall be designated the investigator in charge of the complaint. Information gathered during an investigation under this subsection shall not be made public by the Commission, its officers or employees, except for information made public as a result of being offered or received into evidence in an action brought under this subsection.

(2) The Chairman of the Commission or, upon the request of the Chairman, the Commissioner shall designate a member of the Commission to supervise the processing of the complaint.

(3) The complaint may be resolved at any time before a hearing by conference, conciliation and persuasion with the complainant and the respondent, such resolution to be embodied in a conciliation agreement, which shall include an agreement by the respondent to refrain from committing unlawful discriminatory practices in the future, and which may contain such further provisions as are agreed upon by the complainant and the respondent. No conciliation agreement shall be deemed an effective resolution by the Commission unless the supervisory commission member shall have reviewed and approved the terms thereof.  
Positions taken by a

witness in connection with such efforts toward conciliation shall not be made public or used against the interest of the witness in a subsequent proceeding.

(4) In undertaking its investigation of a complaint the Commission shall have the authority:

(i) To issue a subpoena or subpoena duces tecum and thereby compel attendance of witnesses or production for examination of books, papers, and records, whenever it is deemed necessary to compel the attendance of witnesses, or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers or any other evidence relating to any matter under investigation or in question before the Commission. The power may be exercised only by the joint action by the Chairman of the Commission and the Commissioner.

–(ii) To require any party or witness to answer interrogatories at any time after the complaint is filed.

(iii) To take depositions of witnesses including any party pursuant to a complaint or investigation made by the Commission.

(iv) Pursuant to subitems (i), (ii), (iii), above, if a person fails to permit access, fails to comply with a subpoena, refuses to have his or her deposition taken, refuses to answer interrogatories, or otherwise refuses to allow discovery, the Commission may request an order of a court of competent jurisdiction requiring discovery and other related good faith compliance.

(5) If not sooner resolved, the investigator shall upon completion of his investigation submit to the supervisory commission member a statement of the facts disclosed by his investigation and recommend either that the complaint be dismissed or that a panel of commission members be designated to hear the complaint. The supervisory commission member, after review of the case file and the statement and recommendation of the investigator shall issue an order either of dismissal or for a hearing, which order shall not be subject to judicial or other further review.

(6) If the order be of dismissal, the supervisory commission member shall mail a copy of the

order to the complainant and the respondent at their last known addresses.

(7) If the order be for a hearing, the supervisory commission member shall annex thereto a notice and a copy of the complaint and require the respondent to answer the complaint at a hearing at a time and place specified in the notice and shall serve upon the respondent a copy of the order, the complaint, and the notice.

(8) At any time before a hearing a complaint may be amended by the supervisory commission member upon the request of the investigator or of the complainant or of the respondent. Complaints may be amended during a hearing only upon a majority vote of the panel of commission members for such hearing.

(9) Upon request by any party, the Commissioner shall issue appropriate subpoenas or subpoenas duces tecum to any witnesses or other custodians of documents desired to be present at the hearing, or at prehearing depositions, unless the Commissioner determines that issuance of the subpoenas or subpoenas duces tecum would be unreasonable or unduly burdensome.

(10) Upon notification by any party that any party or witness has failed to permit access, failed to comply with a subpoena or subpoena duces tecum, refused to have his or her deposition

taken, refused to answer interrogatories, or otherwise refused to allow discovery, the Commission, shall, upon notice to the party or witness, apply to a court of competent jurisdiction for an order requiring discovery and other good faith compliance unless the Commission determines that the discovery would be unreasonable or unduly burdensome.

(11) Upon request by the supervisory commission member, the Chairman of the

Commission shall designate a panel of three members of the Commission to sit as the Commission to hear the complaint; provided, that no member of the Commission shall be a member of a panel to hear a complaint for which he has been a supervisory commission member.

(12) At any hearing held pursuant to this subsection, the case in support of the complaint shall be presented before the panel by one or more of the commission's employees or agents, and, with consent of the panel, by legal representatives of the complaining party; provided, that endeavors at conciliation by the investigator shall not be received into evidence nor otherwise made known to the members of the panel.

(13) The respondent shall submit a written answer to the complaint and appear at such hearing in person or by counsel and may submit evidence. The respondent shall have the power reasonably and fairly to amend his answer.

(14) The complainant shall be permitted to be present and submit evidence.

(15) Proceedings under this section shall be subject to the Administrative Procedures Act, Sections 1-23-310 through 1-23-400 of the Code of Laws of South Carolina, 1976, as amended, and in case of conflict between the provisions of this chapter and the Administrative Procedures Act, the Administrative Procedures Act shall govern. A recording of the proceedings shall be made, which may be subsequently transcribed upon request and payment of a reasonable fee by the complainant or the respondent. The fee shall be set by the Commission or upon motion of the panel, in which case copies of such transcription shall be made available to the complainant or the respondent upon request and payment of a reasonable fee to be set by the Commission.

(16) If upon all the evidence at the hearing the panel shall find that the respondent has engaged in any unlawful discriminatory practice, it shall state its findings of fact and serve upon the respondent in the name of the Commission an opinion and order requiring that such unlawful discriminatory practice be discontinued and requiring such other action including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay to the persons aggrieved by such practice as, in the judgment of the panel, will effectuate the purposes of this chapter. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. The Commission may retain jurisdiction of any such case until it is satisfied of compliance by the respondent with its order.

(17) If upon all the evidence at the hearing the panel shall find that the respondent has not engaged in any such unlawful discriminatory practice, the panel shall state its findings of fact and serve upon the complainant and the respondent an opinion and order dismissing the complaint as to the respondent.

(18) A copy of the opinion and order of the Commission shall be delivered in all cases to the Attorney General and to such other public officers as the Commission deems proper. Copies of the opinion and order shall be available to the public for inspection upon request, and copies shall be made available to any person upon payment of a reasonable fee set by the Commission.

(19)(i) If an application for review is made to the commission within fourteen days from the date the order of the commission is given, the commission, for good cause shown, shall review the order and evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the order.

(ii) The order of the commission, as provided in item (16) of subsection (c) of this section, if not reviewed in due time, or an order of the commission upon review, as provided for in subitem (i) of item (19) of this subsection, is conclusive and binding as to all questions of fact unless clearly erroneous in view of the reliable, probative, and substantive evidence in the whole record. Either party to the dispute, within thirty days after receipt of notice to be

sent by registered mail of the order may appeal the decision of the commission to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). In case of an appeal from the decision of the commission, the appeal operates as a supersedeas for thirty days only, unless otherwise ordered by the administrative law judge, and the respondent is required to comply with the order involved in the appeal or certification until the questions at issue are fully determined in accordance with the provisions of this chapter.

(iii) The commission may institute a proceeding for enforcement of its order of item (16) of subsection (c) of this section, or its amended order of subitem (i) of item (19) of this subsection after thirty days from the date of the order, by filing a notice of appeal in the court of common pleas of the county in which the hearing occurred, or where a person required in the order to cease and desist from a practice which is the subject of the commission's order, or to take other affirmative action, resides, or transacts business. If no appeal pursuant to subitem (ii) of item (19) of this subsection is initiated, the commission may obtain a decree of the court for enforcement of its order upon a showing that a copy of the petition for enforcement was served upon the party subject to the dictates of the commission's order.

Other Agencies Impacted      Any state agency against which a charge is filed

Statute or Regulation      [Approved 10.17.17](#)

[Recommendation # 6 SC Code Section 31-21-70 \(G\) Application and expectations](#)

Explanation of Revision      Disability discrimination related to modifications, accommodations and construction deficiencies in a housing investigation may involve the terms and conditions of a sale or rental of a dwelling, in addition to the denial of a dwelling.

Recommended Language      (G) For purposes of Section 31-21-40(6) and 31-21-40(7), discrimination includes:

- (1) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford that person full enjoyment of the premises, except that in the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- (2) a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or
- (3) in connection with the design and construction of covered multi-family dwellings for first occupancy after the date that is thirty months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that:
  - (a) the public use and common use portions of such dwelling are readily accessible to and usable by handicapped persons;
  - (b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
  - (c) all premises within these dwellings contain the following features of adaptive design:
    - (i) an accessible route into and through the dwelling;
    - (ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

- (iii) reinforcements in the bathroom walls to allow later installation of grab bars; and
- (iv) usable kitchens and bathrooms that an individual in a wheelchair can maneuver about the space

Other Agencies Impacted	None
Statute or Regulation	Approved 10.17.17 Recommendation # 7 SC Code Section 31-21-120 (B) Complaints; process and handling; conciliation; effect of local laws; civil action
Explanation of Revision	The Agency and its Federal Counterpart agency (the Department of Housing and Urban Development) no longer require that a complaint or answer be verified, only that they be under oath. The Commission may contract and cooperate with Federal Equivalent Agencies (like the EEOC and HUD) in furthering the joint missions of the Agencies.
Recommended Language	(B) A complaint under subsection (A) must be filed within one hundred eighty days after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him, not later than ten days after receipt of notice, and may be amended reasonably and fairly by the respondent at any time. <del>Both complaint and answer must be verified.</del>
Other Agencies Impacted	None
Statute or Regulation	Approved 10.17.17 Recommendation # 8 SC Code Section 45-9-10 (A) All persons entitled to equal employment of and privileges to public accommodation; places of public accommodation; "supported by state action" defined
Explanation of Revision	In recent years, the Attorney General and SLED have not engaged in any investigations related to public accommodation discrimination and instead all complaints are brought to the Human Affairs Commission for processing through conciliation efforts only. The Commission seeks to have the General Assembly encourage our partner Agencies to work with SCHAC in adjudicating allegations of public accommodation discrimination. Alternatively, SCHAC seeks that the statutes be changed to empower SCHAC with processing complaints. The language in the law, and new process, mirrors the Tennessee Human Rights Commission, which is substantially similar to the South Carolina Human Affairs Commission.
Recommended Language	(A) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in Article 1 of this chapter, without discrimination or segregation on the ground of race, color, religion, <del>or national origin, or sex.</del> <u>(Agency recommendation amended. though nothing in this part shall prohibit segregation on the basis of sex of bathrooms, health clubs, rooms for sleeping or changing clothes, or other places of public accommodation the commission specifically exempts on the basis of bona fide considerations of public policy.)</u>
Other Agencies Impacted	Office of the Attorney General and SLED Staff reached out for input from agencies (Attorney General - October 4) and SLED (October 2)

Statute or Regulation	<p>Approved 10.17.17</p> <p>Recommendation # 9 SC Code Section 45-9-40 Processing of complaints; review by State Human Affairs Commission; complaint by Attorney General</p>
Explanation of Revision	<p>In recent years, the Attorney General and SLED have not engaged in any investigations related to public accommodation discrimination and instead all complaints are brought to the Human Affairs Commission for processing through conciliation efforts only. The Commission seeks to have the General Assembly encourage our partner Agencies to work with SCHAC in adjudicating allegations of public accommodation discrimination. Alternatively, SCHAC seeks that the statutes be changed to empower SCHAC with processing complaints. The language in the proposed wording, and new process, mirrors the Tennessee Human Rights Commission, which is substantially similar to the South Carolina Human Affairs Commission.</p>
Recommended Language	<p>Section 45-9-40. Processing of <u>charges</u> <del>complaints</del>; review by State Human Affairs Commission; complaint by <u>Commission</u> <del>Attorney General</del>.</p> <p>Whenever the <u>State Human Affairs Commission</u> <del>Attorney General</del> receives a <u>charge</u> <del>complaint</del> and has cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by the provisions of Article 1, and that the pattern or practice is of a nature so as to deny the full exercise of the rights described in the provisions of Article 1, the <u>Commission</u> <del>Attorney General</del> <del>shall notify the State Law Enforcement Division which shall conduct an investigation.</del> The results of this investigation must be reported to <u>a panel of the Board of the Commission</u> <del>the State Human Affairs Commission</del>. A panel of not fewer than three commission members, designated by the chairman, shall determine if there is reasonable cause to believe that the facts alleged, based upon the results of this investigation, are sufficient to state a violation of Article 1 by a pattern or practice of discrimination or segregation.</p> <p>If this panel finds reasonable cause, <u>they shall inform the chairman</u> <del>the chairman shall inform the Attorney General</del>, and the <u>Commission</u> <del>Attorney General or his designee</del> shall begin an action by <del>filing a complaint with the commission and serving a complaint and Order for hearing</del>, by certified mail, return receipt requested, <u>on</u> the parties named in the complaint. The commission members which serve on this panel may not serve on the panel conducting a hearing on the allegations contained in the complaint if a license revocation proceeding is initiated. If a person alleged to have violated the provisions of Article 1 by a pattern or practice of discrimination or segregation is an employee or agent of an establishment as defined in Section 45-9-10, the <u>Commission</u> <del>Attorney General</del> shall make a diligent effort to include in the complaint the name of the employer, principal, or a third party who may be the holder of a license or permit under which the establishment or an agent of the establishment operates. The complaint must set forth a description of the charges, including the facts pertaining to the pattern or practice of discrimination or segregation and a listing of those licenses or permits which are sought to be revoked under the provisions of this article and must state clearly the remedy or penalty available pursuant to Sections 45-9-60 and 45-9-80 if the allegations are found to be true.</p>
Other Agencies Impacted	<p>Office of the Attorney General and SLED</p> <p>Staff reached out for input from agencies (Attorney General - October 4) and SLED (October 2)</p>

Statute or Regulation	<p><b>No Action Taken - Additional Information Requested</b></p> <p>Recommendation # 10 SC Code Section 45-9-60 State Human Affairs Commission may establish rules of procedure for hearings; subpoenas; rights of persons charged; rules of evidence; scope of hearing; deliberations of panel; remedies for violation</p>
Explanation of Revision	<p>In recent years, the Attorney General and SLED have not engaged in any investigations related to public accommodation discrimination and instead all complaints are brought to the Human Affairs Commission for processing through conciliation efforts only. The Commission seeks to have the General Assembly encourage our partner Agencies to work with SCHAC in adjudicating allegations of public accommodation discrimination. Alternatively, SCHAC seeks that the statutes be changed to empower SCHAC with processing complaints. The language in the proposed wording, and new process, mirrors the Tennessee Human Rights Commission, which is substantially similar to the South Carolina Human Affairs Commission.</p>
Recommended Language	<p>State Human Affairs Commission may establish rules of procedure for hearings; subpoenas; rights of persons charged; rules of evidence; scope of hearing; deliberations of panel; remedies for violation. The commission may establish rules of procedure for the conduct of the panel hearings as provided in this article and is not governed by the Administrative Procedures Act in establishing these rules or in the conduct of panel hearings. The commissioner, upon request of the panel conducting a hearing, may issue subpoenas and subpoenas duces tecum to allow the panel to interview any person it deems necessary and review any document it deems relevant.</p> <p>A person or group of persons charged in the complaint with engaging in a pattern or practice of discrimination or segregation in violation of Article 1 shall have the right in the hearing to present physical and documentary evidence, the testimony of witnesses, and other relevant information. In procuring the testimony of witnesses, such persons shall have the benefit of the commissioner's subpoena power. Such persons shall have the right to appear before the panel and be represented by an attorney, to call witnesses, to confront and cross examine adverse witnesses, and to make oral and written legal arguments.</p> <p>All testimony given must be under oath in the presence of a court reporter who shall record the proceedings. The rules of evidence applicable in circuit court shall be used in all hearings. Except to the extent necessary to establish a pattern or practice of discrimination or segregation or to allow for the participation of those intervenors as may be allowed by Section 45-9-70, the panel conducting the hearing must limit the scope of the hearing to the items delineated in the description of the charges or in the allegations in the complaint.</p> <p>Notwithstanding any other provision of law to the contrary, all deliberations and votes of the panel may be conducted in executive session. The deliberations, findings, and conclusions of the panel are confidential and may not be disclosed by any person until the final order or determination is made public as provided in this article.</p> <p>Except as otherwise provided by this article, if it is determined that the rights and privileges secured by Article 1 have been violated by a pattern or practice of discrimination or segregation by an owner of an establishment, an employee of an establishment, or an agent of an establishment, the panel shall grant the relief authorized in Section 45-9-80. The panel may further order any persons found to have violated the provisions of Article 1 by a pattern or practice of discrimination or segregation to reimburse the State for the actual costs incurred in conducting the hearing, including reasonable attorney's fees. Additionally, the Panel's Order shall be public and may require:</p> <ol style="list-style-type: none"> <li>(1) <u>Admission of individuals to a place of public accommodation, resort or amusement;</u></li> <li>(2) <u>The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges and services of the respondent;</u></li> <li>(3) <u>Reporting as to the manner of compliance;</u></li> <li>(4) <u>Posting notices in conspicuous places in the respondent's place of business in the form prescribed by the commission and inclusion of such notices in advertising material;</u></li> </ol>

- (5) Payment to the complainant of damages for an injury, including humiliation and embarrassment, caused by the discriminatory practice, and cost, including a reasonable attorney's fee;
- (6) Such other remedies as shall be necessary and proper to eliminate all the discrimination identified by the evidence submitted at the hearing or in the record.

Other Agencies Impacted

Office of the Attorney General

Staff reached out for input from agencies (Attorney General - October 4)

Statute or Regulation

Approved 10.17.17

Recommendation # 11 SC Code Section 45-9-80 Attorney General to notify permitting, regulatory or licensing authority of violations; immediate revocation of license or permit; enforcement of panel's decision; violators not to obtain license or permit for three years

Explanation of Revision

In recent years, the Attorney General and SLED have not engaged in any investigations related to public accommodation discrimination and instead all complaints are brought to the Human Affairs Commission for processing through conciliation efforts only. The Commission seeks to have the General Assembly encourage our partner Agencies to work with SCHAC in adjudicating allegations of public accommodation discrimination. Alternatively, SCHAC seeks that the statutes be changed to empower SCHAC with processing complaints. The language in the proposed law, and new process, mirrors the Tennessee Human Rights Commission, which is substantially similar to the South Carolina Human Affairs Commission.

Recommended Language

Commission ~~Attorney General~~ to notify permitting, regulatory, or licensing authority of violations; immediate revocation of license or permit; enforcement of panel's decision; violators not to obtain license or permit for three years.

Notwithstanding any other provision of law or ordinance to the contrary, if the panel determines that the provisions of Article 1 have been violated by a pattern or practice of discrimination or segregation by the owner of an establishment, an employee of an establishment, or an agent of an establishment of public accommodations as defined in Section 45-9-10, the Commission ~~Attorney General~~ must immediately notify the appropriate state or local permitting, regulatory, or licensing authority that those licenses or permits so designated in the panel's order must be revoked immediately, notwithstanding the provisions of Section 1-23-380(C), upon expiration of the time allowed for an appeal if no appeal has been filed. After appeals, if the panel's order is not reversed, the license or permit must be revoked as provided in this article. If necessary, a writ of mandamus may be sought by the Commission ~~Attorney General~~ or any individual to effectuate the provisions of this section. Nothing in this section shall be construed as requiring the issuance of a writ of mandamus, and no civil action shall lie against any regulatory or licensing official acting pursuant to an order of the panel.

If the Commission notifies the appropriate state or local permitting, regulatory, or licensing authority that those licenses or permits so designated in the panel's order must be revoked immediately, no the owner of an establishment, employee of an establishment, or agent of an establishment who is found to have violated the provisions of Article 1 by a pattern or practice of discrimination or segregation shall not obtain a license or permit from the same regulatory or licensing entity or seek the reissuance of a revoked license or permit within three years from the date of the panel's order or a final determination of a court of competent jurisdiction, whichever is later.

Other Agencies Impacted

Office of the Attorney General

Staff reached out for input from agencies (Attorney General - October 4)

Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 12
Explanation of Revision	Regulation 65-2 Complaints (Approved in 2017 - Effective 5.26.17) The regulation should be changed to eliminate the unnecessary requirement of notarization on the Complaint Form, and should instead reflect the statutory requirement of a statement that is made under oath or affirmation. The proposed amendment parallels the requirements of the Agency's federal counterpart, the Equal Employment Opportunity Commission, thereby making the respective practices of the two entities substantially similar, which is required by the Worksharing Agreement between the Agency and the Equal Employment Opportunity Commission.
Recommended Language	B. Complaint Form. The complaint shall be in writing on a form provided by the Commission for this purpose. The complaint must be signed and sworn <u>under oath or affirmation.</u> <del>before a notary public or other person duly authorized by law to administer oaths and take acknowledgements. Notarial service shall be furnished without charge by the Commission.</del>
Other Agencies Impacted	None
Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 13
Explanation of Revision	Regulation 65-3 Investigations and Evidence Production (Changes Approved in 2017 - Effective 5.26.17) The regulation should be changed to decrease the timeframe for subpoena enforcement from 30 days to 14 days, additionally the timeframe to request a motion to quash and request for additional time are removed. The regulation should further provide Complainants and Respondents with equal access to the Agency's investigative files in order to be substantially equivalent to the EEOC, and the citation for the Freedom of Information Act is wrong and should be corrected. .
Recommended Language	65-3. Investigation and Production of Evidence. A. Investigation. (1) Investigator. The investigation of complaint shall be conducted by one or more investigators from the Commission's staff who shall be appointed by the Commissioner. If more than one investigator is appointed, one of the investigators shall be designated the "investigator in charge" and shall direct the investigation. (2) Duties of the Investigator. Investigators shall do those things necessary and proper to thoroughly investigate a complaint, but shall limit their investigations to their proper scope as described in Subsection 65-3A(5) herein. Investigators assigned to investigate complaints filed pursuant to Section 1-13-90(c) of the Act (State agencies or departments and their local subdivisions) shall upon completion of their investigations submit to the supervisory commission member a statement of the facts disclosed by their investigations and recommend to the supervisory commission member that the complaint be dismissed or that a panel of commission members be designated to hear the complaint. In complaints arising under Section 1-13-90(d) of the Act (employers, employment agencies or labor organizations, including municipalities, counties, special purpose districts, school districts and local governments), investigators shall upon completion of their investigation submit to the Commissioner a statement of the facts disclosed by the investigation and recommend either that the complaint be dismissed or that the Commission endeavor to formally conciliate the matter. (3) Supervisory Commission Members. If the complaint under investigation is brought pursuant to Section 1-13-90(c) of the Act, the Chairman of the Commission, or upon the request of the

Chairman, the Commissioner shall designate a member of the Commission to supervise the processing of the complaint who shall be known as the supervisory commission member. The supervisory commission member shall review the results of the investigation conducted by the investigator and review the investigator's recommendations for dismissal or other action.

(4) Commencement of the Investigation. The investigation shall commence immediately upon service by the Commission of a copy of the complaint or notice of complaint upon the respondent.

(5) Scope of Investigation. Insofar as practicable, the investigation shall be limited to a determination of the facts relating to the unlawful employment practice or practices under investigation or in question before the commission, alleged in the complaint and to the individual harm alleged to have been suffered by the complaining party. The investigator's inquiry for relevant facts shall be restricted to the relevant immediate environment in which the complaining party allegedly suffered harm such as a department or similar organizational structure of a respondent employer which is within the decision-making authority of a single person.

(6) Conduct of the Investigation.

(a) The investigator shall make a prompt and complete investigation of the allegations in the complaint which meet the standards of R.65-2.

(b) As part of each investigation the investigator:

(i) Will accept as evidence any statement of position and/or evidence concerning the allegations of the complaint which the complainant or respondent wishes to voluntarily submit.

(ii) Shall require the complainant or respondent to provide any evidence, including statements and documents, ~~if any, in his/her possession~~ which are relevant to the complaint, as well as, any information which is necessary to establish actual damages or to establish the date on which the alleged damages occurred.

(c) The investigator may require the complainant to provide a detailed statement which includes, but is not limited to:

(i) a statement of each specific harm that the complainant has allegedly suffered, and the date on which each alleged harm occurred;

(ii) for each alleged harm, a statement specifying the act, policy or practice of the respondent which is alleged to be unlawful; and

(iii) for each act, policy or practice alleged to have harmed the complainant a statement of the facts which lead the complainant to believe that the act, policy or practice is unlawfully discriminatory.

(d) During the investigation of a complaint, the investigator may conduct a fact-finding conference with the parties. The purpose of the conference shall be to clearly define the issues to determine which elements of the matter under investigation are undisputed, to resolve those issues that can be resolved and to determine whether there is any likelihood for a negotiated no-fault settlement of the complaint as described in Section 65-5A.

Discussions during a fact-finding conference are confidential. Any conciliation efforts during the conference are also confidential and are considered conciliation attempts within the meaning of the Act.

B. Production of Evidence.

~~(1) Investigator's Informal Request for Information. An investigator may, at any reasonable time after service of complaint, informally request access to records and documents in the possession of any person being investigated which are relevant to the complaint for purposes of inspection and copying.~~

~~(2)~~(1) Investigator's Formal Request for Information. An investigator may, at any reasonable time after service of complaint, formally request access to or production of records and documents in the possession of any person being investigated which are relevant to the complaint for purposes of inspection and copying. The investigator shall make the formal request for documents in writing by certified mail, transmitted to the person being investigated.

~~If any person refuses to comply with an investigator's informal request for access to documents and records, the investigator shall demand access to the documents in writing by certified mail, transmitted to the person being investigated.~~ The written demand shall notify the person that the investigator may apply to the Commission for a subpoena if access to or production of the documents and records is not permitted within thirty (30) days from the receipt of the investigator's written demand.

~~(3)(2)~~ Investigator's Application for Subpoena ~~Duces Tecum~~. If any person fails to comply with an investigator's formal written demand for information within thirty (30) days after receipt of the written demand, the investigator may apply to the Commission for a subpoena ~~duces tecum~~ by presenting to the Commission the investigator's written demand and the response of the person to whom the demand was made denying access to the information requested or, if no response was made, the investigator's affidavit that no response was received from the party to whom the demand for information was sent.

~~(4)(3)~~ Issuance of Subpoena ~~Duces Tecum~~. To effectuate the purpose of the Act, upon a showing by an investigator that a person has not complied with a written demand for information relevant to the complaint which was transmitted to the person by certified mail, the Chairman of the Commission and the Commissioner shall acting jointly have the authority to sign and issue a subpoena requiring:

- (a) the production of evidence including but not limited to books, papers, records, correspondence or documents in the possession or under the control of the person subpoenaed;
- (b) access to evidence for purposes of examination and the right to copy; and
- (c) under Section 1-13-90(c) of the Act, attendance at hearings or at prehearing depositions.

~~(5)(4)~~ Form and Content of Subpoenas.

(a) A subpoena issued by the Commission shall:

- (i) state the name and address of its issuer;
- (ii) briefly and clearly state the cause of issuance;
- (iii) identify the person to whom and the place, date and time at which the subpoena is returnable;
- (iv) identify the person or evidence subpoenaed with reasonable clarity, specificity and particularity to readily enable the person receiving the subpoena to identify the named person or evidence;
- (v) state the date and time access is requested if a subpoena ~~duces tecum~~ is issued.

(b) A subpoena shall only be returnable to a duly authorized investigator of the Commission of the Commissioner.

(c) Neither the complainant nor the respondent shall have the right to demand that an investigative subpoena be issued.

~~(6)(5)~~ Petitions to Revoke Subpoena. Within fourteen (14) ~~thirty (30)~~ days after a subpoena is issued, the person served with the subpoena may petition the Commission by mail to revoke or modify the subpoena and shall serve a copy of the petition upon the investigator who originally demanded the information. The petition shall separately identify the portion of the subpoena with which the petitioner does not intend to comply and shall state with respect to each portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition and shall be designated "Attachment A". Within ten (10) days after receipt of the petition or as soon thereafter as practicable, the Commission shall review the petition and make a written determination upon the petition stating in detail the reasons for the Commission's determination and shall serve a copy of the determination upon the petitioner and the investigator demanding the information. When a petition to revoke a subpoena is served upon the Commission, no enforcement of a subpoena shall be sought until the Commissioner has made a determination on the petition and served the petitioner with the determination.

~~(7)~~(6) Applications For Enforcement.

(a) Failure to Comply and Enforcement. A person who receives a subpoena may refuse to comply by failing to respond to the subpoena or by affirmatively stating that he/she will not respond; it is not necessary for the person to serve a petition to revoke the subpoena. If a person fails to comply with a subpoena, the Commission may, after ~~fourteen (14)~~ thirty (30) days, apply to any state court of competent jurisdiction for an order requiring the person to comply with the subpoena as provided by the Act.

(b) Notice of Hearing. Any person against whom an order is sought shall be given at least four (4) days notice (excluding Saturdays, Sundays, and state holidays) of the time and place of the hearing, and may oppose the granting of the order.

~~(c) Requests for Additional Time. Except in extraordinary circumstances the Commission will not oppose requests for additional time not to exceed ten (10) days, to prepare for the hearing, if the request is made to the court and served upon the Commission at least two days before the scheduled hearing.~~

~~(d) Motions to Quash. As provided by the Act, any person may move before a court of competent jurisdiction for an order quashing a subpoena after giving the Commission four (4) days notice (excluding Saturdays, Sundays and state holidays).~~

~~(8)~~(7) Interrogatories and Depositions.

(a) A party or witness may be required to answer written interrogatories relevant to a complaint under investigation under Section 1-13-90(c) and (d) of the Act at any time after such complaint is served.

(b) At least ten (10) days written notice (excluding Saturdays, Sundays and state holidays) shall be furnished to any party or witness sought to be deposed.

(c) The scope of discovery shall be governed by the relevance to the content of the complaint under investigation as described in Subsection 65-3A(5) of these Regulations.

~~(9)~~(8) Petitions to Revoke Interrogatories and Depositions. If a person refuses to have his/her deposition taken or refuses to answer interrogatories, the person may petition to revoke the notice to take deposition or revoke the interrogatories within five (5) days after receipt of the notice to take deposition or within thirty (30) days after receipt of interrogatories. The petition shall be mailed to the Commission and shall be served upon the investigator who originally demanded the information. The petition shall separately identify each portion of the interrogatories with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the notice to take deposition or the interrogatories, as the case may be, shall be attached to the petition and designated as "Attachment A". Within five (5) days after receipt of the petition or as soon thereafter as practicable, the Commission shall make a determination upon the petition stating in detail the reasons for its determination and shall serve a copy of its determination upon the petitioner. When a petition to revoke is served upon the Commission, no enforcement of a notice to take deposition or interrogatories shall be sought until the Commission has made its determination on the petition and served the petitioner.

~~(10)~~(9) Applications for Enforcement.

(a) Failure to Comply and Enforcement. A person who receives interrogatories or a notice to take deposition may refuse to comply by failing to respond or by affirmatively stating that he/she will not respond; it is not necessary for the person to serve a petition to revoke. If a person fails to comply with the notice to take deposition, the Commission may after ten (10) days apply to any state court of competent jurisdiction for an order requiring the person to comply as required by the Act. If a person fails to answer interrogatories the Commission may after thirty (30) days apply to any state court of competent jurisdiction for an order requiring the person to answer the interrogatories as provided by the Act.

(b) Notice of Hearing. Any person against whom an order is sought shall be given at least four (4) days notice (excluding Saturdays, Sundays and state holidays) of the time and place of the hearing, and may oppose the granting of the order.

~~(c) Requests for Additional Time. Except in extraordinary circumstances, the Commission will not oppose requests for additional time not to exceed ten (10) days to prepare for the hearing if the requests are made to the court and served upon the Commission at least two days before the scheduled hearing.~~

~~(d) Motions to Quash. Any person may move before a court of competent jurisdiction for an order quashing a motion to take depositions or interrogatories after giving the Commission four (4) days notice (excluding Saturdays, Sundays and state holidays).~~

~~(11)~~(10) Confidentiality.

(a) Public Access to Commission Files or Information Gathered During an Investigation. As provided in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered during an investigation conducted under Section 1-13-90 of the Act, shall not be made public by the Commission, its officers or employees, unless and until that information is offered or received into evidence at a Commission hearing or court proceeding brought in accordance with the Act. In view of the prohibitions against making information public contained in Sections

1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered by the Commission during investigations and internal memoranda assessing evidence, discussing complaints or recommending action on complaints shall not be deemed "public records" within the meaning of the Code of Laws of South Carolina Section 30-4-20 ~~30-3-20~~. The provisions of this Subsection apply whether the Commission's investigative file is open for an ongoing investigation or closed after a matter is completely concluded.

(b) Public Access to Final Opinions and Orders and Determinations. The public shall have access to the Commission's final opinion and order concerning a complaint under Section 1-13-90(c) of the Act or the Commission's determination on whether to dismiss a complaint or sue in the state circuit court under Section 1-13-90(d) of the Act.

(c) Commission Requests for Information from Investigators. If the Commission requires reports on investigations or on the progress of investigations, the investigator's report shall be given to the Commission while the Commission sits in executive session with member of the public excluded.

(d) Access to Information by Complainant and Respondent.

(i) Information Provided by the Parties Themselves. The complainant may at all times have access to any information which the complainant has furnished the Commission. The respondent may at all times have access to any information which the respondent has furnished the Commission. However, neither the complainant nor the respondent shall have information furnished by the other party, except that this Subsection does not apply to disclosure to the parties or their attorneys where the disclosure is limited to matters necessary for determining appropriate relief and/or negotiating settlements or making conciliation offers and except that this Subsection does not apply to the complainant's or respondent's access to Commission files after a complaint against the respondent has been served as provided in subitem (ii), following.

(ii) Information Available to the Parties in a Proceeding. ~~a Respondent before a Hearing or Court Procedure.~~ If an action is brought against a respondent in accordance with the Act, either before the Commission pursuant to Section 1-13-90(c) of the Act or in a court of competent jurisdiction pursuant to Sections 1-13-90(c) and (d) of the Act, the complainant and respondent shall from the time the complaint is served be granted access to the investigative file of the Commission which shall include access to statements, affidavits or depositions of the complainant and ~~complainant's~~ witnesses, whether or not the complainant and the ~~complainant's~~ witnesses are employees of the respondent at the time the request for access is made. The complainant and respondent shall also have access to all other facts and data gathered by the Commission during its investigation,

provided however that ~~neither shall the respondent shall not~~ have access to deliberative memoranda, working papers, drafts and other work products of the Commission relating to a complaint and further provided that deletions may be made where necessary to protect the personal privacy of an affiant or an individual named in a document to insure the anonymity of confidential sources or information, and to protect the confidentiality of trade secrets, confidential financial information and the like.

(iii) Copy of the Complaint. A copy of the complaint will be served in all cases upon the respondent unless a complaint received pursuant to a federal contract expressly requires that the original complaint not be served. In the event that a copy of the complaint is not provided, the respondent shall be served with a notice of the complaint within ten (10) days of receipt. The notice of complaint shall include the place, circumstances and identity of the person filing the complaint, a description of the violations of the Act alleged to have been committed by the respondent and the date of the alleged violation.

(e) Reports and Compilations. The Commission may publish abstracts of data derived from its closed investigative files in a form which does not reveal the identity of the parties, trade secrets, financial information or competitive commercial information or processes.

(f) Sharing Information Between Agencies. The Commission shall not provide information to any state or federal agency which does not have written regulations providing essentially the same protection against unauthorized disclosure as provided in these regulations.

Other Agencies Impacted     None

Statute or Regulation     [Approved 10.17.17 \(For Information Purposes Only in Subcommittee Report\)](#)  
[Recommendation # 14](#)  
[Regulation 65-9 Procedure for instituting Civil Action \(Approved in 2017 - Effective 5.26.17\)](#)

Explanation of Revision     The Regulation should be changed to reflect the One Hundred Twenty (120) day statutory deadline for filing a lawsuit. This deadline is found in South Carolina Code Section 1-13-90(d)(6).

Recommended Language     (3) Content of Notice of Right to Sue. The notice of right to sue shall include:  
    (a) authorization to the complainant to bring a civil action pursuant to Section 1-13-90(d) of the Act within one hundred twenty (120) ~~ninety (90)~~ days from issuance of such authorization by the Commission to the complainant, his/her attorney of record, or, in those instances covered by 65-2J(2)(d) hereof, from the date of mailing to the complainant's last known address;  
    (b) advice concerning the institution of such civil action by the complainant, where appropriate;  
    (c) a copy of the complaint;  
    (d) the Commission's decision, determination, or dismissal as appropriate.

Other Agencies Impacted     None

Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 15 Regulation 65-22 Employment Records Retention (Approved in 2017 - Effective 5.26.17)
Explanation of Revision	Regulation 65-22 may confuse state agencies and may lead an agency to understand that records need only be retained for a period of six months, when in fact, federal recordkeeping obligations require longer retention periods for state agencies and other employers, specifically those found in 29 C.F.R. § 1602.
Recommended Language	<del>Each State Agency, department and local subdivision thereof shall preserve and retain any personnel or employment record made or kept by them, including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, for a period of six (6) months from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of six (6) months from the date of termination. However, in no event is the six month record keeping requirement to be construed or interpreted as permitting the destruction of personnel records, after the expiration of the six month period, whenever a charge of discrimination has been filed and currently pending against a State Agency, department or local subdivision thereof.</del> <u>Repealed.</u>
Other Agencies Impacted	None
Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 16 Regulation 65-23 Record Preservation for Discrimination Charge (Approved in 2017 - Effective 5.26.17)
Explanation of Revision	The law should apply to all employers, labor organizations, and employment agencies which are in the process of being investigated by the Human Affairs Commission. The regulation should clarify that charges originating with the Commission's federal counterpart, the Equal Employment Opportunity Commission, have the same requirement. Additionally, the Human Affairs Commission should have the right to infer that, if an employer, labor organization, or employment agency fails to retain personnel records which are relevant evidence to an investigation, such evidence may have adversely affected the party's position.
Recommended Language	65-23. Preservation of Records in Event of Charge of Discrimination. When a charge of discrimination has been filed <u>with the Commission or its federal equivalent, or if an action brought by either entity is pending the Commission, the employer, labor organization, or employment agency</u> respondent State Agency, department or local subdivision, shall preserve all personnel <u>or employment</u> records relevant to the charge or action until final disposition of the charge or the action. <u>Failure to retain relevant personnel or employment records may result in an adverse inference against the party during the course of an investigation.</u>
Other Agencies Impacted	None

Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 17 Regulation 65-223 Investigation Procedures (Resolution to Approve Pending)
Explanation of Revision	The law should clarify that certain file contents may be protected from disclosure.
Recommended Language	(3) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in 65-225.F., the Commission will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, <u>provided however that neither shall have access to deliberative memoranda, working papers, drafts and other work products of the Commission relating to a complaint and further provided that deletions may be made where necessary to protect the personal privacy of an affiant or an individual named in a document to insure the anonymity of confidential sources or information, and to protect the confidentiality of trade secrets, confidential financial information and personal identifiable information under S.C. Code 30-2-30, or those items exempt from disclosure under S.C. Code 30-4-30. Additionally, any records requested by a party or a non-party to an investigation under S.C. Code 30-4-30 will be assessed on a case by case basis.</u> Following the completion of investigation, the Commission shall notify the aggrieved person and the respondent that the final investigation report is completed and will be provided upon request.
Other Agencies Impacted	None

Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 18 Regulation 65-227 Complaint Issuance (Approved in 2017 - Effective 5.26.17)
Explanation of Revision	The law needs to consistently and clearly use different terms when referring to different documents in an investigation deemed to be a 'reasonable cause' case.
Recommended Language	65-227. Issuance of <u>Reasonable Cause Determination</u> <del>Complaint</del> A . Reasonable cause determination. <ol style="list-style-type: none"> <li>(1) If a conciliation agreement has not been executed by the complainant and the respondent, and approved by the Commissioner, within the time limits set forth in paragraph (3)(a) of this section, the Commission shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise, disclosed during the investigation. <ol style="list-style-type: none"> <li>(a) In all cases <ol style="list-style-type: none"> <li>(i) If the Commission determines that reasonable cause exists the Commission will immediately issue a <u>reasonable cause determination</u> <del>complaint</del> on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.</li> <li>(ii) If the Commission determines that no reasonable cause exists, the Commission shall: issue a short and plain written statement of the facts upon which the Commission has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal. Public disclosure of the dismissal may be by issuance of a press</li> </ol> </li> </ol> </li> </ol>

release except that the respondent may request that no release be made. Notwithstanding a respondent's request that no press release be issued, the fact of the dismissal, including the names of the parties, shall be public information available on request.

(2) The Commission may not issue a reasonable cause determination ~~complaint~~ under paragraph (1) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a complaint may not be issued because of the commencement of such a trial, the Commission will so notify the aggrieved person and the respondent by certified mail or personal service.

(3)(a) The Commission shall make a reasonable cause determination within 100 days after filing of the original complaint (or where the Commission has reactivated a complaint, within 100 days after service of the notice of reactivation), unless it is impracticable to do so.

(b) If the Commission is unable to make the determination within the 100 day period specified in paragraph (3)(a) of this section, the Commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

#### B. Issuance of Administrative Pleading ~~Complaint~~.

##### (1) An administrative pleading ~~complaint~~:

(a) Shall consist of a short and plain written statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(b) Shall be based on the final investigative report; and

(c) Need not be limited to facts or grounds that are alleged in the original complaint if the record of the investigation demonstrated that the respondent has been given notice and an opportunity to respond to the allegation.

##### (2) Within three business days after the issuance of the reasonable cause determination ~~complaint~~ the Commission shall:

(a) Set a time and place for hearing;

(b) File the administrative pleading ~~complaint~~ along with the required notifications, with the Chairman; and

(c) Serve the administrative pleading ~~complaint~~ and notifications in accordance with the Act.

#### C. Election of civil action or provision of administrative proceeding.

(1) If an administrative pleading ~~complaint~~ is issued under 65-227.B., a complainant, a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding, to have the claims asserted in the complaint decided in a civil action.

(2) The election must be made no later than twenty days after the receipt of service of the reasonable cause determination ~~complaint~~. The notice of the election must be filed with the Commission, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under Article 3.

(3) If an election is not made under this section, the Commission will maintain an administrative proceeding based on the administrative pleading ~~complaint~~ in accordance with the procedures under Article 3.

(4) If an election is made under this section, the Commission shall cause to be commenced and maintained a civil action seeking relief as provided by the Fair Housing Law on behalf of the aggrieved person in the appropriate Court of Common Pleas.

Other Agencies Impacted    None

Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 19 Regulation 65-233 Fair Housing Law Pleadings, Motions, and Discoveries (Approved in 2017 - Effective 5.26.17)
Explanation of Revision	The citation in this regulation is confusing, so clarity is needed.
Recommended Language	<del>Discovery.</del> K. <del>A.</del> Either party may cause to be taken the depositions of witnesses within or without the State. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas of this State; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply. L. <del>B.</del> The Chief Hearing Commissioner shall on its own behalf, or, upon request, on behalf of any other party to the case, issue in the name of the Commission subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers and records. M. <del>C.</del> The Court of Common Pleas shall, on application of the Commission, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the Commission. N. <del>D.</del> If a party fails to comply with discovery, the hearing panel may: (1) Draw an inference in favor of the requesting party with regard to the information sought; (2) Prohibit the party failing to comply from introducing evidence or otherwise relying upon, testimony relating to the information sought; (3) Permit the requesting party to introduce secondary evidence concerning the information sought; (4) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or (5) Take such other action as may be appropriate.
Other Agencies Impacted	None
Statute or Regulation	Recommendation # 20 - The agency skipped #20 in their numbering
Statute or Regulation	Approved 10.17.17 Recommendation # 21 - SC Code Section 1-13-40(j) Creation of the South Carolina Commission on Human Affairs
Explanation of Revision	This item should be deleted, as identified by the Legislative Audit Council in its December 2014 report, because "the agency's last annual report addressing this section of law was in FY 00-01; however, the accountability report encompasses all the information which was previously in the annual report."
Recommended Language	<del>(j) The Commission shall render each year to the Governor and to the General Assembly a written report of its activities and of its recommendations.</del>
Other Agencies Impacted	None.

Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 22 - Regulation 65-2(d)(6) Complaints
Explanation of Revision	The Agency's federal equivalent, the Equal Employment Opportunity Commission, accepts charges filed by fax or email.
Recommended Language	F. Manner of Filing. The complaint may be made in person to any member of the Commission's staff, <u>transmitted via facsimile or email</u> , or mailed to the Commission's office in Columbia, South Carolina. A complaint may also be filed in the above manner at any other Commission office subsequently established for the filing of complaints by the Commission at any other location in the State.
Other Agencies Impacted	None.

Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 23 - Regulation 65-3(B)(10) (Additional Recommendation provided in July 31, 2017 letter)
Explanation of Revision	The Commission is prohibited from allowing public access to information contained in employment investigation files. However, the parties to the file have certain restricted access to the file contents, primarily for processing purposes. The limitation currently prevents the charging party from gaining access to the respondent's written 'position statement' which contains its defenses.
Recommended Language	B. Production of Evidence. (10) Confidentiality. (a) Public Access to Commission Files or Information Gathered During an Investigation. As provided in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered during an investigation conducted under Section 1-13-90 of the Act, shall not be made public by the Commission, its officers or employees, unless and until that information is offered or received into evidence at a Commission hearing or court proceeding brought in accordance with the Act. In view of the prohibitions against making information public contained in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered by the Commission during investigations and internal memoranda assessing evidence, discussing complaints or recommending action on complaints shall not be deemed "public records" within the meaning of the Code of Laws of South Carolina Section 30-4-20 . The provisions of this Subsection apply whether the Commission's investigative file is open for an ongoing investigation or closed after a matter is completely concluded. (b) Public Access to Final Opinions and Orders and Determinations. The public shall have access to the Commission's final opinion and order concerning a complaint under Section 1-13-90(c) of the Act or the Commission's determination on whether to dismiss a complaint or sue in the state circuit court under Section 1-13-90(d) of the Act. (c) Commission Requests for Information from Investigators. If the Commission requires reports on investigations or on the progress of investigations, the investigator's report shall be given to the Commission while the Commission sits in executive session with member of the public excluded. (d) Access to Information by Complainant and Respondent. (i) Information Provided by the Parties Themselves. The complainant may at all times have access to any information which the complainant has furnished the Commission. The respondent may at all times have access to any information which the respondent has furnished the Commission. <u>During the investigation of the charge of discrimination, both parties may have access to the charge filed by the complainant, and the Respondent's initial response to the charge, or position statement, and non-confidential attachments. Confidential attachment should be labeled by the Respondent prior to being sent to the Commission.</u> However, nNeither the complainant nor the respondent shall

have other information furnished by the other party, except that this Subsection does not apply to disclosure to the parties or their attorneys where the disclosure is limited to matters necessary for determining appropriate relief and/or negotiating settlements or making conciliation offers and except that this Subsection does not apply to the complainant's or respondent's access to Commission files after a complaint against the respondent has been served as provided in subitem (ii), following.

(ii) Information Available to the Parties in a Proceeding. If an action is brought against a respondent in accordance with the Act, either before the Commission pursuant to Section 1-13-90(c) of the Act or in a court of competent jurisdiction pursuant to Sections 1-13-90(c) and (d) of the Act, the complainant and respondent shall from the time the complaint is served be granted access to the investigative file of the Commission which shall include access to statements, affidavits or depositions of the complainant and witnesses, whether or not the complainant and the witnesses are employees of the respondent at the time the request for access is made. The complainant and respondent shall also have access to all other facts and data gathered by the Commission during its investigation, provided however that neither shall have access to deliberative memoranda, working papers, drafts and other work products of the Commission relating to a complaint and further provided that deletions may be made where necessary to protect the personal privacy of an affiant or an individual named in a document to insure the anonymity of confidential sources or information, and to protect the confidentiality of trade secrets, confidential financial information and the like.

(iii) Copy of the Complaint. A copy of the complaint will be served in all cases upon the respondent unless a complaint received pursuant to a federal contract expressly requires that the original complaint not be served. In the event that a copy of the complaint is not provided, the respondent shall be served with a notice of the complaint within ten (10) days of receipt. The notice of complaint shall include the place, circumstances and identity of the person filing the complaint, a description of the violations of the Act alleged to have been committed by the respondent and the date of the alleged violation.

(e) Reports and Compilations. The Commission may publish abstracts of data derived from its closed investigative files in a form which does not reveal the identity of the parties, trade secrets, financial information or competitive commercial information or processes.

(f) Sharing Information Between Agencies. The Commission shall not provide information to any state or federal agency which does not have written regulations providing essentially the same protection against unauthorized disclosure as provided in these regulations.

Other Agencies Impacted      None.

Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Recommendation # 24 - Regulation 65-223 (Additional Recommendation provided in July 31, 2017 letter)
Explanation of Revision	The Regulation explains the procedures for investigating a charge filed under the Fair Housing Law. The regulation should include provisions that allow for closure of an investigation when a complainant wants to withdraw the matter, or when complainant is offered full relief under the law and fails to accept it.
Recommended Language	D. Completion of investigation. <u>(1) At any time, the aggrieved person may seek to withdraw the complaint from the agency. The request must be in writing from the aggrieved party, or aggrieved party's representative, stating the reasons withdrawal. The request is subject to approval by the Commission. Such withdrawal shall be without prejudice to the rights of the aggrieved party. A withdrawn complaint may be re-filed, provided such filing occurs within one hundred eighty (180) days of the discriminatory act originally alleged.</u> <u>(2) If the respondent offers full relief to the aggrieved party, and the relief is rejected, the Commission may dismiss the matter.</u> <u>(3) If the aggrieved party fails to provide information necessary for the proper filing or processing of a complaint, fails or refuses to appear or to be available for scheduled interviews or conferences with Commission investigators, or otherwise refuses to cooperate with the Commission to the extent that the Commission is unable to resolve the complaint, then the Commission, after due written notice to the aggrieved party and fifteen (15) days in which to respond, may dismiss the complaint.</u> <u>(4) All other</u> The investigations will remain open until the reasonable cause determination is made or a conciliation agreement is executed and approved. Unless it is impracticable to do so, the Commission will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Commission reactivates the complaint, within 100 days after service of the notice of reactivation). If the Commission is unable to complete the investigation within the 100 day period, the Commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.
Other Agencies Impacted	None.
Statute or Regulation	Approved 10.17.17 (For Information Purposes Only in Subcommittee Report) Subcommittee Report Note that
Explanation	The Subcommittee Report will include for information purposes only the agency's implementation of recommendations from the 2014 Legislative Audit Council Review of the agency.

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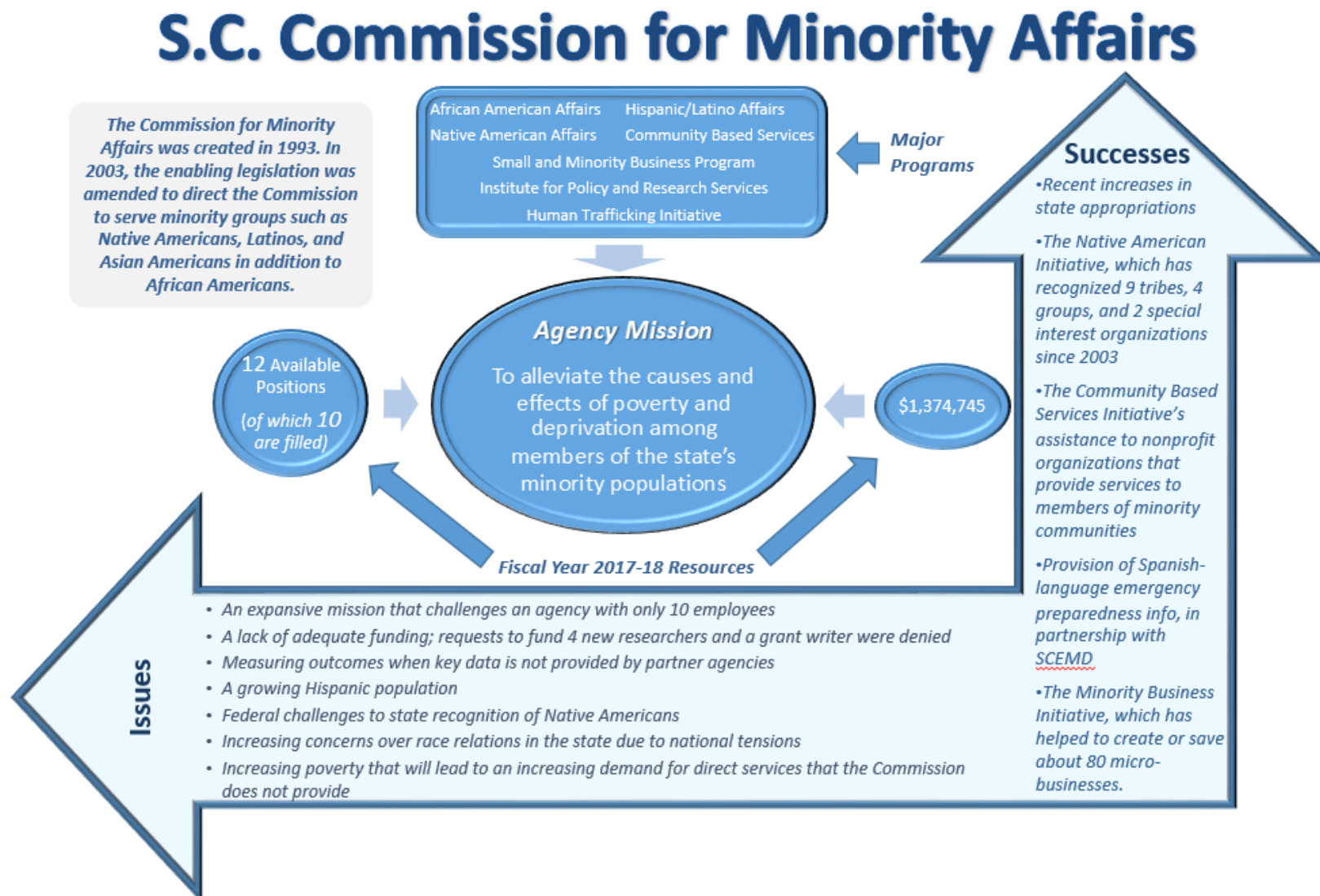
## STUDY TIMELINE: COMMISSION FOR MINORITY AFFAIRS

- August 7, 2015      Agency submits its **Annual Restructuring and Seven-Year Plan Report**, which is available online.
- March 30, 2016      Agency submits its **Annual Restructuring Report**, which is available online.
- September 2016      Agency submits its 2015-16 Accountability Report/2017 Annual **Restructuring Report**.
- May 10, 2017      **Full committee votes** to make the agency the next agency for the Economic Development, Natural Resources, and Transportation Subcommittee to study. Video of the meeting is available online.
- May 11, 2017      **Agency receives notice** that it has been selected for study.
- June 27 - July 28, 2017      Committee solicits input from the public about the agency in the form of an **online public survey**. The results of the public survey are available online.
- September 2017      Agency submits its 2016-17 Accountability Report/2018 Annual **Restructuring Report**.
- September 29, 2017      Agency submits its **Program Evaluation Report**, which is available online.
- October 16, 2017      Committee holds **public input meeting** about this and other agencies. Video of the meeting is available online.
- October 24, 2017      (TODAY) Subcommittee meets with agency (**Meeting #1**) to discuss the agency's purpose; mission; vision; laws enforced; organizational structure; major program areas; and relationships with other agencies.
- Ongoing      Public may submit written comments on the Oversight Committee's webpage on the General Assembly's website ([www.scstatehouse.gov](http://www.scstatehouse.gov))

# AGENCY OVERVIEW

## Snapshot

Figure 1. Snapshot of agency that includes its history, mission, resources, successes, challenges, and emerging issues<sup>1</sup>



## History

The Commission for Minority Affairs (CMA) has provided the Committee with an overview of the agency's history.<sup>2</sup> In addition, Committee staff will confirm the accuracy of any assertion of legislative action.

- 1993 – The agency was created when signed into law by Governor Carroll A. Campbell.
- 2000 – Hispanic leaders met with Governor Jim Hodges to discuss the state's growing Hispanic population which led to the commission of an Ad Hoc Committee to study issues confronting this growing population and ultimately the establishment of the Hispanic Initiative at the Commission;
- 2002 – The agency received a Notable State Document Award for its *State of Minorities Abstract*.
- 2003 – The agency's statute was amended to authorize the Commission to work on the behalf of all minorities in the state as opposed to working exclusively on behalf of African Americans.  
– The creation of the agency's Native American initiative.
- 2004 – The creation of the agency's Hispanic initiative and the hiring of the agency's Hispanic Coordinator to administer the initiative.
- 2005 – State Recognition of the first Native American entity.
- 2006 – The agency received a Notable Document Award for its 2004 Edition of the *Statistical Profile by Counties* document.
- 2007 – The agency entered into a partnership with the SC Emergency Management Division to outreach to the Hispanic community during emergencies.
- 2008 – The creation of the agency's Small and Minority Business Assistance initiative and the hiring of a coordinator to administer the initiative.  
– The agency's statute amended to include its Human Trafficking Initiative.
- 2009 – The completion of the agency's Student Achievement and Vision Education (SAVE) report.
- 2013 – Partnered with Midlands Technical College to administer the ASSIST grant.  
– Produced the state's first *Native American Community Needs Assessment* report.
- 2016 – The agency developed a Human Trafficking Resource Notebook.
- 2017 – Creation of the agency's "Working Together Works" initiative to establish a statewide plan to address issues of poverty and deprivation among the state's minority populations.  
– Hiring of the agency's Human Trafficking Coordinator to administer its Human Trafficking initiative.

## Legal Directives

The Commission for Minority Affairs is primarily governed by Title 1, Chapter 31 of the S.C. Code of Laws. This statute also serves as the basis for the agency's mission. Additional statutes pertaining to the CMA include:

- Title 8, Chapter 30 of the S.C. Code of Laws, establishing a hotline to receive allegations of violations of immigration or human trafficking laws;
- S.C. Code of Laws §12-21-4200, directing \$131,000 of state bingo revenues to the CMA;
- S.C. Code of Laws §20-1-20, establishing that leaders of Native American entities recognized by the CMA may perform marriage ceremonies; and
- S.C. Code of Laws §50-11-515, allowing members of Native American tribes recognized by the CMA to use wild turkey feathers in works of art.

All of these statutes are included below.

### *Title 1, Chapter 31: Primary Governing Legislation*

#### **SECTION 1-31-10. Commission for Minority Affairs created; composition; majority to be African-American; term of office; filling vacancies.**

There is created a State Commission for Minority Affairs consisting of nine members and the Governor ex officio. The Governor must appoint one person from each of the congressional districts of the State and two persons from the State at large upon the advice and consent of the Senate. The Governor shall designate the chairman. The members serve for a term of four years and until their successors are appointed and qualify. A vacancy must be filled in the same manner as original appointment for the remainder of the unexpired term. A majority of the members of the commission must be African American.

*HISTORY: 1993 Act No. 164, Part II, Section 110; 2003 Act No. 85, Section 3; 2012 Act No. 279, Section 3, eff June 26, 2012.*

#### **SECTION 1-31-20. Commission to meet at least quarterly; purpose.**

The commission must meet quarterly and at other times as the chairman determines necessary to study the causes and effects of the socio-economic deprivation of minorities in the State and to implement programs necessary to address inequities confronting minorities in the State.

*HISTORY: 1993 Act No. 164, Part II, Section 110; 2001 Act No. 26, Section 1.*

#### **SECTION 1-31-30. Hiring of executive director and other personnel; appropriations.**

The commission is authorized to hire an executive director and other personnel necessary to carry out its duties and functions under this chapter. The General Assembly shall provide for the funds in the annual appropriations act.

*HISTORY: 1993 Act No. 164, Part II, Section 110.*

**SECTION 1-31-40. Powers and duties of Commission.**

(A) The commission shall:

- (1) provide the minority community consisting of African Americans, Native American Indians, Hispanics/Latinos, Asians, and others with a single point of contact for statistical and technical assistance in the areas of research and planning for a greater economic future;
- (2) work with minority officials on the state, county, and local levels of government in disseminating statistical data and its impact on their constituencies;
- (3) provide for publication of a statewide statistical abstract on minority affairs;
- (4) provide statistical analyses for members of the General Assembly on the state of minority communities as the State experiences economic growth and changes;
- (5) provide the minority community with assistance and information on Voting Rights Act submissions in the State, as well as other related areas of concern to the minority community;
- (6) determine, approve, and acknowledge by certification state recognition for Native American Indian entities; however, notwithstanding their state certification, the tribes have no power or authority to take any action which would establish, advance, or promote any form of gambling in this State;
- (7) establish advisory committees representative of minority groups, as the commission considers appropriate to advise the commission;
- (8) act as liaison with the business community to provide programs and opportunities to fulfill its duties under this chapter;
- (9) seek federal and other funding on behalf of the State of South Carolina for the express purpose of implementing various programs and services for African Americans, Native American Indians, Hispanics/Latinos, Asians, and other minority groups;
- (10) promulgate regulations as may be necessary to carry out the provisions of this article including, but not limited to, regulations regarding State Recognition of Native American Indian entities in the State of South Carolina;
- (11) establish and maintain a twenty-four hour toll free telephone number and electronic website in accordance with Section 8-30-10; and

(12) perform other duties necessary to implement programs.

(B) The commission may delegate these powers and duties as necessary.

(C) Nothing in this chapter recognizes, creates, extends, or forms the basis of any right or claim of interest in land or real estate in this State for any Native American tribe which is recognized by the State.

*HISTORY: 1993 Act No. 164, Part II, Section 110; 2003 Act No. 85, Section 4; 2008 Act No. 280, Section 2, eff June 4, 2008.*

#### **SECTION 1-31-50. Promulgation of regulations to carry out duties.**

The commission may promulgate those regulations necessary to carry out its duties under this chapter.

*HISTORY: 1993 Act No. 164, Part II, Section 110.*

### *Title 8, Chapter 30: Immigration & Human Trafficking Hotline*

#### **SECTION 8-30-10. Recording and reporting allegations of federal immigration law violations; centralized tracking database.**

(A) The Executive Director of the State Commission for Minority Affairs, or a designee, shall establish and maintain a twenty-four hour toll free telephone number and electronic website to receive, record, collect, and report allegations of violations of federal immigration laws or related provisions of South Carolina law by any non-United States citizen or immigrant, and allegations of violations of any federal immigration laws or related provisions in South Carolina law against any non-United States citizen or immigrant. Such violations shall include, but are not limited to, E-Verify or other federal work authorization program violations, violations of Chapter 83, Title 40 of this code relating to immigration assistance services, or any regulations enacted governing the operation of immigration assistance services, false or fraudulent statements made or documents filed in relation to an immigration matter, as defined by Section 40-83-20, violation of human trafficking laws, as defined in Section 16-3-2020, landlord tenant law violations, or violations of any law pertaining to the provision or receipt of public assistance benefits or public services.

(B) The executive director, or a designee, shall establish and maintain a centralized tracking database consisting of all information received through the twenty-four hour toll free telephone number and electronic website, and shall report all alleged violations to the appropriate law enforcement, administrative, executive, or regulatory agency or political subdivision having law enforcement or regulatory

control over the subject matter, including, but not limited to the United States Bureau of Immigration and Customs Enforcement, consistent with 8 USC Section 1373.

*HISTORY: 2008 Act No. 280, § 6, eff June 4, 2008; 2015 Act No. 7 (S.196), § 6.A, eff April 2, 2015.*

#### **SECTION 8-30-20. Authority to hire personnel.**

The executive director is authorized to hire personnel necessary to carry out the duties prescribed in Section 8-30-10. The General Assembly shall provide for the funds in the annual appropriations act.

*HISTORY: 2008 Act No. 280, § 6, eff June 4, 2008.*

*Other Relevant Code Sections (see language in bold type)*

#### **SECTION 12-21-4200. Disbursement of revenues.**

The first nine hundred forty-eight thousand dollars of the total revenues derived from the provisions of this article which is collected from bingo within this State must be deposited monthly in twelve equal amounts into an account in the Office of the State Treasurer and called "Division on Aging Senior Citizen Centers Permanent Improvement Fund". All interest earned on monies in the Division on Aging Senior Citizen Centers Permanent Improvement Fund must be credited to this fund. Of the remaining revenue:

- (1) Seven and five one-hundredths percent of the annual revenue derived from the provisions of Section 12-21-4190(2) must be deposited with the State Treasurer to be credited to the account of the Division on Aging, Office of the Governor, but in no case shall this credit be less than six hundred thousand dollars. This amount must be allocated to each county for distribution in home community services for the elderly as follows:
  - (a) One-half of the funds must be divided equally among the forty-six counties.
  - (b) The remaining one-half must be divided based on the percentage of the county's population age sixty and above in relation to the total state population using the latest report of the United States Bureau of the Census.

The aging service providers receiving these funds must be agencies recognized by the Division on Aging, Office of the Governor and the area agencies on aging.

- (2) Twenty and eight-tenths percent of the annual revenue derived from the provisions of Section 12-21-4190(2), or two and one-half million dollars each

fiscal year, whichever is greater, must be deposited by the State Treasurer in a separate fund for the Department of Parks, Recreation and Tourism entitled the Parks and Recreation Development Fund. Interest earned by this fund must be added to it and credited to its various accounts in the same proportion that the annual allocation to each account bears to the total annual distribution to the fund. Unexpended amounts in the various fund accounts must be carried forward to succeeding fiscal years except as provided in Section 51-23-30. Fund proceeds must be distributed as provided in Chapter 23 of Title 51.

- (3) Subject to the distribution in item (2), seventy-two and fifteen one-hundredths percent of the annual revenue derived from the provisions of Section 12-21-4190(2) must be deposited with the State Treasurer and credited to the general fund, except that **the first one hundred thirty-one thousand of such revenues each year must be transferred to the Commission on Minority Affairs.** (emphasis added)

*HISTORY: 1996 Act No. 449, § 1; 2004 Act No. 172, § 11, eff August 2, 2003; 2006 Act No. 357, § 2, eff July 1, 2007; 2006 Act No. 359, § 2, eff July 1, 2006; 2016 Act No. 254 (H.5034), § 8, eff June 7, 2016.*

#### **SECTION 20-1-20. Persons who may perform marriage ceremony.**

Only ministers of the Gospel, Jewish rabbis, officers authorized to administer oaths in this State, and **the chief or spiritual leader of a Native American Indian entity recognized by the South Carolina Commission for Minority Affairs** pursuant to Section 1-31-40 are authorized to administer a marriage ceremony in this State. (emphasis added)

*HISTORY: 1962 Code § 20-2; 1952 Code § 20-2; 1942 Code § 8565; 1932 Code § 8565; Civ. C. '22 § 5530; Civ. C. '12 § 3751; 1911 (27) 131; 2008 Act No. 322, § 1, eff June 16, 2008.*

#### **SECTION 50-11-515. Use of wild turkey feathers in art.**

(A) An American Indian artist, **who is a member of a tribe recognized by** (1) Public Law 101-644, the Indian Arts and Crafts Board Act, and (2) **the state's Commission on Minority Affairs** pursuant to Section 1-31-40, may use wild turkey feathers in arts and crafts that are offered for sale and sold to the general public if the artist has on his person a tribal identification card demonstrating his authorization pursuant to the Indian Arts and Crafts Board Act.

(B) This section does not authorize the sale of other parts of wild turkeys, whether taken lawfully or unlawfully, including, but not limited to, capes, beards, and fans.

*HISTORY: 2008 Act No. 286, § 8, eff June 11, 2008 and by 2008 Act No. 300, § 1, eff June 11, 2008.*

## ORGANIZATION

### *Governing Body (i.e. director, commissioners, trustees, etc.)*

In the Program Evaluation Report, the Committee asks the agency to provide information about the agency's governing body.<sup>3</sup> The CMA is governed by a Board of Commissioners consisting of nine members and the Governor ex officio. The agency's statute provides that the Governor must appoint one person from each of the seven congressional districts of the state and two persons from the state at large upon the advice and consent of the Senate. The members serve for a term of four years and until their successors are appointed and qualify. Vacancies are filled in the same manner as original appointment for the remainder of the unexpired term. A majority of the members of the Commission must be African American (S.C. Code of Laws §1-31-10).

Table 1 lists the current agency board members, congressional district represented, and date the member's term expires.<sup>4</sup>

*Table 1. Agency board members, congressional district represented, and date term expires.*

Board Members	Congressional District	Date Term Expires
Chairman Mr. Kenneth Battle	First	June 30, 2017
Dr. Kent T. Washington	Second	June 30, 2019
Dr. Lamont A. Flowers	Third	June 20, 2021
Ms. Karen W. McGill	Fourth	June 30, 2019
Dr. William B. James, Jr.	Fifth	June 30, 2021
Reverend Eddie C. Guess	Sixth	June 30, 2011
Reverend Michelle Law-Gordon	Seventh	June 30, 2020
Mr. Louie C. Chavis	At Large	June 30, 2013
<i>Vacant</i>	At Large	N/A
Ms. Tia S. Brewer-Footman	Governor's Designee	N/A

### *Internal Audit*

In the Program Evaluation Report, the Committee asks the agency to provide information about internal audit process, if it has one. The CMA does not have an internal audit process. Agency audits are conducted by the Office of the State Auditor.<sup>5</sup>

## *Organizational Units*

The agency's Program Evaluation Report (PER) includes information about its seven organizational units:<sup>6</sup>

### **African American Affairs Initiative**

Responsible for confronting the disparate facts regarding African-Americans by working with local, state, and federal entities, as well as other organizations to develop strategies and be a catalyst to improve conditions in our community.

### **Hispanic Latino Affairs Initiative**

Addresses issues concerning the Hispanic Latino community of South Carolina to include economic, education, health, public safety, human rights and other pertinent issues that affect the Hispanic community.

### **Native American Affairs Initiative**

Serves as the South Carolina Indian Affairs Office with the mission to establish the framework to ensure social equity and economic prosperity for all Native American Indian citizens throughout the State of South Carolina through policy change, education, and increased awareness.

### **Small and Minority Business**

Promotes social and economic self-sufficiency primarily for disadvantaged minorities by providing entrepreneurial education and training, business technical assistance and provides information for microloan programs.

### **Community Based Services Initiative**

Provides and strengthens minority non-profit organizations and church affiliates with technical assistance, capacity building, collaboration and partnerships to better serve communities.

### **Research and Policy Services**

Provides current statistical data, conducts simple to complex applied statistical and survey research, conducts policy analysis of state and federal legislation, and helps disseminate key statistical information to state leaders for profit and non-profit organizations, and to individual citizens in the State of South Carolina. These research services assist the SC Commission for Minority Affairs in achieving its agency mission in utilizing research to help to study the causes and effects of socioeconomic poverty and deprivation in South Carolina.

### **Human Trafficking and Immigration Initiative**

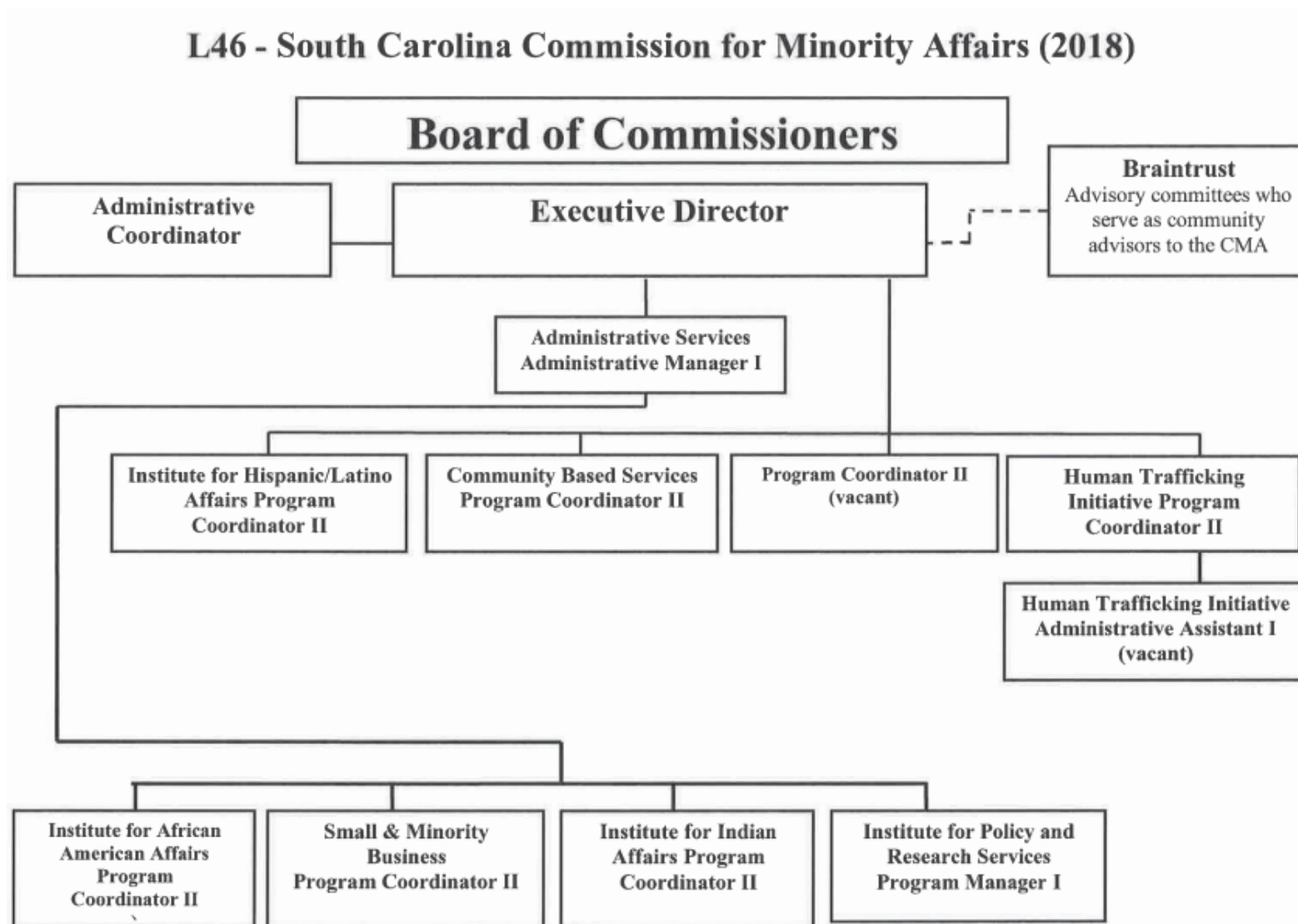
Responsible for addressing and raising awareness on issues regarding human trafficking and immigration laws and provides opportunities for reporting via the hotlines concerning the issues addressed.

The agency reported that it had no turnover in 2014-15 and in 2016-17, and it lost only one employee in 2015-16. There was no exit interview process.

The agency did not evaluate employee satisfaction or allow for anonymous feedback during the last three fiscal years (2014-15 through 2016-17). None of the agency's jobs required a certification.

## Organizational Chart

Figure 2: Organizational Chart, 2018<sup>7</sup>



## Products, Services, and Customers

In the Program Evaluation Report, the Committee asks an agency to **provide a list of its deliverables** (i.e., products and services) as well as additional information related to laws, customers, costs, and potential negatives impacts. The CMA provided a list of 11 deliverables, all of which it reported that it is **required by law** to provide **free of charge**. The agency also indicated that none of these deliverables would fit within the mission of another state agency. The other information it provided about these deliverables is shown in Table 2 below.<sup>8</sup>

Table 2: List of Deliverables

Table 2: List of Deliverables						
Applicable Laws	Customer satisfaction evaluated?	Does the agency know the...			Greatest potential harm to the public if deliverable is not provided	Recommendations to the General Assembly to help avoid the greatest potential harm
		cost per unit?	annual # of potential customers?	annual # of customers served?		
1. Provide the minority community consisting of African Americans, Native American Indians, Hispanics/Latinos, Asians, and others with a single point of contact for statistical and technical assistance in the areas of research and planning for a greater economic future						
Code of Laws, §1-31-40	Yes	No	Yes	Yes	The agency will not be able to serve citizens, state agencies and other organizations through technical assistance and better access to cultural and community based research or statistical data for economic and community development.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA
2. Work with minority officials on the state, county, and local levels of government in disseminating statistical data and its impact on their constituencies						
Code of Laws, §1-31-40	Yes	No	Yes	Yes	The agency will not be able to serve citizens, state agencies and other organizations through technical assistance and better access to cultural and community based research or statistical data for economic and community development.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA

Applicable Laws	Customer satisfaction evaluated?	Does the agency know the...			Greatest potential harm to the public if deliverable is not provided	Recommendations to the General Assembly to help avoid the greatest potential harm
		cost per unit?	annual # of potential customers?	annual # of customers served?		
3. Provide for publication of a statewide statistical abstract on minority affairs						
Code of Laws, §1-31-40	Yes	No	Yes	Yes	Without the production of the "State of Minorities Report," the agency will not be able to provide statistics on how minorities fare and compare to the majority population or information to the legislature with the hopes of influencing changes in policy and law(s).	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA
4. Provide statistical analyses for members of the General Assembly on the state of minority communities as the State experiences economic growth and changes						
Code of Laws, §1-31-40	No	No	No	No	The agency will not be able to serve citizens, state agencies and other organizations through technical assistance and better access to cultural and community based research or statistical data for economic and community development.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA
5. Provide the minority community with assistance and information on Voting Rights Act submissions in the State, as well as other related areas of concern to the minority community						
Code of Laws, §1-31-40* <i>No longer required due to Federal changes.</i>	No	No	No	No	This is no longer applicable due to a change in the Federal Voting Rights Act.	N/A

Applicable Laws	Customer satisfaction evaluated?	Does the agency know the...			Greatest potential harm to the public if deliverable is not provided	Recommendations to the General Assembly to help avoid the greatest potential harm
		cost per unit?	annual # of potential customers?	annual # of customers served?		
6. Determine, approve, and acknowledge by certification state recognition for Native American Indian entities; however, notwithstanding their state certification, the tribes have no power or authority to take any action which would establish, advance, or promote any form of gambling in this State						
Code of Laws, §1-31-40; §1-31-50; §20-1-20; §50-11-515 Code of Regs, §139-100; §139-105; §139-108; §139-109	Yes	No	Yes	Yes	Without the process of State Recognition, Native American entities will not have formal acknowledge from the State of South Carolina establishing a “government-to-government” relationship in addition to preventing access to programs and serves of at all levels of government and non-governmental agencies along with preventing compliance with Federal and State laws.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA
7. Establish advisory committees representative of minority groups, as the commission considers appropriate to advise the commission						
Code of Laws, §1-31-40; Code of Regs, §139-106; §139-200; §139-202	Yes	No	Yes	Yes	The agency will not be able to serve citizens, state agencies and other organizations through technical assistance and better access to cultural and community based research or statistical data for economic and community development.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA

Applicable Laws	Customer satisfaction evaluated?	Does the agency know the...			Greatest potential harm to the public if deliverable is not provided	Recommendations to the General Assembly to help avoid the greatest potential harm
		cost per unit?	annual # of potential customers?	annual # of customers served?		
8. Act as liaison with the business community to provide programs and opportunities to fulfill its duties under this chapter						
Code of Laws, §1-31-40	Yes	No	No	Yes	The agency will not be able to serve citizens, state agencies and other organizations through technical assistance and better access to cultural and community based research or statistical data for economic and community development.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA
9. Seek federal and other funding on behalf of the State of South Carolina for the express purpose of implementing various programs and services for African Americans, Native American Indians, Hispanics/Latinos, Asians, and other minority groups						
Code of Laws, §1-31-40	No	No	No	No	The agency will not be able to serve citizens, state agencies and other organizations through technical assistance and better access to cultural and community based research or statistical data for economic and community development.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA

Applicable Laws	Customer satisfaction evaluated?	Does the agency know the...			Greatest potential harm to the public if deliverable is not provided	Recommendations to the General Assembly to help avoid the greatest potential harm
		cost per unit?	annual # of potential customers?	annual # of customers served?		
10. Promulgate regulations as may be necessary to carry out the provisions of this article including, but not limited to, regulations regarding State Recognition of Native American Indian entities in the State of South Carolina						
Code of Laws, §1-31-40; §1-31-50; §20-1-20; §50-11-515; Code of Regs, §139-100; §139-105; §139-108; §139-109; §139-106; §139-200; §139-202	No	No	No	No	Without the process of State Recognition, Native American entities will not have formal acknowledge from the State of South Carolina establishing a “government-to-government” relationship in addition to preventing access to programs and serves of at all levels of government and non-governmental agencies along with preventing compliance with Federal and State laws.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA
11. Establish and maintain a twenty-four hour toll free telephone number and electronic website in accordance with Section 8-30-10						
Code of Laws, §8-30-10; §8-30-20	No	No	No	No	The agency will not be able to serve citizens, state agencies and other organizations through technical assistance and better access to cultural and community based research or statistical data for prevention and prosecution of labor law violations including all forms of human trafficking.	1. Provide additional FTE to carry out these duties. 2. Require other agencies to partner and collaborate with the Commission regarding data and outreach initiatives to make current programs more effective. 3. Support legislative and policy changes to positively affect minority communities as suggested through reports and research conducted by the CMA

## Revenue Sources

In the Program Evaluation Report, the Committee asks the agency to provide information about its revenue sources. The CMA reported that all of its revenues remain with the agency. Table 3 is a summary of the information the agency provided.<sup>9</sup>

Table 3: Revenue Sources

Revenue Sources	Recurring?	Type	FY 16-17				FY 17-18 (Budgeted)			
			Revenue		Carried from Previous Year	Spent on Strategic Plan	Revenue		Carried from Previous Year	Budgeted for Strategic Plan
			Amount	% of Total			Amount	% of Total		
General Fund	Recurring	State	\$1,020,729	86.7%	\$39,585	\$884,827	\$1,028,806	84.2%	\$102,073	\$1,130,879
Bingo	Recurring	State	\$131,000	11.1%	\$29,240	\$136,476	\$131,000	10.7%	\$23,764	\$154,764
Other Funds Authorization	Non-Recurring	Other Funds	\$825	0.1%	\$27,062	\$160	\$1,375	0.1%	\$27,727	\$29,100
USDA	Non-Recurring	Federal	\$24,885	2.1%	\$0	\$16,688	\$60,000	4.9%	\$0	\$60,000
TOTAL			\$1,177,439		\$95,887	\$1,038,152	\$1,221,181		\$153,564	\$1,374,743

## COMMITTEE CONTACT INFORMATION



### Website

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>

### Phone Number

(803) 212-6810

### Email

[HCommLegOv@schouse.gov](mailto:HCommLegOv@schouse.gov)

### Location

Blatt Building, Room 228

<sup>1</sup> SC House of Representatives, House Legislative Oversight Committee, “Agency PER (Program Evaluation Report) (September 29, 2017),” at [www.scstatehouse.gov](http://www.scstatehouse.gov) under “Committee Postings and Reports” > “House Legislative Oversight Committee” > “Minority Affairs, Commission for” <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/MinorityAffairs/PER%20-%20Complete%20PDF.PDF> (Accessed October 10, 2017). Hereinafter, “Agency PER”

<sup>2</sup> [Agency PER](#), pp. 3-4.

<sup>3</sup> [Agency PER](#), pp. 4-5.

<sup>4</sup> SC Secretary of State, Boards and Commissions, Commission for Minority Affairs. [http://search.scsos.com/boards\\_commissions/default.aspx](http://search.scsos.com/boards_commissions/default.aspx) (Accessed October 10, 2017).

<sup>5</sup> [Agency PER](#), p. 5.

<sup>6</sup> [Agency PER](#), p. 19.

<sup>7</sup> [Agency PER](#), p. 10.

<sup>8</sup> [Agency PER](#), pp. 13-18.

<sup>9</sup> [Agency PER](#), pp. 20-31.



- Website - <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>
- Phone Number - 803-212-6810
- Email - [HCommLegOv@schouse.gov](mailto:HCommLegOv@schouse.gov)
- Location - Blatt Building, Room 228